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SENTENCING PROFILE

Kids in court: The sentencing of children in Queensland



**Queensland Sentencing
Advisory Council**

Kids in court: The sentencing of children in Queensland

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Acknowledgement of Traditional Owners

We acknowledge and give our respects to the Traditional Owners and Caretakers of this land, where they have performed age-old ceremonies of storytelling, healing, music, dance and celebration. We would also like to acknowledge and give our respects to Elders, past, present and emerging, for they hold the memories, traditions and knowledge of Aboriginal and Torres Strait Islander culture.

Aboriginal and Torres Strait Islander peoples are advised that this publication may contain words, names and descriptions of people who have passed away.

The Queensland Sentencing Advisory Council values Aboriginal and Torres Strait Islander people's experience and culture and recognises and prioritises their needs to understand the drivers of their over-representation in Queensland's criminal justice system. Our Aboriginal and Torres Strait Islander corporate artwork *Overcoming Obstacles* by Casey Coolwell was commissioned to embody our commitment to understanding the drivers of over-representation in the Queensland criminal justice system. To view the artwork and what it represents, please visit our website.

Summary

This is the third Sentencing profile report. It examines the emerging trends and patterns in the sentencing of children in Queensland.

The purpose of this report is to provide information on emerging sentencing trends for children in Queensland courts and give insight into factors contributing to children becoming involved in the criminal justice system. The quantitative analysis is based on data from the Queensland courts database (2005–06 to 2018–19).

The Technical paper for research publications, available on the Council's website, provides more information on counting rules, methodology and terminology used in this series.

Patterns of offending

The rate of children who commit offences decreased over time

The rate of children aged 10 to 16 sentenced in court has been steadily declining since 2009–10, while the number of cases remained relatively stable over time.

Remote areas had the highest rate of sentenced children

The rate of sentenced children was higher in remote areas with 36 children per 1,000 population, followed by regional areas with 10 children per 1,000 population. Major cities had the lowest rate of sentenced children at 7.6 children per 1,000 population.

The most common age at time of offence was 17 years

In 2018–19, 26.5 per cent of cases were committed by children aged 17 years. Children aged under 13 years accounted for 14.8 per cent of cases.

Aboriginal and Torres Strait Islander children were over-represented

Aboriginal and Torres Strait Islander children were 5.5 times over-represented in the youth justice system.

Boys were over-represented

The vast majority of cases (75.2%) were committed by boys, compared to 24.8 per cent of cases committed by girls.

Trends in offending and recidivism

The three most common offences were theft, public order offences and unlawful entry

Theft comprised 43.8 per cent of sentenced cases, followed by public order (26.9%) and unlawful entry (24%).

The number of sentenced children increased for almost every offence category

Theft was the most common offence category and had the largest absolute increase over the data period. Drug offences and justice and government offences also increased considerably. Traffic and vehicle offences, followed by sexual assault offences were the only two categories that decreased in the data period.

Half of sentenced children were repeat offenders

Just over half (50.7%) of offenders were sentenced multiple times as children. Reoffending rates varied by type of offence, with the highest rate of reoffending observed for trespassing, followed by unlawful entry and wilful damage.

Penalties and sentencing outcomes

A reprimand was the most common penalty for children in Magistrates Courts

Non-custodial penalties comprised the majority of penalties in Magistrates Courts, with children reprimanded in 29.8 per cent of cases, followed by good behaviour bonds (16.0%), probation (15.4%) and community service (14.0%).

The rate of custodial penalties increased in Magistrates Courts

The use of custodial penalties in Magistrates Courts gradually increased over time, from 4 per cent of cases in 2005–06 to 7 per cent in 2018–19. The number of detention orders more than doubled in the data period, from 95 to 209 cases.

Probation was the most common penalty in the higher courts

Probation was the most common non-custodial penalty in the higher courts (39.6%), followed by community service (18.8%). Nearly one-third of cases dealt with in the higher courts received a custodial penalty (29.6%), with detention as the most common custodial penalty at 17.6 per cent, followed by conditional release orders at 11.9 per cent.

More than half of children sentenced to detention received an order less than 6 months

The majority of children sentenced to detention (51.3%) received an order of under 6 months, while 30.3 per cent received between 6 and 12 months. The average head sentence for children sentenced to detention in the Magistrates Courts was 4.5 months. The average head sentence for children sentenced to detention in the higher courts was 16.8 months.

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Abbreviations

ABS	Australian Bureau of Statistics
ADHD	Attention Deficit Hyperactivity Disorder
AIFS	Australian Institute of Family Studies
AIHW	Australian Institute of Health and Welfare
ANZSOC	Australian and New Zealand Standard Offence Classification
ASGS	Australian Statistical Geography Standard
CCQ	Childrens Court of Queensland
DJAG	Department of Justice and Attorney-General
DVO	domestic violence order
ERP	estimated resident population
FASD	Foetal Alcohol Spectrum Disorder
MSO	most serious offence
NFP	not further punished
PDLR	prison/detention last resort (principle of)
PSA	<i>Penalties and Sentences Act 1992</i> (Qld)
QFCC	Queensland Family and Child Commission
QGSO	Queensland Government Statistician's Office
QPS	Queensland Police Service
QWIC	Queensland Wide Inter-linked Courts
YJA	<i>Youth Justice Act 1992</i> (Qld)

Introduction

This report seeks to fill a gap in publicly available information on the sentencing of children in Queensland. Children are over-represented in statistics on recorded crime by police. Due to the nature of the offending behaviour common among children, their crimes are often more easily detected by police.¹ However, children are under-represented in statistics on sentencing as a result of the comparatively minor nature of offending among children, as well as diversion of children away from the criminal justice system. Those sentenced in court are often among the most vulnerable children,² making it crucial to better understand the patterns of offending, types of offences committed and penalties received by children.

Children in the youth justice system often find themselves in a complex nexus of cognitive immaturity, personal challenges, risk factors within their communities and structural disadvantage. This report seeks to provide statistics on the sentencing of children in Queensland in context. Findings from existing studies highlight that while most children who commit offences do not continue to offend, the ones who do often struggle with complex vulnerabilities and grow into ‘frequent flyers’ of the criminal justice system who commit a comparatively large proportion of offences.³

Seeking to stop these trajectories of offending early, the Youth Justice Strategy, established by the Queensland Government in 2019, is based on the principles of early intervention, keeping children out of court, keeping children out of custody and reducing reoffending.⁴ The legal basis for sentencing children in Queensland is different to adults, placing a strong emphasis on diversion and alternatives to custody. Yet, children do end up in court and even though in the minority, some are sentenced to detention.

A recent report published by the Queensland Government Statistician’s Office (QGSO) found that, of those who are sentenced to detention, the majority identify as Aboriginal and Torres Strait Islander children.⁵ The Queensland Family and Child Commission (QFCC) has recently concluded that ‘legislative changes and new initiatives by government over many years have failed to improve the over-representation of Aboriginal and Torres Strait Islander children in the youth justice system’.⁶ The QFCC report stresses the importance of long-term funding in accordance with the Youth Justice Strategy, as well as increasing collaboration across agencies, improving the inclusion of families of children who offend, and further acknowledging the vulnerability of children involved in the youth justice system.⁷

This report provides an overview of the sentencing of children in Queensland courts between 2005–06 and 2018–19, seeking to inform legal professionals and the public about sentencing of children to contribute to a better understanding of the youth justice system.

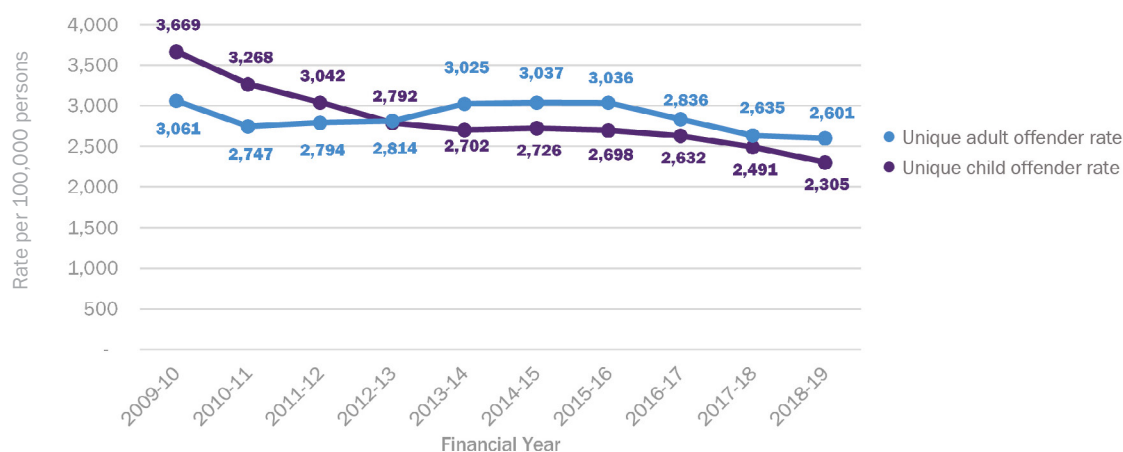
1. Queensland Government Statistician’s Office, *Crime report, Queensland, 2018-19* (Queensland Treasury, 2020) 89.
2. Bob Atkinson, *Report on youth justice* (Version 2, June 2018) (‘The Atkinson report’) 23 citing the Queensland Police Service *Operational Procedures Manual*.
3. Troy Allard et al, *Police diversion of young offenders and Indigenous over-representation* (Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice No 390, March 2010).
4. Department of Youth Justice, *Working together changing the story: Youth Justice Strategy 2019-2023* (‘Youth Justice Strategy 2019-2023’).
5. Queensland Government Statistician’s Office, *Justice report, Queensland, 2018-19* (Queensland Treasury, 2020).
6. Queensland Family and Child Commission, *Changing the sentence: Overseeing Queensland’s youth justice reforms*, (published in July 2021), 8.
7. Ibid.

Trends in offending among children

The rate of youth offending is decreasing, not only in Queensland, but also in other Australian jurisdictions and internationally.⁸ Data from the Queensland Police Service (QPS) as published by the QGSO shows that the number of unique children (aged 10–17 years) proceeded against by police declined by 30.8 per cent from 17,243 in 2009–10 to 11,936 in 2018–19.⁹ In comparison, the number of unique adult offenders decreased only slightly, from 101,334 in 2009–10 to 100,891 in 2018–19 (representing a less than 1% decrease).¹⁰

In fact, 2018–19 saw the lowest unique child offender rate at 2,305 per 100,000 children in Queensland within the 10-year time series – see Figure 1. This rate equates to only 2.3 per cent of the population aged 10 to 17, indicating that the vast majority of children in this age bracket did not come into contact with the court system during the data period. The data presented in Figure 1 shows the number of unique adults and children proceeded against by police. It is important to note that in addition to levels of crime committed, changes in policing practices and the changing use of diversionary measures (eg. cautions) may have impacted these rates.¹¹

Figure 1: Unique offender rate of children versus adults, Queensland, 2009–10 to 2018–19



Source: Queensland Government Statistician's Office, Crime report, *Queensland, 2018-19*, Figure 38, published March 2020.

Scope of the Sentencing profile series

The Council's *Sentencing profile* series investigates emerging sentencing trends and patterns for specific cohorts in Queensland. This is the third *Sentencing profile* report. It aims to examine the emerging trends and patterns in the sentencing of children in Queensland and make this analysis available to the wider community. The purpose of this report is to provide information on emerging sentencing trends relating to children in Queensland courts as well as to give insight into the factors that contribute to children becoming involved in the criminal justice system.

Methodology

This report contains data from the Queensland Courts Database (maintained by QGSO) and findings from published research on youth offending. The report is based on data extracts obtained from the administrative system used by Queensland Courts to record information about court events (a system known as 'QWIC' or the Queensland Wide Inter-linked Courts system).

Types of data analyses undertaken in this report	
	Age
	Gender
	Aboriginal and Torres Strait Islander status
	Geographical
	Trends over time
	Offence type
	Recidivism
	Penalty type

8. Gwyn Griffiths and Gareth Norris, 'Explaining the crime drop: contributions to declining crime rates from youth cohorts since 2005' (2020) 73(1) *Crime, Law and Social Change* 25-53.

9. Queensland Government Statistician's Office, *Crime report, Queensland, 2018-19* (Queensland Treasury, 2020) 89.

10. Ibid.

11. In her overview to the Children's Court of Queensland *Annual report 2018–19*, the President stated that 'the Queensland Police Service is working on increased use of diversions by expanding the cautioning program and training officers in recognising appropriate cases for that program as well as exploring protected admissions which would enable further expansion of cautioning and restorative justice diversion'.

An extract of the Courts Database was provided to the Council in November 2019 and includes cases sentenced in Queensland courts from 1 July 2005 to 30 June 2019. This data forms the basis of the statistical analysis contained in this report. Only data up to 2018-19 is used to ensure consistency with other reports in this series.

The data reported in this document may differ from information published by other agencies, primarily due to differences in the counting rules applied. This study reports on finalised court appearances resulting in a sentenced outcome. Cases that did not result in a sentence (including cases involving charges that were withdrawn or defendants found not guilty) were excluded. For more information on the counting rules, methodology and terminology used in this series, the Council's *Technical paper for research publications* is available on the Council's website.

The research presented in this report examines cases involving children dealt with by Queensland courts where a penalty was imposed under the *Youth Justice Act 1992* (Qld) ('YJA') between 1 July 2005 to 30 June 2019. Therefore, it is limited to children sentenced for an offence and does not report on the outcomes of police or court diversionary options. If a penalty was imposed under the *Penalties and Sentences Act 1992* (Qld), the offender was categorised as an adult and excluded from this report. The majority of the data presented in this report relates to children aged 10 to 16 years.¹² Children aged 17 were treated as adults for the purposes of sentencing in Queensland until February 2018, when legislation came into force that brought 17-year-olds into the youth justice system (see Chapter 2).

A defendant's Aboriginal and Torres Strait Islander status is based on information recorded by police and transferred to QWIC. The information is based on self-identification by the offender. The quality of this data is dependent on accurate recording by police and transfer to QWIC. Due to data limitations, cases involving traffic and vehicle regulatory offences (ANZSOC Division 14)¹³ and dangerous or negligent operation of a vehicle (ANZSOC Subdivision 041) were excluded from data analysis examining Aboriginal and Torres Strait Islander status.

Offender rates were calculated using Estimated Resident Population (ERP) data derived from the Australian Bureau of Statistics (ABS) and expressed as the number of offenders per 1,000 population between 10 and 16 years old (when analysing data between 2005-06 and 2017-18) or between 10 to 17 years old (when analysing data for 2018-19). Where rates are presented by location, gender or Aboriginal and Torres Strait Islander status, the rates were calculated using the population of the relevant group.

For geographical data, the offence location was coded to the Australian Statistical Geography Standard's (ASGS) remoteness structure as published by the ABS.¹⁴ This structure divides Australia into five classes of remoteness based on relative access to services. However, for ease of reporting, this Sentencing profile series classifies offence location by three levels of remoteness: 1) major cities, 2) regional areas (consisting of inner and outer regional areas) and 3) remote areas (consisting of remote and very remote areas).

Some of the analysis in this report is based on the most serious offence (MSO) sentenced. The MSO is the offence receiving the most serious penalty, as ranked by the classification scheme used by the ABS. One MSO is recorded per offender per court event.

This report refers to offence classifications assigned by the Australian and New Zealand Standard Offence Classification (ANZSOC) scheme. This classification scheme aims to provide 'a uniform national statistical framework for classifying criminal behaviour in the production and analysis of crime and justice statistics'.¹⁵

Structure of this research

The report is divided into six sections:

- ▶ Chapter 1 reviews research evidence regarding why children offend.
- ▶ Chapter 2 discusses the principles of sentencing children in Queensland and outlines why they are treated differently to adults in the criminal justice system.
- ▶ Chapter 3 presents an analysis of the profile of children sentenced by Queensland Courts over the 14-year data period — including an analysis of the demographic characteristics of sentenced children, geographical patterns and trends over time.
- ▶ Chapter 4 explores trends in common offences and recidivism.
- ▶ Chapter 5 presents an analysis of the penalties and sentencing outcomes for children sentenced in Queensland.
- ▶ Chapter 6 provides final comments.

12. The *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld) commenced in Queensland on 12 February 2018 and increased the age that a person is treated as a child from 16 to 17 years. For more information, see 'Inclusion of 17-year-olds in the youth justice system', *Department of Youth Justice* (web page, 3 June 2020).

13. The traffic and vehicle offence division includes offences relating to vehicles and most forms of traffic, including offences pertaining to the licensing, registration, roadworthiness or use of vehicles, bicycle offences and pedestrian offences. For more information, please see the *Australian New Zealand Standard Offence Classification (ANZSOC)*, 2011 published by the Australian Bureau of Statistics. For more information on this counting methodology, please see the explanatory notes by the Australian Bureau of Statistics on their publication, *Criminal courts*.

14. Australian Bureau of Statistics, *Correspondence, 2017 locality to 2016 remoteness area* (released March 2018).

15. For more information, please see the *Australian New Zealand Standard Offence Classification (ANZSOC)*, 2011 published by the Australian Bureau of Statistics.

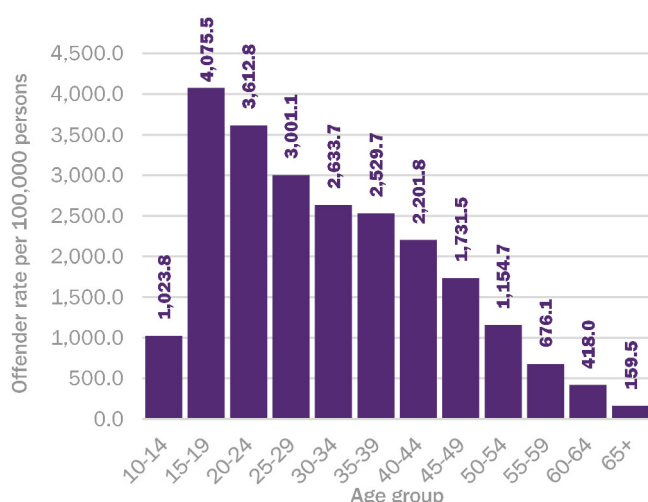
Why children offend and the impacts of criminal justice interventions

This section presents a brief overview of research on offending by children, with a particular focus on youth crime trends and risk factors for offending. Given the extensive literature in this area, the information presented is not intended to provide a comprehensive analysis of published research on these issues.¹⁶ Rather, a brief overview is presented to provide contextual information to inform understanding and interpretation of the data presented in this *Sentencing profile*. A recent publication by QGSO – *Youth offending: Research brief* – provides a comprehensive overview of research on youth offending.¹⁷

This report uses the term *children* when referring to *children* aged 10 to 17 years. However, some research papers referenced in this report may refer to young people aged 18 to 25. When cited research includes participants aged 18 to 25, this report uses the term *children and young people*.

1.1 Introduction

Figure 2: Offender rate by age group in Australia, 2018-19



Source: Australian Bureau of Statistics, *Recorded crime – Offenders*, Table 'Offender rate(a) by age group (years), 2018–19 to 2019–20', released 11 Feb 2021.

Using data published by the ABS on offender rate by age group in 2018-19, Figure 2 shows the offender rate rises sharply from late childhood, peaks in late adolescence then slowly declines from early adulthood onwards.

Children and young people are more likely to come to the attention of police than adults. Cunneen and colleagues¹⁸ explained that this increased attention is due to a variety of reasons; young people who offend are less experienced at committing offences and they are more likely to commit offences in groups, in public areas (e.g. public transport or in shopping centres) or close to where they live.

In addition, children and young people tend to commit offences that are attention-seeking and public, as well as episodic, unplanned or opportunistic.¹⁹ These factors can contribute to higher visibility of the offending and the likelihood of several people being charged over a single incident.²⁰

According to the Victorian Sentencing Advisory Council, the fact that young people often offend in groups means that multiple young people may be arrested for one incident, which can distort the statistical relationship between offences and offenders. Further, some offences in which young people have traditionally been over-represented – such as burglary and theft – have high reporting rates due to insurance requirements.²¹ However, it has been consistently observed that only a small proportion of these young people will go on to commit more offences as they grow older. Research shows that most children and young people 'grow out' of offending.²²

16. Meta-analyses and systematic reviews published by the Campbell Collaboration on youth offending and other research undertaken by youth offending researchers should be consulted, please visit the Campbell Collaboration website for more information.

17. Queensland Government Statistician's Office, *Youth offending* (Queensland Treasury, April 2021).

18. Chris Cunneen, Rob White and Kelly Richards, *Juvenile justice: Youth and crime in Australia*. (Oxford University Press, Fifth Edition, 6 November 2015) 55.

19. Ibid.

20. Victorian Sentencing Advisory Council, *Sentencing children and young people in Victoria*, (April 2021) 8 citing Jean-Marie McGloin and Alex R. Piquero, "I Wasn't Alone": Collective Behaviour and Violent Delinquency' (2009) 42(3) *Australian and New Zealand Journal of Criminology* 336. McGloin and Piquero's research was not confined with the Australian context but criminological research has generally found that juvenile offending is frequently group-based: 'A routine finding in research on criminal careers concerns the group nature of juvenile delinquency. In fact, this finding is so consistent that virtually every serious criminological theory must confront (if not include) its observation'.

21. Ibid citing Chris Cunneen and Rob White, *Juvenile justice: Youth and crime in Australia*. (Oxford University Press, Third Edition, 2007). Also see Kelly Richards, *What makes juvenile offenders different from adult offenders?* (Australian Institute of Criminology Trends and Issues No. 409, February 2011) 3.

22. Richards (n 21) 2.

1.1.1 Cognitive and emotional maturity in children and adolescents

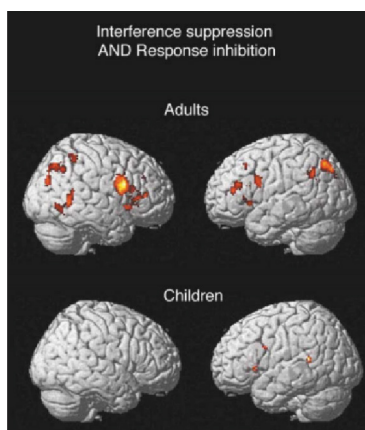
There has been an increased focus in recent years on research investigating how brain development impacts decision making and human behaviour such as criminal conduct.²³ With the increasing use of sophisticated brain-imaging technologies, researchers have been able to show that the child and adolescent brain is still under development until the age of 25 (early adulthood).²⁴ The risk-taking behaviour of children and young people, and their poor decision-making may therefore be understood in the context of increased activation or under-developed brain regions common in this age-group.

Advances in neuroscience research demonstrate that the last parts of the brain to reach maturity are those that relate to complex decision-making, and those that regulate behavioural and emotional responses.²⁵ In other words, children and

young people are less able to control their emotions and are more reward-driven than adults because the skills to exercise impulse control and to evaluate risks and consequences are still developing (see Figure 3).²⁶ This can lead to an increased sensitivity to peer pressure and engaging in impulsive, dangerous and even illegal behaviours. Children may not have the cognitive maturity to understand the consequences of their behaviour and impact on victims of the offences they commit. In addition, sensitivity to peer pressure and the tendency to engage in dangerous behaviour may lead to further damage to a developing brain.²⁷ For example, drug and alcohol experimentation can have detrimental impacts on the development of children's brains.²⁸

The lack of maturity and awareness by children regarding the likely consequences of their actions is reflected in the principles a court must apply when sentencing children under the YJA (discussed in Chapter 2). The Queensland Court of Appeal has made specific comment about the 'immaturity in thinking that hampers a child's judgment, as well as a child's lack of experience' resulting in children committing 'offences without being conscious of the potential consequences'. It noted that 'for this reason, the moral blameworthiness of a child for the consequences of offending cannot always be the same as that of an adult.'²⁹

Figure 3: Activation in adult brains versus child brains



'Adults are more capable than children of activating a "control" network in the brain, involving the prefrontal cortex. Brain activation is determined by examining blood flow to the brain in a magnetic resonance imaging (MRI) machine. This control allows adults to better resist impulses and ignore distractions.' (Silvia Bunge, copyright Neuron).

23. For more information, see the Scottish Sentencing Council literature review on 'The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts' (February 2020). See also Judge Peter Johnstone 'The grey matter between right and wrong: Neurobiology and young offending' (11 October 2014) in Children's Court of NSW Resource Handbook, *Criminal matters – background material*.
24. Arain et al. 'Maturation of the adolescent brain' (2013) 9 *Neuropsychiatric Disease and Treatment*; Alison Burke, 'Under construction: Brain formation, culpability, and the criminal justice system' (November-December 2011) 34(6), *International Journal of Law and Psychiatry*.
25. Ibid.
26. Ibid; For more information about this, see UC Berkeley News, *This is your brain on adolescence* (16 October 2008 Web Page) and The MacArthur Foundation Research Network on Law and Neuroscience <<https://www.lawneuro.org/>>
27. Scottish Sentencing Council (n 23) 23.
28. Ken Winters and Amelia Arria, 'Adolescent brain development and drugs' (2011) 18(2) *The Prevention Researcher*.
29. *R v Patrick* (a pseudonym) [2020] QCA 51, 10 [43] (Sofronoff P, Fraser JA and Boddice J agreeing).

1.1.2 Risk and protective factors for offending

In addition to the cognitive and emotional maturity of children and adolescents, there are many other factors influencing offending behaviour among children and young people. Research on child offending refers to risk factors and protective factors. Risk factors are factors that increase the likelihood of offending, while protective factors are those that decrease the probability of offending or mitigate the risks.³⁰

Research shows that children and young people who have offended are more likely to have been exposed to risk factors and less likely to have had access to protective factors than children who have not committed an offence.³¹

Based on a review of the current literature, risk and protective factors can be further broken down into four broad levels of influence, including individual, interpersonal, community-level and structural factors.

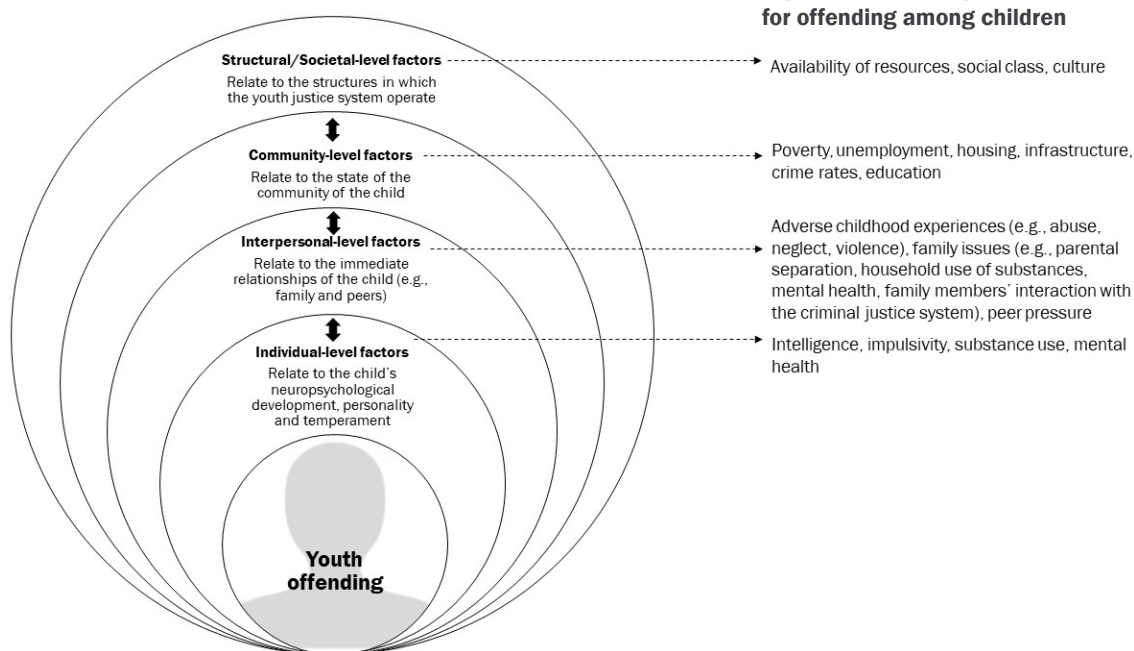
An exhaustive review of all known risk and protective factors is beyond the scope of this *Sentencing profile*. Reports published by the QGSO and the QFCC provide a comprehensive summary of risk and protective factors as they apply to children.³²

Several researchers note the 'multiplicative effect' or 'compounding effect' when several risk factors are present.³³ Research by Herrenkohl and colleagues demonstrated that being exposed to six or more risk factors increases the likelihood of a 10-year-old to commit a violent act by the age of 18 up to 10 times, compared to a 10-year-old exposed to only one risk factor.³⁴ Furthermore, research found that the developmental period or the age at which the child experiences a specific risk factor influences their future offending behaviour.³⁵

Individual-level factors

Individual factors relate to the child's neuropsychological development, personality and temperament (e.g. gender, age, intelligence, impulsivity, substance use, mental health). Reviews have found a higher prevalence of traumatic brain injury, attention deficit hyperactivity disorder (ADHD), lower levels of intelligence, perinatal and prenatal complications,³⁶ and risk-taking personalities among incarcerated children and young people.³⁷ The Australian Institute of Health and Welfare (AIHW) reported that children and young people under youth justice supervision are 30 times more likely to receive treatment for alcohol and other drugs compared to the general population (33% versus 1% within the data period of June 2012 to July 2016).³⁸

Figure 4: Risk and protective factors for offending among children



30. David Farrington, 'Childhood risk factors and risk-focussed prevention', in Mike Maguire, Rod Morgan and Robert Reiner (eds), *The Oxford handbook of criminology* (Oxford University Press, 4th ed, August 1 2006); Kenneth Dodge and Gregory Pettit, 'A biopsychosocial model of the development of chronic conduct problems in adolescence' (March 2003) 39(2) *Developmental Psychology*.

31. Ibid.

32. Ibid n 5, and n 6.

33. Todd Herrenkohl et al, 'Developmental risk factors for youth violence' (March 2000) 26(3) *Journal of Adolescent Health*; Farrington (n 30).

34. Ibid.

35. Michael Shader, *Risk factors for delinquency: An overview* (Office of Juvenile Justice and Delinquency Prevention, January 2003).

36. Prenatal refers to the period of a child's development before birth, while perinatal refers to the period immediately before and after birth of the child.

37. Nathan Hughes et al, 'The prevalence of traumatic brain injury among young offenders in custody: A systematic review' (April 2015) 30(2) *Journal of Head Trauma Rehabilitation* 94; Seena Fazel, Helen Doll and Niklas Langstrom, 'Mental disorders among adolescents in juvenile detention and correctional facilities: A systematic review and metaregression analysis of 25 surveys' (September 2008) 47(9) *Journal of the American Academy of Child & Adolescent Psychiatry*, 1010.

38. Australian Institute of Health and Welfare, *Overlap between youth justice supervision and alcohol and other drug treatment services: 1 July 2012 to 30 June 2016* (Catalogue no. JUV 126, 2018).

Foetal Alcohol Spectrum Disorder (FASD) is a neurological disorder impacting on a child's cognitive development. Prevalence of FASD among those who come in contact with the criminal justice system varies, however, research in Western Australia's youth detention centres found a high prevalence of FASD and neurodevelopmental impairment in children and young people in detention.³⁹ Out of the 99 children aged 10 to 17 who completed a multidisciplinary diagnostic assessment, 88 had at least one domain of severe neurodevelopmental impairment (a prevalence of 89%), and 36 were diagnosed with FASD (a prevalence of 36%).⁴⁰

Interpersonal-level factors

Interpersonal factors relate to the immediate relationships of the child (e.g. family, peers) and the interactions between them (e.g. adverse childhood experiences, family issues, presence of domestic and family violence, peer pressure). Family characteristics such as family size, child maltreatment, a parent's antisocial behaviours and poor parenting skills have been linked to youth offending. In addition, peers have been found to strongly impact on a child's likelihood of engaging in offending behaviour. The brain development of children and young people is characterised by a sensitivity to rewards making them more likely to succumb to peer pressure.⁴¹

It is crucial to consider that 'victimisation is a pathway into offending behaviour for some young people.'⁴² Several reports from different Australian jurisdictions found that children and young people who offend are also disproportionately victims of crime. Using data from the NSW Young People in Custody Health Survey, Moore and colleagues⁴³ found that 60 per cent of young people who offended have experienced child abuse or neglect, with girls reporting a higher frequency of severe child maltreatment compared to boys.

Community factors

Community level factors are those that relate to the structure of the society or community in which the child lives (eg. poverty, unemployment, housing) and the inherited norms and values of that community (eg. culture).

Exploring the intersection of child maltreatment, homelessness and young offending, the Australian Institute of Family Studies (AIFS) stated that homeless young people are at a higher risk of being involved in the criminal justice system:



Young homeless people are often unable to support themselves, are ineligible for benefits, and unlikely to find employment. Consequently, they may engage in survival behaviours – begging, theft, drug dealing and prostitution – to earn income for food and shelter.⁴⁴ Not only are some of these behaviours illegal, they are also more visible to police due to the lack of privacy experienced by homeless people.⁴⁵

Research conducted by the AIHW showed that 'almost 15% of young people under juvenile justice supervision accessed homelessness support services within the 12 months before the start of their most recent youth justice supervision, and almost 20% within the previous 2 years.'⁴⁶

The Victorian Sentencing Advisory Council conducted a series of studies into the proportion of sentenced and diverted children who were known to child protection services, highlighting the complex backgrounds of children who come into contact with the criminal justice system. The study found that over one in three sentenced and diverted children had been the subject of a report to the Victorian child protection service.⁴⁷ The AIHW reports that children and young people under youth justice supervision are nine times more likely to have been involved with child protection services compared to the general population.⁴⁸

39. Carol Bower et al, 'Fetal alcohol spectrum disorder and youth justice: A prevalence study among young people sentenced to detention in Western Australia' (February 2018) 8(2) *BMJ Open*.

40. Ibid.

41. See Table 6.7 as indicated by the highest estimated correlation and estimated odds ratio in Mark Lipsey and James Derzon, 'Predictors of violent or serious delinquency in adolescence and early adulthood: A synthesis of longitudinal research', in Rolf Loeber and David Farrington (eds), *Serious & violent juvenile offenders: Risk factors and successful interventions* (Sage Publications Inc, 1998).

42. Richards (n 21) 4.

43. Elizabeth Moore, Claire Gaskin and Devon Indig, 'Childhood maltreatment and post-traumatic stress disorder among incarcerated young offenders' (October 2013) 37(10) *Child Abuse and Neglect* 861.

44. Anna Stewart and Emily Hurren, *Child maltreatment, homelessness and youth offending* (Australian Institute of Family Studies, October 2017) citing Hanie Edalati and Tonia L Nicholls. (2017). 'Childhood maltreatment and the risk for criminal justice involvement and victimization among homeless individuals: A systematic review'. *Trauma, Violence, & Abuse* 1-16.

45. Anna Stewart and Emily Hurren, *Child maltreatment, homelessness and youth offending* (Australian Institute of Family Studies, October 2017) citing Kristin M Ferguson et al. (2011), 'Correlates of street survival behaviors in homeless young adults in four U.S. cities' 81(3) *American Journal of Orthopsychiatry* 401-409

46. Australian Institute of Health and Welfare, *Children and young people at risk of social exclusion: Links between homelessness, child protection and juvenile justice 2012* (Data linkage series no. 13 Cat. no. CSI 13).

47. Victorian Sentencing Advisory Council, 'Crossover kids: Vulnerable children in the youth justice system: Report 1: Children who are known to Child Protection among sentenced and diverted children in the Victorian Children's Court' (released on 1 May 2019).

48. Australian Institute of Health and Welfare, *Young people in child protection and under youth justice supervision: 1 July 2014 to 30 June 2018* (Data linkage series no. 25. Catalogue. no. CSI 27).

Structural/Societal-level factors

Structural and societal-level factors refer to the overarching environment of children, including systemic factors impacting on the youth justice system. This includes availability of resources, structural disadvantage and socio-demographic factors. A key structural factor impacting on the youth justice system in Queensland is the continued over-representation of Aboriginal and Torres Strait Islander children.⁴⁹ The Atkinson report on youth justice commented that the:

extremely high rates of over-representation of Aboriginal and Torres Strait Islander children is a stand-out feature of the youth justice system in Queensland and Australia. This is true for all parts of the system and, in the case of detention, has worsened over the past 25 years.⁵⁰

In addition to disadvantages experienced by Aboriginal and Torres Strait Islander children, structural factors may also include gender, belonging to a culturally and linguistically diverse group, ethnicity, disability or social class.

1.2 Early intervention and diversion as effective strategies

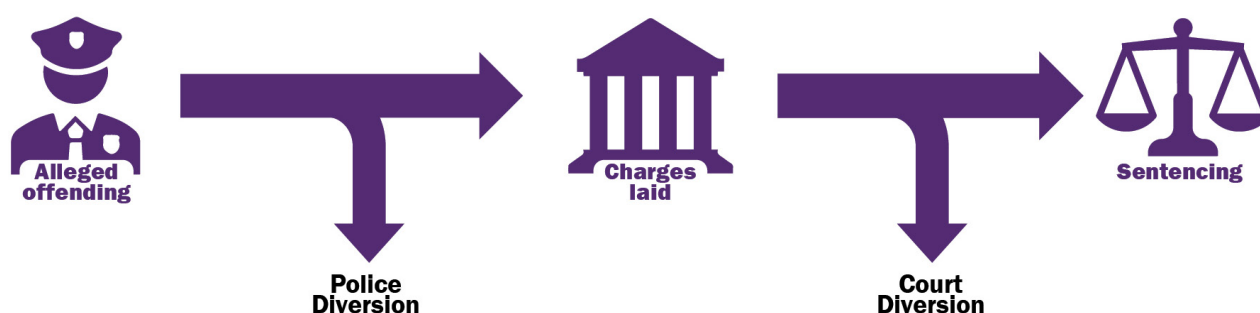
The Queensland Youth Justice Strategy (2019-2023) is based on four key pillars:

- ▶ Intervene early
- ▶ Keep children out of court
- ▶ Keep children out of custody
- ▶ Reduce reoffending.⁵¹

Early results from evaluations attest to the success of intensive, placed-based initiatives aimed at early intervention. An evaluation of the Maranguka Justice Reinvestment Project in Bourke, an Aboriginal-led place-based model of justice reinvestment, demonstrated promising results, including a 31 per cent increase in year 12 student retention rates and a reduction by 38 per cent in charges across the top five youth offence categories.⁵² There are several other projects across Australia at different stages of implementation and evaluation, but many demonstrate positive initial outcomes.

Research has also found that diversion either by police or courts can be an effective strategy in the management of young people who offend. Taking into account that the majority of children who come to the attention of police never go on to reoffend, the 2018 *Report on youth justice* (the Atkinson report) concluded that diverting low risk children and young people from the criminal justice system is the most effective and efficient approach to engaging with this offender cohort.⁵³

Figure 5: Diversion pathways for children



49. Garner Clancey, Cindy Wang and Brenda Lin, *Youth justice in Australia: Theme from recent inquiries* (Australian Institute of Criminology Trends and Issues No. 605, October 2020), 5.

50. *The Atkinson report* (n 2).

51. Department of Youth Justice (n 4).

52. KPMG, *Maranguka Justice Reinvestment Project: Impact assessment* (17 November 2018) 8.

53. *The Atkinson report* (n 2).

A meta-analysis⁵⁴ conducted in 2012 concluded that diversion is more effective in reducing reoffending than conventional criminal justice interventions (e.g. probation or detention).⁵⁵ This meta-analysis focused on pre-court interventions including warnings, counselling, and release and cautioning. A Queensland-based study of the outcomes of police cautioning found that children and young people whose first offence resulted in a court appearance were more likely to come into contact with the criminal justice system again, and do so earlier, than those who were cautioned.⁵⁶

Furthermore, a 12-month program evaluation of restorative justice conferencing showed that 59 per cent of the children who completed a conference between July 2016 and December 2016 did not reoffend within the 6 months following their conference.⁵⁷ Of those who reoffended, 7 per cent decreased the magnitude⁵⁸ of their re-offending. Overall, 77 per cent of children either did not reoffend or reoffended to a lesser extent.⁵⁹ While this study provides evidence in support of restorative justice conferencing, it was not conducted as a randomised control trial due to ethical and legal limitations. Therefore, the findings need to be interpreted with caution as young people who committed less serious offences may both be more likely to be diverted and not re-offend.

Other studies found that treatment programs that target risk and protective factors among medium- to high-risk children and young people were more effective in reducing recidivism than less targeted programs.⁶⁰ The risk-need-responsivity principle outlines that rehabilitation programs should address recidivism by responding to the needs of the individual offender and being responsive to their specific characteristics (e.g. using cognitive behavioural therapy, adapting the program to suit the learning style of the participant or delivering culturally sensitive programs).⁶¹

1.3 The impacts of youth detention and use of alternatives to custody

Research on youth offending consistently warns that a period of detention is harmful to children.⁶² Children and young people who enter the youth justice system, especially those who have served time in custody (either on remand or sentenced), are most likely to present with an array of vulnerabilities and complex needs.⁶³ By spending time in detention, these vulnerabilities can be further exacerbated.⁶⁴ Aboriginal and Torres Strait Islander children and young people are particularly impacted by the negative effects of detention as they continue to be over-represented in the youth justice systems in Queensland and other jurisdictions.⁶⁵

Detention can have far-reaching criminogenic effects. Involvement in the criminal justice system may lead to other negative outcomes including restricting positive interactions, limiting a child's access to education and rehabilitation programs, and encouraging anti-social behaviour through a child's interactions with anti-social peers. These factors in turn increase a child's likelihood of future offending.⁶⁶ Any type of contact with the criminal justice system, including contact with police, can have an ongoing negative impact on children due to the stigmatising effects of being labelled a 'criminal'.⁶⁷ Labelling theory suggests that once young people begin to perceive themselves as criminal or deviant, they are at increased risk of their offending behaviour becoming entrenched.⁶⁸

While necessary in some cases as a way of keeping the community safe from serious and recidivist offending,⁶⁹ using detention as a last resort is an important principle of the youth justice framework in Queensland. Evidence suggests that providing a range of options that are tailored to children's individual needs can help keep children out of detention while keeping the community safe. The approach of therapeutic jurisprudence can provide options for courts to divert or sentence children and young people and ensure they benefit from interventions addressing their complex needs and criminogenic risks.⁷⁰ Other options include restorative justice, family group conferencing and participation in treatment for substance abuse, offending relating to sexual violence or mental health issues. Bail support services and supervised bail accommodation can provide support to children and young people with complex needs.⁷¹

54. A meta-analysis uses statistical methods to summarise the results of the studies that were identified in their review of the literature.

55. Holly Wilson and Robert Hoge, 'The effect of youth diversion programs on recidivism: A meta-analytic review' (October 2012) 40(5) *Criminal Justice and Behaviour* 497.

56. Susan Dennison, Anna Stewart and Emily Hurren, *Police cautioning in Queensland: The impact on juvenile offender pathways* (Australian Institute of Criminology (Trends and Issues in Crime and Criminal Justice, No 306, February 2006), 4.

57. Department of Child Safety, Youth and Women, *Restorative Justice Project: 12-Month program evaluation* (20 May 2018) 8.

58. Ibid Table 15. The report defined the magnitude of offending as 'a composite measure of offending that is based on offending frequency and peak offence seriousness during the reference period. Change in offending magnitude is based on a comparison of pre- and post-conference offending. Pre-conference offending takes into account the 12 months prior to the conference; post-conference offending takes into account the six months post-conference.'

59. Ibid 47.

60. Wilson (n 55) 509.

61. Ibid; Kevin Howells et al, 'Risk, needs and responsivity in violence rehabilitation: Implications for programs with Indigenous offenders' (1999) *Faculty of Social Sciences – Papers. 2; Queensland Corrective Services, Rehabilitative needs and treatment of Indigenous offenders in Queensland* (November 2010) 17.

62. Howard White, 'The effects of sentencing policy on reoffending' (Campbell Policy Brief No 4, Campbell Collaboration, November 2017).

63. Clancey (n 49) 5.

64. Chris Cunneen, Barry Goldson and Sophie Russell, 'Juvenile justice, young people and human rights in Australia' (2016) 28(2) *Current Issues in Criminal Justice* 173.

65. Clancey (n 49) 5.

66. Ibid.

67. Cunneen (n 64) 179-180.

68. Richards (n 21).

69. *The Atkinson report* (n 2).

70. White (n 62).

71. Matthew Willis, *Bail support: A review of the literature* (Australian Institute of Criminology Research Report No 4, June 2017) 24, 28-9.

The legal framework

This chapter discusses the legal framework and principles that guide criminal justice responses to children in Queensland and explores the reasons why children are treated differently to adults in the criminal justice system.

2.1 Who is a 'child'?

In Queensland, a 'child' is a person who is aged under 18.⁷²

Prior to 12 February 2018, a 'child' for the purposes of the YJA, was a person who had not turned 17 years.⁷³ This meant that until this time, young people who were 17 were treated as adults for the purposes of sentencing. Young people aged 17 are now dealt with in the criminal justice system as children and sentenced under the YJA. This reform brought Queensland in line with other Australian jurisdictions.

This legislative change increased the number of young people being supervised by Queensland's youth justice system in 2017–18. The 2018–19 financial year was the first full reporting year for Queensland that included 10 to 17-year-old children.⁷⁴

The minimum age of criminal responsibility

A person under 10 years old is not criminally responsible for any act or omission in Queensland and cannot be charged with a criminal offence.

There is a rebuttable presumption at law that children under 14 years are not criminally responsible for their actions.⁷⁵ In the case of a child aged between 10 and 14, the prosecution must prove beyond reasonable doubt that at the time of doing the act or making the omission, the child had the capacity to know they should not do the act or make the omission. This reflects the common law presumption that children under 14 years are *doli incapax*, or incapable of crime/doing wrong.⁷⁶

2.2 Childrens Court of Queensland

In Queensland, all proceedings involving a child charged with a criminal offence, must generally be dealt with by the Childrens Court of Queensland⁷⁷ or the Supreme Court.

The Childrens Court of Queensland consists of two tiers:⁷⁸

- ▶ the Childrens Court of Queensland as constituted by a judge appointed to the Childrens Court, or a District Court judge if a Childrens Court judge is not available. Childrens Court judges deal with serious criminal offences and can hear sentence reviews (similar to an appeal) from sentences imposed by a Childrens Court magistrate, and
- ▶ the Childrens Court of Queensland as constituted by a magistrate appointed to the Childrens Court, or any magistrate if a Childrens Court magistrate is not available, or if a magistrate is not available, by two justices of the peace. Childrens Court magistrates deal with regulatory offences, summary offences and less serious indictable offences. This includes conducting committal proceedings for both serious criminal offences and Supreme Court offences.⁷⁹

Children charged with offences categorised as 'Supreme Court offences' by the YJA are dealt with by the Supreme Court.⁸⁰ These include murder and trafficking in Schedule 1 drugs.

72. *Acts Interpretation Act 1954* (Qld) sch 1, definitions of 'child' and 'individual'.

73. *Youth Justice Act 1992* (Qld) sch 4, as amended by *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld) s 4, omitting the definition of 'child'.

74. Childrens Court of Queensland, *Annual report 2018-19* (Report, 2019); See also Australian Government Productivity Commission, *Report on government services 2021* (January 2021) pt 17.1 <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/community-services/youth-justice>.

75. *Criminal Code* (Qld) s 29(1).

76. Queensland Family and Child Commission, *The age of criminal responsibility in Queensland* (January 2017) 4.

77. A District Court judge can act if a Childrens Court judge is not available, and any magistrate (or otherwise, two justices of the peace) can act if a Childrens Court magistrate is not available: *Childrens Court Act 1992* (Qld) s 5.

78. *Youth Justice Benchbook* (2020), 14-15. See *Childrens Court Act 1992* (Qld) ss 3-6 and *Youth Justice Act 1992* (Qld) ss 9, 49, 60-7, sch 4.

79. *Youth Justice Act 1992* (Qld) s 64.

80. *Ibid* sch 4 defines a 'supreme court offence' as an 'offence for which the District Court does not have jurisdiction to try an adult because of the *District Court of Queensland Act 1967* (Qld), s 61

2.3 Amendments to the Youth Justice Act 1992 (Qld)

Over the data period, 2005–06 to 2018–19, several amendments were made to the YJA. Appendix 2 provides a full list of changes. Amendments of most direct relevance to the sentencing of children are outlined in Table 1.

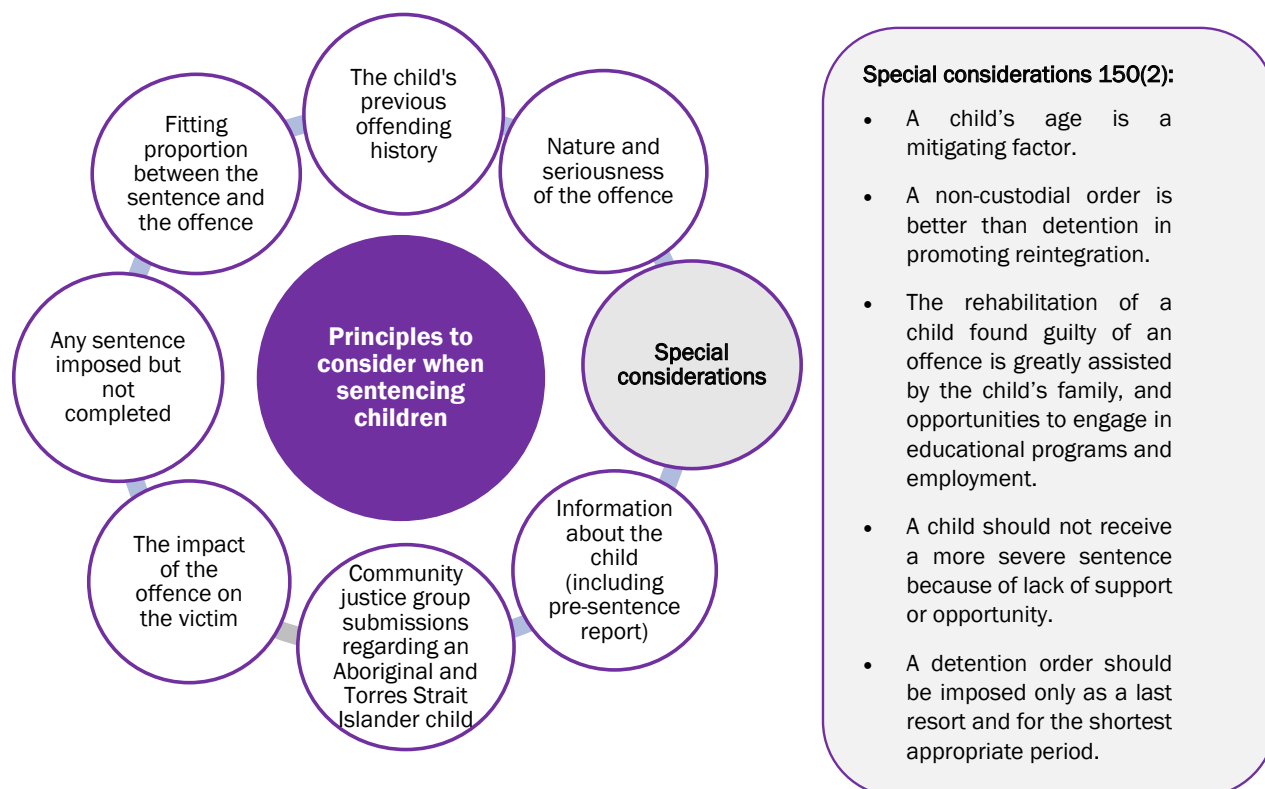
Table 1: Amendments to the YJA that impacted the sentencing of children

LEGISLATIVE AMENDMENT	IMPACT
<i>Youth Justice (Boot Camp Orders) and Other Legislation Amendment Act 2012 (Qld)</i> (commenced 1 January 2013)	Introduced boot camp orders as a sentencing option (if a court made a detention order, a child could be released to a boot camp order, which involved one month spent in a residential boot camp centre followed by between 2–5 months of intensive supervision in the community).
<i>Youth Justice and Other Legislation Amendment Act 2014 (Qld)</i>	Removed the sentencing principle that a detention order should only be imposed as a last resort and directed that a court, in sentencing a child, must not have regard to this principle. In addition, introduced a mandatory 'boot camp (vehicle offences) order' as a sentence.
<i>The Youth Justice and Other Legislation Amendment Act (No 1) 2016 (Qld)</i> and <i>Youth Justice and Other Legislation Amendment Act (No 2) 2016 (Qld)</i> (commenced 27 June 2016)	Reinstated the sentencing principle that a detention order should be imposed only as a last resort, and for the shortest appropriate period. Reinstated a court-referred youth justice conferencing program and expanded the program to allow for increased flexibility in the delivery of restorative justice interventions as part of police-referred and court-referred conferencing. Removed boot camp orders and boot camp (vehicle offences) orders as sentencing options.
<i>Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016 (Qld)</i> (commenced 12 February 2018)	Increased the upper age of a 'child' for the purpose of the YJA from 16 years to 17 years.

2.4 Principles that guide the treatment and sentencing of children

The YJA is the key legislation that applies to the sentencing of children in Queensland.⁸¹ It includes specific youth justice principles, sentencing principles and special considerations that must be applied in proceedings against children.⁸²

Figure 6: Principles to consider when sentencing children



81. Queensland Sentencing Advisory Council, *Sentencing child offenders* (Web Page, 8 February 2021) <https://www.sentencingcouncil.qld.gov.au/about-sentencing/sentencing-child-offenders>.

82. *Youth Justice Act 1992 (Qld)* ss 2, 3, 150, sch 1

Courts are also required to take into account the Charter of Youth Justice Principles that sets out 21 principles underpinning the operation of the Act⁸³ (all of equal priority).⁸⁴ These principles include that the community should be protected from offences and, in particular, recidivist high-risk offenders, as well as principles focused directly on children: upholding their rights, keeping them safe and promoting their wellbeing, encouraging their respect for others and acceptance of responsibility for their actions, holding them accountable, dealing with children in a way that recognises their need for guidance and assistance given that children tend to be dependent and immature, providing opportunities to develop in responsible, beneficial and socially acceptable ways, and encouraging their reintegration into the community and participation in education, training or employment.

There is an emphasis on diverting children from the criminal justice system, unless the nature of the offence and the child's criminal history indicates that court proceedings should be commenced. The Charter also includes a principle that a child should be detained in custody for an offence — whether on arrest, remand or sentence — only as a last resort and for the shortest time justified in the circumstances.

2.5 Treatment of adults who have committed offences as children

Some offenders aged 18 and over may be supervised in the youth justice system or held in youth detention rather than an adult prison. In Queensland, an offender who commits an offence as a child, but who turns 18 prior to the charge being finalised, will generally still be sentenced as a child.⁸⁵ However, if proceedings start or are still ongoing once the offender turns 19, the YJA has specific, detailed provisions which tend to require sentencing the offender as an adult.⁸⁶

A court can impose a YJA order on a child who will become an adult before the order ends. The order continues to apply as if the offender was still a child. Consequent proceedings and

orders (e.g. for breach) can also be made as if the person was still a child⁸⁷ (although court discretion to convert the order into an adult one is triggered upon further alleged offending as an adult or the offender turning 19).⁸⁸ The YJA includes provisions about where a person must be held if they are remanded or serving a sentence in custody for both child and adult offences.⁸⁹

2.6 Diversion and cautioning as an alternative to court proceedings

The Youth Justice Principles include a principle that if a child commits an offence, they should be diverted from the court process unless the nature of the offence and the child's criminal history indicate a court proceeding should be commenced.⁹⁰

If the offence is not a 'serious offence', a police officer must consider a diversionary option before commencing proceedings.⁹¹ Examples of diversionary options that can be used by police include:⁹²

- ▶ to take no action⁹³
- ▶ to administer a caution to the child⁹⁴
- ▶ to refer the child to participate in a restorative justice process⁹⁵
- ▶ to offer the child an opportunity to attend a drug diversion assessment program in the case of minor cannabis-related offences⁹⁶
- ▶ to offer the child an opportunity to attend and complete a graffiti removal program if the offence is a graffiti offence.⁹⁷

Police may also take one of the first three listed diversionary actions in relation to a child who has committed a 'serious offence'.⁹⁸ Police have developed operational procedures that guide how these decisions are made.⁹⁹

Aboriginal and Torres Strait Islander children can also be cautioned by members of the Aboriginal and Torres Strait Islander community, however it was noted in the Atkinson report that this appears to only be possible where there is a mutually agreed protocol between the community and the QPS.¹⁰⁰

83. Ibid s 3(2), sch 1. Further, one of the Act's objectives is to ensure that courts that deal with children who have committed offences deal with them according to principles established under it: *Youth Justice Act 1992* (Qld) s 2(d).

84. *R v EI* [2011] 2 Qd R 237, 238 (Muir JA).

85. *Youth Justice Act 1992* (Qld) ss 132-4. See s 146 for a discretion regarding a person serving a period of detention.

86. Ibid ss 140-1 143. However, there must be consideration of age at offending and the likely sentence if the matter was instead finalised under the YJA. There are caps on adult orders in line with child maximums and any adult mandatory minimum sentences are disengaged: *Youth Justice Act 1992* (Qld) s 144.

87. Ibid s 142.

88. Ibid s 143.

89. Childrens Court of Queensland, Supreme and District Court, Youth Justice Benchbook (1st ed, 2020) section 2.7 'Child offenders who become adults' 28, regarding *Youth Justice Act 1992* (Qld) ss 135-139.

90. Ibid sch 1 principle 5.

91. Ibid s 11(1).

92. Ibid s 11.

93. Ibid s 11(1)(a).

94. *Police Powers and Responsibilities Act 2000* (Qld) s 380(2)(b) and 380(3)(b), *Youth Justice Act 1992* (Qld) ss 11(1)(b) and 15.

95. *Police Powers and Responsibilities Act 2000* (Qld) s 380(2)(b) and 380(3)(c), *Youth Justice Act 1992* (Qld) ss 11(1)(c) and 22.

96. See *Police Powers and Responsibilities Act 2000* (Qld) s 379, *Youth Justice Act 1992* (Qld) ss 11(1)(d) and 50(3).

97. See *Police Powers and Responsibilities Act 2000* (Qld) s 379A, *Youth Justice Act 1992* (Qld) ss 11(1)(e).

98. *Youth Justice Act 1992* (Qld) s 11(7).

99. See Queensland Police Service, *Operational procedures manual* (Issue 83, Public Edition, July 2021) sections 5.3.1 ('Diversion options') and 5.5.1 ('Criteria for deciding to administer a caution').

100. *The Atkinson report* (n 2) 23 referencing the Queensland Police Service's *Operational procedures manual* (n 99).

2.7 Court diversion

Although police have commenced proceedings against a child, a court may also divert a child instead of continuing with the court process. The court has the following diversion options:

- ▶ Dismissal — a court can dismiss a charge (and may also issue a caution or direct a police officer to do so) instead of accepting a child's plea of guilty if the court decides the police should have cautioned the child instead of charging them or referred them to a restorative justice process, or no action should have been taken.¹⁰¹
- ▶ A court referred drug assessment and education session before sentencing — a court can refer a child who pleads guilty to certain drug offences and is willing to participate in a one-on-one session involving an assessment of their drug use, drug education and treatment options. Eligible charges are possessing small amounts of certain dangerous drugs for personal use (including amphetamines, cannabis and ecstasy) and possessing items like a bong or needle. Successful completion means court proceedings come to an end.¹⁰²
- ▶ Restorative justice process — if the court considers a restorative justice referral is appropriate, the court may refer a child to a restorative justice process instead of imposing a sentence.¹⁰³

The statistics in this report need to be interpreted in the context of available alternatives to court proceedings and diversion options. It is important to note that court-based sentencing statistics only partially capture children's involvement in the criminal justice system.

2.8 Sentencing options for children

2.8.1 What types of orders can be made?

The types of sentencing orders a court can make when sentencing a child found guilty of an offence are set out in section 175 of the YJA. They are to:

- ▶ reprimand the child (issue a formal warning)
- ▶ order the child to be of good behaviour for a period not longer than 1 year
- ▶ order the child to pay a fine of an amount prescribed under an Act in relation to the offence
- ▶ order the child to be placed on probation for a period not longer than 1 year, or 2 years if the court is constituted by a judge and the offence is not a 'relevant offence'

- ▶ order the child to perform his or her obligations under a restorative justice agreement made prior to sentence (called a 'pre-sentence referral')
- ▶ order that the child participate in a restorative justice process
- ▶ if the child is 13 years or over at the time of sentence, order the child to perform unpaid community service for a period not longer than 100 hours if the child is under 15 years, or 200 hours if the child is 15 years or over
- ▶ if the child is under 13 at the time of sentence, make an intensive supervision order for the child for a period of not more than 6 months
- ▶ order that the child be detained for a period not more than 1 year, or if the court is constituted by a judge, and the offence is not a 'relevant offence', up to half the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve or 5 years (whichever is shorter).

A court can only make a probation order, community service order or intensive supervision order if a child has been found guilty of an offence of a type that, if committed by an adult, would make the adult liable to imprisonment.¹⁰⁴

In the case of more serious offences (referred to in the YJA as 'relevant offences'¹⁰⁵) sentenced by a judge, the court may:

- ▶ make a probation order for up to 3 years
- ▶ order the child be detained for up to 7 years
- ▶ if the maximum penalty for the offence is life, order the child be detained for up to 10 years, or up to life imprisonment if the offence involves the commission of violence against a person, and the court considers the offence to be particularly heinous having regard to all the circumstances.¹⁰⁶

When imposing a detention order, the court may also make a conditional release order,¹⁰⁷ which immediately suspends detention and the child is released into a structured program with strict conditions.¹⁰⁸ Mandatory conditions include:

- ▶ the child participate as directed in a program (conditional release program) for a period of not more than 3 months
- ▶ during the period of the order the child not break the law, comply with every reasonable direction of Youth Justice and report to and receive visits as directed
- ▶ the child or their parents notify Youth Justice within 2 business days of any change of address, employment or school
- ▶ the child not leave, or stay out of, Queensland without permission.¹⁰⁹

101. *Youth Justice Act 1992* (Qld) ss 21 and 24A.

102. *Ibid* ss 172–173.

103. *Ibid* s 164. This type of referral is called a 'court diversion referral': s 163(1)(d)(i). If the child fails to comply with a restorative justice agreement made as a result of the referral, or the chief executive returns the referral, the charge for the offence is brought back before the court for sentencing. The court in this instance must either take no further action, allow the child a further opportunity to comply with the agreement, or sentence the child for the offence: ss 164(2)–(4).

104. *Ibid* s 175(2).

105. A 'relevant offence' as defined in section 176(1) of the *Youth Justice Act 1992* (Qld) means a life offence (defined in Schedule 4 to mean an offence for which a person sentenced as an adult would be liable to life imprisonment), or an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more, excluding — (a) an offence of receiving if the value of the property, benefit or detriment is not more than \$5,000; (b) an offence against the Criminal Code, section 419 (Burglary) or 421 (Entering or being in premises and committing indictable offences); if— (i) the offence involved stealing or an intent to steal, or an intent to destroy or damage property, or the damage or destruction of property; and (ii) the offender was not armed or pretending to be armed when the offence was committed; and (iii) the value of any property stolen, damaged or destroyed was not more than \$1,000; and (c) an offence that, if committed by an adult, may be dealt with summarily under the *Drugs Misuse Act 1986* (Qld), section 13.

106. *Youth Justice Act 1992* (Qld) s 176.

107. *Ibid* ss 175(3) and 176(4).

108. *Ibid* ss 219–220.

109. *Ibid* s 221.

A conditional release order made in relation to a child may also contain requirements that the child complies, during the whole or a part of the period of the order, with conditions that the court considers necessary for preventing a repetition by the child of the offence for which the detention order was made or the commission by the child of other offences (for example, a curfew condition).¹¹⁰

2.8.2 Detention as a sentence of last resort

The law in Queensland is that detention must be used only as the sentence of last resort for children. It cannot be ordered unless: (1) the court has received and considered a pre-sentence report, and (2) has considered all other available sentencing options as well as the desirability of not holding a child in detention and, taking these things into account, is satisfied no other sentence is appropriate in the circumstances of the case.¹¹¹

Children sentenced to serve a period of detention are subject to conditional, supervised release after serving 70 per cent of the detention period, unless the court orders release between 50 and 70 per cent due to special circumstances.¹¹²

The President of the Queensland Court of Appeal has made strong comments about detention in a 2017 judgment, noting that the YJA 'requires a judge to give crucial weight to the prospects of a child's future in the ways provided for by the Act and in a way unknown to the process of sentencing adults':¹¹³

In particular, the Act requires that a child's prospect of maturing into a decent adult be the central factor in sentencing rather than either retribution or general deterrence, which remain relevant.

The Act rightly treats detention as the least effective tool available for this purpose in the case of children. This is done ... not primarily for the personal benefit of the child offender or out of a sense of tenderness, but primarily for the benefit of the Queensland community as a whole and its interest in preventing continued offending.¹¹⁴

...The injunction in the Act that detention is to be regarded as a sentence of last resort, to be imposed only when the court is positively satisfied that there is no other possible alternative, is, therefore, not merely a platitude or a bromide. It is an emphatic parliamentary order enacted with express deliberation.¹¹⁵

...The Act requires that other solutions be actually considered and, if appropriate, attempted as the means to adapt a child's likely behaviour before the last, the worst, the harshest and, usually, the least effective and bluntest instrument, detention, is applied.¹¹⁶

Having considered the legal framework guiding the sentencing of children in Queensland, the next sections of this report will present detailed statistical information about sentencing outcomes for children in Queensland. For further information about the sentencing of children, refer to the Council's website or the Council's publication *Guide to the sentencing of children in Queensland* (September 2021).

110. Ibid s 221(2). The court may also set conditions the child must comply with when outside the State (for example to attend a particular school located outside of Queensland: s 221(3)). A requirement that a child wear a tracking device cannot be imposed: s 221(4)(c).

111. Ibid ss 207, 208, 150(2)(b),(e), sch 1(18).

112. Ibid ss 227.

113. *R v SCU* [2017] QCA 198, 27 [130] (Sofronoff P) (emphasis in original).

114. Ibid.

115. Ibid 18 [84].

116. Ibid 23 [108].

Patterns in offending

This chapter provides an overview of offending patterns for children who were sentenced in court between 2005–06 and 2018–19, including information on the demographic characteristics of sentenced children.¹¹⁷

There were an estimated 512,338 children aged 10 to 17 residing in Queensland as at June 2018, accounting for 11.8 per cent of the total population that could be legally held criminally responsible (aged 10 years and over).¹¹⁸

There were 781,587 unique people (adults and children) who were involved in 2.2 million cases sentenced in Queensland courts between 2005–06 and 2018–19. There were 31,859 unique children who were involved in 92,999 cases (MSO) representing 4.2 per cent of the total cases sentenced in Queensland courts over that period.

It is important to note that the inclusion of 17-year-olds in Queensland's youth justice system commenced only recently (February 2018). As the data presented in this report was largely collected before this reform, the report mostly focuses on children aged between 10 and 16 who were dealt with as a child under the YJA.

3.1 Sentencing court

Children who commit offences in Queensland can be dealt with at three different levels of court. The Childrens Court at the Magistrates Court level, the Childrens Court at the District Court level, and the Supreme Court. The majority of cases were dealt with at the Magistrates Courts level (n=87,974, 94.5%), with the remaining cases dealt with at the Supreme and District Court level (n=5,025, 5.4%).

When Childrens Courts are not available (e.g. in a regional court) or if an adult offender was co-accused, children may be dealt with in the Magistrates or District Courts.

The Childrens Court (Magistrates Courts level) heard the vast majority of cases (n=87,847, 92.5%), with only 127 cases heard in the Magistrates Courts. The Childrens Court of Queensland (District Court level) heard 4,970 cases (5.3%), and only 11 cases were heard in the District Court. The Supreme Court heard 44 cases in which the offender was sentenced as a child (0.1%).

When referring to Magistrates courts in the data analysis presented in this chapter, this includes all cases sentenced at the Magistrates Courts level—including the Childrens Court of Queensland at Magistrates Courts level. Higher courts refers to all cases sentenced in the District Court and the Supreme Court—including cases sentenced in the Childrens Court of Queensland (District Court level).

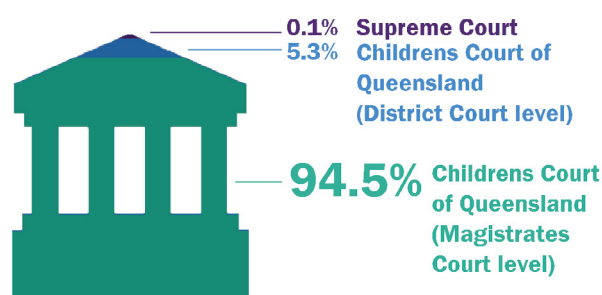
Focus of this report:

92,999 cases

31,859 children sentenced in Queensland courts between 2005–06 and 2018–19

The rate of children who commit offences is decreasing. Since 2009–10, the rate of children aged 10 to 16 sentenced in court has been steadily declining, while the number of cases remained relatively stable over time. This means that while fewer children appear in court, those who do are sentenced for a higher number of cases. Diversionary practices and the use of cautions by police may impact on the number of children who appear in court.

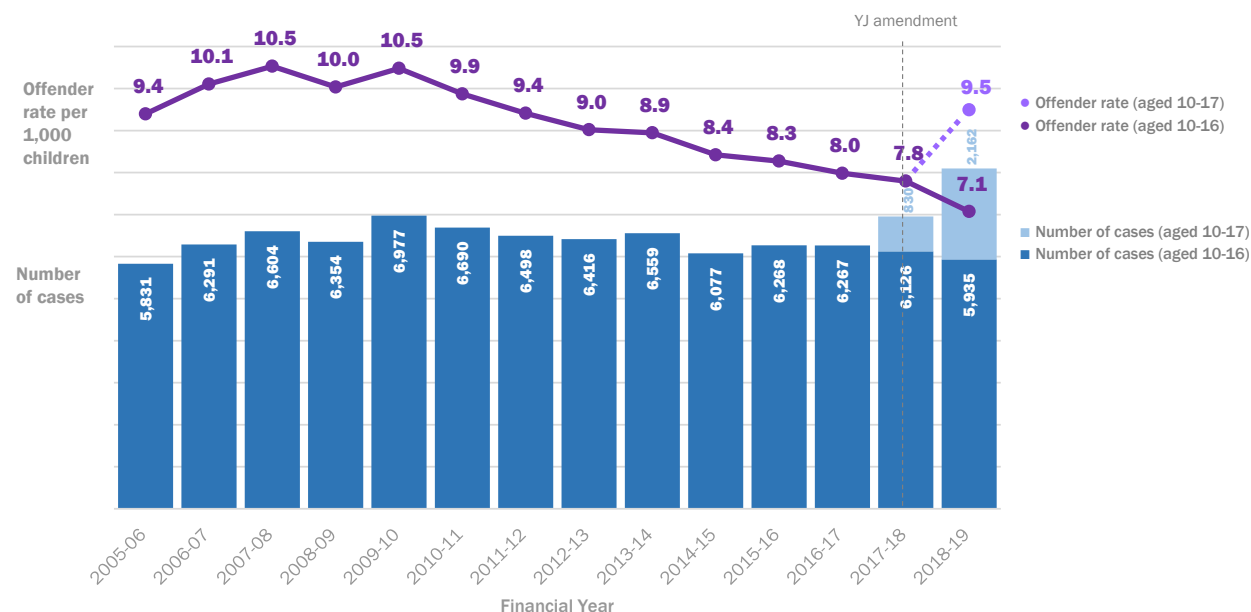
The inclusion of 17-year-olds led to an overall increase in both the number of cases sentenced and the offender rate (see Figure 7). Data from 2017–18 reflects only four months of this change, with 2018–19 as the first full year following the inclusion of 17-year-olds in the youth justice system. In 2018–19, 17-year-olds were responsible for 26.7 per cent of cases (n=2,162) sentenced in court. The inclusion of 17-year-olds in the youth justice system increased the rate of child offenders to 9.5 per 1,000 in 2018–19.



117. Where a penalty was made pursuant to the *Youth Justice Act 1992* (Qld), the offender was categorised as a child.

118. Australian Bureau of Statistics, 'Population at 30 June, by sex and single year of age, Qld, from 1971 onwards' in *National, state and territory population* (June 2020).

Figure 7: Number of cases and rate of sentenced children by age group over time



Data includes MSO, sentenced children, higher and lower courts, cases sentenced 2005–06 to 2018–19.

Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

Notes:

- 1) This diagram includes children aged 10 to 16 (or aged 10 to 17 for offences committed after 12 February 2018) based on their age at the time of committing the offence. Some of these children may be over the age of 18 at the time of sentence.
- 2) Rates were calculated using the estimated Queensland resident population (ERP) data aged 10 to 16/17 from Australian Bureau of Statistics, 'National, state and territory population', March 2020.
- 3) Cases where the offender's age at the time of offence was unknown were excluded.

3.2 Remoteness of offence location

Remote areas had the highest rate of sentenced children compared to regional areas and major cities — see Figure 9. While only 10.4 per cent of total cases were committed in remote areas, the rate of sentenced children was higher in remote areas with 36 children per 1,000 population aged 10 to 17 years (using 2019 population estimates). Regional areas had the second highest rate of sentenced children (10.0 per 1,000) and accounted for more than one-third of sentenced children (39.4%). While the majority of sentenced children offended in a major city (53.6%), major cities had the lowest rate of sentenced children at 7.6 children per 1,000 population.

Figure 8: Number of sentenced children by remoteness area

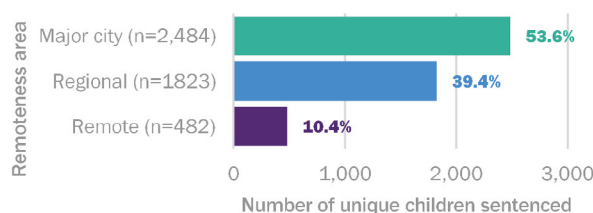
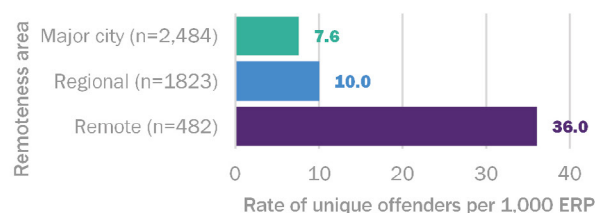


Figure 9: Rate of sentenced children by remoteness area



Data includes MSO, sentenced children, higher and lower courts, cases sentenced 2018–19.

Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

Notes:

- 1) Cases in which the offence location was either unknown or interstate were excluded.
- 2) Percentages add to more than 100% as some children commit offences across locations of different remoteness levels.
- 3) Rates were calculated using estimated resident population data by remoteness area for sentenced children aged 10 to 17. Estimated resident population data was obtained from QGSO, 'Single year of age, by sex, by statistical area levels 1 and 2 (SA1 & SA2), Queensland LGAs and Tweed, 2011 to 2019'. To correspond SA1 data to remoteness areas, the QGSO 'Meshblock correspondence files (ASGS 2016)' were used.
- 4) Remoteness levels of offences were determined by mapping the postcode and suburb in which an offence was committed to a remoteness area using Australian Bureau of Statistics, 'Correspondence, 2017 Locality to 2016 Remoteness Area', Australian Statistical Geography Standard (ASGS): Volume 5 - Remoteness Structure, July 2016.

3.3 Characteristics of sentenced children

15.8 YEARS OLD

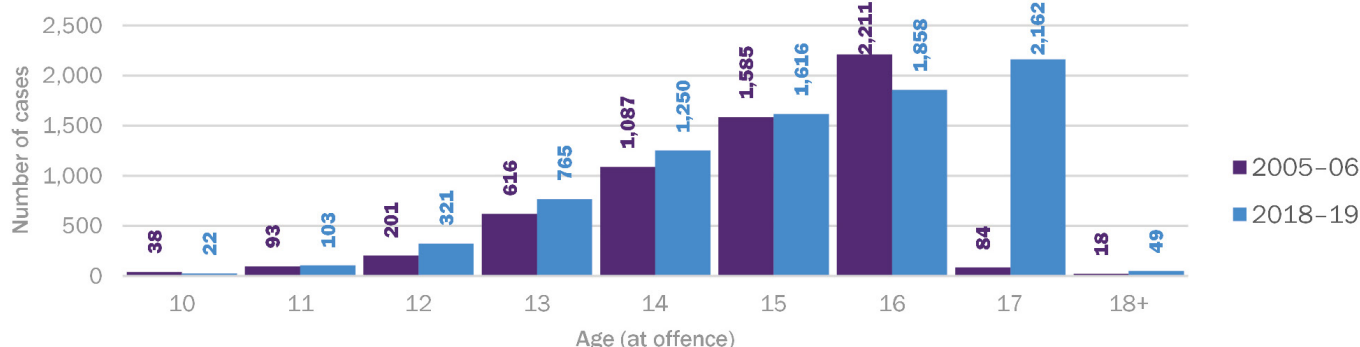
average age.

Data includes cases sentenced in 2018–19.

17 YEARS OLD

most common age

Figure 10: Age at time of offence for sentenced children



Data includes MSO, sentenced children, higher and lower courts, cases sentenced 2005–06 and 2018–19.

Source: QGSO, Queensland Treasury–Courts Database, extracted November 2019.

Note: 16 cases were excluded as the offender's age at time of offence was unknown.

3.3.1 Age

The most common age at the time of committing an offence was 17 years in 2018–19, with 26.5 per cent of cases committed by this age group. The average age in 2018–19 was 15.8 years. Children aged under 13 years accounted for 14.8 per cent of cases.

Figure 10 shows the age distribution at the time of offence for sentenced children in 2005–06 and 2018–19. As discussed earlier, 17-year-olds sentenced prior to the YJA reforms (February 2018) were not included in the youth justice system.

Older children were sentenced most often — 16-year-olds in 2005–06 and 17-year-olds in 2018–19. While the number of children aged 10 to 13 was relatively low compared to older children, the number of 12–14-year-olds in the youth justice system increased over time.

On average, girls and boys had a similar age at the time of the offence in 2018–19 (15.6 years for girls, and 15.8 years for boys). Sentenced Aboriginal and Torres Strait Islander children were slightly younger compared to sentenced non-Indigenous children.¹¹⁹ However, it is important to note that Aboriginal and Torres Strait Islander peoples generally have a younger age structure compared to the non-Indigenous population.¹²⁰ The average age at the time of offence for Aboriginal and Torres Strait Islander children was 15.4 (median=15.5) compared to 16.1 (median=16.3) for non-Indigenous children.

3.3.2 Gender and Aboriginal and Torres Strait Islander status

Boys and Aboriginal and Torres Strait Islander children are over-represented in the youth justice system.¹²¹ While Aboriginal and Torres Strait Islander children only comprise 8.1 per cent of children in Queensland aged 10 to 17, they represent 44.6 per cent (n=41,306) of the cases dealt with by the Queensland courts. Aboriginal and Torres Strait Islander adults account for 16.9 per cent of cases dealt with by courts over the 14-year data period.¹²² Figure 11 shows that, while Aboriginal and Torres Strait Islander adults are 5 times over-represented in the criminal justice system, children are over-represented to an even higher degree (5.5 times). The concerning level of over-representation of Aboriginal and Torres Strait Islander children in the criminal justice system points to the complex risk factors and vulnerabilities experienced by this cohort.¹²³

Boys were also over-represented in the criminal justice system, with 75.2 per cent of cases (n=69,940) committed by boys over the 14-year reporting period, compared to only 24.8 per cent (n=23,033) committed by girls. In contrast, the population of boys and girls in Queensland is evenly divided, with 51.4 per cent of children aged 10 to 17 being boys, and 48.6 per cent being girls,¹²⁴ which further demonstrates that boys are considerably more likely to be sentenced than girls.

Non-Indigenous boys were responsible for the largest proportion of cases involving children sentenced in court in the reporting period. Over 40 per cent of total cases involved non-Indigenous

119. Independent groups t-test: $t(79,517) = 62.73$, $p < .0001$, $r = 0.22$ (equal variances not assumed).

120. Australian Institute of Health and Welfare, *The health and welfare of Australia's Aboriginal and Torres Strait Islander peoples: 2015* (Catalogue no. IHW 147, 2015) 10 section 2.2. AIHW found that in 2011, over one-third of Aboriginal and Torres Strait Islander people were aged under 15 compared with 18 per cent of non-Indigenous people.

121. For more information on the over-representation of Aboriginal and Torres Strait Islander children in Queensland's criminal justice system, please see the Council's report *Connecting the dots: The sentencing of Aboriginal and Torres Strait Islander peoples in Queensland* (March 2021).

122. Cases in which the Aboriginal and Torres Strait Islander status of a person was unknown were excluded from this calculation.

123. *The Atkinson report* (n 2).

Figure 11: Over-representation of Aboriginal and Torres Strait Islander adults and children in sentenced cases



Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

Estimated resident population data obtained from Australian Bureau of Statistics, 'Estimates of Aboriginal and Torres Strait Islander Australians, June 2016'.

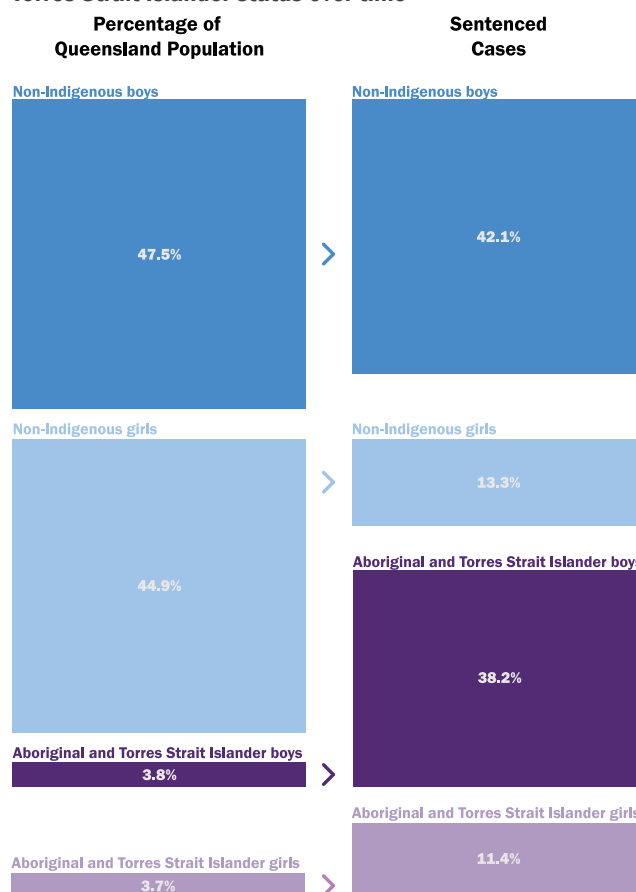
boys (42.1%, n=38,973) and one-third involved Aboriginal and Torres Strait Islander boys (33.2%, n=38,973) – see Figure 12. Collectively, boys accounted for three-quarters of all sentenced children. Non-Indigenous girls represented 13.3 per cent of those sentenced and Aboriginal and Torres Strait Islander girls represented 11.4 per cent of cases involving children.

The proportion of cases involving girls has steadily increased over time (even before the inclusion of 17-year-olds in the youth justice system). In 2018–19, non-Indigenous girls accounted for 15.1 per cent of cases, while Aboriginal and Torres Strait Islander girls accounted for 11.8 per cent of cases involving children (n=515).

This is in line with a general trend of increased female offending, even among adults.¹²⁵ While it is beyond the scope of this report to examine the reasons for this gendered increase, in addition to potential changes in offending behaviour and offending profiles, priorities in law enforcement may also impact this trend.¹²⁶

Other studies show similar patterns. Longitudinal research undertaken by Allard and colleagues showed that of all people aged 10 to 16 born in Queensland in the 1990s, 14 per cent had at least one contact with the youth justice system by the age of 17 years.¹²⁷ However, this proportion varies depending on gender and Aboriginal and Torres Strait Islander status. The study found that 2 in 3 of all Aboriginal and Torres Strait Islander boys and 1 in 4 of all Aboriginal and Torres Strait Islander girls had an offending contact by the age of 17. Compared to their non-Indigenous counterparts, one in 10 non-Indigenous boys and one in 20 non-Indigenous girls had contact with the criminal justice system.¹²⁸

Figure 12: Proportion of cases by gender and Aboriginal and Torres Strait Islander status over time



Data includes MSO, sentenced children, higher and lower courts, cases sentenced 2005–06 to 2018–19.

Source: QGSO, Queensland Treasury–Courts Database, extracted November 2019.

Estimated resident population data obtained from QGSO, Queensland Treasury, Population estimates by Indigenous status, 2015 edition.

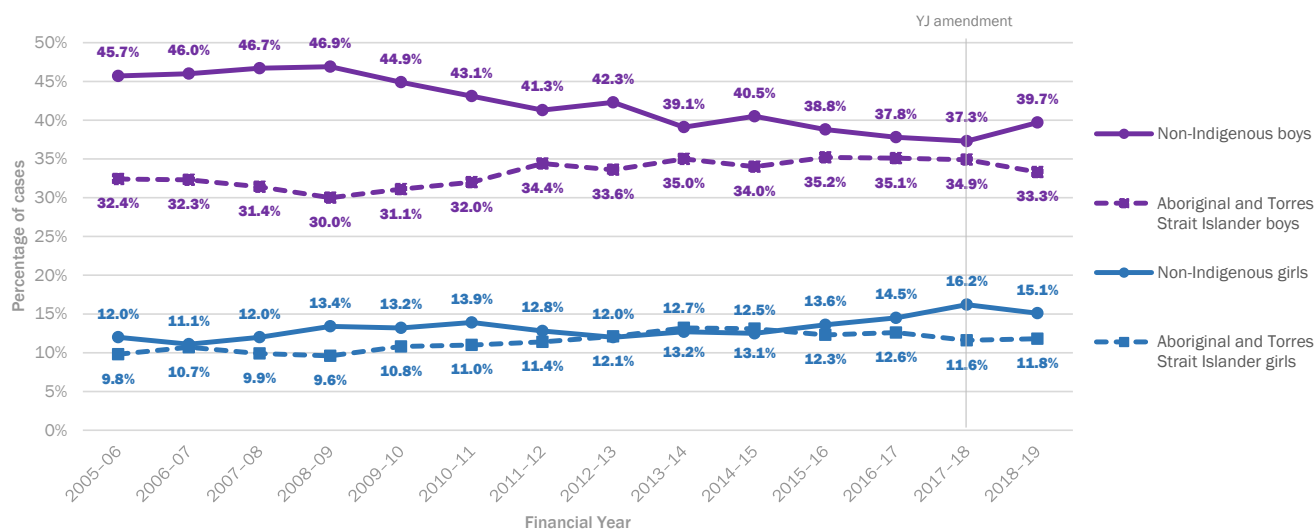
Notes: 427 cases were excluded as the gender or Aboriginal and Torres Strait Islander status of the child was unknown.

124. Australian Bureau of Statistics (n 118).

125. Queensland Sentencing Advisory Council, *Baseline report: The sentencing of people in Queensland*, May 2021.

126. Evann J Ooi, *Recent trends in the NSW female prison population* (NSW Bureau of Crime Statistics and Research, 2018); Anna Kerr and Rita Shackel, 'Equality with a vengeance: The over-incarceration of women' *PrecedentAULA* 43; (2018) 147 *Precedent* 20.

Figure 13: Proportion of cases by gender and Aboriginal and Torres Strait Islander status over time



Data includes MSO, sentenced children, higher and lower courts, cases sentenced 2005-06 to 2018-19.

Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

Notes: 427 cases were excluded as the gender or Aboriginal and Torres Strait Islander status of the offender was unknown.

127. Allard (n 3).

128. Ibid 2.

Trends in offending and recidivism

Patterns of offending differ between adults and children. This chapter provides an overview of the most common offences committed by children in Queensland. This analysis will include differences in offending patterns over the reporting period as well as differences in offending patterns by offence location and demographic group (i.e. grouped by gender and Aboriginal and Torres Strait Islander status). A recidivism analysis provides insights into patterns of reoffending among children. In this section of the report, all offences were analysed, not just the MSO.

The analysis presented in this section draws on different offence classifications:

- **General offence categories** based on the Australian and New Zealand Standard Offence Classification (ANZSOC),¹²⁹ and
- **Specific offence descriptions** based on Queensland legislation.

The analysis presented in this section focuses on the most common offences committed.

4.1 Most common offences

The three most common offences (ANZSOC categories) sentenced among children in Queensland were theft, public order offences and unlawful entry – see Figure 14 (these figures include all offences, not just MSOs).



43.8% of cases involved **Theft**



26.9% of cases involved **Public order offences**



24.0% of cases involved **Unlawful entry offences**

'Theft' includes the taking of money or goods without the use of force, violence or coercion.¹³⁰ There were 41,047 cases involving theft, of which 43.3 per cent (n=17,754) recorded a finalised charge of stealing – see Table 2. The next most common specific offence within the category of theft was unlawful use of motor vehicles (29.7%, n=12,210), followed by unauthorised dealing with shop goods (25.3%, n=10,367).

Public order offences include offences relating to disorderly conduct and regulated public order activities. Of the 25,179 cases of public order offences, almost half (47.7%, n=12,016) involved a finalised charge of public nuisance, followed by trespassing (44.3%, n=11,145).

The unlawful entry category is defined as the unlawful entry of a structure with the intent to commit an offence.¹³¹ There were 22,470 cases involving unlawful entry. Nearly three-quarters of these (n=16,584, 73.8%) involved the unlawful entry of non-dwelling premises (for example a school, shop or warehouse), and almost half involved the unlawful entry of a dwelling (45.0%, n=10,104). Offences involving a dwelling (where a person lives) are referred to as 'burglary'.

Justice and government offences comprised 21.8 per cent of sentenced cases (n=20,468). The most common of these offences, assaulting or obstructing a police officer, accounted for almost half of these cases (48.7%, n=9,961). Property and environment offences accounted for 21.8 per cent (n=18,195), with wilful damage accounting for almost all the offences in this category (92.3%, n=16,787). Traffic and vehicle offences represented 12.2 per cent of sentenced cases involving children (n=11,457), the most common offence being driving without a licence (68.1%, n=7,804) and driving unregistered (23.8%, n=2,731) and uninsured (21.8%, n=2,503) vehicles.

129. The objective of the ANZSOC is to provide a uniform national statistical framework for classifying criminal behaviour in the production and analysis of crime and justice statistics. The ANZSOC is used in Australian Bureau of Statistics statistical collections, Statistics New Zealand statistical collections, Australian police, criminal courts and corrective services agencies and New Zealand police and justice agencies.

130. For the full definition, see Australian Bureau of Statistics, *Australian and New Zealand Standard Offence Classification (ANZSOC)* (2011 3rd ed) 52.

131. Ibid 48.



21.8% of cases involved **Justice and government offences**



19.4% of cases involved **Property and environment offences**



12.2% of cases involved **Traffic and vehicle offences**

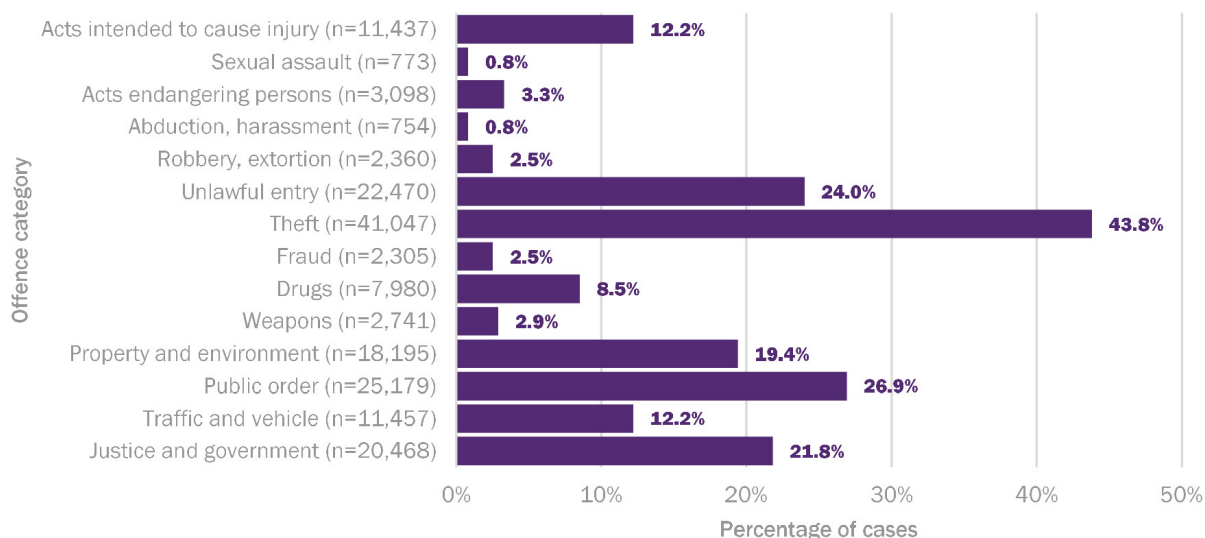
Previous research on offending in Australia has found that patterns of offending differ between children and adults. Certain types of offences (e.g. graffiti, vandalism, shoplifting and fare evasion) are disproportionately committed by children.¹³² In addition to differences in offending behaviour, children are commonly over-represented in cases involving offences against property. Children may be over-represented in offences such as burglary and theft as these offences generally have high reporting rates due to insurance purposes:

In contrast, children are under-represented in offences against the person, in particular the more serious offence categories such as homicide and sexual assaults. They are also less likely to use a weapon when committing an offence.¹³⁵ For more information on the most common offences for children per offence category, see table 2.



some offences committed disproportionately by juveniles, such as motor vehicle theft, have high reporting rates due to insurance requirements.¹³³ This may result in young people coming to police attention more frequently. In addition, some behaviours (such as underage drinking) are illegal solely because of the minority status of the perpetrator. Research has demonstrated that some offence types committed disproportionately by juveniles (such as motor vehicle thefts and assaults) are the types of offences most likely to be repeated.¹³⁴

Figure 14: Most common offence categories sentenced for children



Data includes sentenced children in the lower and higher courts, cases sentenced 2005–06 to 2018–19.

Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

Note: Totals add to more than 100% as some children may be sentenced for multiple types of offences
















132. Richards (n 21).

133. Ibid.

134. Richards (n 21) citing Cindy C Cottle, Ria J Lee and Kirk Heilbrun, 'The prediction of criminal recidivism in juveniles: A meta-analysis' 28(3) *Criminal Justice and Behaviour* 367–394.

135. Richards (n 21) 68.

Table 2: Number of cases by offence category

Offence Category	Offence	Cases
 Homicide	Manslaughter	6
	Attempt to murder	5
	Murder	4
 Acts intended to cause injury	Common assault	5,316
	Assaults occasioning bodily harm	5,281
	Serious assaults	1,450
 Sexual assault	Indecent treatment of children under 16	360
	Rape	211
	Sexual assaults	162
 Acts endangering persons	Dangerous operation of a vehicle	985
	Careless driving of motor vehicles	519
	Going armed so as to cause fear	475
 Abduction, harassment	Threatening violence	393
	[Cth] Telecommunications offences	230
	Deprivation of liberty	104
 Robbery, extortion	Robbery	1,813
	Attempted robbery	376
	Assault with intent to steal	201
 Unlawful entry	Unlawful entry (premises)	16,584
	Burglary; Unlawful entry (dwelling)	10,104
 Theft	Stealing	17,754
	Unlawful use of motor vehicles	12,210
	Unauthorised dealing with shop goods	10,367
 Fraud	Fraud	2,025
	Stealing	106
	False representation of age	74
 Drugs	Possession of drug utensils	5,027
	Possessing dangerous drugs	4,717
	Possessing property used in connection with a drug offence	836
 Weapons	Possession of a knife in a public place or a school	2,211
	Possession of weapons	327
	Prohibited conduct involving a weapon in a public place	96
 Property and environment	Wilful damage	16,787
	Unauthorised damage to property	1,138
	Arson	332
 Public order	Public nuisance	12,016
	Trespass	10,689
	Prohibitions affecting minors	1,610
 Traffic and vehicle	Unlicensed driving	7,804
	Driving unregistered vehicle	2,731
	Driving uninsured vehicle	2,503
 Justice and government	Assault or obstruct police officer	9,961
	Breach of bail - failure to appear	4,873
	Contravene direction or requirement of police officer	3,670

Data includes juvenile offenders in the lower and higher courts, cases sentenced 2005–06 to 2018–19.

Source: Queensland Government Statistician's Office, Queensland Treasury - Courts Database, extracted November 2019.

4.1.1 Changes in offending patterns over time

The number of sentenced children increased for almost every offence category. Figure 15 shows the increase in rate per 100,000 population for each offence category between 2005–06 and 2018–19 (see Table 8 in Appendix 1 for detailed data).

Theft was the most common offence category and had the largest absolute increase over the data period, from a rate of 591.8 to 767.1 offences per 100,000 population from 2005–06 to 2018–19 – an increase of 29.6 per cent. The categories of unlawful entry, public order, justice and government, property and environment, and acts intended to cause injury were the next most common offences, which all increased considerably.

Drug offences had the largest proportional change from 2005–06 to 2018–19, increasing from a rate of 83.6 to 239.5 offences per 100,000 population – an increase of over 300 per cent.

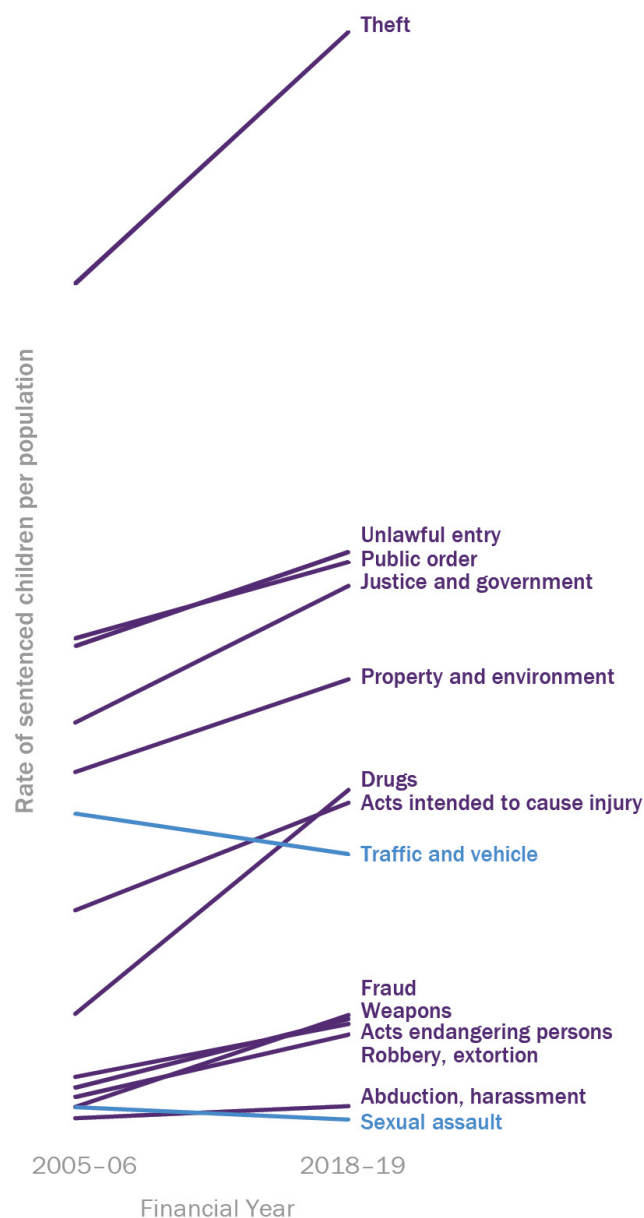
Only two offence categories decreased over the data period. Sexual assault was one of the least common offences and decreased from a rate of 18.7 to 9.8 offences per 100,000 population – a decrease of 47.6 per cent. Traffic and vehicle offences were fairly common (mostly consisting of unlicensed driving offences) and decreased from a rate of 222.8 to 194.7 offences per 100,000 population over the data period – a decrease of 12.6 per cent.

Figure 16 shows the trends over time for the most common individual offences sentenced over the data period. Stealing was the most common offence sentenced, which more than doubled from 898 to 1,950 offences over the data period.

Of the most common offences, unlawful use of a motor vehicle increased the most (168.2%) – from 560 to 1,502 offences between 2005–06 and 2018–19. Wilful damage and unlawful entry (of non-dwelling premises) were both common offences that continued to trend upwards over the data period.

Shoplifting (legally referred to as ‘unauthorised dealing with shop goods’) reached a peak of 1,008 cases in 2009–10 and dropped to 735 cases in 2018–19. Unlicensed driving followed a similar trend, with a peak in 2007–08 and a subsequent decrease.

Figure 15: Trends in offence categories for sentenced children between 2005–06 and 2018–19



Data includes sentenced children in the higher and lower courts, cases sentenced 2005–06 and 2017–18.

Source: QGSQ, Queensland Treasury – Courts Database, extracted November 2019.

See Table 8 in Appendix 1 for the underlying data.

Notes:

Rates were calculated using estimated resident population (ERP) for Queensland aged 10 to 16/17 from Australian Bureau of Statistics, ‘National, state and territory population’, March 2020. This diagram includes children aged 10 to 16 in 2005–06 and children aged 10 to 17 in 2018–19. The population used for rates were adjusted to account for this change; however, the inclusion of 17-year-olds in 2018–19 may result in a shift in the offence profile of this cohort.

Figure 16: Trends for the most common offences sentenced for children between 2005–05 and 2017–18



Data includes sentenced children in the higher and lower courts, cases sentenced 2005–06 to 2017–18.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

See Table 9 in Appendix 1 for the underlying data.

Note: This diagram includes children aged 10 to 16 or aged 10 to 17 for offences committed after 12 February 2018. An increase in the number of cases sentenced in the latest financial year (2018–19) is expected due to the increased size of the cohort.

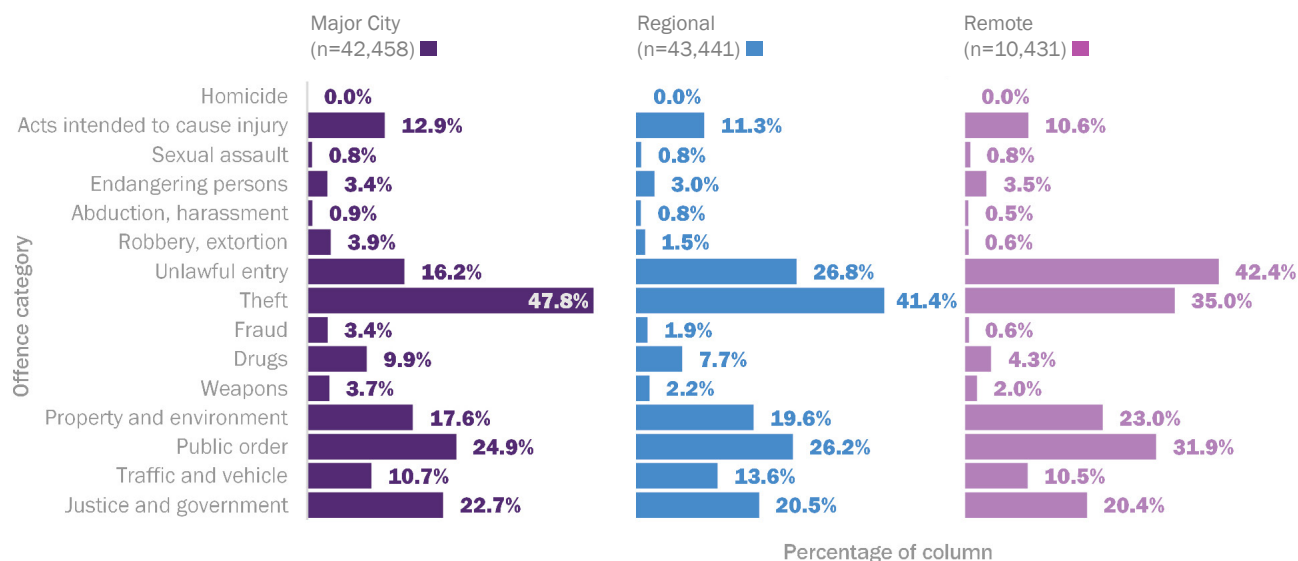
4.1.2 Differences in offending patterns by location

The types of offences committed differed by the remoteness of the offence location (see Figure 17). These differences may be impacted by a variety of factors, including but not limited to opportunities for offending behaviour, offender profiles, policing priorities and availability of diversion programs.

Theft offences involving children were more common in major cities and regional areas, while having a finalised charge of

unlawful entry was more common in remote areas. Property offences were more common in remote areas compared to other areas. Public order and justice and government offences were common across all locations, but particularly prevalent in remote areas. Offences including acts intended to cause injury, robbery and extortion, fraud, drugs and weapon offences were more common in major cities.

Figure 17: Offence categories by remoteness levels



Data includes sentenced children, higher and lower courts, cases sentenced between 2005–06 to 2018–19.








Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Notes:

- 1) Totals add to more than 100% as some cases involve multiple types of offences.
- 2) Miscellaneous offences and offences with missing offence categories are not presented.
- 3) Cases in which the remoteness of the offence location was unknown or interstate were excluded.

Table 3 presents the most common offences by level of remoteness. Stealing was the most common offence committed in major cities (18.9%) and regional areas (20.1%), while the unlawful entry of (non-dwelling) premises was the most common offence in remote areas (35.3%). Unauthorised dealing with shop goods (commonly known as shoplifting) was more commonly committed in major cities (15.1%) compared to other areas. Wilful damage, unlawful use of motor vehicles, public nuisance and burglary (the unlawful entry of a dwelling) were common across all remoteness levels, with slightly more of these offences being committed in regional and remote areas compared to major cities.

Table 3: Most common offences sentenced by remoteness level

Offence	Major City (n=42,458)	Regional (n=43,441)	Remote (n=10,431)
 Stealing	18.9%	20.1%	13.7%
 Wilful damage	15.8%	18.3%	22.0%
 Entering or being in premises and committing indictable offences	11.0%	19.5%	35.3%
 Unlawful use of motor vehicles	11.0%	14.1%	16.2%
 Public nuisance	11.9%	12.4%	15.2%
 Unauthorised dealing with shop goods	15.1%	8.6%	2.7%
 Burglary	8.1%	12.3%	14.3%

Data includes sentenced children, higher and lower courts, cases sentenced 2005–06 to 2018–19.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Notes: Cases in which the remoteness of offence location was unknown or interstate were excluded.

4.1.3 Differences in offending patterns by gender and Aboriginal and Torres Strait Islander status

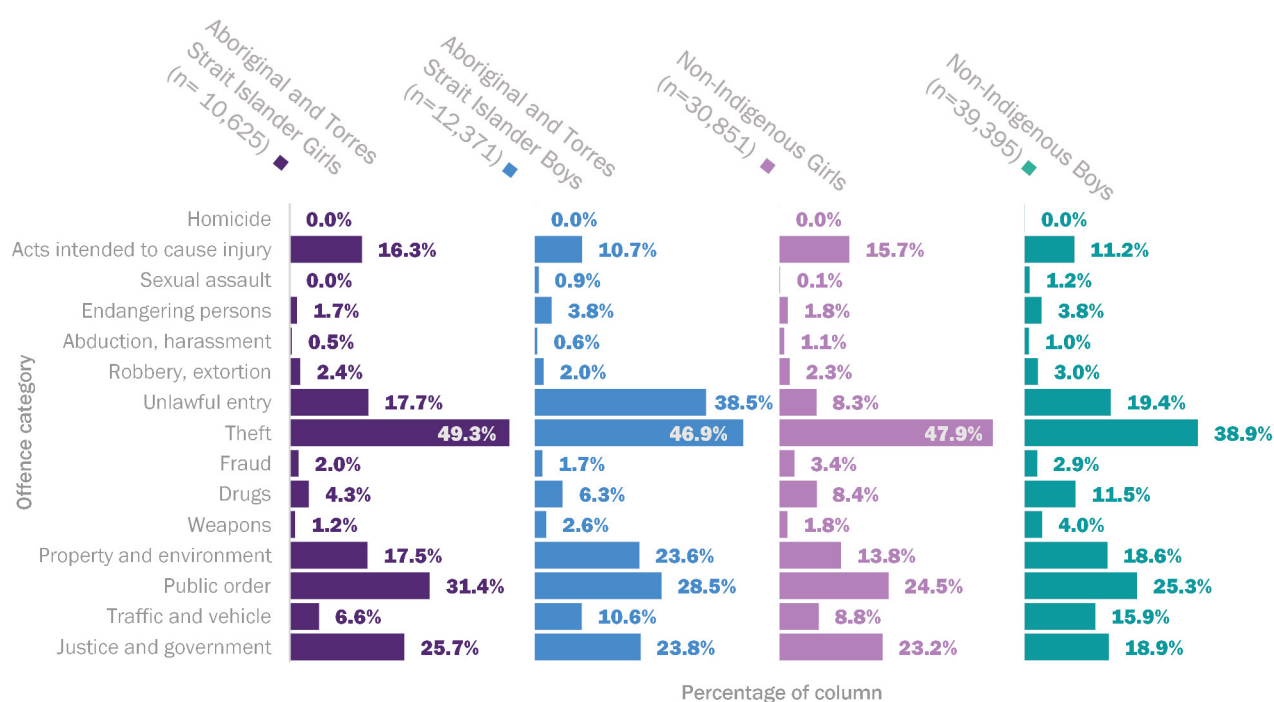
The types of offences committed also differed depending on the gender and Aboriginal and Torres Strait Islander status of sentenced children. Figure 18 demonstrates that while some types of offences were committed disproportionately by either Aboriginal and Torres Strait Islander or non-Indigenous children, others differed based on gender.

Offences involving unlawful entry and property were common for Aboriginal and Torres Strait Islander boys. Theft was notably less common for non-Indigenous boys compared to other groups of children. Public order and justice and government offences were

more common for Aboriginal and Torres Strait Islander children, particularly Aboriginal and Torres Strait Islander girls. Drug offences were most common for non-Indigenous boys, followed by non-Indigenous girls.

Sexual assault, while uncommon overall, was predominately committed by boys and more commonly committed by non-Indigenous boys. Similarly, endangering persons was considerably more common for boys, regardless of their Aboriginal and Torres Strait Islander status. Interestingly, acts intended to cause injury were more common for girls, particularly Aboriginal and Torres Strait Islander girls.

Figure 18: Offence categories by demographic group



Data includes sentenced children, higher and lower courts, cases sentenced 2005–06 to 2018–19.










Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Notes:

- 1) Totals add to more than 100% as some cases involve multiple types of offences.
- 2) Miscellaneous offences and offences with missing offence categories are not presented.
- 3) Cases where the gender or Aboriginal and Torres Strait status of the offender are unknown were excluded.

The table below lists the most common individual offences committed by children by demographic groups. The unlawful entry of (non-dwelling) premises, unlawful use of motor vehicles, trespassing and burglary (the unlawful entry of a dwelling) were particularly common for Aboriginal and Torres Strait Islander boys. In contrast, unauthorised dealing with shop goods was particularly common for girls, regardless of their Aboriginal and Torres Strait Islander status.

Table 4: Most common offences sentenced by demographic group

Offence	Aboriginal and Torres Strait Islander children		Non-Indigenous children	
	Girls (n=10,360)	Boys (n=29,879)	Girls (n=10,360)	Boys (n=29,879)
 Stealing	21.7%	20.8%	18.0%	17.4%
 Wilful damage	16.3%	22.4%	12.3%	16.7%
 Unlawful entry (of premises)	13.2%	29.4%	5.5%	13.7%
 Unlawful use of motor vehicles	12.6%	20.0%	7.4%	9.6%
 Public nuisance	18.2%	12.0%	14.3%	11.6%
 Trespass	10.8%	14.3%	8.1%	10.5%
 Shoplifting	16.4%	6.9%	20.7%	9.9%
 Assault or obstruct police officer	12.4%	11.4%	12.9%	9.4%
 Unlawful entry (of dwelling); Burglary	7.3%	17.4%	3.8%	8.8%

Data includes sentenced children, higher and lower courts, cases sentenced 2005–06 to 2018–19.
Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Notes:

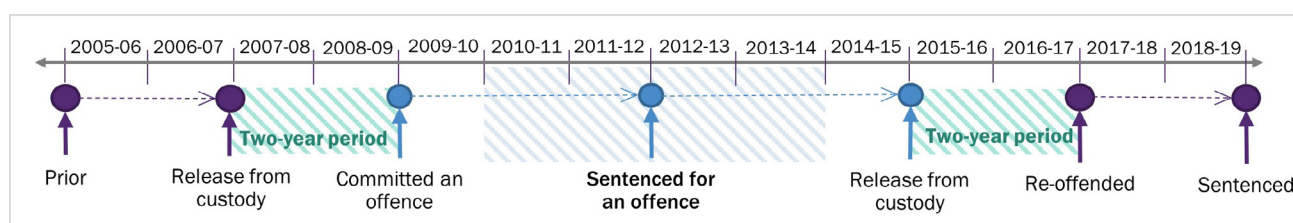
- 1) Totals add to more than 100% as some cases involve multiple offences.
- 2) Cases in which the gender or Aboriginal and Torres Strait status of the offender were unknown were excluded.

4.2 Recidivism

The majority of children who receive a supervised youth justice sentence serve only one sentence and do not return to serve another supervised sentence.¹³⁶ A longitudinal study conducted by the AIHW measured recidivism rates for children born between 1990–91 and 1998–99 who received supervision from youth justice agencies in Australia. Of those aged 10 to 17 who were under sentenced youth justice supervision at any time between 2000–01 to 2016–17, 61 per cent received only a single supervised sentence before turning 18. Further, ‘the younger a person was at their first supervised sentence (either community based or detention), the more likely they were to return to sentenced youth justice supervision.’¹³⁷

The study found that ‘of young people aged 10 to 16 in 2017–18 and released from sentenced community-based supervision, 40% returned to sentenced supervision within 6 months, and 57% within 12 months. Of those released from sentenced detention, 61% returned within 6 months, and 80% within 12 months’. While the study provides important insights, it did not control for seriousness of offending, which would likely have impacted on the sentence outcome as well as a child’s future re-offending risk.¹³⁸

Figure 19: Methodology for recidivism analysis: example of child sentenced to custodial penalty



There are considerable methodological challenges in measuring recidivism. For the purposes of this report, the Council has operationalised recidivism as any offence that was committed within two years of the date of sentencing for a non-custodial penalty or within two years of a child's expected release from custody, where both offences were dealt with in the youth justice system.¹³⁹ Of the 32,197 children sentenced in Queensland courts between 2005–06 and 2018–19, 16,308 (50.7%) were repeat offenders – that is, they were sentenced multiple times under the YJA over the 14-year period.

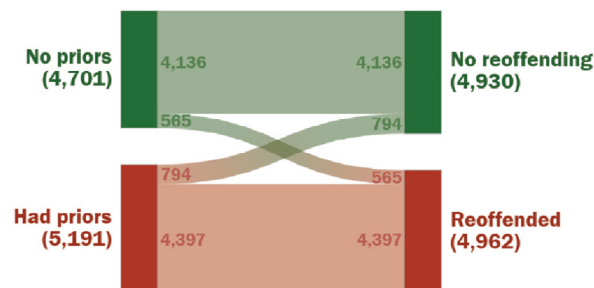
Children who were sentenced under the YJA over the period 2010–11 to 2013–14 were examined in more detail to determine whether they had committed any other offences before or after this period (see Figure 20).¹⁴⁰ Traffic and vehicle offences were excluded from this analysis.

Between 2010–11 and 2013–14, there were 25,245 cases sentenced, involving 9,892 unique children. Of these, just over half previously offended (n=5,191, 52.5%) and half committed a new offence after being sentenced (n=4,962, 50.2%) – see Figure 20. About two in five children had no prior and no subsequent offence recorded (n=4,136, 41.8%). Only 5.7 per cent (n=565) of those who did not have a prior offence recorded reoffended. Of those who did have a prior offence recorded, 44.5 per cent (n=4,397) reoffended. Only 8.0 per cent of those who had a prior offence recorded (n=794) did not commit any subsequent offences between 2010–11 and 2013–14.

Table 5 shows prior and subsequent court events for sentenced children by gender and Aboriginal and Torres Strait Islander status. On average, boys had a higher number of prior¹⁴¹ and subsequent¹⁴² court events compared to girls, regardless of their

50.7% repeat offenders

Figure 20: Recidivism for sentenced children



Data includes higher and lower courts, children sentenced between 2010–11 and 2013–14 where reoffending occurred within two years of the child's expected release from custody.

Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

Note: Cases involving traffic and vehicle regulatory offences (ANZSOC Division 14) were excluded from recidivism analyses

Aboriginal and Torres Strait Islander status. These differences were statistically significant.

There was a statistically significant difference in the average number of prior¹⁴³ and subsequent¹⁴⁴ court events for non-Indigenous children compared to Aboriginal and Torres Strait Islander children, regardless of gender. On average, Aboriginal and Torres Strait Islander boys had the highest number of prior and subsequent court events, followed by Aboriginal and Torres Strait Islander girls.¹⁴⁵

Table 5: Prior and subsequent court events by gender and Aboriginal and Torres Strait status

Offender type	N	No prior offences (%)	1 to 3 prior offences (%)	4+ prior offences (%)	Number of court events			
					Avg	Median	Min	Max
Prior offending	9,892	47.5	32.6	19.9	1.9	1.0	0	30
Aboriginal and Torres Strait Islander girls	1,079	40.8	35.5	23.7	2.2	1.0	0	27
Non-Indigenous girls	1,586	58.1	30.8	11.1	1.2	0.0	0	18
Aboriginal and Torres Strait Islander boys	2,620	32.8	35.0	32.2	3.0	2.0	0	30
Non-Indigenous boys	4,506	52.9	31.8	15.4	1.5	0.0	0	21
Subsequent offending	9,892	49.8	30.0	20.2	2.0	1.0	0	24
Aboriginal and Torres Strait Islander girls	1,079	42.1	32.1	25.9	2.4	1.0	0	22
Non-Indigenous girls	1,586	61.5	27.2	11.3	1.2	0.0	0	22
Aboriginal and Torres Strait Islander boys	2,620	34.2	32.6	33.2	3.1	2.0	0	24
Non-Indigenous boys	4,506	55.6	29.5	14.8	1.5	0.0	0	21

Data includes sentenced children, higher and lower courts, cases sentenced between 2010–11 and 2013–14 where reoffending occurred within two years of the child's expected release from custody.

Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

Note:

1) Cases involving traffic and vehicle offences (ANZSOC Division 14) were excluded from recidivism analyses.

2) Cases where the child's gender or Aboriginal and Torres Strait Islander status was unknown were excluded from demographic breakdowns but were included in the total number of children.

136. Australian Institute of Health and Welfare, *Young people returning to sentenced youth justice supervision 2016-17* (Catalogue no. JUV 127, 2018).

137. Ibid 4.

138. Ibid 136.

139. For more information on the application of this methodology, please see the Technical Paper available on the Council's website.

Previous research has found that compared to non-Indigenous children, Aboriginal and Torres Strait Islander children are more deeply entrenched in the youth justice system and experience incarceration in detention centres from an earlier age.¹⁴⁶ Allard et al found that 'Indigenous young people in the general population were found to be 4.5 times more likely to have contact with the criminal justice system than non-Indigenous young people, they were 2.9 times less likely to be cautioned than they were to appear in court, two times less likely to have a police conference than appear in court and 1.5 times less likely to be cautioned than attend a conference for their first contact with the system'.¹⁴⁷ As the Council's report on the sentencing of Aboriginal and Torres Strait Islander peoples – *Connecting the Dots* – sets out, there are many complex factors sitting behind these statistics. These include economic disadvantage, mental illness, substance use, homelessness, and poverty, often connected to the intergenerational impacts of colonisation and policies of forced removal from land, or removal of children from their families.¹⁴⁸

Table 6 shows the prior and subsequent court events for sentenced children by remoteness level. Remoteness impacts on the number of prior offences¹⁴⁹ and subsequent reoffending.¹⁵⁰ Children who committed an offence in a major city had the lowest average of 1.7 court events, while children sentenced in regional and remote areas had the highest average of 2.2 court events.

Similar trends were observed in subsequent reoffending. Children who committed an offence in a major city had the lowest average of 1.7 court events, while children sentenced in regional and remote areas had the highest average of 2.2 court events. Similar trends were observed in subsequent reoffending, with remote areas showing the highest average number of subsequent court events (an average of 2.4 court events).

Table 6: Prior and subsequent court events by remoteness level

Offender type	N	No prior offences (%)	1 to 3 prior offences (%)	4+ prior offences (%)	Number of court events			
					Avg	Median	Min	Max
Prior offending	10,868	45.8	33.4	20.8	2.0	1.0	0	30
Major city	4,896	48.9	33.2	18.0	1.7	1.0	0	22
Regional	4,846	44.2	32.9	22.9	2.2	1.0	0	30
Remote	1,126	39.9	36.4	23.7	2.2	1.0	0	27
Subsequent offending	10,868	48.3	30.9	20.7	2.0	1.0	0	24
Major city	4,896	51.8	30.8	17.4	1.7	0.0	0	22
Regional	4,846	47.3	30.0	22.7	2.2	1.0	0	24
Remote	1,126	37.7	35.3	27.0	2.4	1.0	0	22

Data includes sentenced children, higher and lower courts, cases sentenced between 2010–11 and 2013–14 where reoffending occurred within two years of the child's expected release from custody.

Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

Notes:

- 1) Cases involving traffic and vehicle offences (ANZSOC Division 14) were excluded from recidivism analyses.
- 2) Some cases involve multiple offences committed at locations with different remote areas.
- 3) Cases in which the remoteness of the offence location was unknown were excluded

140. To calculate recidivism, offenders were linked across multiple court events to identify occurrences of prior offending and reoffending. This offender linkage was undertaken by QGSO and involved both deterministic and probabilistic matching techniques to account for anomalies in data systems in relation to common administrative data errors relating to issues such as the use of nicknames and transposed details.

141. Independent groups $t(5,595.6) = -7.08, p < .0001, r = 0.09$ (equal variances not assumed).

142. Independent groups $t(5,399.3) = -5.85, p < .0001, r = 0.08$ (equal variances not assumed).

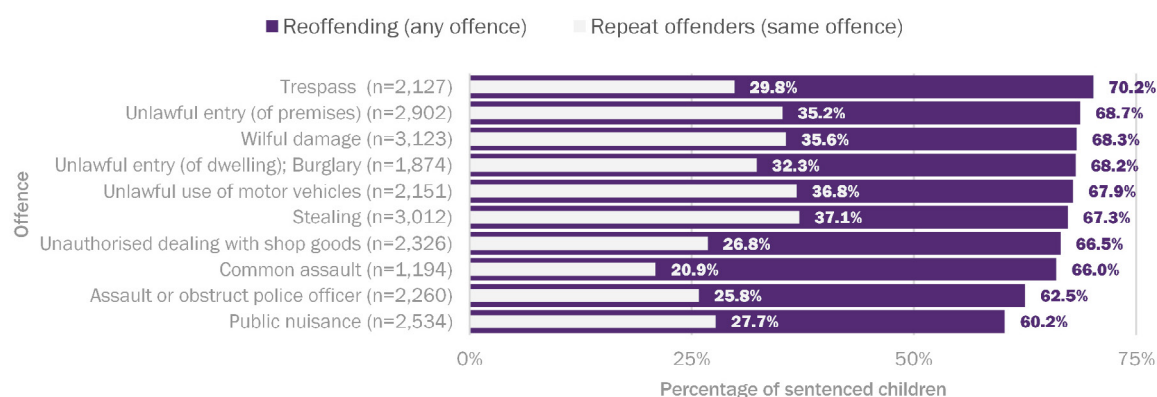
143. Independent groups $t(5,831.0) = -19.41, p < .0001, r = 0.25$ (equal variances not assumed).

144. Independent groups $t(5,932.4) = -20.47, p < .0001, r = 0.26$ (equal variances not assumed).

145. For more information on the recidivism rates of Aboriginal and Torres Strait Islander children versus non-Indigenous children, please see the Council's report titled *Connecting the dots: The sentencing of Aboriginal and Torres Strait Islander peoples in Queensland* (March 2021).

146. Chris Cunneen, Neva Collings and Nina Ralph, *Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement* (Queensland Legislative Assembly, November 2005) 93.

Figure 21: Reoffending for the top 10 most common offences sentenced.



Data includes sentenced children, higher and lower courts, children sentenced between 2010–11 and 2013–14, where reoffending occurred within two years of the child's expected release from custody.

Source: QGSQ, Queensland Treasury – Courts Database, extracted November 2019.

Reoffending rates also varied by type of offence. Figure 21 shows the proportion of sentenced children who reoffended within two years of release by the top 10 most common offences during the index period of 2010–11 to 2013–14. The darker bars represent the proportion of children who reoffended by committing any offence, while the lighter bars show the proportion of children who committed the same offence. The highest rate of reoffending was observed for trespassing, followed by unlawful entry and wilful damage. The highest rate of repeat offending for the same offence was observed for stealing (37.1%), followed by unlawful use of a motor vehicle (36.8%) and wilful damage (36.6%). The lowest rate of repeat offending (for the same offence) was observed for common assault, followed by assaulting or obstructing a police officer.

147. Allard (n 3) 4.

148. Please see the Council's report *Connecting the dots: The sentencing of Aboriginal and Torres Strait Islander peoples in Queensland* (March 2021) for more information.

149. One way ANOVA: $F(2, 3,127.4) = 36.78$, $p < .0001$ (used Welch's correction as equal variances not assumed).

150. One way ANOVA: $F(2, 3,141.4) = 40.50$, $p < .0001$ (used Welch's correction as equal variances not assumed).

Penalties and sentencing outcomes

This chapter provides analysis of the penalties and sentencing outcomes for children sentenced in the Queensland courts and focuses primarily on cases sentenced as a most serious offence (MSO).

5.1 Overview

There were 92,999 cases (MSO) involving sentenced children in the data period. In total, 87,974 cases were dealt with in the Magistrates Courts and 5,025 in the higher courts. The use of custodial and non-custodial penalties changed over time at both court levels, with a steady increase for children sentenced to custodial penalties in the Magistrates Courts.

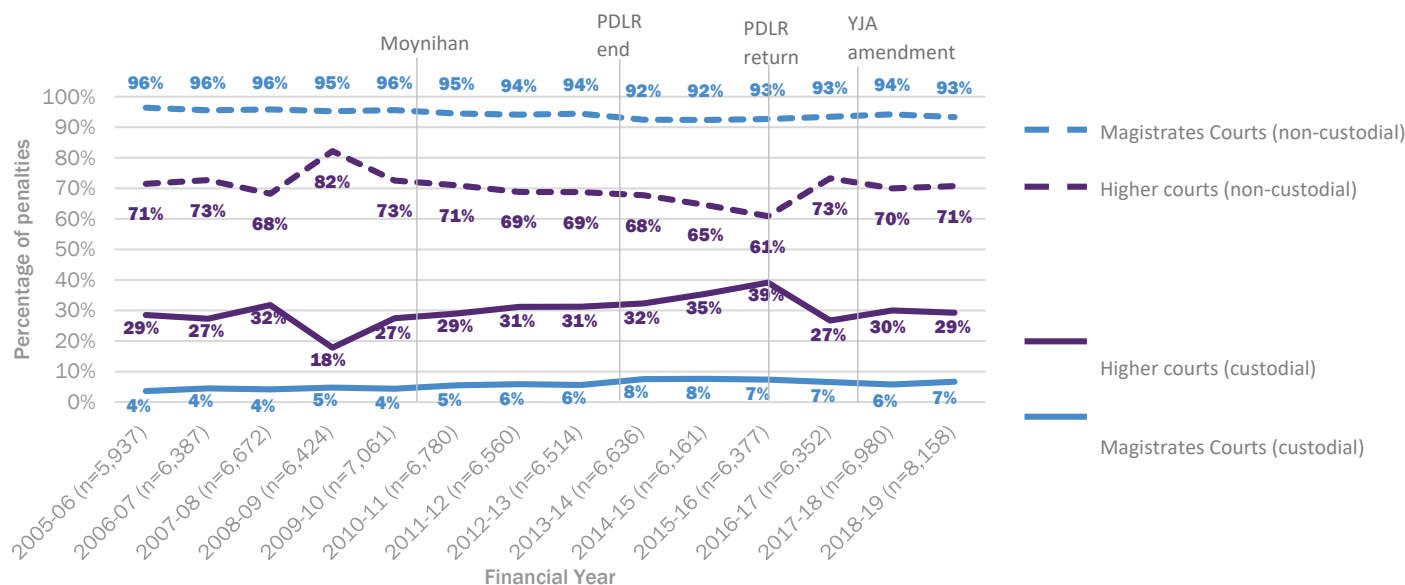
Figure 22 shows the use of custodial and non-custodial penalties for children by court type between 2005–06 and 2018–19. The vertical lines depict reforms that are likely to have impacted on the data presented. The 'Moynihan reforms' expanded the Magistrates Courts' jurisdiction and increased the District Court's general criminal jurisdiction. The meaning of a 'serious offence' under the YJA was also amended to ensure consistency of the summary jurisdiction of the Childrens Court with the types of offences that can be determined summarily in the Magistrates Courts as a result of these reforms. 'PDLR' refers to the

legislative requirement that courts should only impose detention as a last resort. The inclusion of 17-year-olds as children is shown as 'YJA amendment'.

In the Magistrates Courts, the use of custodial penalties gradually increased over time – from 4 per cent of cases sentenced in the Magistrates Courts in 2005–06 to 7 per cent in 2018–19. The use of non-custodial penalties gradually decreased – from 96 per cent of cases sentenced in the Magistrate Courts in 2005–06 to 93 per cent in 2018–19.

The proportion of cases that received a custodial penalty in the higher courts fell between 2007–08 and 2008–09, from 32 per cent to 18 per cent, but increased in the following year. Following the abolition of detention as a last resort ('PDLR') in 2014, there was an increase in the proportion of custodial penalties in the higher courts (from 32% in 2013–14 to 39% in 2015–16). Following the reintroduction of PDLR in 2016, the proportion of custodial penalties dropped to 27 per cent in 2016–17.

Figure 22: Use of custodial and non-custodial penalties by level of court over time



Data includes sentenced children, higher and lower courts, cases sentenced 2005–06 to 2018–19.

Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

Notes: The vertical line depicts reforms that could affect the data:

'Moynihan' refers to legislative changes which expanded the jurisdiction of the Magistrates Courts and increased the District Court's general criminal jurisdiction.

'PDLR' refers to the legislative requirement that courts should only impose detention as a last resort and that a sentence allowing the person to stay in the community is preferable (with some legislative exceptions).

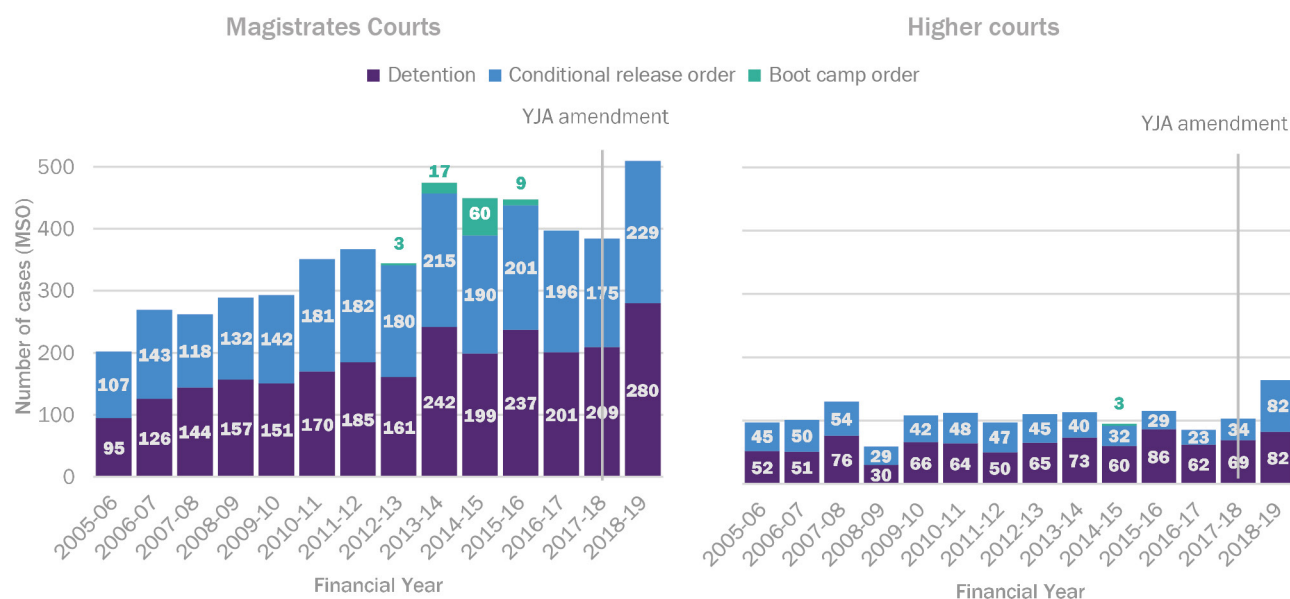
'YJA amendment' refers to the inclusion of 17-year-olds in the youth justice system.

For more information on these reforms, reviews and legislative changes, please see the Queensland Sentencing Advisory Council report *Community-based sentencing orders, imprisonment and parole options – Final Report* (July 2019).

The number of cases in which a child was sentenced to detention in the Magistrates Courts increased over time. Detention orders more than doubled between 2005–06 and 2017–18 (excluding 2018–19 due to impact of the YJA amendment), from 95 to 209 cases. At the same time, conditional release orders increased by 63.6 per cent—from 107 to 175 cases.

In the higher courts, the number of detention orders increased from 52 to 69 cases (an increase of 32.7%), while conditional release orders decreased from 45 to 34 cases (a decrease of 24.4%) between 2005–06 and 2017–18 (excluding 2018–19 due to the impact of the YJA amendment).

Figure 23: Use of custodial penalties over time in the Magistrates Courts



Data includes sentenced children, higher and lower courts, cases sentenced 2005–06 to 2018–19.
Source: QGSQ, Queensland Treasury - Courts Database, extracted November 2019.

Notes: The vertical line depicts reforms that could affect the data:

- 1) 'YJA amendment' refers to the inclusion of 17-year-olds in the juvenile justice system.
- 2) Boot camp orders were introduced on 31 January 2013 and were repealed from 1 July 2016. The orders were available in a limited number of geographic locations.

429

children aged 10 to 14

(at the time of sentence)

were given a **detention order**

Queensland's Criminal Code has a presumption against criminal responsibility for children under 14 years.¹⁵¹ The prosecution must prove beyond reasonable doubt that at the time of the offence, a child aged between 10 and 14 was capable of knowing they should not commit the offence. This reflects the common law presumption that children under 14 years are *doli incapax*, or incapable of crime/doing wrong.¹⁵²

The effect of these provisions is that children as young as 10 years can be — and are found to be — criminally responsible and placed in youth detention.¹⁵³ In 2017–18, the AIHW reported that approximately 7 per cent (n=411) of children under supervision on an average day throughout Australia were aged between 10 and 13 years.¹⁵⁴

In the Council's analysis, there were 429 unique children under the age of 15 (at the time of being sentenced) who were given a detention order between 2005–06 and 2018–19. This means that, of the 1,846 children sentenced to a detention order in the reporting period, nearly one quarter (23.2%) involved children aged between 10 and 14 years.

Figure 24 shows the length of detention orders, finding that more than half (51.3%) received a sentence of less than 6 months. It is important to note that Figure 24 only shows the finalised cases in which a detention order was imposed. The penalty lengths depicted in the figures below do not include time spent on remand. According to the Childrens Court of Queensland *Annual report 2019–20*, the average length of time children spent on remand in custody was 30 days.¹⁵⁵

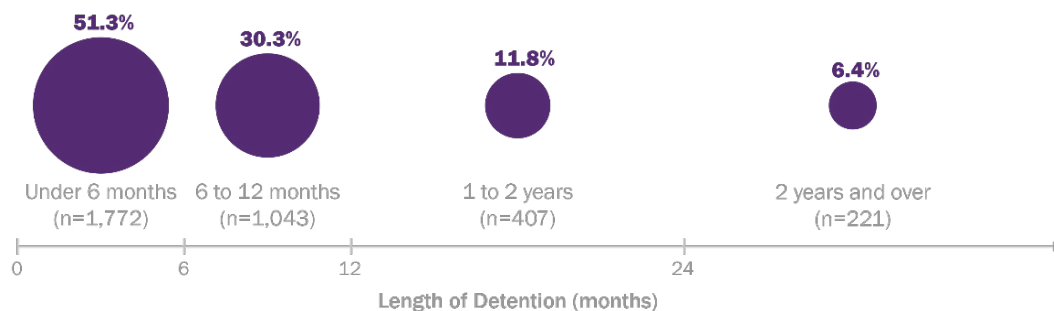
151. *Criminal Code (Qld)* s 29(2).

152. Queensland Family and Child Commission (n 76) 4.

153. Australian Institute of Health and Welfare, *Youth justice in Australia 2017-18* (Catalogue no. JUV 129, 2019) 8.

154. *Ibid*

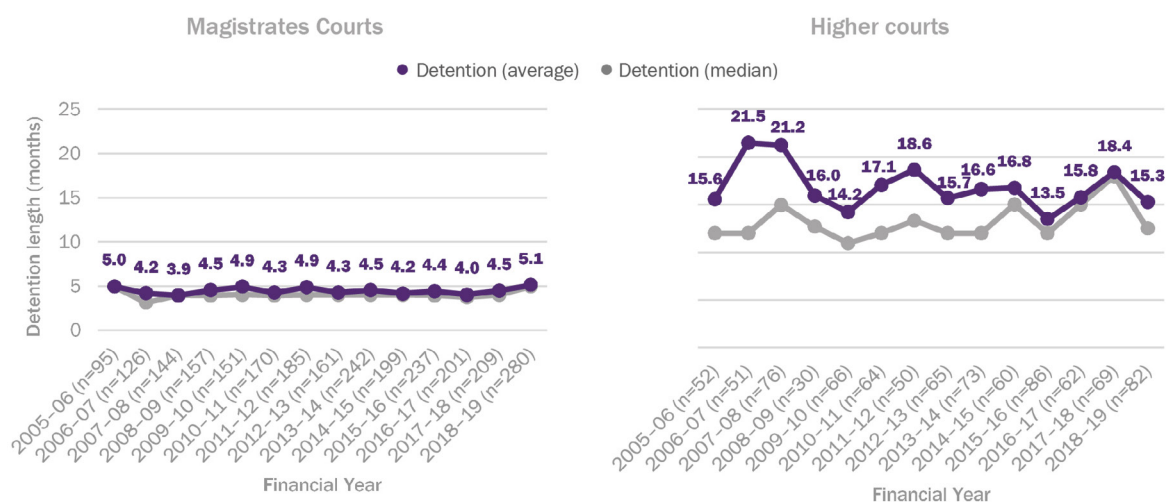
Figure 24: Length of detention penalties for sentenced children



Data includes MSO, sentenced children, higher and lower courts, cases sentenced 2005–06 to 2018–19.
Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

The average length of detention orders in the Magistrates Courts has been relatively stable over time (see Figure 25). However, in the higher courts, the trends in average length were more varied, which may be due to the lower numbers and the diversity of cases sentenced in the higher courts.

Figure 25: Median and average detention length



Data includes MSO, sentenced children, higher and lower courts, cases sentenced 2005–06 to 2018–19.
Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

5.2 Detailed breakdown of sentencing outcomes for children

A reprimand was the most common penalty for children in the Magistrates Courts, while probation was most common in the higher courts.

Figure 26 shows the breakdown of custodial and non-custodial penalties by court level for children sentenced between 2005–06 and 2018–19.

Non-custodial penalties comprised the majority of penalties in the Magistrates Courts (n=82,933, 94.3%), with children reprimanded in 29.8 per cent (n=26,174) of cases, followed by good behaviour bonds (n=14,047, 16.0%), probation (n=13,531, 15.4%) and community service (n=12,330, 14.0%). Just over 10 per cent of cases received a court diversion referral (n=9,802, 11.1%).

Custodial penalties comprised 5.7 per cent of penalties in the Magistrates Courts (n=5,037), with detention imposed in 2.9 per cent of cases (n=2,557). An additional 2.7 per cent were sentenced to detention but were immediately released into a

structured program with strict conditions (a conditional release order, n=2,391).

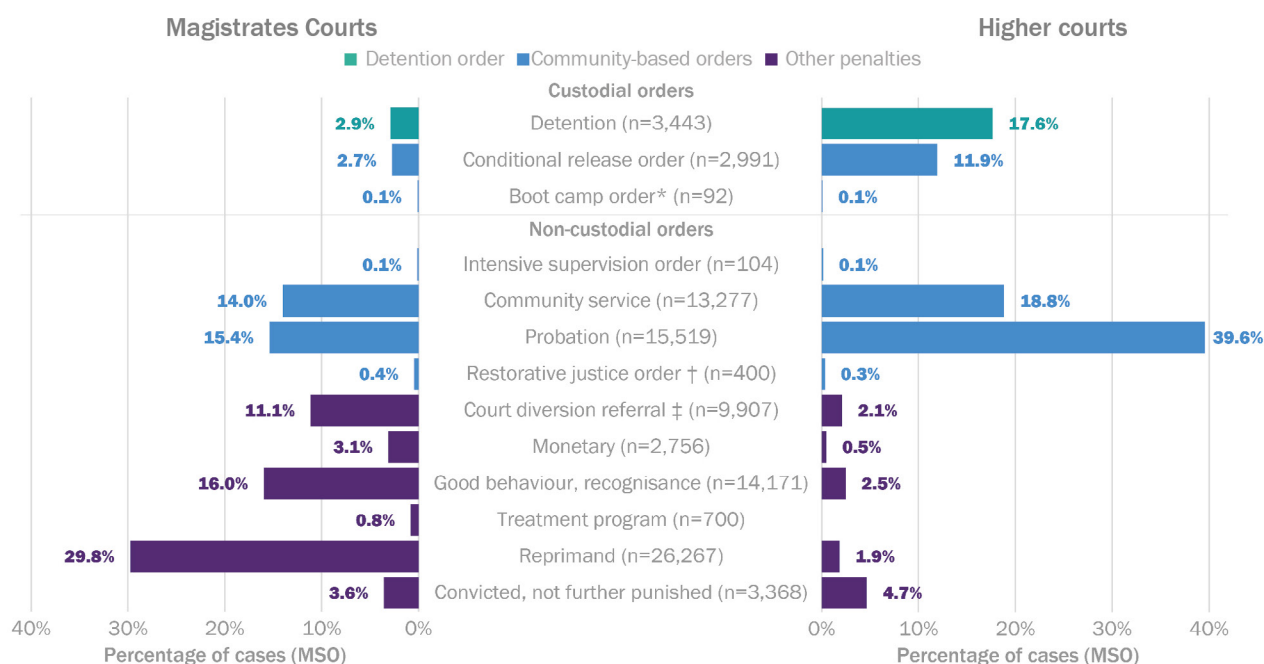
A smaller proportion of cases received monetary orders (n=2,733, 3.1%), treatment program orders (n=700, 0.8%) and intensive supervision orders (n=98, 0.1%), which are only available to children aged under 13 years. About 3 per cent of children sentenced in the Magistrates Courts were convicted but not further punished (n=3,134, 3.6%).

Probation was the most common non-custodial penalty in the higher courts, with over one-third of cases (n=1,988, 39.6%) receiving a probation order. Community service was the second most common penalty at 18.8 per cent (n=947).

Nearly one-third of cases dealt with in the higher courts received a custodial penalty (n=1,489, 29.6%), with detention as the most common custodial penalty at 17.6 per cent (n=886), followed by conditional release orders at 11.9 per cent (n=600).

Nearly 5 per cent received a conviction but were not further punished (n=234, 4.7%). A smaller number of cases received restorative justice orders, court diversion referrals, monetary orders, good behaviour bonds and reprimands.

Figure 26: Types of penalties imposed on children by court level



Data includes MSO, sentenced children, higher and lower courts, cases sentenced 2005–06 to 2018–19.

Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

Notes:

* Boot camp orders were introduced on 31 January 2013 and were repealed from 1 July 2016. The orders were available in a limited number of geographic locations.

† Restorative justice orders were introduced on 27 June 2016.

‡ A court may refer a matter to conferencing without making a sentencing order. Prior to 11 December 2012, these orders were known as indefinite referrals and resulted in the child being found guilty of the offence without a conviction being recorded. From 27 June 2016, the current Court Diversion Referrals do not include such a deemed legislative conviction; however, the making of the referral does bring the court proceedings for the offence to an end.

5.2.1 Sentence lengths for children sentenced in the Magistrates Courts

The average head sentence for children sentenced to detention in the Magistrates Courts was 4.5 months (median=4.0 months).

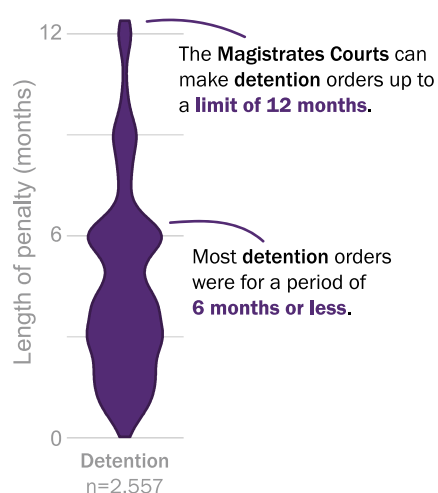
There was little variation in the length of detention orders by socio-demographic group in the Magistrates Courts, apart from gender: on average, boys received detention orders that were one month longer than girls (4.6 months compared to 3.6 months). Children who committed an offence in major cities received slightly longer detention orders compared to regional and remote areas.

In cases in which a conditional release order was issued, the average order had a head sentence of 3.1 months (median=3 months). The longest sentence was for 12 months (the legal maximum). There were very few intensive supervision orders made during the data period — only 98 cases — with an average length of 5.3 months (median = 6 months).

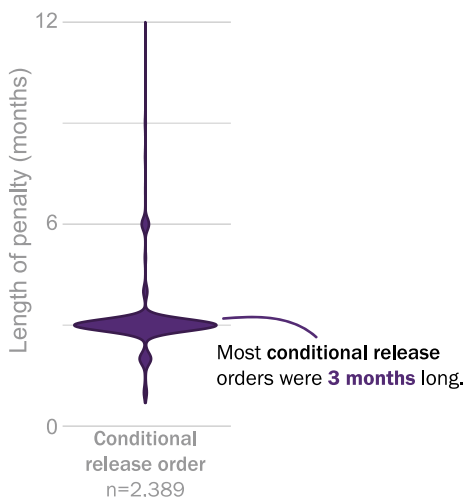
Probation was the third most common non-custodial penalty imposed on children in the Magistrates Courts (with reprimand as the first, and a good behaviour bond as the second) with an average length of 7.6 months (median = 6 months). Community service was also a common penalty for children in the Magistrates Courts, with an average length of 49.5 hours (median = 40 hours).

On average, children who received a monetary penalty were required to pay \$242 (median=\$150). The average length of recognisance orders was 5.6 months (median=6 months). Additional information on penalty length and amount in the Magistrates Courts can be found in Appendix 1.

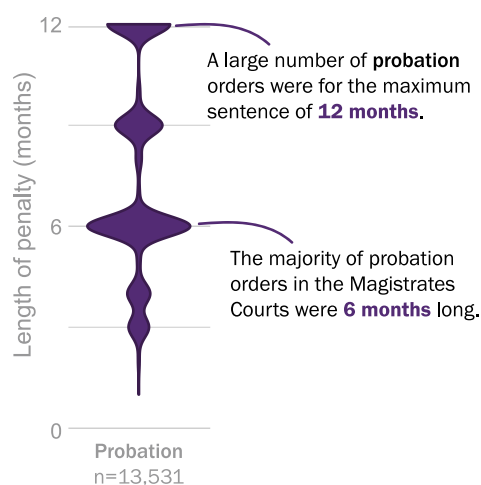
Magistrates Courts — Detention



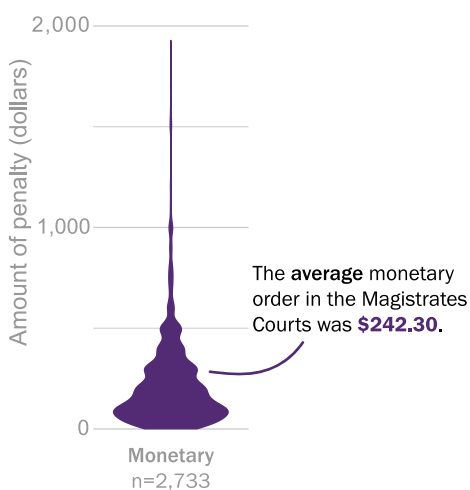
Magistrates Courts — Conditional Release



Magistrates Courts — Probation



Magistrates Courts — Monetary Orders



5.2.2 Sentence lengths for children sentenced in the higher courts

The average head sentence for children sentenced to detention in the higher courts was 16.8 months (median=12 months). The longest detention sentence was 14 years. In cases in which a conditional release order was issued, the average order had a head sentence of 4.5 months (median=3 months), and the longest sentence was for 2.5 years.

The length of detention by socio-demographic characteristics was more varied in the higher courts. Boys received longer detention orders – 17.2 months compared to 13.8 months for girls.

Non-Indigenous children (17.8 months) received slightly longer detention orders compared to Aboriginal and Torres Strait Islander children (16 months). Detention orders were also longer for children sentenced in major cities.

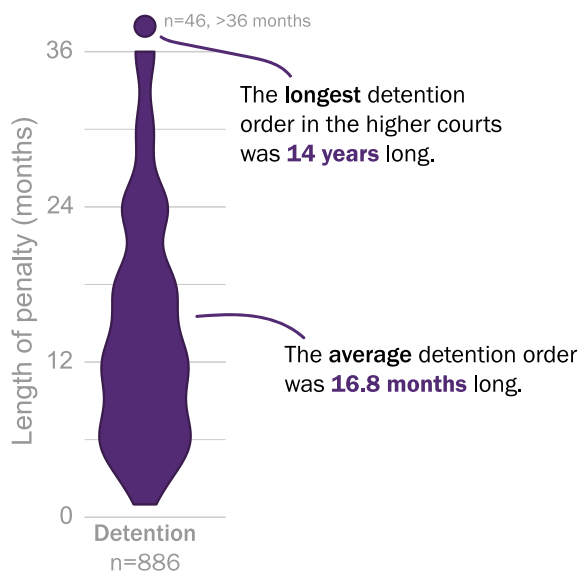
Probation was the most common non-custodial penalty imposed on children in the higher courts. Cases where probation was imposed received an average length of 17.1 months (median = 18 months).

Community service imposed in the higher courts had an average length of 91.4 hours (median = 80 hours). There was only a very small number of cases that received an intensive supervision order (n=6).

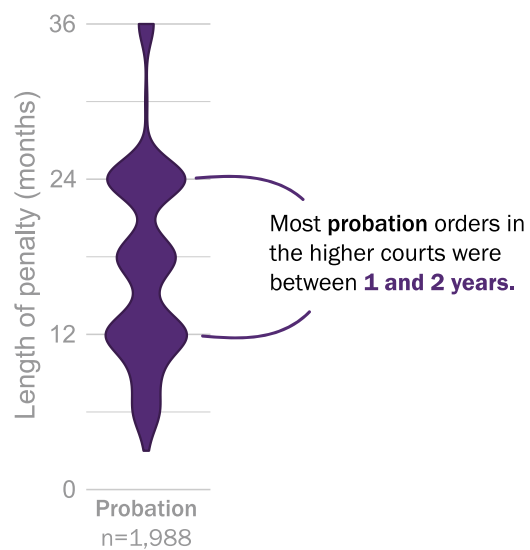
Monetary penalties were rare in the higher courts (n=23). On average, children who received a monetary penalty were required to pay \$611 (median=\$500). The average length of recognisance orders was 8.2 months (median=6 months).

Additional information on penalty length and amount in the higher courts can be found in Appendix 1.

Higher courts – Detention



Higher courts – Probation



Concluding remarks

The Council's *Sentencing profile* series focuses on specific cohorts of the Queensland community to understand trends and patterns in sentencing for different groups over the period 2005–06 to 2018–19. This report focused on children, one of the most vulnerable cohorts in our community.

There is a strong evidence base in support of adopting different criminal justice responses to children than those that apply to adults. As a community, we recognise that children are different to adults – they lack physical, cognitive and emotional maturity, and they require nurturing and protection until adulthood. This is why the youth justice system is underpinned by a different set of principles, based on diverting children away from the criminal justice system and focused on assisting them to understand the impact of their behaviour. Evidence has demonstrated that the incarceration of children is not an effective response to offending behaviour and is more likely to lead to further and more chronic offending in the longer term. Early intervention and addressing risk factors are far more effective strategies to prevent offending.

The Council's analysis shows that rates of offending among children are decreasing. The rate of matters proceeded against by police per 100,000 children in Queensland declined sharply between 2009–10 and 2018–19, with a 35.8 per cent drop observed over that period. This could well be due to an increased focus on diversion, both by police and courts. Over that same period, the use of custodial penalties has increased – from 4 per cent of cases sentenced in the Childrens Court at the Magistrates Court level in 2009–10 to 7 per cent in 2018–19. This may be due to a range of factors, such as changes to the availability of diversionary and conferencing options over time,

an increased focus on diversion, and changes to the jurisdiction of the Childrens Court at the Magistrates Court level allowing it to deal with more serious matters.

Aboriginal and Torres Strait Islander children are dramatically over-represented in the youth justice system, an issue that continues to be recognised by many stakeholders and legal and policy commentators, most recently the QFCC in its report that aims to evaluate the success of the Youth Justice Strategy.¹⁵⁶ While they comprise 8.1 per cent of 10 to 17-year-old children in Queensland, they represent almost half (44.6%) of Queensland children sentenced in court. It is crucial to invest in programs and interventions to disrupt the offending trajectories of Aboriginal and Torres Strait Islander children.

The Youth Justice Strategy, with its focus on early intervention, keeping children out of court, keeping children out of custody and reducing reoffending, actively supports the 21 Youth Justice Principles in the YJA. In its report, the QFCC supports this approach and urges the government to “stay the course” and continue its investment in strategies to address the causes of youth offending.¹⁵⁷

This report acknowledges the vulnerability of the children who come into contact with the criminal justice system. While most children do not repeat their offending behaviour, a small group will drift into chronic patterns of offending. This statistical publication aims to provide policy-makers and the public with up-to-date insights into the sentencing of children to start a conversation about how the lives of children who commit offences can be supported and changed to achieve better outcomes for them, their families and their communities.

156. QFCC (n 6).

157. Ibid 8.

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Appendix 1: Data tables and additional figures

Table 7: Summary statistics on the length of sentence for sentenced children by gender, Aboriginal and Torres Strait Islander status and remoteness

	Magistrates Courts					Higher courts				
	Detention (months)									
	n	Avg	Median	Min	Max	n	Avg	Median	Min	Max
Girls	278	3.6	3.0	4 days	12.0	106	13.8	12.0	1.5	36.0
Boys	2,279	4.6	4.0	1 day	12.4	780	17.2	12.0	1.0	168.0
Aboriginal and Torres Strait Islander	1,968	4.5	4.0	2 days	12.0	492	16.0	12.5	1.0	96.0
Non-Indigenous	588	4.6	4.0	1 day	12.4	394	17.8	12.0	1.6	168.0
Major city	483	4.8	4.0	3 days	12.0	431	17.4	14.0	1.7	168.0
Regional	1,656	4.4	4.0	1 day	12.4	406	16.4	12.0	1.0	144.0
Remote	417	4.5	4.0	4 days	12.0	49	14.1	10.0	1.5	54.0
Total	2,557	4.5	4.0	1 day	12.4	886	16.8	12.0	1.0	168.0

Conditional release order (months)										
	n	Avg	Median	Min	Max	n	Avg	Median	Min	Max
Girls	338	3.0	3.0	1.0	9.0	89	3.6	3.0	3.0	12.0
Boys	2,053	3.1	3.0	21 days	12.0	511	4.6	3.0	1.5	30.0
Aboriginal and Torres Strait Islander	1,659	3.1	3.0	21 days	12.0	232	4.4	3.0	1.5	24.0
Non-Indigenous	732	3.1	3.0	1.0	9.0	367	4.5	3.0	2.0	30.0
Major city	520	3.1	3.0	1.0	12.0	360	4.5	3.0	2.0	30.0
Regional	1,451	3.1	3.0	21 days	9.0	207	4.5	3.0	1.5	24.0
Remote	417	3.2	3.0	1.0	8.0	32	4.0	3.0	2.0	24.0
Total	2,391	3.1	3.0	21 days	12.0	600	4.5	3.0	1.5	30.0

Boot camp order† (months)										
	n	Avg	Median	Min	Max	n	Avg	Median	Min	Max
Girls	24	4.0	3.5	3.0	6.0	0*	-	-	-	-
Boys	65	4.4	4.0	3.0	9.0	3*	-	-	-	-
Aboriginal and Torres Strait Islander	82	4.2	4.0	3.0	9.0	3*	-	-	-	-
Non-Indigenous	7*	-	-	-	-	0*	-	-	-	-
Major city	0*	-	-	-	-	0*	-	-	-	-
Regional	87	4.3	4.0	3.0	9.0	2*	-	-	-	-
Remote	2*	-	-	-	-	1*	-	-	-	-
Total	89	4.3	4.0	3.0	9.0	3*	-	-	-	-

Intensive supervision order (months)										
	n	Avg	Median	Min	Max	n	Avg	Median	Min	Max
Girls	6*	-	-	-	-	0*	-	-	-	-
Boys	92	5.3	6.0	3.0	6.0	6*	-	-	-	-
Aboriginal and Torres Strait Islander	88	5.4	6.0	2.0	6.0	4*	-	-	-	-
Non-Indigenous	10	4.6	5.0	3.0	6.0	2*	-	-	-	-
Major city	8*	-	-	-	-	0*	-	-	-	-
Regional	66	5.4	6.0	3.0	6.0	4*	-	-	-	-
Remote	24	5.1	6.0	2.0	6.0	2*	-	-	-	-
Total	98	5.3	6.0	2.0	6.0	6*	-	-	-	-

	Magistrates Courts					Higher courts				
Community service (hours)										
	n	Avg	Median	Min	Max	n	Avg	Median	Min	Max
Girls	2,206	43.2	40.0	1.0	200.0	175	83.9	75.0	5.0	200.0
Boys	10,123	50.8	40.0	1.0	200.0	772	93.1	80.0	5.0	240.0
Aboriginal and Torres Strait Islander	6,918	48.1	40.0	1.0	200.0	265	82.5	80.0	5.0	240.0
Non-Indigenous	5,400	51.2	40.0	1.0	200.0	675	95.2	89.0	5.0	200.0
Major city	3,875	49.1	40.0	1.0	200.0	637	90.9	80.0	5.0	240.0
Regional	6,675	50.0	40.0	1.0	200.0	269	92.2	100.0	5.0	200.0
Remote	1,774	48.0	40.0	2.0	200.0	40	93.3	80.0	20.0	200.0
Total	12,330	49.5	40.0	1.0	200.0	947	91.4	80.0	5.0	240.0

Probation (months)										
	n	Avg	Median	Min	Max	n	Avg	Median	Min	Max
Girls	3,577	7.3	6.0	1.0	18.0	422	16.6	18.0	3.0	36.0
Boys	9,954	7.7	6.0	1.0	36.0	1566	17.3	18.0	3.0	36.0
Aboriginal and Torres Strait Islander	7,131	7.7	6.0	1.0	24.0	664	16.8	18.0	3.0	36.0
Non-Indigenous	6,378	7.4	6.0	1.0	36.0	1309	17.3	18.0	3.0	36.0
Major city	4,715	7.4	6.0	1.4	24.0	1240	17.0	18.0	3.0	36.0
Regional	6,894	7.5	6.0	1.0	36.0	645	17.5	18.0	3.0	36.0
Remote	1,916	8.2	9.0	1.0	24.0	102	16.9	13.5	3.0	36.0
Total	13,531	7.6	6.0	1.0	36.0	1988	17.1	18.0	3.0	36.0

Monetary (dollars)										
	n	Avg	Median	Min	Max	n	Avg	Median	Min	Max
Girls	472	\$174.3	\$100	\$2	\$3,462	4*	-	-	-	-
Boys	2,258	\$256.7	\$183	\$1	\$8,156	19	\$683.1	\$500	\$95	\$2,000
Aboriginal and Torres Strait Islander	700	\$216.6	\$150	\$2	\$5,500	6*	-	-	-	-
Non-Indigenous	1,990	\$252.9	\$161	\$1	\$8,156	16	\$586.2	\$500	\$95	\$2,000
Major city	1,052	\$244.0	\$150	\$1	\$6,196	11	\$457.3	\$500	\$75	\$1,000
Regional	1,480	\$237.6	\$150	\$1	\$8,156	11	\$752.2	\$500	\$274	\$2,000
Remote	198	\$268.4	\$200	\$4	\$2,500	1*	-	-	-	-
Total	2,733	\$242.3	\$150	\$1	\$8,156	23	\$611.1	\$500	\$75	\$2,000

Good behaviour bond, recognisance (months)										
	n	Avg	Median	Min	Max	n	Avg	Median	Min	Max
Girls	3,823	5.5	6.0	7 days	12.0	33	8.0	6.0	3.0	12.0
Boys	10,223	5.7	6.0	1.0	24.0	91	8.3	9.0	1.0	12.0
Aboriginal and Torres Strait Islander	5,603	5.3	6.0	7 days	12.0	38	8.3	6.0	3.0	12.0
Non-Indigenous	8,395	5.8	6.0	1.0	24.0	85	8.2	6.0	1.0	12.0
Major city	6,896	5.8	6.0	1.0	24.0	85	8.1	6.0	1.0	12.0
Regional	6,010	5.5	6.0	7 days	12.0	31	8.7	9.0	2.0	12.0
Remote	1,129	5.4	6.0	1.0	12.0	8*	-	-	-	-
Total	14,047	5.6	6.0	7 days	24.0	124	8.2	6.0	1.0	12.0

Data includes MSO, sentenced children, higher and lower courts, cases sentenced 2005–06 to 2018–19.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Notes:

* denotes small sample sizes and statistics are not presented for sample sizes less than 10.

† Boot camp orders were introduced on 31 January 2013 and were repealed from 1 July 2016. The orders were available in a limited number of geographic locations.

Table 8: Rate of sentenced children per 100,000 estimated resident population by offence category

Offence category (ANZSOC)	2005-06	2018-19
Acts intended to cause injury	155.6	230.5
Sexual assault	18.7	9.8
Acts endangering persons	39.6	76.5
Abduction, harassment	11.0	19.3
Robbery, extortion	25.8	69.2
Unlawful entry	339.9	405.1
Theft	591.8	767.1
Fraud	18.7	82.8
Drugs	83.6	239.5
Weapons	32.2	79.9
Property and environment	252.0	316.5
Public order	345.0	398.2
Traffic and vehicle	222.8	194.7
Justice and government	286.5	381.6

Data includes sentenced children in the higher and lower courts, cases sentenced 2005–06 and 2017–18.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Notes:

Rates were calculated using estimated resident population for Queensland aged 10 to 16/17 from Australian Bureau of Statistics, 'National, state and territory population', March 2020.'

Table 9: Trends for the most common offences sentenced for children between 2005–05 and 2017–18

Offence	Financial Year													
	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Public nuisance	615	811	884	933	1033	865	912	805	868	856	815	755	861	1003
Shoplifting	678	644	704	803	1008	1007	890	806	635	636	635	556	630	735
Stealing	898	1009	1029	966	1145	1189	1219	1364	1348	1286	1302	1468	1681	1950
Trespass	451	594	573	562	744	710	729	701	847	903	899	960	1002	1035
Unlawful entry (premises)	1030	1158	1159	975	1140	1131	1220	1296	1253	1029	1098	1174	1388	1533
Unlawful use of motor vehicles	560	666	654	660	640	740	885	1035	1003	779	911	989	1186	1502
Wilful damage	855	1040	1027	980	1159	1159	1239	1274	1312	1240	1196	1257	1458	1591
Unlawful entry (dwelling); Burglary	497	592	575	541	600	651	726	819	752	720	754	852	954	1071
Unlicensed driving	573	666	748	732	605	525	479	511	534	432	459	444	470	626

Data includes sentenced children in the higher and lower courts, cases sentenced 2005–06 and 2017–18.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

Figure 28: Magistrates Courts, distribution of sentence lengths for sentenced children

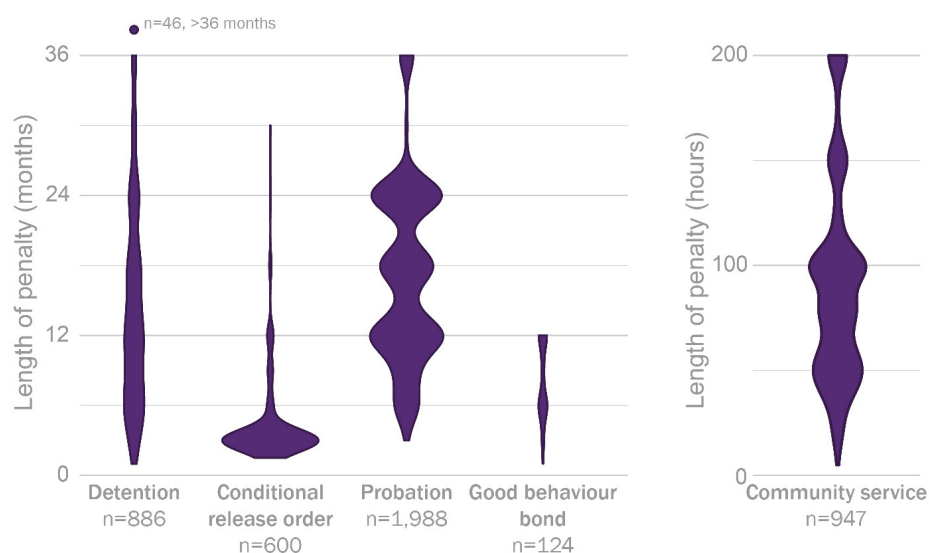


Data includes MSO, sentenced children, lower courts, cases sentenced 2005–06 to 2018–19.

Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

Note: A small number of cases in which the penalty length was unknown have been excluded.

Figure 27: Higher courts, distribution of sentence lengths for sentenced children



Data includes MSO, sentenced children, higher courts, cases sentenced 2005–06 to 2018–19.

Source: QGSO, Queensland Treasury - Courts Database, extracted November 2019.

Note: A small number of cases in which the penalty length was unknown have been excluded.

Appendix 2 Amendments to the *Youth Justice Act 1992 (Qld)* over time

Throughout the data period of 2005–06 to 2018–19, there have been some major amendments to the YJA. The key amendments in respect to sentencing were:

Youth Justice (Boot Camp Orders) and Other Legislation Amendment Act 2012 (Qld) (commenced 1 January 2013):

- ▶ Boot camp orders were introduced as a sentencing option in prescribed areas. If a court makes a detention order, a child may be released to a boot camp order (which involves one month in a residential boot camp centre followed by between 2–5 months of intensive supervision in the community).
- ▶ Removed the power of a court to refer a child to a youth justice conference instead of passing a sentence (indefinite referral).
- ▶ Removed the power of a court to refer a child to a conference before sentence. If an agreement was reached the court could order any or all of the terms of the agreement in or as part of the sentence, or decide that no further action should be taken instead of a sentence.

Youth Justice and Other Legislation Amendment Act 2014 (Qld):

- ▶ Sentencing principle that a detention order should only be imposed as a last resort was removed.
- ▶ Childhood findings of guilt were admissible against adults (with or without a conviction being recorded).
- ▶ Sentencing reviews as an appeal option removed.
- ▶ Introduced a mandatory 'boot camp (vehicle offences) order' as a sentence. This applied to a child found guilty of a vehicle offence, who is 13 years of age at sentence, in a prescribed area, who is not ineligible and who is a 'recidivist vehicle offender' (a child who is found guilty of a relevant vehicle offence and has been found guilty of two or more other vehicle offences in the past one year).

Youth Justice and Other Legislation Amendment Act (No 1) 2016 (Qld) and *Youth Justice and Other Legislation Amendment Act (No 2) 2016 (Qld)* (commenced 27 June 2016):

- ▶ Sentencing principle that detention is a last resort, and a child should be detained for the shortest period re-instated.
- ▶ Restorative Justice Process introduced as a diversionary option for police and courts and as a sentencing and pre-sentencing option.
- ▶ Principle inserted that a court, before sentencing a child who pleads guilty, must consider referring the matter for a Restorative Justice Process instead of sentencing a child.
- ▶ Boot camp orders removed as a sentencing option.
- ▶ Sentencing reviews reinstated.

Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016 (Qld) (commenced 12 February 2018):

- ▶ Children aged 17 years are dealt with in the youth justice system.



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