

The background of the cover features a stylized illustration. On the left, a large, thick, purple tree trunk curves upwards. A child with dark hair, wearing an orange t-shirt and purple shorts, stands on a light orange path, looking out over a landscape of rolling orange hills under a bright, hazy sky. In the foreground, a woman with dark hair, wearing an orange top and light blue pants, sits cross-legged on a teal patch of ground. To her right are stylized purple and orange plants. The overall color palette is dominated by purple, orange, and teal.

Guide to the sentencing of children in Queensland

November 2021



**Queensland Sentencing
Advisory Council**
Inform. Engage. Advise.

Guide to the sentencing of children in Queensland

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This guide reflects the law as at 30 June 2021.

Queensland Sentencing Advisory Council

The Queensland Sentencing Advisory Council is established by section 198 of the *Penalties and Sentences Act 1992* (Qld). Its functions are detailed in section 199 of the *Penalties and Sentences Act 1992* (Qld).

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About this guide

The *Guide to the sentencing of children in Queensland* explains how Queensland courts sentence children found guilty of an offence under the *Youth Justice Act 1992* (Qld).

This guide does not explore how courts sentence adults.

The focus of this guide is on sentencing undertaken by Queensland courts. It is intended to provide members of the community with information about the principles and factors that guide the sentencing of children in Queensland, as well as information about the role of the courts, who is involved in the sentencing process and how the courts decide the sentence. Links to other resources are provided, where relevant, for those who may wish to find out more.

While some of what is described applies generally in other Australian states and territories, there are significant differences in the detail.

The *Guide to the sentencing of children in Queensland* is a companion resource to the Council's *Queensland Sentencing Guide* which explains how courts sentence adults under the *Penalties and Sentences Act 1992* (Qld). This guide is available on the Council's website.

Terminology

Terms in bold type throughout this guide are defined in the [Glossary](#).

The Childrens Court of Queensland, constituted either by a judge or magistrate (or two justices of the peace if a magistrate is not available), deals with most criminal matters involving children. To distinguish between the two different levels of court, the guide refers to these as the 'Childrens Court (District Court level)' and the 'Childrens Court (Magistrates Court level)'.

In this guide, the terms 'Childrens Court judge' and 'Childrens Court magistrate', unless otherwise stated, refer to any District Court judge or magistrate sitting as the Childrens Court — whether specially appointed to the Childrens Court or not.

The terms 'child' and 'children' refer to a person who is under the age of 18. As children under 10 years cannot be held criminally responsible, the content of this guide relates to the sentencing of children aged 10 to 17 years.

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- Former Judge and President of the Childrens Court of Queensland, Michael Shanahan AM
- Legal Aid Queensland
- Office of the Public Guardian
- Queensland Family & Child Commission
- Queensland Health
- Queensland Law Society
- Queensland Police Service
- Youth Affairs Network of Queensland

In particular, we wish to acknowledge the support of His Honour Chief Judge Brian Devereaux SC, who generously provided permission for much of the content on which this guide is based to be drawn from the *Youth Justice Benchbook*, and former Judge and President of the Childrens Court of Queensland, Michael Shanahan AM, who authored the excellent and comprehensive resource.

The existence of the benchbook and the ability to draw on it made the Council's task in preparing this guide much more achievable than might otherwise have been the case.

Throughout this guide, we have highlighted where we have drawn on or referenced information from the benchbook.

Information about the sentencing of children for Commonwealth offences has been drawn from the Commonwealth Director of Public Prosecutions (CDPP) *Sentencing of Federal Offenders in Australia: A Guide for Practitioners* (4th edition, 2021). We thank the CDPP for allowing us to make use of this content for the purposes of developing the guide.

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.

The Queensland Sentencing Advisory Council recognises and prioritises the needs of Aboriginal and Torres Strait Islander peoples to address 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 system. To view the artwork please visit our [website](#).

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1. About sentencing

Sentencing is the process of determining and applying the appropriate penalty for a person who has been convicted of an offence. A person is convicted if they plead guilty to an offence or are found guilty by the court.

It is a complex exercise that involves a court considering a range of factors guided by the law. The factors that a court must take into account are different for adults and children, which are discussed in [Part 7, Sentencing principles and considerations](#).

Getting support

Sentencing, and the court process generally, can be intimidating and overwhelming for children and their families, as well as for victims.

For children and their families, the child's lawyer or the Department of Children, Youth Justice and Multicultural Affairs (Youth Justice) can refer them to appropriate support services.

Victims can discuss available supports with the investigating police officer or the Victim Liaison Officer from the Office of the Director of Public Prosecutions. More information for victims appears below under [Role of the victim](#).

? What does 'guilty' and 'not guilty' mean?

Plea of guilty: 'guilty' means the child agrees that they committed the offence they have been charged with (what the police say they did to break the law).

Plea of not guilty: 'not guilty' means the child does not agree that they did what they were charged with (what the police say they did to break the law).

If there is a trial, a magistrate, judge or jury will decide if the child is guilty or not guilty.

Responsibility for sentencing

In Queensland, responsibility for sentencing is shared between the Parliament, the Executive and the courts.

Parliament: makes written laws (known as '[statute law](#)' or '[legislation](#)'). For example, the *Youth Justice Act 1992* (Qld) (YJA).

The Executive (Ministers, assisted by government departments and agencies): administers (or gives effect to) the laws made by the Parliament. For example, the Department of Children, Youth Justice and Multicultural Affairs ([Youth Justice](#)) manages child offenders in detention and in the community.

The Courts (the judiciary): interpret and apply laws. For example, a judge or magistrate will interpret and apply the YJA to decide what sentence to impose on a child who pleads guilty or is found guilty of an offence.

The sources of sentencing law

There are two sources of sentencing law in Queensland:

Statute law — laws made by Parliament that set out:

- what is an offence
- who can be charged
- the penalty
- the types of sentencing orders a court can make
- what a court must consider when deciding the sentence.

For example, the Queensland Criminal Code¹ establishes a number of offences and sets out the penalties that apply. If a child commits an offence against the Criminal Code, the YJA provides the court procedure and sentencing options available to the court.

Common law (case law) — decisions made by courts (magistrates and judges) when sentencing and decisions about how legislation should be interpreted or applied. In sentencing, case law from a higher court can guide a lower court about the appropriate sentence for a certain type of offending.

If a court interprets the law or decides cases where no law exists, the decision can create new laws known as common law.

For more information about the sources of sentencing law, including information about Commonwealth offences and laws, see the [Queensland Sentencing Guide](#) available on the [Council's website](#).

2. The Youth Justice Act 1992 (Qld) (YJA)

About the YJA

The *Youth Justice Act 1992* (Qld) (YJA) governs the sentencing of children in Queensland, including:

- giving certain courts the power (jurisdiction) to hear and decide cases
- listing what sentencing options are available
- providing guidance to courts about what they must consider when deciding the appropriate sentence
- setting out rules and procedures about what happens if a child commits an offence but becomes an adult (that is, turns 18 years old) before the matter is finalised.

A child can be charged with committing the same offence that an adult can. However, the type of court, the sentencing options available and the sentencing principles that apply to a child are different than those that apply to adults who commit an offence.

Generally, when sentencing an adult, the *Penalties and Sentences Act 1992* (Qld) applies. When sentencing a child, the *Youth Justice Act 1992* (Qld) applies.

A charter of youth justice principles underlies the operation of the YJA. This means all decisions under the YJA, including sentencing decisions by judges and magistrates, must be in accordance with the youth justice principles. The principles include, for example:

9 A child who commits an offence should be:

- (a) *held accountable and encouraged to accept responsibility for the offending behaviour;*
- (b) *dealt with in a way that will give the child the opportunity to develop in responsible, beneficial and socially acceptable ways;*
- (c) *dealt with in a way that strengthens the child's family; and*
- (d) *dealt with in a way that recognises the child's need for guidance and assistance because children tend to be dependent and immature.*

The charter is reproduced at [page 38](#) of this guide.

The YJA also includes a set of sentencing principles that apply whenever a child is being sentenced for an offence. These include the youth justice principles, and other factors the court must take into account.

See [Part 7. Sentencing principles and considerations](#) for more information about the youth justice principles and other sentencing principles and considerations.

Who does the YJA apply to?

In Queensland, a 'child' is an individual who is under the age of 18.²

The YJA applies to a child who has, or is [alleged](#) to have, committed an offence. A child can be charged with and sentenced for an offence if they are between 10 and 17 years old.³

Minimum age of criminal responsibility – 10 years

In Queensland, a child under 10 years old cannot be held criminally responsible for their behaviour.⁴ This means a child under 10 cannot be charged with an offence.

Under common law, the minimum age of criminal responsibility is 7 years. However, because of statute law, in Queensland the minimum age of criminal responsibility is 10 years. In other Australian states and territories, the minimum age of criminal responsibility is also 10 years.

This is the age the Parliament considers a child can understand the moral wrongness of their actions to the degree where they should be held criminally accountable for their conduct.

The age at which this is set is a policy decision and different countries have adopted different minimum ages. For example, while it is 10 years in countries including New Zealand, England, Scotland and Ireland, it is 12 years in Canada, 13 years in France, 14 years in Germany, and 15 years in many Scandinavian countries, like Denmark, Finland, Norway and Sweden.

Proving criminal responsibility for children aged under 14

In Queensland, if a child is aged between 10 and 14 years, they can only be criminally responsible if the prosecution shows they had the mental capacity to know that what they did was seriously wrong when they did it.⁵ The prosecution must prove this to a criminal standard of proof ([beyond reasonable doubt](#)).

If a child does not admit they knew their actions were seriously wrong, police must further investigate the child's capacity to distinguish between right and wrong and therefore, the child's capacity to know that doing the act was wrong.⁶ [Evidence](#) can be sought, for example, from a parent, teacher or other person who knows the child.

What is required to show the child had capacity will change depending on the nature of the allegations and the child.⁷ For example, a child is likely to be better able to understand the offence of stealing someone else's property compared to offences such as damaging public property, fare evasion or receiving stolen goods.⁸

If the prosecution has not proven this, the child is entitled to be found not guilty ([acquittal/acquitted](#)).

The statute law about proving criminal responsibility for a child under 14 is based on a common law presumption known as 'doli incapax' which means 'incapable of crime' or doing wrong.

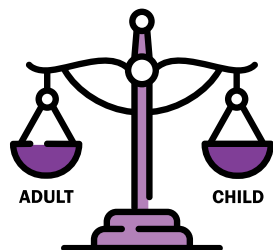


The information in this section is a simplified summary of Chapter 4 'Capacity' of the Queensland Courts Service, [Youth Justice Benchbook](#).

3. Treatment of children by the criminal justice system

Children are treated differently to adults by the Queensland criminal justice system.

An important reason for this is the differences between adults and children's levels of maturity and capacity to control their behaviour and to make good decisions.



Children's behaviour and levels of maturity are not just related to their family or social environment; there is also a biological component. Research studies have shown that the brain is not fully mature until a young person is in their mid-20s.⁹ The last parts of the brain to develop are those that support a person's ability to make decisions, evaluate the consequences of their actions and to control impulsiveness and risk-taking.¹⁰ Because children are still developing, they also are more open and responsive to rehabilitation.¹¹

Taking the differences between adults and children into account, the YJA is underpinned by a charter of youth justice principles.¹² The charter (reproduced at [page 38](#)) recognises children may be vulnerable when dealing with people in positions in authority, such as police and court officers.

Diversion from the courts' criminal justice system is encouraged, wherever possible. The charter says that proceedings for offences should be conducted in a fair, just and timely way, allowing opportunities for the child and parents to participate in and understand proceedings.

It recognises the importance of children who commit offences being held accountable and encouraged to accept responsibility for their offending behaviour, while also being given the opportunity to develop in responsible, beneficial and socially acceptable ways.

Decisions affecting children under the YJA are to be made and implemented in timeframes that children can understand, and consideration should be given to age, maturity and the cultural background of children in making these decisions.

The charter also recognises that the community should be protected from offences, and, in particular, recidivist (repeat) high-risk offenders.

In addition to these charter principles, special principles apply to courts when sentencing children. These include a focus on supporting children's rehabilitation and recognition of the importance of opportunities to engage in educational and employment opportunities.

These principles are discussed further in [Part 7. Sentencing principles and considerations](#) of this guide.

The types of diversionary and sentencing options available when dealing with children are also different to those that apply when sentencing adults under the *Penalties and Sentences Act 1992* (Qld).

Information about diversion and alternatives to sentencing are discussed in [Part 6](#) of this guide. Sentencing orders and other orders that can be made are discussed in [Part 11](#).

4. Courts and jurisdiction

Courts that deal with children charged with an offence

Children alleged to have committed an offence in Queensland can be dealt with by three different levels of court (from lowest to highest):

1. The [Childrens Court \(Magistrates Court level\)](#) as constituted by a Childrens Court magistrate, or any magistrate if a Childrens Court magistrate is not available, or two justices of the peace if a magistrate is not available.¹³
2. The [Childrens Court \(District Court level\)](#) as constituted by a Childrens Court judge,¹⁴ or a District Court judge if a Childrens Court judge is not available.¹⁵
3. The [Supreme Court of Queensland](#).

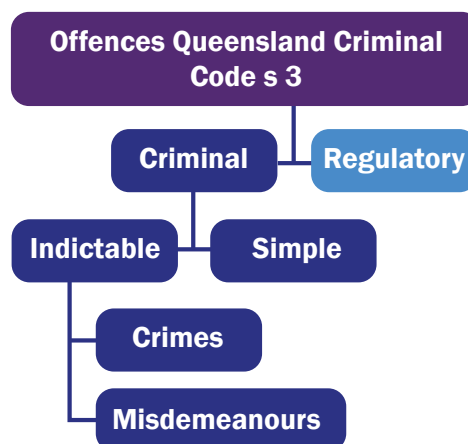


The type of court a child is sentenced by depends on the type of offence the child is charged with, the seriousness of the charge and in some cases, which court the child chooses.

Generally, the more serious the offence, the higher the court that will hear it. For example, murder and manslaughter cases can only be heard in the Supreme Court of Queensland.

Offence types

Figure 1: Categories of offences



Source: Adapted from Heather Douglas, Malcolm Barrett and Emma Higgins, *Criminal Process in Queensland* (2nd ed, 2017) 114.

Offences are divided into categories because it can make a difference as to which court has power (jurisdiction) to deal with that offence and the type of penalty that can be imposed. There can also be different time limits for when proceedings must start.

In Queensland, there are two types of offences – regulatory offences and criminal offences.¹⁶

Regulatory offences are less serious minor offences, specified under the *Regulatory Offences Act 1985* (Qld). Regulatory offences can provide police with an alternative to charging a person with a criminal offence. For example, police may charge a person with either the regulatory offence of unauthorised dealing with shop goods of a value less than \$150 ('shoplifting') or leaving a restaurant, hotel, motel or other venue without paying instead of with the criminal offence of stealing. If there has been damage to property, police may charge a person with the regulatory offence of damage to property where the value of the damage or loss caused is less than \$250 instead of with the criminal offence of wilful damage.

If a child has committed a regulatory offence, they are generally dealt with by a magistrate.

A police officer or other authorised person may issue an infringement notice ('ticket') to a child for a range of offences (including regulatory offences) instead of commencing proceedings.

Criminal offences consist of:

- simple offences (types of **summary offences**)
- indictable offences (misdemeanours and crimes).

Simple offences are generally minor offences. Proceedings usually start within 12 months of the alleged offence taking place and are usually heard in the Magistrates Court. Examples include many driving offences, public nuisance offences, trespassing, and minor drug utensil offences. In some circumstances, a judge of a higher court may hear a simple offence.

Indictable offences are misdemeanours and crimes. Generally, crimes are more serious than misdemeanours.

An indictable offence may be dealt with in the Supreme Court or by a Childrens Court judge, unless the law says a magistrate can deal with it or lets a child choose which court deals with it (known as an 'election'). If an indictable offence is heard and decided ('finalised') in the Childrens Court by a magistrate, it is said to be as 'dealt with summarily'.

For example, pushing a person causing bruising would be contrary to section 339(1) of the Criminal Code, assault occasioning bodily harm. This is an indictable offence and is a crime. A child may choose whether to have the offence dealt with summarily by the Childrens Court at the Magistrates Court level or on indictment by the Childrens Court as constituted by a judge. Generally, if an indictable offence is dealt with summarily, the conviction is deemed to be a conviction of a simple offence.¹⁷

? What does 'dealt with summarily' mean?

This means an indictable offence is finalised in the Childrens Court at the Magistrates Court level instead of being finalised in a higher court.

If the child does not admit to committing the offence, a Magistrate (rather than a jury) decide if the child is guilty or not guilty of the offence.

If the child is found guilty or pleads guilty, a magistrate, rather than a judge, imposes the sentence.

The YJA also classifies offences in the following ways which determines which court can deal with a matter:

A '**serious offence**' is an indictable offence which, if committed by an adult, would make the adult liable to life imprisonment (for example, murder or manslaughter), or liable to 14 years imprisonment or more (for example, robbery).¹⁸ However, it is complex and there are some exceptions.

This classification is important because it determines which court must deal with a charge involving a child. A serious offence cannot be dealt with by the Childrens Court at the Magistrates Court level and must go to a higher court. For example, if a child is charged with robbery because it is alleged that they threatened to hit a person and took their phone, the matter must go to the Childrens Court constituted by a judge and cannot be dealt with by a magistrate.

A '**Supreme Court offence**' means an offence which, if committed by an adult, the District Court does not have power to hear (for example, murder, manslaughter, unlawful striking causing death or trafficking in schedule 1 drugs).¹⁹ This classification is important because it determines which court must deal with the charge. A Supreme Court offence must be dealt with in the Supreme Court.

For example, if a child is charged with the offence of unlawful striking causing death under section 314 of the Criminal Code, because they are alleged to have punched someone who later died, the matter must go to the Supreme Court and cannot be dealt with by a magistrate or judge of the Childrens Court.

A '**life offence**' means an offence that a person sentenced as an adult would be liable to life imprisonment (for example, murder, manslaughter or robbery if the person is or pretends to be armed, wounds or uses personal violence or is in company with others). This classification is important as the maximum penalty is different for a child than for a person sentenced as an adult.

For example, if a child is charged with robbery while armed on the basis that it is alleged they threatened a person with a knife to steal their phone, the case must be heard in the Childrens Court presided over by a judge (at the District Court level). If the child pleads guilty or is found guilty, the offence would meet the definition of being a 'relevant offence' for the purpose of sentencing (see below).

A '**relevant offence**' (for the purposes of sentencing) means a **life offence** or an offence that, if committed by an adult, would involve a maximum penalty of 14 years' imprisonment, although there are some exceptions to this. This classification of an offence as a 'relevant offence' determines the maximum period a judge can order a child to be detained when they are sentenced.

The maximum period of detention is up to 7 years for an offence that is not a life offence, or 10 years for a relevant offence that is a life offence (or even up to and including life in certain circumstances).²⁰

See **Part 11. Sentencing and other orders for children** for more information on the types of sentencing orders and powers courts have in sentencing.

Childrens Court (Magistrates Court level)

Almost all charges involving children start in the [Childrens Court \(Magistrates Court level\)](#). This first tier of the Childrens Court is constituted by a Childrens Court magistrate, or any magistrate if a Childrens Court magistrate is not available, or two justices of the peace if a magistrate is not available.²¹ A [magistrate](#) is an experienced legally trained person (a barrister, solicitor or legal practitioner) appointed as a magistrate who hears the case and decides the sentence. A Childrens Court magistrate is a magistrate appointed by the Governor in Council, on the recommendation of the Attorney-General, as a Childrens Court magistrate.²²

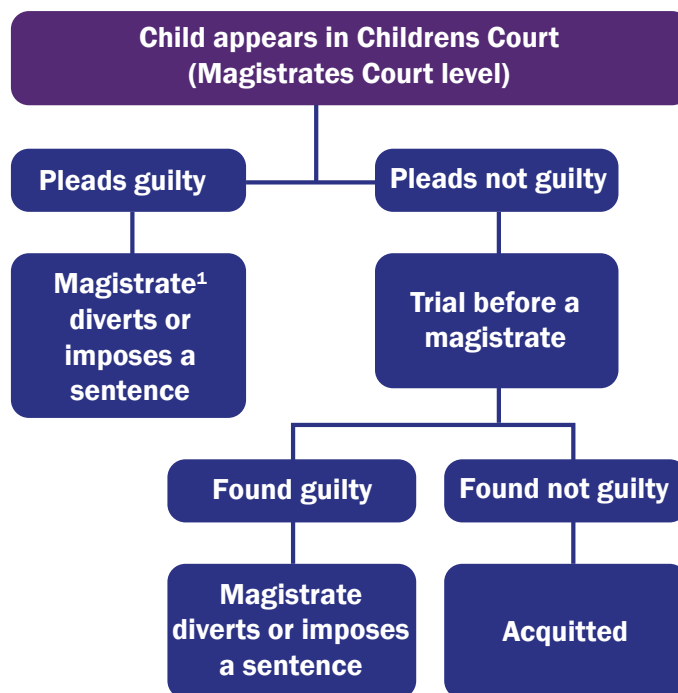
If a child pleads not guilty, the magistrate (not a jury) conducts



the trial (known as a [summary trial](#)) to decide if the child is guilty or not guilty (see below for an explanation of what a summary trial is). If the child is found guilty, the magistrate will also decide the sentence.

All Childrens Court (Magistrates Court level) proceedings are heard in a closed court. This means only people directly involved in the case can be present and no information identifying a child can be published. However, matters heard in the higher courts on indictment are held in open court.²³

Figure 2: How charges are dealt with summarily in the Childrens Court



Note:

1. Two justices of the peace may sentence a child for a simple offence, but only if a child pleads guilty (YJA, 67(1)(a)) and a magistrate is not available (CCA, 5(3)(c)). The justices are not permitted to make a detention order or a conditional release order (YJA, 67(2)).

Sentencing Powers

If a Childrens Court magistrate or other magistrate is imposing a sentence, the length of the sentence is more limited than if the child is sentenced by a judge. Justices of the peace have even more limited powers. These limitations are discussed below in [Part 11, Sentencing and other orders for children](#).

Committal proceedings

All charges start in the Childrens Court (Magistrates Court level). A case may go to a higher court if the law says it must (for example, a serious offence like robbery), or if the law says the child can choose which court the matter is heard in (for example, an indictable (serious) offence like assault occasioning bodily harm). Before an offence can go to a higher court, there is usually a [committal proceeding](#). Alternatively, a child (through their lawyer) can bypass the committal proceeding and go straight to a higher court for sentencing by asking the prosecution to prepare an 'ex officio indictment'.

At a committal proceeding, the magistrate will decide if there is enough [evidence](#) for a trial or sentence in the Childrens Court (District Court level) or Supreme Court. If there is, the magistrate will confirm that the child agrees (if the child has a choice) and send (commit) the charge to the Childrens Court or Supreme Court.

An ex officio indictment can be a quick way to finalise a matter where the child is pleading guilty. One way this can occur is if the child and prosecution both agree to have the charge sent to a higher court for a plea of guilty without a committal proceeding. The child and prosecution should agree on the factual basis of the plea before this occurs.

There are other circumstances when the prosecution can present an ex officio indictment in a higher court.

Childrens Court (District Court level)

The Childrens Court as constituted by a judge, or a District Court judge if a Childrens Court judge is not available,²⁴ hears more serious cases.

Childrens Court judges are District Court judges appointed by the Governor in Council, on the recommendation of the Attorney-General, as Childrens Court judges.²⁵

The Childrens Court judge appointed as the head of this court is known as the President of the Childrens Court of Queensland.²⁶

This court can hear all indictable offences charged against a child, other than very serious charges referred to as 'Supreme Court offences'.²⁷

If a child is pleading guilty and has charges being dealt with by the Childrens Court (Magistrates Court level) and indictable charges in the Childrens Court (District Court level) or the Supreme Court, in most circumstances the child can make an application for the higher court to sentence them for all offences at the same time.²⁸

Proceedings in the Childrens Court presided over by a judge will not start until the prosecution presents an [indictment](#).

An indictment is a written document that contains the offences charged against the child (each offence is known as a 'count').

? What is a committal proceeding?

A committal proceeding is a separate hearing where a magistrate will determine whether there is enough evidence for a trial or sentence in a higher court for an indictable offence.

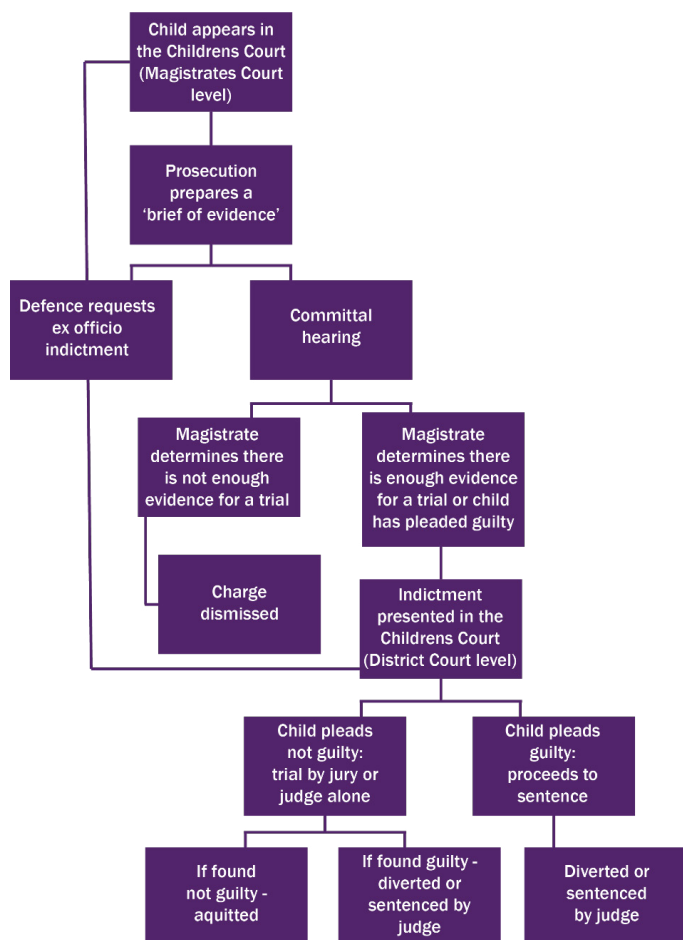
The magistrate will determine this based on evidence.

Evidence is proof of an alleged fact.

This can include what a witness says happened, documents (including recordings, text messages, drawings, CCTV footage and photographs), things (e.g. a knife) and facts that a court accepts as evidence of facts.

At a committal hearing, evidence can be given orally by witnesses or by statement being admitted as evidence.

Figure 3: The management of indictable (serious) charges dealt with on indictment



In most cases, the child may choose (known as an 'election') to have a trial with a [jury](#) or by a Childrens Court judge (judge alone). This choice can be made at the committal proceeding or later and can be changed before the child enters a plea. There are a number of reasons a child may choose or apply for a judge alone trial.

This court is not a closed court, meaning any member of the public can be present. However, there are rules that information identifying the child cannot be published. The only exception is if the judge allows it. This can only happen if a judge has sentenced a child for a life offence that is violent and heinous (an extremely serious example of the offence), and the court considers that it is in the interests of justice to allow the publication.²⁹

? What is a jury trial?

When a jury trial is held, 12 members of the community selected at random will determine whether the child is guilty based on the facts of the case presented at the trial.

A jury must all agree (unanimous verdict) and in some circumstances the court will accept a verdict if 11 of the 12 jurors agree (majority verdict).

The judge does not decide on guilt but ensures the trial is conducted fairly and makes all other decisions, including the sentence if the child is convicted.

In some cases, a criminal trial without a jury is held.

This happens if a magistrate hears the case (known as a summary trial) and can also happen if the case is heard in a higher court (known as a judge alone trial).

In this case, the magistrate or judge ensures the trial is conducted fairly, hears the evidence and decides whether the child is guilty or not guilty.

The magistrate or judge will explain why they have decided this (whereas in a jury trial, the jury does not explain the reason for their decision).

Sentencing powers

If a Childrens Court judge is imposing the sentence, certain limits apply to the maximum duration of the sentencing orders that can be made. These are discussed below in [Part 11. Sentencing and other orders for children](#) of this guide.

Childrens Court judges also can hear and decide [sentence reviews](#) and [appeals](#) from cases heard in the Childrens Court by a magistrate. Sentence reviews and appeals are discussed in [Part 13. Appeals and sentence reviews](#) of this guide.

Supreme Court of Queensland

Some very serious charges such as murder, manslaughter, and trafficking in certain drugs (e.g. amphetamines, cocaine, heroin, LSD, methylamphetamines ('ice' in its crystal form), MDMA ('ecstasy') and listed steroid drugs (known as 'schedule 1 drugs')) can only be dealt with by the Supreme Court and are known as 'Supreme Court offences'.³⁰

The court process for a 'Supreme Court offence' begins in the Childrens Court (Magistrates Court level) and there is a committal proceeding, (similar to the committal proceeding for charges that must be heard by the Childrens Court (District Court level) (see page 12).

If the child does not plead guilty to the charges, a jury decides if the child is guilty or not guilty of the offence. If the child pleads guilty or is found guilty, a judge then decides what sentence to impose.

Similar to the Childrens Court as constituted by a judge, the Supreme Court is not a closed court, meaning any member of the public can be present. However, there are rules that information identifying the child cannot be published. The only exception is if the Supreme Court allows it. This can only happen if a judge has sentenced a child for a life offence that is violent and heinous (an extremely serious example of the offence), and the court considers that it is in the interests of justice to allow the publication.³¹

Sentencing powers

In addition to other sentencing orders under the YJA (discussed in [Part 11. Sentencing and other orders for children](#) of this guide), the Supreme Court can order a child convicted of an offence to be detained for up to:

If an adult is convicted of murder, the court must impose a life sentence. However, if a child is convicted of murder, the Supreme Court does not have to impose a life sentence. If a life sentence is imposed on a child for an offence of murder, the same minimum non-parole periods (that is, the time that the offender must spend in prison before being eligible to apply for parole) apply as if the child was sentenced as an adult.³⁴

These are:

- 30 years — murder of more than one person or by a person with a previous murder conviction
- 25 years — murder of a police officer
- 20 years — murder other than those listed above.

District Court of Queensland

The District Court (as distinct from the Childrens Court of Queensland when constituted by a Childrens Court or District Court judge) can try or sentence a child on indictment if the child is also charged as an adult with an offence,³⁵ or if the child is a co-accused with an adult on a joint trial.³⁶ Such a trial must be conducted with a jury.³⁷ If found guilty, the child must be sentenced under the YJA.³⁸



Information in this section is a simplified summary of Chapter 3 'Jurisdiction', section 9.14 Committal hearings' and section 10.2 'Trial' of the Queensland Courts Service, [Youth Justice Benchbook](#).

7 years
for a 'relevant offence'

10 years
for a 'life offence',³² or up to a maximum penalty of

life
if

- the offence involves the commission of violence against a person, and
- the court considers the offence to be a particularly heinous offence having regard to all the circumstances.³³

5. The sentence hearing

Overview

A sentence is the penalty imposed by a court for an offence. A sentence can only be imposed when an **accused** child has been convicted of an offence. A child can be convicted of an offence in one of two ways:

1. they plead guilty to the offence
2. they are found guilty following a trial.

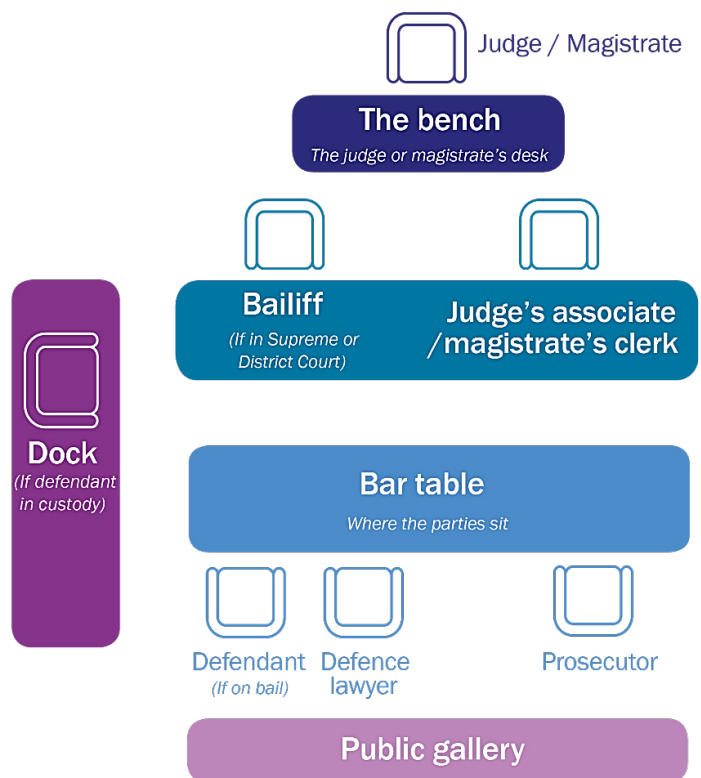
To be found guilty at trial, the magistrate, judge (for judge alone trials), or a jury must be satisfied **beyond reasonable doubt** that the child is guilty of the offence as charged. The jury should all agree (unanimous verdict) although in some cases the court will accept a verdict if 11 of 12 jurors agree (majority verdict).

If the child is found guilty of, or pleads guilty to an offence, then the court will hold a sentence hearing. For matters in the Childrens Court (Magistrates Court level), the court is closed to the public and only certain people can attend. Those people include:

- the judge or magistrate
- the prosecutor
- the child
- the child's lawyer
- a representative from Youth Justice
- a representative from the Office of the Public Guardian
- if the child is Aboriginal or Torres Strait Islander – a representative of the Community Justice Group in the child's community or a representative of an organisation providing welfare services
- a parent
- a victim
- a representative of the media (only with the court's permission).

For matters in the Childrens Court, District Court or the Supreme Court presided over by a judge, the court is not closed and any member of the public can attend. However, there are rules about publishing information which identifies the child. For more information see page 19 of this guide ([Role of the media](#)).

The below diagram depicts a typical Magistrates Court courtroom. In cases presided over by a judge in the Childrens Court, District Court and Supreme Court, docks are generally located behind the bar table.



! For a full list of who may be present in the Childrens Court, see '1.2.1 Summary: Who may be present in the Childrens Court (Criminal Jurisdiction)' of the Queensland Courts Service, [Youth Justice Benchbook](#).

Role of people in the court

The prosecutor

During the sentence hearing the prosecutor provides the judge or magistrate with information about:

1. the factual circumstances of the offence/s
2. background or any information about the offence/s, in particular any **aggravating factors** (things that may make the offending more serious)
3. the child's criminal history, highlighting relevant prior offending
4. the impact of the offending on the victim/s (it may be presented as a victim impact statement)
5. any relevant case law and legislation, including sentencing principles
6. suggestions about the penalty that might be appropriate.



Public Guardian

The Office of the Public Guardian Child Advocates promote and protect the rights of children who are subject to a child protection order or intervention.⁴⁰ They support the child to participate in decision-making to ensure their rights and interests are protected and views and wishes promoted.

They can support negotiation of charges, and help the defence lawyer to understand issues that may be impacting the child's contact with the criminal justice system and to access relevant information to assist them in making submissions to the court.

Information provided can include information about the young person's child protection history, trauma background, placement history while in care, history of exposure to physical and emotional harm or neglect, exposure to anti-social attitudes, lack of secure social and familial attachments, unstable living or accommodation arrangements, detention or admission to a health service and any relevant medical or psychiatric diagnoses.

During the sentence hearing, they may support the child to attend and speak for themselves and provide complementary submissions to the court including on mitigating factors that may reduce the sentence.

For more information about the Office of Public Guardian Child Advocate go to: <https://www.publicguardian.qld.gov.au/i-am-a-child-or-young-person/know-your-rights/opg-child-advocates>.



The defence lawyer

During the sentence hearing, the defence lawyer provides the judge or magistrate with information about:

1. the child's personal circumstances (known as **antecedents**)
2. character references (letters from people who know the child well (such as family members or friends) who can provide an opinion of the child relevant to the offence/s)
3. background or any information about the offence/s, in particular any **mitigating factors** (things that may reduce the sentence, such as whether the child co-operated with the police or were remorseful)
4. information about any steps the child has taken towards rehabilitation, and future plans
5. any relevant case law and legislation, including sentencing principles
6. suggestions about the penalty that might be appropriate.



Community Justice Group representative

When sentencing a child who is Aboriginal or Torres Strait Islander, a court must have regard to submissions made by a representative from a Community Justice Group (CJG) in the child's community.

A representative of a CJG can provide the court with information about the child's relationship to the community, any cultural considerations and information about programs and services for offenders in which the CJG participates.

For more information about CJGs see page 26 of this guide.



Youth Justice representative

During the sentence hearing the court may hear from a representative of Youth Justice about:

- any previous supervision that the child has undergone
- matters relating to the child's custody or release from custody
- sentencing orders that may be made against the child
- any other matters the court considers relevant.³⁹

Youth Justice will usually inform the court about programs and services it can provide or arrange under the various sentencing orders that may be made.

Prior to the sentence, Youth Justice may be asked by the court to prepare a pre-sentence report. The purpose of pre-sentence reports and the type of information included is discussed in **Part 10. Pre-sentence** reports of this guide.



The judge or magistrate

The information given in a sentence hearing, in addition to sentencing principles and factors set out in legislation and in case law, helps the judge or magistrate to decide on an appropriate sentence.

The judge or magistrate must also ensure that the child understands what is happening and is given an opportunity to participate in the proceedings. The court must ensure that the child and parent/s understand the nature of the offence, the court process and the consequences of any sentence.⁴¹

During the sentence hearing the judge or magistrate can ask questions to seek information and clarify issues.

How judges and magistrates decide what sentence to impose is a complex process and requires them to consider a range of issues and factors (see **Part 7. Sentencing principles and considerations** and **Part 8. How judges and magistrates decide the sentence**).



When a judge or magistrate makes an order involving conditions as part of the sentence — for example, an order of probation — the judge or magistrate must ensure the child understands the conditions imposed and agrees to the order being made.

The judge's or magistrate's reasons for their sentencing decision are called **sentencing remarks**. These reasons are often delivered verbally at the end of the sentence hearing (*ex tempore*).

In more complex matters, a judge or magistrate may prepare their reasons in writing which are delivered later.

Parents

The youth justice principles encourage a parent of a child to fulfil their responsibility for the care and supervision of the child.⁴²

Their attendance at court proceedings is therefore important. The YJA allows a court to adjourn a proceeding to allow for the parent (or relevant guardian) to attend⁴³ and may order their attendance.⁴⁴

The judge or magistrate must ensure that the parent/s both understand what is happening and are given an opportunity to participate in the proceedings. The court must also ensure the parent/s both understand the nature of the offence, the court process and the consequences of any sentence imposed on the child.⁴⁵

A parent may be required to attend court if a child pleads guilty or is found guilty of a personal or property offence and the court considers that a lack of supervision by the parent may have contributed to the offence and there is compensation to be paid. The court may call on the parent to show cause (provide an explanation) as to why the parent should not pay the compensation.⁴⁶



Information in this section is a simplified summary of section 2.9 'Role of parents' of the Queensland Courts Service, [Youth Justice Benchbook](#).

The victim

Queensland legislation protects the interests of victims during sentencing. The youth justice principles encourage a victim of an offence committed by a child to participate in the process of dealing with a child,⁴⁷ which includes the sentencing process.

When determining an appropriate sentence, the court must consider any physical, mental or emotional harm done to a victim because of the offence.⁴⁸

One of the ways the victim can bring this harm to the attention of the court is through the making of a victim impact statement. A **victim impact statement** is a written statement made by a victim — or the victim's family — that details the harm experienced from the offence. It may include attachments such as medical reports, photographs or drawings. The statement helps to inform the sentencing judge or magistrate about the impact of a crime on the victim; however, the victim does not have to provide one. If a victim or victim's family chooses not to provide a victim impact statement, this does not mean the court will assume the offence caused little or no harm to the victim or the family.



A victim impact statement is an opportunity for a victim to participate in the criminal justice process by communicating to the court the impact that the crime has had including any physical, social, financial or psychological effects.

Find out how to make a victim impact statement: www.qld.gov.au/law/crime-and-police/victims-and-witnesses-of-crime/court-support-for-victims-of-crime.

The victim impact statement should focus on the impacts of the crime, not the crime itself. It must be accurate and relevant only to the crime for which the person has been found guilty.

It might include details of:

- the difference in the victim's life before and after the crime
- physical or emotional injuries and how these affect the victim
- financial loss and how this affects the victim
- if the case is about the death of a loved one, details about the loved one's life.

The victim can provide their impact statement to either the arresting police officer or the Victim Liaison Officer from the Office of the Director of Public Prosecutions. A victim may also be offered the opportunity to read their victim impact statement aloud in court. If a victim is provided the opportunity to read their impact statement aloud, the court may make special arrangements to assist the victim (for example, obscuring the victim's view of the offender).

A victim has certain rights in criminal justice proceedings, outlined in the *Victims of Crime Assistance Act 2009* (Qld).

Find out about victim rights: www.qld.gov.au/victimrights

Victim Assist Queensland provides assistance to victims of violent crime, including all forms of domestic and family violence in Queensland, to help people recover from the effects of the crime and get their lives back on track.

Victim Assist Queensland: www.qld.gov.au/victims

If there is a **restorative justice process**, a victim has a right to attend and to participate in the conference, but they do not have to attend. A victim is able to have support people attend with them, including family and friends. Aboriginal and Torres Strait Islander victims can have an Aunty, Uncle or a member of a CJG attend if they wish.



Information in this section includes a simplified summary of information contained in section 9.7.7 'Submissions on sentence' of the Queensland Courts Service, [Youth Justice Benchbook](#).

About restorative justice processes / conferencing

A [restorative justice process](#) is a process that involves the child attending a conference (meeting) with a convenor, the victim, the child's parent, a police representative and if the child is an Aboriginal or Torres Strait Islander person, a respected person of the community.

Also referred to as 'restorative justice conferencing', restorative justice processes provide an opportunity for everyone involved to be heard and understood. They also allow those people who are most affected by an offence to be part of the process of deciding how the child should make up for their behaviour.

The child must admit the offence and take responsibility for what they have done. The aim is to reach an agreement about how the child can make up for the harm caused (a [restorative justice agreement](#)). After the conference, the child must perform the tasks required under the agreement for the process to be successful.

Research has shown that conferencing can be more effective in reducing reoffending than traditional justice methods.

To find out more about restorative justice processes, visit the [Queensland Government's website](#).

Benefits for victims

Restorative justice conferences provide an opportunity for the victim to:

- tell their story directly to the person who caused them harm and let them know how the offending has affected them
- ask for answers to the questions they may have about the crime
- contribute to a result that is meaningful to them for how the child should start making up for the harm.

Research shows that conferencing can help victims recover from the harm caused by an offence through victims:

- being given a voice in the justice process
- having a say about the offence and the outcome
- meeting the offender
- understanding more about the offence committed against them.

Victims can be empowered through regaining their confidence, optimism and sense of safety.

The vast majority of victims who have participated in a restorative justice conference have said they would recommend the process to other victims.

To find out more about the benefits of restorative justice conferences, visit the [Queensland Government's website](#).

Role of the media

The media's role is to provide information to the public. Journalists may report on sentencing outcomes in matters involving children but cannot publish identifying information about the child.



For example, the media may report that a 15-year-old child has been sentenced for a robbery offence in the Childrens Court and received 6 months' detention. The media, however cannot name or include other information in their report that identifies the child, or is likely to lead to the identification of the child, such as their address, school, place of work, or a photograph, picture or video of the child or someone else.

In a lesser-populated area, even publishing the child's age may not be allowed, as some people would be able to identify the child with that information.

The only exception is if a higher court allows for identifying information to be published. This can only happen if a judge has sentenced a child for a life offence that is violent and heinous (an extremely serious example of the offence), and the court considers that it is in the interests of justice to allow the publication.⁴⁹

For Magistrates Court level Childrens Court proceedings, a representative of the media can only be present in court with the Court's permission.⁵⁰ In the higher courts, the proceedings are open to the public and anyone, including the media, can attend but cannot publish personal information unless allowed by the court.

More information about the role of the media and what journalists can and can't report on can be found in our [Court reporting guide for Journalists](#) which is available on our [website](#).



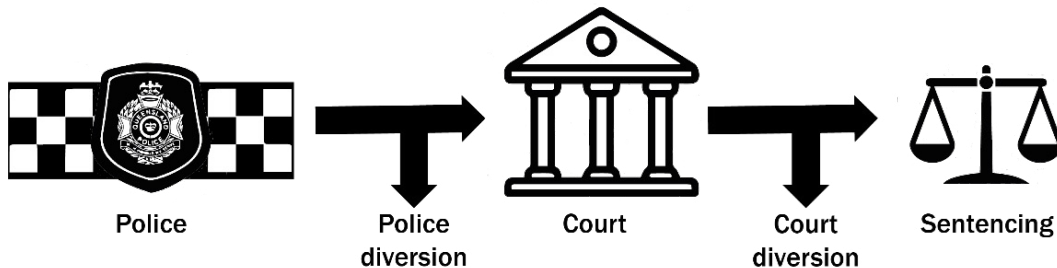
Information in this section includes a simplified summary of information contained in sections 1.2 'Closed or open court' and 2.8 'Identification and confidentiality issues' of the Queensland Courts Service, [Youth Justice Benchbook](#).

6. Diversion and alternatives to sentencing

The YJA, including the charter of youth justice principles, encourages a child who commits an offence to, where appropriate, be diverted from the courts' criminal justice system.⁵¹ Diversion provides options for responding to an offence outside the courts' criminal justice system.

There are two stages at which a child may be diverted from the criminal justice system:

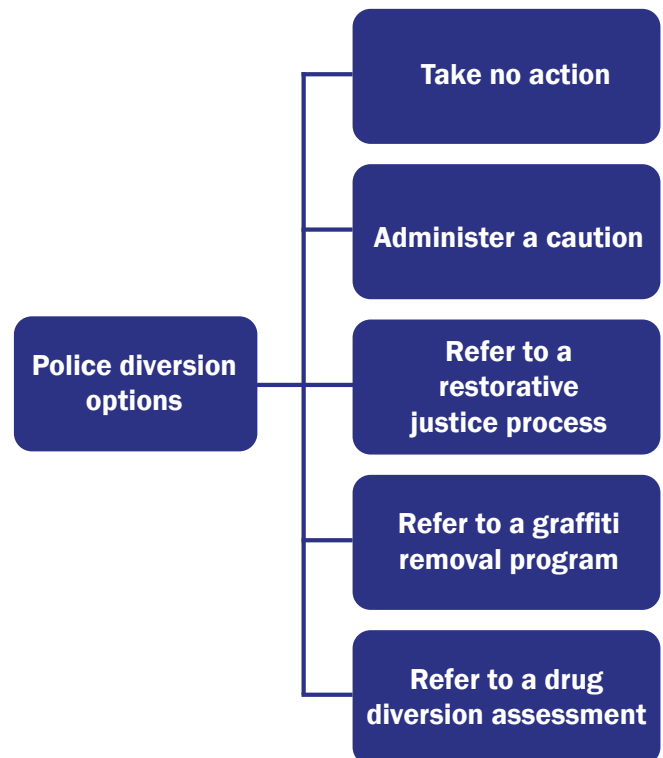
1. before proceedings in court are commenced against the child ([police diversion](#))
2. after proceedings in court have commenced and a child has pleaded guilty to the offence (court diversion).



Police diversion

Before starting proceedings against a child for an offence (that is not a **'serious offence'**), police must consider if, in all the circumstances, it would be better to do one of the following things:

1. **take no action** – give an informal warning from the police officer
2. **administer a caution** – where a police officer (or, where appropriate, a respected Aboriginal or Torres Strait Islander community member) explains to the child what they have done wrong. This can involve the child giving an apology to a victim
3. refer the child to a **restorative justice process** – where police refer the child to a voluntary meeting with the victim of the offence (where possible), facilitated by a trained convenor, to discuss the offence and how the child can repair the harm it caused
4. refer the child to a **graffiti removal program** – where police offer a 2-hour program to a child aged at least 12 who admits to a graffiti offence
5. refer the child to a **police drug diversion assessment program** – where police refer a child found in possession of a small amount of cannabis and/or with an implement used for smoking cannabis, to an assessment, education and counselling session.
6. These options can be used even if a similar action has been taken in the past involving that child, or if a proceeding for another offence has been started or has ended.⁵² Although police are not required to consider these options prior to starting a proceeding for a 'serious offence', any of the first three options may still be taken in relation to such an offence.⁵³ For more information about 'serious offences', see the discussion in this guide on ['Offence types'](#).



Information in this section is a simplified summary of Chapter 7 'Diversion' and section 8.4 'Police Diversion' of the Queensland Courts Service, [Youth Justice Benchbook](#).

Police cautioning

Cautioning is an important mechanism for ensuring a child understands and accepts responsibility for their actions, diverting young people from the criminal justice system, and preventing recidivism. A caution does not form part of a child's criminal history.

Police administer cautions to children in accordance with the principles of the *Youth Justice Act 1992* (YJA). Police must consider alternatives to starting a proceeding against a child for an offence (other than a serious offence), including administering a caution (YJA, s 11). Diversion options may also be considered for serious offences.

Chapter five of the *QPS Operational Procedures Manual* (Issue 82 Public Edition, 11 June 2021) contains QPS policy with respect to cautioning children.

When police decide to caution a child, there are several steps they must follow.

Before a caution can be given, the child must:

- admit to having committed the offence; and
- agree to being cautioned. (YJA, s 16)

Where appropriate, if a child has declined to admit an offence, but a diversion option is otherwise appropriate, the Protected Admissions Scheme may be applied to remove the potential barriers to cautioning or other diversion options (Queensland Police Service, *Operational Procedures Manual* (Issue 82, Public Edition, 11 June 2021) section 5.8 'Protected admissions').

Only certain police officers are allowed to give a caution to a child. Officers can administer a caution if they hold a particular type of position, or if have been authorised (approved) to give a caution after they have completed specialist training. Officers who can issue cautions have different levels of approval to caution depending on the type and seriousness of the offence the child has committed (Queensland Police Service, *Operational Procedures Manual*, section 5.4 'Authority to caution').

The cautioning process takes a lot of preparation. Before a child is cautioned, the investigating police officer has

to undertake a number of tasks, including locating the child's parents and contacting them to let them know the circumstances and to ensure a parent, or another adult chosen by the child or the parent, will be present.

(Queensland Police Service, *Operational Procedures Manual*, section 5.5.2 'Preparation for administering a caution')

If the child is a member of an Aboriginal or Torres Strait Islander community, police must consider whether there is a respected person of the community who is available and willing to administer the caution and ask them to caution the child (YJA, s 17). When a respected person is to caution a child, a police officer who is approved to give cautions must explain the cautioning process to that respected person prior to the caution being given, and must also be there when the child is cautioned (Queensland Police Service, *Operational Procedures Manual*, section 5.4.6 'Cautions administered by respected persons of Aboriginal or Torres Strait Islander communities').

If a police officer is giving a caution, they must make sure that the child and the parent or adult attending with them understand the purpose, nature and effect of the caution (YJA, s 18).

The cautioning process itself generally involves a meeting between police, the child and the parent or other adult supporting them where:

- the child admits to committing the offence and the police explain to the child why their behaviour is against the law
- the child may apologise to the victim, if the child has indicated they are willing to apologise, and the victim is willing to participate (YJA, s 19)
- the child receives a formal warning/reprimand from the police officer, and
- the child is given a notice of caution that they are asked to sign, noting the details of the caution, including that a caution was administered, who gave it and who was present (YJA, s 20).

Court diversion

The YJA provides that if a child pleads guilty to an offence, the court must consider a restorative justice process referral instead of sentencing the child.⁵⁴ If this referral is made, it is called a court diversion referral.

A court may make this order if it is satisfied that the child understands the process, is willing and suitable to participate, and that the process would allow the offence to be appropriately finalised without needing to sentence the child.⁵⁵

Other diversionary options a court may use instead of imposing a sentence are:

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, referred them to a restorative justice process or taken no action.⁵⁶

Similarly, a court can dismiss a charge (and may refer the offence for a restorative justice process) instead of accepting a child's plea of guilty if the court decides the police should have referred the charge to a restorative justice process.⁵⁷

Court referred drug assessment and education session —

a court can refer a child who pleads guilty to certain drug offences and is willing to participate, to 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 implements like a bong or a needle (a 'drug utensil'). Successful completion means court proceedings come to an end.

If a court does not divert the child, the matter proceeds to sentence.

If a child pleads guilty to an offence, the court must consider a restorative justice process referral instead of sentencing the child.



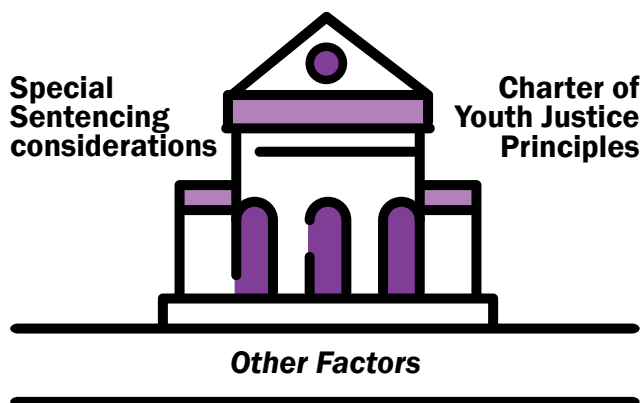
Information in this section is a simplified summary of section 7.3 'Childrens Court may dismiss a charge if caution should have been administered', 7.5 'Childrens Court may dismiss a charge if offence should have been referred to restorative justice process', and 7.6 'Court Ordered Diversion' of the Queensland Courts Service, [Youth Justice Benchbook](#).

7. Sentencing principles and considerations

When sentencing a child for an offence, the court is required by section 150 of the YJA to consider matters including the principles set out in the charter of youth justice principles, what are called ‘special sentencing considerations’, and other factors.

There are different sentencing principles for adults and children. When sentencing an adult, section 9 of the Penalties and Sentences Act 1992 (Qld) applies. When sentencing a child, section 150 of the Youth Justice Act 1992 (Qld) applies.

Section 150 Youth Justice Act 1992 (Qld)



Charter of youth justice principles

A court must consider the youth justice principles set out under Schedule 1 of the YJA — the charter of youth justice principles. The charter contains 21 fundamental principles that underlie the operation of the Act (all of equal value).⁵⁸ Many of the youth justice principles are based on Australia’s obligations under the United Nations Convention on the Rights of the Child.⁵⁹

Principles that are of relevance to sentencing include:

- **Principle 1:** The community should be protected from offences and, in particular, recidivist (repeat) high-risk offenders.
- **Principle 2:** The youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing.
- **Principle 9:** A child who commits an offence should be held accountable and be encouraged to accept responsibility for their actions. They should be given a chance to have guidance, strengthen their family and to develop in socially acceptable ways.
- **Principle 10:** A victim of an offence should be given a chance to be part of the process of dealing with the child for the offence.
- **Principle 13:** A child’s age, maturity and, where appropriate, cultural and religious beliefs and practices should be considered.
- **Principle 14:** If the child is of Aboriginal or Torres Strait Islander background, the child should be dealt with in a way that involves their community if possible.
- **Principle 17:** A child should be supported to stay connected to the community, continue their education, training or employment and to continue to live at home, if possible.
- **Principles 18 and 19:** A child should be detained in custody only as a last resort in a suitable facility and for the shortest time justified in the circumstances.

A full list of the 21 youth justice principles can be found in this guide at pages [38](#) and [39](#).

Special sentencing considerations

The court must also take into account special considerations listed in the Act. These are:

- a child's age is a **mitigating factor** (something that may reduce the severity of the sentence) in deciding whether to impose a penalty, and the type of penalty imposed
- a sentence served in the community (a non-custodial order) is better than detention in promoting a child's ability to reintegrate into the community
- a child's rehabilitation is greatly assisted by their family and the chance to participate in educational programs and employment
- a child without family support, educational or employment opportunities should not receive a more severe sentence because of the lack of support
- a detention order should be imposed only as a last resort (if no other penalties are appropriate) and for the shortest amount of time.

Other factors

When sentencing a child, a court must also take into account:

- the nature and seriousness of the offence
- the child's previous history of offending
- any **aggravating factors** or **mitigating factors** present, including whether the child committed the offence for which they are being sentenced while waiting to have another charge or charges finalised
- any information about the child (including a pre-sentence report)
- any submissions made by a representative of the CJG in the child's community if the child is Aboriginal or Torres Strait Islander (for example, the child's connection with the community, family or kin, cultural considerations and any considerations relating to programs and services established for offenders in which the CJG participates. See page 28 for more information about the sentencing of Aboriginal and Torres Strait Islander children)
- the impact of the offence on any victim, including those provided to the court in a **victim impact statement**
- incomplete sentences, such as a sentence the child is still serving for another offence and/or any previous sentence the child is still serving or may have to serve
- ensuring the sentence is proportionate to the offence (that is, reflects the seriousness of the offence committed and reflects the common law principle of **proportionality (principle of proportionality)**⁶⁰
- if a child is convicted of the manslaughter of a child under 12 years, the court must also consider the age and defencelessness of the victim as an **aggravating factor**.⁶¹

Mitigating factors are details about the child and the offence that tend to reduce the severity of the sentence.

Examples of factors that can mitigate a sentence:

- the child is young and immature
- the child has previously been well behaved (known as 'good character')
- the child has demonstrated remorse (they feel guilty about, and sorry for, what they have done) and/or evidence of rehabilitation
- the background of the child (for example, the child may have had an abusive, neglectful, traumatic childhood)
- the child suffers from a cognitive impairment or mental illness
- whether the child pleaded guilty, and the stage in the proceedings that this occurred.

Aggravating factors are details about the offence, the victim, and/or the offender that tend to increase the seriousness of the offence and the severity of the sentence.

Examples of factors that can aggravate a sentence:

- the vulnerability of the victim (for example, a younger child or a person with a disability);
- planning the crime (called premeditation);
- using a weapon, including a pretend weapon or pretending to have a weapon;
- committing the offence as part of a group (in company);
- the degree of any violence and harm caused; and
- committing the offence while on bail or while the child was subject to a court order.

The court will take these factors into account when determining an appropriate sentence.

When sentencing, a judge or magistrate often has to exercise their [discretion](#). Discretion means the power to choose. A court can choose the sentence that is most appropriate in each case, by weighing up and balancing all the different things the law says a court may or must consider.

See [Part 8. How judges and magistrates decide the sentence](#) at [page 27](#) of this guide for an explanation of how judges and magistrates decide the sentence.



General sentencing principles

In addition to the purposes, youth justice principles and factors set out in the YJA, courts must also consider 'the general principles applying to the sentencing of all persons'.⁶² These principles, developed under the [common law](#) (case law), apply to both adults and children and provide guidance to help judges and magistrates reach a decision on the sentence to impose. Some of these general principles are:

Parity

Parity means that co-offenders who are jointly involved in the same criminal conduct or activity should receive a similar penalty if the offence and circumstances are similar. However, differences in age, personal and criminal history, and culpability, may justify a different sentence.

Where sentences are imposed on an adult and a child who are co-offenders there will often be considerable disparity because different legislative schemes apply.⁶³

Parity is an aspect of 'equal justice' (that is, courts should treat same or similar offending alike and different offending, differently).⁶⁴

Totality

Totality means that when there is more than one offence committed, the total sentence should reflect the overall criminality of the offending (that is, for all the offences). Totality may apply when there are several offences committed over a short timeframe, or where a person is already serving a sentence and the offences were committed before or after that sentence was imposed.

The sentencing court may order a sentence to be imposed concurrently or reduce a cumulative sentence to avoid imposing a 'crushing' sentence (a sentence so severe that it crushes any hope that the person will lead a useful life after release from custody).

For an explanation of concurrent and cumulative sentences, see below – '[Other matters](#)', [page 33](#)'.

The De Simoni principle

A person should only be sentenced for an offence that he or she has been found guilty of and not punished for other criminal conduct. This means a judge or magistrate cannot take into account circumstances that have not been charged but would have warranted a conviction for a different or more serious offence.⁶⁵

For example, under the Criminal Code there are the offences of common assault (eg. pushing someone) and assault occasioning bodily harm (eg. pushing someone causing bruising).⁶⁶ If a child has been charged with and pleaded guilty to the offence of common assault, but the victim suffered a bruise, the court cannot take that injury into account when sentencing the child because this is 'bodily harm' and would be the more serious offence of assault occasioning bodily harm (which the child has not been charged with).



Information in this section is a simplified summary of information contained in Chapter 11 'Sentence' of the Queensland Courts Service, [Youth Justice Benchbook](#).

Sentencing of Aboriginal and Torres Strait Islander children and the role of community justice groups

When sentencing a child who is Aboriginal or Torres Strait Islander, a court must have regard to submissions made by a representative from a Community Justice Group (CJG) in the child's community.

CJGs are run by members of the local Aboriginal and Torres Strait Islander community. They are non-government organisations that deliver justice-related initiatives, provide support and a community-based response to Aboriginal and Torres Strait Islander people in contact with the justice system.

To inform sentencing, a representative of a CJG can provide the court with information about the child's relationship to the community, any cultural considerations and information about programs and services for offenders in which the CJG participates.

Cultural considerations in sentencing can be important to limit misunderstanding and misinterpretation. They can explain

the social context in which the child's offending occurred, the child's behaviour and child's use of language (for example, if the child uses a local idiom).

The court must also have regard to the youth justice principles that provide for community involvement and cultural considerations, including that:

- a person making a decision relating to a child should consider the child's cultural and religious beliefs and practices (Principle 13)
- the child's community should be involved if a child is Aboriginal or Torres Strait Islander (Principle 14)
- programs and services established under the YJA should be culturally appropriate (Principle 15).

For more information about CJGs and their locations see: <https://www.courts.qld.gov.au/services/court-programs/community-justice-group-program>



Information in this section includes a simplified summary of information contained in section 2.5 'Provisions Concerning Aboriginal and Torres Strait Islander Children' and 11.8 'Aboriginal and Torres Strait Islander Children – Sentencing Considerations' of the Queensland Courts Service, [Youth Justice Benchbook](#).

8. How judges and magistrates decide the sentence

A judge or magistrate must exercise their **discretion** (power to choose) when deciding the appropriate sentence.

A court must choose the sentence that is most appropriate in each case, by weighing up and balancing all the different things the law says a court may or must consider.

The High Court has said there ‘is no single correct sentence’ and ‘the sentencer is called on to reach a single sentence which... balances many different and conflicting features.’
See *Markarian v R* (2005) 228 CLR 357, 371–4.

The High Court has explained there are a number of reasons why the exercise of sentencing discretion by a judge or magistrate is not purely subjective (based on personal beliefs) or arbitrary (a random personal choice without reason), and involves much more than selecting a number out of thin air:

1. A sentencing judge or magistrate is likely to have seen many other cases involving people who have committed the same type of offence. Because of this, judges and magistrates develop, through their experience and knowledge, a sense of how serious a particular case is compared to other similar cases, and how the circumstances of the offender compare to other offenders, which affects how much weight is given to different factors. Sentencing judges and magistrates also consider what sentences have been imposed in other cases for that same type of offence.
2. Judges and magistrates factor in changes to legislation – including increases in the maximum penalty for the offence. This guides their approach to determining the appropriate sentence. For example, an increase to the maximum penalty may indicate that the offence now is viewed more seriously, and that sentences for the offence should be higher.
3. Sentencing judges and magistrates are always aware that the sentences they impose may be reviewed on appeal (by an appeal court). Therefore, they pay close attention to the guidance provided by appellate courts about factors that are relevant to sentencing in a particular case and those that are not.
4. The sentences judges and magistrates impose, and their reasons, are open to scrutiny through the publication of their sentencing remarks or through media reporting. Knowing this, judges and magistrates aim to impose sentences that are consistent with community expectations.
5. Sentencing judges and magistrates are bound to ensure that any sentence they impose is **proportional (principle of proportionality)** to the seriousness of the offence committed. A court may not impose a sentence that is more severe than is justified by the crime committed – even if this is for the purpose of public protection. Proportionality, together with consistency, operates as a ‘final check’ against a sentence being imposed that is unjust.⁶⁷

Australian research comparing judges’ sentence orders with what members of the public on a jury would have imposed, the Tasmanian Jury Sentencing Study and the Victorian Jury Sentencing Study, have shown that in general, the sentences judges impose are in line with, or even harsher than what members of the public consider to be an appropriate penalty.⁶⁸

9. Human Rights Act 2019 (Qld)

Overview

There are several rights set out under the *Human Rights Act 2019* (Qld) ('HRA') that apply to all people in Queensland, including children. For people involved in the criminal justice system, there are some specific rights. These include:

1. the right to the equal protection of the law without discrimination (s 15(3)),
2. the right not to be punished in a cruel, inhumane or degrading way (s 17(b)),
3. the right to a fair hearing when a person is charged with a criminal offence and specific rights in relation to criminal proceedings (ss 31 and 32), and
4. the right not to be tried or punished more than once (s 34).

Also, 'a child charged with a criminal offence has the right to a procedure that takes into account the child's age and the desirability of promoting the child's rehabilitation' (s 32(3)).

Section 33 of the HRA specifically refers to children in the criminal process. The section recognises that a child held in custody with adults has a higher risk of violent victimisation, exposure to illicit substances and escalating criminality.⁶⁹ It also emphasises the need for a speedy resolution which is more onerous than the HRA provisions in relation to adults.⁷⁰ Finally, the section highlights the importance of a child being treated appropriately for their age.

Human Rights Act 2019 (Qld) s 33:

(1) An accused child who is detained, or a child detained without charge, must be segregated from all detained adults.

(2) An accused child must be brought to trial as quickly as possible.

(3) A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.

Many of the rights included in the HRA are already reflected in the charter of youth justice principles (see discussion at page 23. The charter of youth justice principles is reproduced in Appendix 1).



Information in this section is a simplified summary of information contained in section 2.3 'Human Rights Act' of the Queensland Courts Service, [Youth Justice Benchbook](#).

Right to protection against retrospective criminal laws

The HRA protects people against the operation of retrospective criminal laws. Retrospective laws are laws that apply to what a person did or did not do in the past, but which did not exist at the time.

Section 35 of the HRA says that:

- (1.) *A person must not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in.*
- (2.) *A penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed.*
- (3.) *If a penalty for an offence is reduced after a person committed the offence but before the person is sentenced for that offence, that person is eligible for the reduced penalty.*
- (4.) *Nothing in this section affects the trial or punishment of any person for any act or omission which was a criminal offence under international law at the time it was done or omitted to be done.*

The Queensland Human Rights Commission notes that this right can be relevant to laws, policies or decisions that:⁷¹

- aim to impose a penalty on a person for behaviour that was not against the law at the time they did it
- apply more severe penalties on a person for their conduct than existed at the time they engaged in this conduct (for example, making the person subject to a mandatory minimum penalty where previously the court could choose what penalty to impose, or increasing the maximum penalty for an offence)
- do not give a person the benefit of a penalty that has decreased in severity since the time the person committed the offence (for example, where a mandatory penalty is removed, or the maximum penalty for an offence is reduced (e.g. from 7 years' imprisonment to 5 years' imprisonment)
- expand the range of activities covered by a current criminal offence
- change the procedures that apply to criminal trials for acts done before the legislation commenced
- introduce new sentencing options for offences committed before the legislation introducing these options commenced
- change the conditions of parole that apply to prison sentences imposed before the legislation commenced.

Cultural considerations

The HRA recognises that Aboriginal and Torres Strait Islander people hold distinct cultural rights. It also acknowledges the right of Aboriginal and Torres Strait Islander peoples not to be subjected to forced assimilation or destruction of their culture.⁷³

This right supports the participation of children in programs that both aim to address the underlying causes of their offending and are culturally appropriate and culturally safe. While there is no single definition of what the term 'cultural safety' means, this has been described as 'an environment that is safe for people: where there is no assault, challenge or denial of their identity, of who they are and what they need' and where there is 'shared respect, shared meaning, shared knowledge and experience'.⁷⁴

The YJA and charter of youth justice principles reflect cultural rights in a number of ways, including:

- requiring that courts take into account submissions made by a representative of the Community Justice Group in the child's community relevant in sentencing the child, including any cultural considerations and the child's connection to the community, family or kin⁷⁵
- the inclusion of principles that any person making a decision relating to a child to consider, where appropriate, the child's cultural beliefs and practices and, if practicable, deal with a child of Aboriginal or Torres Strait Islander background in a way that involves the child's community⁷⁶
- the recognition that programs and services established under the YJA for children should be culturally appropriate.⁷⁷

More information about the sentencing of Aboriginal and Torres Strait Islander children is at page 26 of this guide.

For more information about the HRA see the Queensland Human Rights Commission Factsheet:

https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0009/19908/QHRC_factsheet_QueenslandHumanRightsAct.pdf

10. Pre-sentence reports

Before imposing a sentence on a child, a court may ask Youth Justice to prepare a report, known as a 'pre-sentence report'. The pre-sentence report will contain information that is relevant to sentencing the child. Some things a pre-sentence report must contain are:⁷⁸

- details about the child (name, date of birth, address, occupation)
- the offence to which the report relates
- details of all community-based orders or detention orders imposed
- any factors Youth Justice believe may have contributed to the child committing the offence
- the child's attitude to the offence and to the victim of the offence
- any consequences that happened to the child following the offence (such as whether the child was disciplined by their parents or a member of the child's community)
- information about sentencing options suitable for the child.

The court may also request that the pre-sentence report contain specific information such as a psychiatric or psychological report, mental health and/or medical assessment. The court may adjourn the proceedings for the report to be prepared.

The court will decide how useful the report is in coming to a decision about the sentence and does not have to agree with or follow the recommendations in the pre-sentence report (for example, the pre-sentence report may say that a certain sentence order is suitable).⁷⁹

Before a court can order detention, a pre-sentence report must be obtained. The court cannot make a detention order or intensive supervision order without considering the contents of a pre-sentence report.



Information in this section is a simplified summary of information contained in section 11.6 'Pre-sentence Reports' of the Queensland Courts Service, [Youth Justice Benchbook](#).

11. Sentencing and other orders for children

Sentencing Options

Good behaviour

Reprimand

Detention

- Conditional Release
- Supervised Release

Community based order

- Probation
- Community Service
- Intensive Supervision Order
- Restorative Justice Order

Fine



Diversiónary Options

Dismissal

Court diversion

Drug and alcohol education

Restorative justice process

The following options are available to a court when a child is found guilty or pleads guilty to an offence, and the court has decided a diversion is not appropriate:

Reprimand — a court can give the child a formal warning. A reprimand forms part of the child's criminal history for any later sentence proceedings.⁸⁰

Good behaviour order — an order that the child not commit another offence during the period of the order (up to 1 year).⁸¹

Fine — an order that a child pay an amount of money as a penalty within a set period.⁸² This order can only be made if the court is satisfied that the child has the capacity (will be able) to pay the fine.⁸³

Restorative justice process — As well as being a diversionary option, restorative justice is available as a sentencing option.⁸⁴ A restorative justice process involves a convenor and the child attending a conference. Other participants can include the victim, a child's parent and a police representative, and if the child is an Aboriginal or Torres Strait Islander person, a respected person of the community.⁸⁵ There must be a degree of victim participation in the conference, although this can be by way of a message pre-recorded by the victim for use in the conference, or the attendance of a representative of a victim advocacy organisation.⁸⁶

The aim of the conference is for the child to take responsibility for their offending behaviour and reach an agreement on how they can make up for the harm caused in a way that benefits everyone (**restorative justice agreement**).⁸⁷

An agreement can include:

1. an apology to the victim
2. a statement of intent about future behaviour
3. abiding by a curfew
4. attending counselling
5. attending educational programs
6. completing volunteer work.⁸⁸

An agreement cannot result in the child being treated more severely than if the child were sentenced by a court.⁸⁹ For example, an agreement cannot require a child to perform 100 hours of community service if the court would have only required the child to perform 50 hours of community service.

When a conference is not possible, an alternative diversion program can be used.⁹⁰ The program can involve remedial actions, activities to strengthen relationships with family and community, and educational programs.⁹¹

The aim is to help the child understand the harm caused and take responsibility for the offence.

A child can be referred to a restorative justice process by a court in the following ways:

Diversionary options (these are not sentence orders, but are included here for completeness):

- **Dismissal** – a court can dismiss a charge instead of accepting a child's plea of guilty if the court decides the police should have referred the offence to a restorative justice process. The court may refer the child to Youth Justice for a restorative justice process.
- **Court Diversion Referral** – if a child pleads guilty, a court must consider referring a child to participate in a restorative justice process instead of sentencing the child.

Pre-sentence option:

- **Pre-sentence Referral** – if a child pleads guilty or is found guilty, the court may refer the child to participate in a restorative justice process prior to sentence. The purpose of this is to help the court decide the most appropriate community-based order or detention order.

The court receives a copy of any agreement made, and must take into account the child's participation, their obligations under the agreement and anything done by the child as part of the agreement when sentencing the child. The court can also order the child to perform their obligations under the agreement as a form of sentence.

Sentence option:

- **Restorative Justice Order** – a sentencing order imposed by the court.

Restorative justice order – a sentencing order imposed by the court⁹² where the child is supervised for a maximum period of 12 months.⁹³ Youth Justice may end the order sooner if it considers the child has completed the requirements. The requirements include that the child must report to and receive visits from Youth Justice, must stay in Queensland, must not commit an offence, must participate in a restorative justice process and must perform the tasks agreed under the restorative justice agreement.⁹⁴

In deciding whether to make a restorative justice order, the court must consider whether:

1. the child has been told about the process and understands it
2. the child is willing to comply with the order
3. the child is a suitable person to participate
4. the order is appropriate, taking into account information provided to the court by Youth Justice as well as the nature of the offence
5. the harm suffered by anyone because of the offence
6. the interests of the community and the child would be served by having the offence dealt with in this way.⁹⁵

Probation order – an order that involves the child being supervised in the community. Supervision includes taking part in offence-focused programs and activities.⁹⁶ The maximum duration of an order is:

- 1 year if made by a magistrate⁹⁷
- 2 years if made by a judge,⁹⁸ or 3 years for a 'relevant offence'.⁹⁹

Youth Justice administers the order. The child will be assessed to identify the factors that have contributed to the offending, and programs and interventions arranged to address those factors. The child must comply with directions from Youth Justice.

Graffiti removal order – As well as being a diversionary option, graffiti removal is available as a sentencing option.¹⁰⁰ If a child was at least 12 years old at the time of committing a graffiti offence, the court must make a graffiti removal order,¹⁰¹ unless the child's physical or mental capacity mean they are unable to comply.¹⁰² This requires the child to perform graffiti removal within 12 months, for a period of hours set by the court. The maximum hours are:

- 5 hours for a child under 13 years old
- 10 hours for a child aged 13 or 14 years old
- 20 hours for a child aged 15 years or older.¹⁰³

Community service order – an order to do at least 20 hours of unpaid community service.¹⁰⁴ The community service must be completed within 12 months, or less for orders of less than 50 hours.¹⁰⁵ The child must be at least 13 years old.¹⁰⁶ The maximum hours are:

- 100 hours for a child aged 13 or 14 years old
- 200 hours for a child aged 15 or older.¹⁰⁷

Youth Justice administers the order and is responsible for directing the child where and when to perform the community service.

Intensive supervision order – an order of up to 6 months for a child aged under 13 years at the time of sentence.¹⁰⁸ The court must have considered a pre-sentence report and believe the child is likely to commit further offences.¹⁰⁹

As for a probation order, Youth Justice administers an intensive supervision order. The child will be assessed to identify the

factors that have contributed to the offending, and programs and interventions arranged to address those factors. The supervision and support provided by Youth Justice are more intensive than for a probation order. The child must comply with directions from Youth Justice.

Detention — an order of last resort where a child is detained for a certain period in a youth detention centre or, on becoming an adult, in prison. A court cannot make a detention order unless it:

- has received and considered a pre-sentence report prepared by Youth Justice
- has considered all other available sentences and, taking into account the desirability of not holding a child in detention, is satisfied no other sentence is appropriate in the circumstances of the case.¹¹⁰

Depending on the sentencing court and seriousness of the offence, the maximum period of detention varies.

A Childrens Court magistrate can impose up to 1 year's detention¹¹¹ (or a longer period, if a Childrens Court judge delegates their sentencing power to the magistrate¹¹²).

For a judge in the Childrens Court or the Supreme Court, the maximum depends on the offence:

- For a 'life offence' – an offence for which a person sentenced as an adult would be liable to life imprisonment (for example murder or manslaughter) the maximum period of detention is 10 years, or up to and including life if it involved violence and was 'particularly heinous' (an extremely serious example of the offence).¹¹³
- For a 'relevant offence' – an offence that, if committed by an adult, would make that person liable to imprisonment of 14 years or more, but not life (although some property and drug offences are not included) the maximum period of detention is 7 years.¹¹⁴
- For other offences, the lesser of:
 - half of the maximum term of imprisonment an adult can be sentenced to, or
 - 5 years.¹¹⁵

A child serving a period of detention is held in one of Queensland's three youth detention centres. As for community-based orders, the child will be assessed to identify the factors that have contributed to the offending, and programs and interventions arranged in the detention centre to address those factors.

Release after fixed period (Supervised release order) —

A child must be released after serving 70 per cent of the total detention period,¹¹⁶ unless the sentencing court orders release after serving between 50 and 70 per cent because of the existence of special circumstances.¹¹⁷

When a child has served the required period in detention, Youth Justice will make a supervised release order. The child will be supervised in the community and Youth Justice can impose and amend conditions.¹¹⁸

If a child does not abide by the supervised release order, Youth Justice may bring the matter back to court.¹¹⁹ The court will decide whether the child has breached the order. The court may order that no action be taken, that the child serve all or part of the remaining sentence of detention in a detention centre, or re-sentence the child.¹²⁰ This is different to an adult who is released on parole. For an adult, the Parole Board Queensland can amend, suspend or cancel the parole order without going back to court.

Conditional release order — an option used instead of actual detention where the court suspends the detention order and immediately releases the child to be supervised in the community.¹²¹ The child must comply with conditions, including complying with every reasonable direction of Youth Justice, report to and receive visits as directed, and engage in a structured program of up to 3 months.¹²²

The program, run by Youth Justice, aims to address a child's offending behaviour through counselling and programs, while enabling them to maintain their existing study and work commitments. If a child does not abide by the conditional release order, Youth Justice can bring the matter back to court.¹²³ The court will decide whether the child has breached the order. The court may give the child another chance on the order or revoke the order and order the child to serve the sentence of detention originally made.¹²⁴



Information in this section is a simplified summary of sections 11.12 'Sentence Orders – General' and 11.13 'Specific Sentence Orders' of the Queensland Courts Service, [Youth Justice Benchbook](#).

Recording a conviction

The decision about whether to record a conviction is a separate decision to deciding what sentence to impose. Recording a conviction gives a child a criminal record for the offence.

A conviction cannot be recorded for a reprimand or good behaviour order. For other sentence options, a sentencing court must decide whether to record a conviction.¹²⁵ The starting point for the court is that a conviction is not to be recorded against a child.¹²⁶ This is because the court places priority on a child's rehabilitation as their future is more uncertain than an adult offender.

A conviction for an offence committed as a child can only be used against a person as an adult if their conviction was recorded. If no conviction was recorded, the offence still forms part of the child's criminal history if they commit another offence as a child.

In making a decision whether to record a conviction, the court looks at all the circumstances of the case, including:

- the child's age and any previous convictions
- the nature of the offence
- the impact that recording a conviction will have on the child's chances of rehabilitation or finding and retaining employment.¹²⁷

To learn about how the Court of Appeal applied the above factors in the case of a child convicted of arson, see the Council's *Case in Focus* summary of the Court of Appeal's decision in *R v SCU*.¹²⁸



Information in this section is simplified summary of section 11.10 'Recording a Conviction' of the Queensland Courts Service, [Youth Justice Benchbook](#).

Other orders

Restitution and compensation orders — In addition to making a sentence order, a court can order a child to pay restitution or compensation to the victim, if the child has capacity to pay.¹²⁹

Driving disqualification — This order disqualifies a person from holding or obtaining a Queensland driver licence (including a learner driver licence) absolutely or for a specified period. For adults, some traffic-related offences carry a mandatory minimum disqualification period that the court must impose. If a child is under 17, the mandatory minimum disqualification periods which apply to adults will only apply if a conviction is recorded.¹³⁰ If a conviction is not recorded, the court may choose whether or not to disqualify the child from driving. If a child is at least 17 years, the mandatory minimum disqualification periods which apply to an adult also apply to the child if they are found guilty, whether or not a conviction is recorded.¹³¹

Other matters

Combination orders — A court may make more than one type of sentencing order for a single offence,¹³² unless this is not permitted under the Act. In some cases, special rules apply to how orders can be combined. For example, if a court makes a detention order and a probation order for a single offence, a court may make the detention order only for a maximum period of 6 months, and may not make a conditional release order.¹³³ The probation order then starts when the child is released from detention and may only be for a maximum period of 1 year after the child is released.¹³⁴

The following combination orders can be made (subject to certain criteria¹³⁵):

- community service and probation
- community service and graffiti removal order
- community service, probation and graffiti removal order
- probation and graffiti removal order
- restorative justice order and any other sentencing order
- detention order and probation
- detention order and graffiti removal order.

See the Youth Justice Benchbook pages 280–281 for a summary table.

Concurrent and cumulative sentences — When a court sentences a child to detention for more than one offence, there is a presumption in Queensland that the sentences will be served concurrently (at the same time), unless the court orders otherwise.¹³⁶ When sentences are to be served concurrently, and one is longer, the shorter sentence (or sentences) is incorporated into the longest one (also called the head sentence).

A court has the power to order that the sentences be served cumulatively (one after each other) but if they do this, the total period of detention cannot be more than:

- 1 year (if made by a Childrens Court magistrate)
- 7 years if made by another court.¹³⁷

In deciding what order to make, the court must consider the principle of **totality** to ensure the total sentence reflects the overall criminality of the offending (see discussion of **General sentencing principles**).

Time in custody on remand — When a child is charged with an offence, if they are denied bail (or do not apply for it) they will be held in detention while waiting for their trial or sentence. They are then ‘remanded in custody’.

If the child is sentenced to detention, the time they have spent in custody before being sentenced must be counted as part of the detention order.¹³⁸ However, if the child was in detention serving a sentence for another offence or offences, that is not counted.¹³⁹

This is a common reason why some offenders are released from custody on, or shortly after, the day they are sentenced as their sentence is effectively backdated to the first day they went into custody.

Even if a child is not sentenced to detention, the time spent on remand must still be taken into account in sentencing.

Mandatory sentences — Mandatory sentence provisions requiring an adult to pay an amount of money or a court to impose a term of imprisonment, do not apply to a child.¹⁴⁰ For example, the mandatory sentence of life imprisonment for murder that applies to adult offenders does not apply to children, although the court may still impose a life sentence in certain circumstances.

Life sentences — Although not mandatory, the court may still impose a life sentence.

If a court sentences a child to life in detention for murder, the same minimum parole periods that apply to adults also apply to the child being sentenced (20 years, 25 years if the victim is a police officer, or 30 years for multiple convictions for murder).¹⁴¹

For other life offences, a child sentenced to life imprisonment is subject to the same parole release provisions as an adult, meaning they are eligible to apply for parole after having served 15 years in custody.¹⁴²

12. What happens if a child turns 18 before or after being sentenced?

In Queensland, under the YJA, a child is a person aged between 10 and 17 years. However, the YJA allows some people aged 18 and over to still be sentenced as if they are a child in court (for example, when proceedings have started but haven't been finalised), and be supervised in the youth justice system.

If a young person is sentenced to detention, they are held in youth detention rather than an adult prison, but only until they are about 18 years and 6 months. The table below outlines what can happen depending on the age of the person:

Turning 18 before charge finalised <p>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.</p>	Can be sentenced as a child
Turning 19 before charge finalised or proceedings started <p>If proceedings start or are still going once the offender turns 19, the YJA has specific, detailed provisions that tend to require sentencing the offender as a child. If proceedings have not yet started and the person is 19, the person will be sentenced as an adult. Although they will be sentenced to an adult sentencing order, the court must have regard to the sentence that might have been imposed if the person had been sentenced as a child.</p>	If proceedings have started: can be sentenced as a child. If not started: will be sentenced as an adult
Turning 18 before sentencing order ends <p>A court can make a YJA order against 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 offender was still a child (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).</p>	Order can continue as if the offender was still a child
Turning 18 before detention order ends and new proceedings commenced <p>If a person is serving a period of detention and proceedings are started within 1 year of an offence being committed, a court may still treat the person as a child if it considers it appropriate (for example, if an offence was committed in a detention centre and the court considers the person should be treated as a child for the offence).</p>	May be sentenced as a child
Turning 18 before detention order ends <p>If a person is in custody for both child and adult offences, the YJA has provisions for where the person must be held. While some of these give leeway to 18-year-olds, there is an overriding principle that 'it is in the best interests of the welfare of all detainees at a detention centre that persons who are 18 years and 6 months or older are not detained at [youth detention centres]' (YJA, s 276F).</p> <p>This means a person who turns 18 while serving a period of detention and has 6 months or more still to serve, or is 18 or older when beginning a period of detention and who has 6 months or more to serve in detention, is likely to be transferred to an adult prison. This is an administrative decision and not a decision a court makes. Where this happens, the person is held in an adult prison and released on parole under the adult system. An application can be made to delay transfer, but once a person turns 18 years and 6 months, they will be transferred despite any application.</p>	Must transfer to an adult prison once 18 years and 6 months



Information in this section is a simplified summary of section 2.7 'Child Offenders who Become Adults' of the Queensland Courts Service, [Youth Justice Benchbook](#).

13. Appeals and sentence reviews

Sentence review

A child, a representative of Youth Justice, the complainant or the arresting officer, can apply to a Childrens Court judge for review of a Childrens Court magistrate's sentencing decision. This process, called a sentence review,¹⁴³ is a rehearing on the merits of the case¹⁴⁴ (in other words, the judge looks at the matter afresh, as though conducting the sentencing from the beginning). The YJA says that this review must be conducted expeditiously (quickly and efficiently) and with as little formality as possible.¹⁴⁵

Appeal to a Childrens Court judge

A child (or their legal representative), the complainant (a police officer) or the Attorney-General can appeal a sentence imposed by a magistrate to be heard before a Childrens Court judge.¹⁴⁶ The test for this type of appeal is whether the sentence was 'excessive' (that is, too harsh) or 'inadequate' (that is, too lenient).¹⁴⁷

A Notice of Appeal must be filed within one month of the sentence being imposed unless the appeal court allows an extension of time.

Appeal to the Court of Appeal

A child or the Attorney-General can appeal to the Court of Appeal against a sentence imposed by a judge of the District Court, Childrens Court or the Supreme Court of Queensland.¹⁴⁸ The Attorney-General has a right of appeal. A child must first obtain the Court of Appeal's leave (permission) before their appeal can proceed.

For more information on an appeal to the Court of Appeal, see: *Appealing a court decision*: <https://www.qld.gov.au/law/sentencing-prisons-and-probation/appealing-a-court-decision>.

Following an appeal to the Court of Appeal, the decision may be further appealed to the High Court of Australia.



Information in this section is a simplified summary of Chapter 12 'Appeals and Sentence Reviews' of the Queensland Courts Service, [Youth Justice Benchbook](#).

High Court of Australia

The final appeal option for a child or the Attorney-General is to make an application for special leave to appeal the Court of Appeal decision to the High Court of Australia (Australia's highest court). The High Court must grant special leave (permission) for the appeal to be heard before it is considered by the court. This application must be made within 28 days of the Court of Appeal delivering its judgment unless the High Court allows an extension of time.

Special leave involves a 2-stage process where 2 justices of the High Court consider:

1. whether the appeal involves a question of law that:
 - has public importance, or
 - there is a difference of opinion in the Court of Appeal on the law, and
2. whether the interests of justice require the High Court to consider the matter.

If special leave is granted, the parties (the sentenced child or legal representative of the sentenced child and the prosecution) must prepare and file further documents and appear at an appeal hearing. The High Court (usually comprising 7 justices) will then consider whether to dismiss or allow the appeal.

Pardon

A Governor is a person appointed by the Queen, on advice from the Premier, and represents Her Majesty Queen Elizabeth II, Queensland's Head of State. You can find out more about the role of the Governor here: <https://www.govhouse.qld.gov.au/the-governor-of-queensland/about-the-governor.aspx>.

A child may petition the Governor to exercise their power to pardon a sentence by sending a formal written request. If granted, a 'pardon' means a person is free from the consequences of their actions (their sentence).

The Governor may ask the Attorney-General for advice, who may refer the matter to the Court of Appeal for an opinion or to decide the matter. This only occurs in exceptional circumstances.

An example could be where a person was convicted and sentenced for an offence but there is now new evidence (forensic evidence such as DNA or ballistic evidence) or a new witness has come forward who can prove their innocence.

14. Commonwealth offences

This guide has focused on sentencing for offences committed under Queensland legislation, such as the Criminal Code (Qld).

Queensland courts also hear cases and sentence children for Commonwealth offences, such as telecommunications offences, offences that occur at an airport or on an aircraft, terrorism, drug importation, and internet or child pornography material offences. Relevant legislation about offences and sentencing for Commonwealth offences includes the *Crimes Act 1914* (Cth) and the *Criminal Code Act 1995* (Cth).

There are different sentencing options for state and Commonwealth offences. Commonwealth sentencing options are found in the *Crimes Act 1914* (Cth).

If a child is suspected of having committed a Commonwealth offence, the Commonwealth Director of Public Prosecutions (not Queensland police) will decide whether to prosecute or not prosecute. Starting proceedings against a child is considered a severe step and is only done if it is in the public interest. There are many considerations, but particularly for children they may consider:

- the seriousness of the offence
- the child's age and maturity
- any alternatives to starting a proceeding (such as giving the child a caution)
- the sentencing options available to a Childrens Court if the matter went to court
- the child's family circumstances
- the child's history and any previous cautions given
- whether proceedings against the child would be too harsh on the offender and their family.¹⁴⁹

If court proceedings are started, a child who has committed a Commonwealth offence may be dealt with as if they were charged with a Queensland offence.¹⁵⁰ This means the YJA can apply so that the child may follow the same court process and the court can impose a sentence option as if the child has committed an offence under Queensland legislation.

This is different to adult federal offenders, who must be sentenced in accordance with Commonwealth law. Some of the YJA sentencing options may not be enforced against a juvenile federal offender and, accordingly, may not be appropriate in the circumstances of a particular case.

In most cases, when sentencing a child for a Commonwealth offence, a court will make a state sentencing order.

Sentencing options under Commonwealth law are:

- **Dismissal** – the court can dismiss the charge (no conviction recorded).¹⁵¹
- **A bond** – the court can impose a bond with¹⁵² or without¹⁵³ a conviction recorded. The person must give security with or without sureties that he or she will be of good behaviour for up to 3 years. This is similar to a Queensland good behaviour bond/recognition for adults; however, a court may also include other conditions such as supervision by a probation officer not exceeding 2 years (but not community service).

? What is 'security with or without sureties'?

The *Crimes Act 1914* (Cth) does not specify what a 'security' can be. In practice, it is usually a sum of money.

A 'surety' is a person who is responsible for another person performing their promise.

If a court imposes a bond and orders a sum of money as security, with a surety, it means another person has agreed to pay the sum of money if the offender is not of good behaviour (for example, commits an offence) during the period of the order.

In practice, a surety is rarely required.

- **Conditional release order** – the court can impose a conditional release with a conviction recorded (similar to a bond with conditions imposed however, a conviction must be recorded and the good behaviour period can be up to 5 years).¹⁵⁴
- **A fine¹⁵⁵ or a community service order¹⁵⁶** – in this case, the court must record a conviction.
- **Imprisonment.**¹⁵⁷

1. For imprisonment of 3 years or less:

- a. a court can impose a release on a 'recognizance release order' (similar to a suspended sentence for adults) with immediate release or release after part of the sentence is served.¹⁵⁸ Upon release, the person must give security with or without sureties that they will be of good behaviour for up to 3 years. It may also be subject to conditions such as supervision by a probation officer for no more than 2 years; or
- b. a court can instead order that the person serve the full period in custody (for sentences of 6 months or less, the court is not required to make a recognizance release order;¹⁵⁹ for sentences of over 6 months up to and including 3 years, a court may decline to make a recognizance release order on the basis that such an order is not appropriate in the circumstances¹⁶⁰). For imprisonment over 3 years: a court can fix a non-parole period,¹⁶¹ which is the minimum time to be served before the Commonwealth Attorney-General (not Youth Justice) decides whether to make or refuse to make a parole order. A court can also decline to fix a non-parole period, which means the person must serve the full term in custody, if such an order is not appropriate.¹⁶²

2. For imprisonment over 3 years: a court can fix a non-parole period, which is the minimum time to be served before the Commonwealth Attorney-General (not Youth Justice) decides whether to make or refuse to make a parole order. A court can also decline to fix a non-parole period, which means the person must serve the full term in custody, if such an order is not appropriate.

For imprisonment orders a conviction must be recorded.



Information in this section is a simplified summary of section 8.4 'Children and young persons' and Chapter 5 'Commonwealth sentencing options' of the Commonwealth Director of Public Prosecutions, *Sentencing of federal offenders in Australia: a guide for practitioners* (4th ed, 2021).

For an adult, the sentencing factors and penalty types are different because the Commonwealth legislation must apply.

For more information see the [Queensland Sentencing Guide](#), Commonwealth Offences.

Further information

Department of Children, Youth Justice and Multicultural Affairs (Youth Justice)

Visit the Department's website for a range of information about sentencing and other aspects of the youth justice system in Queensland.

<https://www.cyjma.qld.gov.au/youth-justice>

Queensland Sentencing Advisory Council

Visit the Council's website to find out about sentencing in Queensland, sentencing reviews the Council is conducting at the Attorney-General's request, research publications, education resources, Sentencing Spotlights on certain offences, and details of sentencing events.

www.sentencingcouncil.qld.gov.au

Queensland Courts

Visit the Queensland Courts website for the daily court lists, courthouse contacts, and information about going to court.

www.courts.qld.gov.au

Legal Aid Queensland

Visit Legal Aid Queensland's website to help you understand your legal rights and options, what to do if you have been charged with an offence, and how to get legal help.

www.legalaid.qld.gov.au

Supreme Court Library Queensland

Visit the Supreme Court Library's website for decisions from Queensland Courts and Tribunals, judicial papers and profiles, and legal events.

www.sclqld.org.au

Appendix 1 Charter of youth justice principles

The charter of youth justice principles underpins the operation of the *Youth Justice Act 1992* (Qld).

YOUTH JUSTICE ACT 1992 (Qld)

SCHEDULE 1 - Charter of youth justice principles

1. The community should be protected from offences and, in particular, recidivist high-risk offenders.
2. The youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing.
3. A child being dealt with under this Act should be -
 - (a) treated with respect and dignity, including while the child is in custody; and
 - (b) encouraged to treat others with respect and dignity, including courts, persons administering this Act and other children being dealt with under this Act.
4. Because a child tends to be vulnerable in dealings with a person in authority, a child should be given the special protection allowed by this Act during an investigation or proceeding in relation to an offence committed, or allegedly committed, by the child.
5. If a child commits an offence, the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started.
6. A child being dealt with under this Act should have procedures and other matters explained to the child in a way the child understands.
7. If a proceeding is started against a child for an offence -
 - (a) the proceeding should be conducted in a fair, just and timely way; and
 - (b) the child should be given the opportunity to participate in and understand the proceeding; and
 - (c) the proceeding should be finalised as soon as practicable.
8. The youth justice system should give priority to proceedings for children remanded in custody.
9. A child who commits an offence should be -
 - (a) held accountable and encouraged to accept responsibility for the offending behaviour; and
 - (b) dealt with in a way that will give the child the opportunity to develop in responsible, beneficial and socially acceptable ways; and
 - (c) dealt with in a way that strengthens the child's family; and
 - (d) dealt with in a way that recognises the child's need for guidance and assistance because children tend to be dependent and immature.
10. A victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law.
11. A parent of a child should be encouraged to fulfil the parent's responsibility for the care and supervision of the child, and supported in the parent's efforts to fulfil this responsibility.
12. A decision affecting a child should, if practicable, be made and implemented within a timeframe appropriate to the child's sense of time.
13. A person making a decision relating to a child under this Act should consider the child's age, maturity and, where appropriate, cultural and religious beliefs and practices.
14. If practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.
15. Programs and services established under this Act for children should -
 - (a) be culturally appropriate; and
 - (b) promote their health and self respect; and
 - (c) foster their sense of responsibility; and
 - (d) encourage attitudes and the development of skills that will help the children to develop their potential as members of society.
16. A child being dealt with under this Act should have access to legal and other support services, including services concerned with advocacy and interpretation.
17. A child should be dealt with under this Act in a way that allows the child -
 - (a) to be reintegrated into the community; and
 - (b) to continue the child's education, training or employment without interruption or disturbance, if practicable; and
 - (c) to continue to reside in the child's home, if practicable.
18. A child should be detained in custody for an offence, whether on arrest, remand or sentence, only as a last resort and for the least time that is justified in the circumstances.
19. A child detained in custody should only be held in a facility suitable for children.
20. While a child is in detention, contacts should be fostered between the child and the community.

21. A child who is detained in a detention centre under this Act -
- (a) should be provided with a safe and stable living environment; and
 - (b) should be helped to maintain relationships with the child's family and community; and
 - (c) should be consulted about, and allowed to take part in making, decisions affecting the child's life (having regard to the child's age or ability to understand), particularly decisions about-
 - i. the child's participation in programs at the detention centre; and
 - ii. contact with the child's family; and
 - iii. the child's health; and
 - iv. the child's schooling; and
 - (d) should be given information about decisions and plans about the child's future while in the chief executive's custody (having regard to the child's age or ability to understand

and the security and safety of the child, other persons and property); and

- (e) should be given privacy that is appropriate in the circumstances including, for example, privacy in relation to the child's personal information; and
- (f) should have access to dental, medical and therapeutic services necessary to meet the child's needs; and
- (g) should have access to education appropriate to the child's age and development; and
- (h) should receive appropriate help in making the transition from being in detention to independence. *

*Example for paragraph (h) - help in gaining access to training or finding suitable employment.

Glossary

Accused	A person who has been charged with an offence but who has not yet been found guilty or not guilty. Also referred to as the defendant.
Acquittal/acquitted	A finding by a court that a person is not guilty of a criminal charge.
Agreed facts	Facts agreed to by the defence and the prosecution regarding the charges that are brought before the court. Usually presented after a plea of guilty.
Aggravating factors	Facts or details about the offence, the victim, and/or the offender that tend to increase the seriousness of the offence and the sentence received.
Alleged	What the prosecution says happened. If the matter proceeds to trial, the court (i.e. the magistrate, the judge, or the jury) will determine if it is proved beyond a reasonable doubt.
Antecedents	Background details about a child, such as age, family and upbringing, employment history, and criminal history (this usually includes details of past convictions and penalties).
Appeal	Review of all or part of a court's decision by a higher court.
Bail	The release of a child into the community until a court decides the charge/s against the person. Bail orders always include a condition that the child must attend court hearings. Additional conditions such as a requirement to live at a certain address, be at a certain address at certain times (curfew) or report to police may be added to a child's bail undertaking.
Beyond reasonable doubt	This is the standard of proof that the prosecution must meet before a person accused of a crime can be found guilty.
Breach	Failure to comply with the conditions of an order.
Case law	Law made by courts, including sentencing decisions and decisions about how to interpret legislation. This is also known as common law.
Caution	A diversion option used by police instead of starting court proceedings. A police officer (or, where appropriate, a respected Aboriginal or Torres Strait Islander community member) will explain to the child what they have done wrong.
Child	An individual under 18 years of age.
Childrens Court (Magistrates Court level)	A special court at the Magistrates Court level that deals with and hears offences committed by children. It is presided over by a Childrens Court magistrate, a magistrate or two Justices of the Peace.
Childrens Court (District Court level)	A special court at the District Court level that deals with children who commit serious criminal offences. It is presided over by a Childrens Court judge who is also a judge of the District Court, or a District Court judge.
Common law	Law made by courts, including sentencing decisions and decisions about how to interpret legislation. This is also known as case law.

Commonwealth offence	An offence committed against Commonwealth legislation, for which a Queensland court imposes a sentence. This includes offences such as Centrelink fraud, telecommunication offences, offences that occur at an airport or on an aircraft, terrorism, people smuggling, drug importation, and internet or child pornography material offences.
Committal proceeding	A preliminary examination by a magistrate of the prosecution's evidence against a child to determine whether there is enough evidence for the matter to go to trial in the Childrens Court (District Court level) or the Supreme Court.
Community Justice Group	Community Justice Groups (CJGs) are run by members of the local Aboriginal and Torres Strait Islander community. They provide submissions to courts on bail and sentencing. CJGs provide a community-based response to local issues, working cooperatively with magistrates, police, Youth Justice personnel, and staff from other government agencies.
Community service order	An order to do unpaid community service for a maximum of hours, usually within 12 months, and to comply with reporting and other conditions.
Compensation order	An order to pay for property taken or damaged, or compensate for loss or damage to property or for any personal injury suffered by a person.
Concurrent sentences	Individual sentences for each offence that are ordered to be served at the same time. This means the shortest sentence is subsumed into the longest sentence (also called the 'head sentence'). For example, two distinct prison sentences, one for five years and one for two years, served wholly concurrently would be a total of five years' imprisonment.
Conditional release order	An option used instead of actual detention where the court suspends the detention order and immediately releases the child to be supervised in the community and participate in a structured program for up to 3 months.
Conviction	A determination of guilt made by a court. A person is convicted if they plead guilty or are found guilty after a trial. When imposing a sentence, a court will decide whether to record a conviction.
Court of Appeal	A division of the Supreme Court, the Court of Appeal hears appeals against conviction, sentence, or both.
Criminal offences	These comprise crimes, misdemeanours and simple offences (that are also a type of 'summary offence').
Crown	The prosecution may be referred to as the Crown. In practice, the prosecution in the higher courts is conducted by the Office of the Director of Public Prosecutions.
Culpability	Culpability refers to blameworthiness – i.e. how morally responsible the person is for the offence and for the harm he or she caused.
Cumulative sentences	Individual sentences for each offence that are ordered to be served one after the other. For example, a child sentenced to 6 months' and to 3 months' detention for separate offences, ordered to be served cumulatively, would have to serve a total sentence of 9 months' detention.
Defendant	A person who has been charged with an offence but who has not yet been found guilty or not guilty. Can be used interchangeably with accused.
De Simoni principle	The principle that a person should only be sentenced for an offence he or she has been found guilty of (named after the High Court case that established the principle).
Detention order	An order that the child is detained for a certain period in a youth detention centre. Depending on which court sentences the child and in the higher courts, the offence, the maximum period a court can impose differs.
Discretion	Discretion means choice. For most offences heard in Queensland courts, sentencing outcomes are not automatic. This allows courts to choose the sentence that is most appropriate in each case, by weighing up all the different things the court must or may consider.
District Court	The District Court is the second tier of the Queensland court system after the Magistrates Courts. It deals with serious criminal offences such as rape, child sexual offending, armed robbery and many serious drug offences. The District Court can also hear an appeal against a sentence imposed in the Magistrates Court.
Diversion	A way of dealing with a child who is alleged to have committed an offence outside of the criminal justice or court system.
Evidence	Proof of an alleged fact. This can include what a witness says happened, documents (including recordings, text messages, drawings and photographs), things (e.g. a knife) and facts that a court accepts as evidence of facts in the case.
Factual basis of the plea	What the child admits to having done. This is different to the child's plea as they may plead guilty to the offence but disagree with the prosecution about what actually happened.

Fine	A penalty requiring that a child pay an amount of money within a specified time.
General sentencing principles	Principles developed under the common law and enshrined in statute law, that serve as guideposts to help Childrens Court judges and magistrates reach a decision on the sentence to impose. They include parity, totality, and the De Simoni principle.
Good behaviour order	A court order for the child to 'be of good behaviour' (not to break the law) for a set period (up to 1 year).
Good behaviour bond	A sentencing option for adults. A court order to appear before the court if called to do so and to 'be of good behaviour' (not to break the law) for a set period (up to 3 years). The offender and anyone acting as a 'surety' is required to pay an amount of money if the offender breaks the law or does not comply with other conditions of the order. Also known as recognisance.
Graffiti removal order	An order requiring the child to remove graffiti for a certain number of hours, usually within 12 months. Depending on the age of the child the maximum hours are between 5 and 20 hours.
Graffiti removal program	A police diversion option. Police can offer a 2-hour program to a child aged at least 12 who admits to a graffiti offence, instead of starting court proceedings.
Grounds of appeal	The reasons why the magistrate, judge or jury is said to have made a wrong decision. These reasons are argued in the appeal court.
Head sentence — imprisonment	The total period of detention imposed. A child will usually be released, before the entire head sentence is served.
High Court of Australia	The highest court in the Australian judicial system. The High Court only deals with legal matters of wider public importance and is not a sentencing court.
Higher courts	In Queensland, the higher courts comprise the District Court and the Supreme Court.
Imprisonment	Detention in prison for adults.
Indictable offences	Crimes and misdemeanours that must be dealt with in the Supreme Court or Childrens Court on indictment (a written charge bringing a person to trial in a higher court). Generally, crimes are more serious than misdemeanours. Some indictable offences can (or must) be dealt with summarily (by a Childrens Court (Magistrates Court level) in certain circumstances.
Indictment	A written document with the charge/s (each one being called a count) bringing a person to trial in a higher court.
Intensive supervision order	an order of up to 6 months for a child aged under 13 years at the time of sentence. The order requires the child to be supervised and to participate in programs as directed.
Judge	The person who hears the case and decides the sentence in the District Court, the Childrens Court, and the Supreme Court.
Jury	A group of 12 people selected at random from the general community. A jury decides whether the accused person is guilty or not guilty of the alleged offence.
Justice	A person appointed as a judge by the Governor-General in Council to the High Court of Australia; and a person appointed to the Supreme Court.
Legislation	Also called statute law, legislation is comprised of written laws either made or authorised by Parliament. There are two main categories of legislation: Acts, which are laws made by Parliament, and subordinate legislation (such as a Regulation) which is made by an entity under authority delegated by Parliament.
Life offence	An offence for which a person sentenced as an adult would be liable to life imprisonment (for example, murder, manslaughter or robbery if the person is or pretends to be armed, wounds or uses personal violence or is in company with others). This classification is important for the maximum penalty a court can impose in sentencing a child.
Magistrate	The person who hears the case and decides the sentence in a Magistrates Court or Childrens Court (Magistrates Court level).
Magistrates Courts	The first tier of the Queensland courts system. Most criminal cases are heard in these courts in some form.
Mandatory sentence	A sentence that is a fixed minimum penalty prescribed by Parliament for committing a criminal offence, allowing no discretion for the court to impose a lesser sentence.
Maximum penalty	The highest penalty that can be given to a person convicted of a particular offence.
Mitigating factor	A fact or detail about the offender and the offence that tends to reduce the severity of the sentence.

Non-custodial order	A sentencing order that does not involve the person being sentenced to imprisonment.
Non-parole period	The time a person serves in prison before being released on parole or becoming eligible to apply for release on parole.
Offender	A person who has been found guilty of an offence, or who has pleaded guilty to an offence.
Office of the Director of Public Prosecutions	The Office of the Director of Public Prosecutions represents the State of Queensland in criminal cases; also referred to as the prosecution or the Crown.
Parity (principle of parity)	Consistency between sentencing decisions involving co-offenders, which supports the principle of equality before the law.
Plea	The response by the accused to a criminal charge — 'guilty' or 'not guilty'.
Police drug diversion assessment program	Police can refer a child found in possession of a small amount of cannabis (not more than 50 grams) or a thing used for smoking cannabis, to an assessment, education and counselling session. At this session, participants are provided with information about the health impacts of illicit drug use and consequences of continued use, and assistance to stop using drugs.
Pre-sentence report	A document prepared for a court by Youth Justice, at the court's request, which provides information about the child and other matters to assist the court in sentencing.
Probation	An order where the child is supervised in the community and takes part in offence-focused programs and activities. Depending on which court imposes the order, the maximum duration is between 1 and 3 years.
Proportionality (principle of proportionality)	The principle that a sentence must be appropriate or proportionate to the seriousness of the crime.
Prosecution	A legal proceeding by the State of Queensland against an accused person for a criminal offence. Prosecutions are brought by the Crown (through the Office for the Director of Public Prosecutions or the Police Prosecution Corps).
Recognisance	A requirement to appear before a court if called to do so and to 'be of good behaviour' (not to break the law) for a set period (up to 3 years), which requires the person and anyone acting as a 'surety' to pay an amount of money if the offender breaks the law or does not comply with other conditions of the order. This is also known as a good behaviour bond.
Recording a conviction	If a child is sentenced, a court must decide whether or not to record a conviction. Recording a conviction gives the child a criminal record for the offence. A child offence conviction can only be used against that person as an adult if the conviction was recorded. If no conviction is recorded, it still forms part of the child's criminal history if they commit another offence as a child.
Regulatory offences	Less serious forms of offence that provide police with an alternative to charging a person with a criminal offence.
Relevant offence	An offence that, if committed by an adult, the person would be liable to 14 years' imprisonment (but there are some exceptions, for example, a burglary that involved stealing, where the child was unarmed and the value of what was taken was less than \$1,000). The classification is important for a court as it can impact the maximum penalty that can be imposed.
Remand	To place an accused child in custody awaiting further court hearings dealing with the charges against them. A child who has been denied bail, or not sought it, will be detained in a youth detention centre.
Reprimand	A formal warning given to the child by a court. A reprimand forms part of the child's criminal history for any later sentence proceedings.
Restitution	An order to restore property taken or damaged in the commission of an offence to its proper owner.
Restorative justice agreement	An agreement made between the child and the victim (or victim representative) during a restorative justice conference. The agreement can include an apology to the victim and actions the child will take to make up for the harm caused.
Restorative justice process	Involves the child attending a conference with a convenor. Other participants can include the victim, the child's parent, a police representative and if the child is an Aboriginal or Torres Strait Islander person, a respected person of the community. The aim of the conference is for the child to admit to the offence and reach an agreement on how they can make up for the harm caused (a restorative justice agreement). The child must then perform the tasks required in the agreement for the process to be successful.

Restorative justice process referral	A child can be referred to a restorative justice process by police (instead of starting court proceedings) or by a court. A referral by a court can be instead of sentencing a child (dismissal or court diversion referral), or before sentencing (pre-sentence referral). A restorative justice process can also be a sentencing option known as a restorative justice order.
Restorative justice order	A sentencing order imposed by the court requiring the child to participate in a restorative justice process and be supervised by Youth Justice for a maximum period of 12 months.
Sentence	The penalty that the court imposes on a child who has been found guilty of an offence.
Sentence review	A sentence review is a rehearing of a sentence imposed by a magistrate by a Childrens Court judge. It is a review on the merits conducted quickly and with as little formality as possible.
Sentencing factors	The factors that the court must take into account when sentencing.
Sentencing remarks	The reasons given by the Childrens Court judge or magistrate for the sentence imposed.
Serious offence	An indictable offence that, if committed by an adult, an adult would be liable to life imprisonment (for example, murder or manslaughter), or liable to 14 years imprisonment or more (for example, burglary or robbery). There are some exceptions and it is complex. A serious offence cannot be dealt with by a Childrens Court magistrate or other magistrate and must go to a higher court.
Simple offences	Generally, simple offences are minor offences that must be prosecuted within 12 months of the matter arising and are usually heard in a Childrens Court by a magistrate. Also a type of summary offence.
Special considerations	Special factors a court must take into account when sentencing a child. These include: a child's age is a mitigating factor in deciding whether to impose a penalty and the nature of the penalty, a sentence served in the community is better than detention in promoting the child's ability to reintegrate into the community, and a child's rehabilitation is greatly assisted by their family and opportunities to participate in educational programs and employment. It also includes the principle that a detention order should be made only as a last resort and for the shortest appropriate period.
Statute law	Laws (legislation) made by Parliament, such as the <i>Youth Justice Act 1992</i> (Qld).
Summarily	When an indictable offence is dealt with in the Childrens Court by a magistrate instead of going to a higher court to be dealt with there. Whether a charge can be dealt with summarily or must go to a higher court is complex and is stated in the Criminal Code.
Summary trial	When a child pleads 'not guilty' before a magistrate in the Childrens Court and has a trial. The magistrate will hear the evidence and decide whether the child is guilty or not guilty. The magistrate will explain why they have decided this.
Summary offences	An offence that can be dealt with by a magistrate or justices of the peace (including some indictable offences).
Supervised release order	An order for a child's release when a child is sentenced to a detention order. A child must be released after serving 70 per cent of the total detention period, unless the court orders release between 50 and 70 per cent because of special circumstances.
Supreme Court	The Supreme Court is the highest court in Queensland. It hears 'Supreme Court offences'. It comprises the trial division and the Court of Appeal.
Supreme Court offence	An offence for which the District Court does not have jurisdiction (power) to try an adult (for example, murder, manslaughter, unlawful striking causing death or trafficking in schedule 1 drugs).
Take no action	The police may take no action for a first or minor offence. The child can still be given an informal warning about their behaviour.
Totality (principle of totality)	The principle that when an offender is convicted of more than one offence, the total sentence should reflect the overall criminality of the offending.
Victim	A person who has suffered harm directly because of a criminal offence, or a family member or dependant of a person who has died or suffered harm because of a criminal offence.
Victim impact statement	A written statement made by a victim that states the harm the offence has caused the victim. It may include attachments such as medical reports, photographs, and drawings.
Youth Justice	The Department of Children, Youth Justice and Multicultural Affairs (Youth Justice) is the government department responsible for managing child offenders if supervision is required as part of bail, arranging a pre-sentence report if ordered, and supervising a child in detention and in the community under any court order. A representative will also be present in court for sentencing and can give information and make recommendations to the sentencing judge or magistrate.
Youth justice principles	A list of 21 fundamental principles contained in schedule 1 of the <i>Youth Justice Act 1992</i> (Qld) that underlie the operation of the Act (all of equal value).

Endnotes

¹ *Criminal Code Act 1899* (Qld) sch 1 ('Criminal Code').

² *Acts Interpretation Act 1954* (Qld) sch 1.

³ Before 12 February 2018, a 'child' for the purposes of the YJA, was a person who had not turned 17 years. This was changed by the *Youth Justice and Other Legislation (Inclusion of 17-year-old-Persons) Amendment Act 2016* (Qld), which amended the YJA by omitting the definitions of 'adult' and 'child' in schedule 4 of the YJA, thereby applying the definitions of these terms contained in the *Acts Interpretation Act 1954* (Qld). The amendment came into force on 12 February 2018. This meant that until this time, young people who were 17 were treated as adults for the purposes of sentencing.

⁴ *Criminal Code* (Qld) s 29.

⁵ *Ibid* s 29(2). *RP v R* (2016) 259 CLR 641.

⁶ Office of the Director of Public Prosecutions, *Director's Guidelines* (as at 30 June 2019) Guideline 6 'Capacity of child offenders – between 10 and 14 years'.

⁷ *RP v R* (2016) 259 CLR 641, 650–1 [12] (Kiefel, Bell, Keane and Gordon JJ).

⁸ *Ibid*.

⁹ Queensland Government Statistician's Office, Queensland Treasury, *Youth Offending: Research Brief* (2021) 7.

¹⁰ *Ibid*.

¹¹ *Ibid* 8.

¹² *Youth Justice Act 1992* (Qld) sch 1.

¹³ *Childrens Court Act 1992* (Qld) s 5(3). If the Childrens Court has two justices (a Justice of the Peace declared under the *Justices of the Peace and Commissioners for Declarations Act 1991* (Qld)) instead of a Childrens Court magistrate, their jurisdiction (power) is limited. They only hear and determine a charge of a simple offence where a child pleads guilty. They cannot make a detention or conditional release order. They may take or make a procedural action or order: *Youth Justice Act 1992* (Qld) s 67.

¹⁴ *Childrens Court Act 1992* (Qld) s 5(2).

¹⁵ *Ibid* s 5(2)(b).

¹⁶ *Criminal Code* (Qld) s 3.

¹⁷ *Ibid* s 659. This rule does not apply to drug offences: *Drugs Misuse Act 1989* (Qld) s 123.

¹⁸ *Youth Justice Act 1992* (Qld) s 8.

¹⁹ *District Court of Queensland Act 1967* (Qld) s 61.

²⁰ *Youth Justice Act 1992* (Qld) ss 176(2)–(3).

²¹ *Childrens Court Act 1992* (Qld) s 5(3). If the Childrens Court has two justices (a Justice of the Peace declared under the *Justices of the Peace and Commissioners for Declarations Act 1991* (Qld)) instead of a Childrens Court magistrate, their jurisdiction (power) is limited. They only hear and determine a charge of a simple offence where a child pleads guilty. They cannot make a detention or conditional release order. They may take or make a procedural action or order: *Youth Justice Act 1992* (Qld) s 67.

²² *Childrens Court Act 1992* (Qld) s 14(1).

²³ *Ibid* s 20(5)(b).

²⁴ *Ibid* s 5(2)(b).

²⁵ *Ibid* s 11(1).

²⁶ See *Ibid* ss 8A(1) and 9(1)–(2).

²⁷ *Youth Justice Act 1992* (Qld) ss 62, 99(1).

²⁸ *Ibid* s 100, *Criminal Code* (Qld) s 651.

²⁹ *Youth Justice Act 1992* (Qld) s 234.

³⁰ Referred to in the *Youth Justice Act 1992* (Qld) as 'Supreme Court offences'. This term is defined in Schedule 4 of the YJA to mean an offence for which the District Court does not have jurisdiction to try an adult because of section 61 of the *District Court of Queensland Act 1967* (Qld).

³¹ *Youth Justice Act 1992* (Qld) s 234.

³² Referred in the *Youth Justice Act 1992* (Qld) as 'life offences' as defined in Schedule 4.

³³ *Youth Justice Act 1992* (Qld) s 176(3).

³⁴ *Ibid* ss 176(6)–(7).

³⁵ *Ibid* s 141.

³⁶ *Ibid* ss 107–113.

³⁷ *Ibid* s 113.

³⁸ *Ibid* s 149.

³⁹ *Ibid* s 74.

⁴⁰ See *Public Guardian Act 2014* (Qld) ss 5, 13 and 52.

⁴¹ *Youth Justice Act 1992* (Qld) s 72.

⁴² *Ibid* sch 1 principle 11.

⁴³ *Ibid* s 69.

⁴⁴ *Ibid* s 70.

⁴⁵ *Ibid* s 72.

⁴⁶ *Ibid* s 258.

⁴⁷ *Ibid* sch 1 principle 10.

⁴⁸ *Ibid* s 150(1)(h).

⁴⁹ *Ibid* s 234.

⁵⁰ *Childrens Court Act 1992* (Qld) s 20(3)(c).

⁵¹ *Youth Justice Act 1992* (Qld) sch 1.

⁵² *Ibid* s 11(6).

⁵³ *Ibid* s 11(7).

⁵⁴ *Ibid* s 162(1).

⁵⁵ *Ibid* s 163.

⁵⁶ *Ibid* s 21.

⁵⁷ *Ibid* s 24A.

⁵⁸ *R v EI* [2011] 2 Qd R 237, 238 [1], [7] (Muir JA, White J agreeing at 244–5 [34], [38]–[39], Chesterman JA dissenting at 244 [30]–[31]).

⁵⁹ This came into force on 2 September 1990 and was ratified by Australia in December 1990.

- ⁶⁰ *Youth Justice Act 1992* (Qld) ss 150(1)(e)–(k).
- ⁶¹ *Ibid* s 150(3).
- ⁶² *R v W; ex parte Attorney-General* [2000] 1 Qd R 460.
- ⁶³ *R v LY* [2008] QCA 76, [31] (McMurdo P, Holmes JA and Mackenzie AJA agreeing) cited in Queensland Courts Service, *Youth Justice Benchbook* section 11.3.
- ⁶⁴ *Lowe v The Queen* (1984) 154 CLR 606, 609 (Gibbs CJ), 610–11 (Mason J); *Hili v The Queen* (2010) 242 CLR 520, 535 [49] (French CJ and Gummow, Hayne, Crennan, Kiefel, Bell JJ); and *Green v The Queen* (2011) 244 CLR 462, 472–3 [28] (French CJ, Crennan and Kiefel JJ).
- ⁶⁵ *R v De Simoni* (1981) 147 CLR 383, 389 (Gibbs CJ, Mason and Murphy JJ agreeing).
- ⁶⁶ See Criminal Code (Qld) ss 335, 339.
- ⁶⁷ *Markarian v R* (2005) 228 CLR 357, 388–90, [76]–[83] (McHugh J).
- ⁶⁸ University of Tasmania, The Jury Projects (2020). Available from <https://www.utas.edu.au/law/research/the-jury-projects> (accessed 25 May 2020). The possible exception to this is sentences for sex offence trials, particularly involving child victims under 12.
- ⁶⁹ Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process* (Report No 84, 29 July 2010).
- ⁷⁰ *Human Rights Act 2019* (Qld) ss 29(5), 32(2)(c).
- ⁷¹ ‘Right to protection against retrospective criminal laws’, Queensland Human Rights Commission (Web Page) < [Guide to the sentencing of children in Queensland 45](https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-protection-against-retrospective-criminal-laws#:~:text=The%20Human%20Rights%20Act%20protects,on%20Civil%20and%20Political%20Rights>.”</p>
<p>⁷² <i>Human Rights Act 2019</i> (Qld) s 28(1).</p>
<p>⁷³ <i>Ibid</i> s 28(3).</p>
<p>⁷⁴ Australian Law Reform Commission, <i>Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Final Report</i> (Report No. 133, 2017) [1.55] referring to a description adopted by the Victorian Commissioner for Aboriginal Children and Young People.</p>
<p>⁷⁵ <i>Youth Justice Act 1992</i> (Qld) s 150(1)(i).</p>
<p>⁷⁶ <i>Ibid</i> sch 1, principles 13 and 14.</p>
<p>⁷⁷ <i>Ibid</i> sch 1, principle 15(a).</p>
<p>⁷⁸ <i>Youth Justice Regulation 2016</i> (Qld) s 5.</p>
<p>⁷⁹ <i>Youth Justice Act 1992</i> (Qld) s 152(3).</p>
<p>⁸⁰ <i>Ibid</i> s 175(1)(a).</p>
<p>⁸¹ <i>Ibid</i> s 175(1)(b).</p>
<p>⁸² <i>Ibid</i> ss 175(1)(c) and 191.</p>
<p>⁸³ <i>Ibid</i> s 190.</p>
<p>⁸⁴ <i>Ibid</i> s 175(1)(da).</p>
<p>⁸⁵ <i>Ibid</i> s 34.</p>
<p>⁸⁶ <i>Ibid</i> s 35(1)(b).</p>
<p>⁸⁷ <i>Ibid</i> sch 4, definition of ‘restorative justice agreement’. See also s 36 for ‘conference agreement’.</p>
<p>⁸⁸ Department of Child Safety, Youth and Women, <i>Twelve Month Program Evaluation: Restorative Justice Project</i> (2018) 43–4.</p>
<p>⁸⁹ <i>Youth Justice Act 1992</i> (Qld) s 36(3).</p>
<p>⁹⁰ <i>Ibid</i> s 31(3).</p>
<p>⁹¹ <i>Ibid</i> s 38.</p>
<p>⁹² <i>Ibid</i> s 175(1)(db).</p>
<p>⁹³ <i>Ibid</i> s 192D(1)(c).</p>
<p>⁹⁴ <i>Ibid</i> s 192B.</p>
<p>⁹⁵ <i>Ibid</i> s 192A.</p>
<p>⁹⁶ <i>Ibid</i> s 193. In addition to mandatory requirements, a court can also order any additional conditions that the court considers necessary or desirable to prevent the child reoffending by committing the same or different type of offence: s 193(2).</p>
<p>⁹⁷ <i>Ibid</i> s 175(d)(i). There is also a power under s 185 of the Act for a Childrens Court judge to delegate sentencing power to a Childrens Court magistrate if the magistrate considers an appropriate sentence would be beyond the jurisdiction of the magistrate. Other criteria must also be met under this section before this delegation can be made.</p>
<p>⁹⁸ <i>Ibid</i> s 175(1)(d)(ii).</p>
<p>⁹⁹ <i>Ibid</i> s 176(1)(a).</p>
<p>¹⁰⁰ <i>Ibid</i> s 176A.</p>
<p>¹⁰¹ <i>Ibid</i>.</p>
<p>¹⁰² <i>Ibid</i> s 194A.</p>
<p>¹⁰³ <i>Ibid</i> s 176A(3).</p>
<p>¹⁰⁴ <i>Ibid</i> ss 175(1)(e) and 200(1).</p>
<p>¹⁰⁵ <i>Ibid</i> s 198.</p>
<p>¹⁰⁶ <i>Ibid</i> s 175(1)(e).</p>
<p>¹⁰⁷ <i>Ibid</i> s 175(1)(e)(i)–(ii).</p>
<p>¹⁰⁸ <i>Ibid</i> s 175(1)(f).</p>
<p>¹⁰⁹ <i>Ibid</i> s 203(1).</p>
<p>¹¹⁰ <i>Ibid</i> s 208.</p>
<p>¹¹¹ <i>Ibid</i> s 175(1)(g)(i).</p>
<p>¹¹² <i>Ibid</i> s 185.</p>
<p>¹¹³ <i>Ibid</i> s 176(3)(a)–(b).</p>
<p>¹¹⁴ <i>Ibid</i> s 176(2).</p>
<p>¹¹⁵ <i>Ibid</i> s 175(g)(ii).</p>
<p>¹¹⁶ <i>Ibid</i> s 227(1).</p>
<p>¹¹⁷ <i>Ibid</i> s 227(2). There are some exceptions to this: if the child has, at any time, been found guilty of a terrorism offence, is the subject of a Commonwealth control order, or the court is satisfied the child has promoted terrorism: s 227(3).</p>
<p>¹¹⁸ <i>Ibid</i> s 228(3).</p>
<p>¹¹⁹ <i>Ibid</i> s 252C.</p>
<p>¹²⁰ <i>Ibid</i> s 252D.</p>
<p>¹²¹ <i>Ibid</i> ss 175(3) and 220.</p>
<p>¹²² <i>Ibid</i> s 221.</p>
<p>¹²³ <i>Ibid</i> s 238.</p>
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¹²⁴ Ibid s 246.

¹²⁵ Ibid s 183.

¹²⁶ *R v SCU* [2017] QCA 198 [94] (Sofronoff P).

¹²⁷ *Youth Justice Act 1992* (Qld) s 116.

¹²⁸ [2017] QCA 198.

¹²⁹ *Youth Justice Act 1992* (Qld) s 235.

¹³⁰ Ibid ss 181(b), 253, 254(3).

¹³¹ Ibid ss 181(b), 253, 254(4).

¹³² Ibid s 177.

¹³³ Ibid s 180(2).

¹³⁴ Ibid s 180(3).

¹³⁵ See ss 178–178C, 180–180A.

¹³⁶ Ibid ss 212–3.

¹³⁷ Ibid s 214.

¹³⁸ Ibid s 218.

¹³⁹ Ibid s 218(2).

¹⁴⁰ Ibid s 155.

¹⁴¹ Ibid s 176(6).

¹⁴² Ibid s 233.

¹⁴³ Ibid s 118.

¹⁴⁴ Ibid s 122.

¹⁴⁵ Ibid s 122(3).

¹⁴⁶ *Justices Act 1886* (Qld) s 222.

¹⁴⁷ Ibid s 222(2)(c).

¹⁴⁸ *Youth Justice Act 1992* (Qld) s 116. See also *District Court Act 1967* (Qld) s 118.

¹⁴⁹ Commonwealth Director of Public Prosecutions, *Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process* (2021) 7 [2.15]–[2.18]. Other factors which may be considered are at 5–6 [2.10].

¹⁵⁰ See *Crimes Act 1914* (Cth) s 20C. This section provides: ‘A child or young person who, in a State or Territory, is charged with or convicted of an offence against a law of the Commonwealth may be tried, punished or otherwise dealt with as if the offence were an offence against a law of the State or Territory’.

¹⁵¹ Ibid s 19B.

¹⁵² Ibid.

¹⁵³ Ibid s 20(1)(a).

¹⁵⁴ Ibid s 20(1)(b).

¹⁵⁵ Ibid ss 4B, 4D.

¹⁵⁶ Ibid s 20AB; *Crimes Regulations 2019* (Cth) reg 15.

¹⁵⁷ *Crimes Act 1914* (Cth) div 3.

¹⁵⁸ Ibid ss 20(1)(b), s 19AC.

¹⁵⁹ Ibid s 19AC(3).

¹⁶⁰ Ibid s 19AC(4).

¹⁶¹ Ibid s 19AB.

¹⁶² Ibid s 19AB(3).



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