

Youth Justice: Rights & Dignity


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What is Youth Justice?

Like adults, children can be charged with criminal offences.

The law relating to children is commonly referred to as Youth Justice.

Topics this presentation covers:

- Governing legislation
 - Principles
 - Doli Incapax
 - Diversionary options
 - Sentencing options
 - Rights & dignity in practice
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Legislation

Legislation

Children's Court Act 1992

- Children's Court is a specialist court established under this Act
- Its jurisdiction deals with young people aged 10 – 17 accused of criminal offences
- Jurisdictions:
 - Children's Court (Magistrate)
 - Children's Court of Queensland (District Court Judge)
 - Supreme Court (Supreme Court Justice)

Youth Justice Act 1992

- Charter of principles
- Procedures and regimes for children
- Sentence options

NB: Children are charged with the same offences as adults: *Criminal Code Act 1899*, *Summary Offences Act 2005*, *Police Powers and Responsibilities Act 2000* etc

YJ Principles

Youth Justice principles

Charter of Youth Justice Principles – Schedule 1 to *Youth Justice Act*

1. Community should be protected from offences and recidivist offenders
2. **A child should be held accountable in a way that recognises the impact of their offending on victims**
3. YJ system should uphold rights of children, keep them safe, and promote their physical and mental wellbeing
4. A child should be treated with respect and dignity, and be encouraged to treat others this way
5. A child, because they are vulnerable, should be given special protection by this Act during investigations or court proceedings
6. A child should be treated in a way that diverts them from the justice system (except if criminal justice is required due to their history or seriousness of the crime)

Youth Justice principles – continued

6. *A child should be treated in a way that diverts them from the justice system (except if criminal justice is required due to their history or seriousness of the crime)*
7. A child should have procedures and other matters explained in a way that they understand
8. Proceedings should be fair, just, and timely. The child should be offered to participate in proceedings. The proceeding should be finalised as soon as practicable.
9. The YJ system should give priority to children in custody.
10. A child should be held accountable and take responsibility. They should be dealt with in a way that helps them develop, strengthens their family, and recognises their need for guidance and assistance.
11. A victim should be given the opportunity to participate in a lawful way.
12. A parent should be encouraged to fulfil their responsibility for care and supervision of the child.
13. A decision affecting a child should be made and implemented within a timeframe appropriate to the child's sense of time.

Youth Justice principles – continued

13. *A decision affecting a child should be made and implemented within a timeframe appropriate to the child's sense of time.*
14. A person making a decision under this Act should consider the child's age, maturity, cultural and religious beliefs and practices
15. If practicable, a child of Aboriginal or Torres Strait Islander descent should be dealt with in a way that involves the child's community
16. Programs/services should be culturally appropriate, promote health and respect, foster responsibility, and encourage the children to develop attitudes/skills
17. A child should have access to legal and other support services
18. A child should be dealt with in a way that allows them to reintegrate into the community, continue their education and training, and reside at home
- ~~19. A child should only be detained in custody as a last resort~~
20. A child in custody should only be held in a facility suitable for children (now 19)
21. While a child is in detention, contacts should be fostered between the child and the community (now 20)

Youth Justice principles – continued

21. A child who is detained in a detention centre should:

- be provided safe and stable environment
- be helped to maintain relationships with family and community
- be consulted about decisions affecting their life (programs, family, health, schooling)
- be given information about decisions and plans for their future whilst in custody
- be given privacy that is appropriate
- have access to dental, medical and therapeutic services
- have access to education
- receive appropriate help in making the transition from being in detention to independence.

Doli Incapax

Doli Incapax

What is *doli incapax*?

- Incapable of deceit
- A child under the age of 10 cannot be held criminally responsible
- A child under the age of 14 is presumed not to be criminally responsible
- S 29 *Criminal Code Act 1899* (Qld)

What does it look like in practice?

- Children aged 10 to 14 *can* be charged with criminal offences
- Prosecution bear the onus of rebutting the presumption
- Prosecution can do this by leading evidence that the child had capacity to know they should not do the criminal act
- Doli Incapax can be used as a defence – Prosecution must prove capacity in addition to the elements of the charge beyond a reasonable doubt

Doli Incapax

What can be used as evidence to rebut the presumption?

- Prior convictions
- Evidence of questioning by police about prior offences (e.g. past ROI)
- Evidence of prior dealings with police
- Education – level of reading/writing
- Absence of illness/medication
- Information from parents

What about how serious the charge is?

“The mere commission of the offence is not, of itself, sufficient to rebut the presumption”

C (A Minor) [1995] 2 CrAppR 166 at 187

“No matter how obviously wrong the act constituting the offence may be, the presumption cannot be rebutted merely as an inference from doing the act”

RP v The Queen [2016] HCA 53; 259 CLR 641 at 9.

**Diverting children away
from the justice system**

Diversionary options

Implementing principle 6: diverting a child from the criminal justice system

A police officer, before starting a proceeding against a child for an offence (other than a serious offence) must first consider whether it is appropriate to do one of the following:

- Take no action
- Administer a caution to the child
- Refer the offence to Youth Justice Services for a restorative justice process
- Offer the child drug diversion (if the offence is eligible to be referred)
- Give the child an opportunity to attend a graffiti removal program

Section 11 *Youth Justice Act 1992 (Qld)*

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Diversionary options

What should police consider?

- The circumstances of the offence
 - Whether it is of a serious nature
 - Whether it was committed in company with other people
 - Whether the child is an active participant or not
 - Over what period the offence was committed
 - Whether there are any injuries/damage/loss suffered by the victim of the offence
- The child's police/criminal history
- Whether the child has received any previous cautions and if the child has been otherwise dealt with for an offence, and how they were dealt with for that offence

Sentencing

Sentencing options

Court options after child pleads guilty or is found guilty of an offence

Court ordered diversions:

- Dismissal and caution – s 21
- Dismissal and referral to restorative justice – s 24
- Court diversion restorative justice referral – s 164
- Court ordered drug diversion – s 172

Sentencing options

Court options after child pleads guilty or is found guilty of an offence

Court-based sentences:

- Reprimand – s 175(1)(a)
- Good behaviour order – ss 175(1)(b), 188, 189
- Restorative justice order – ss 175(1)(da) & (db), 192A-192D
- Probation – ss 175(1)(d), 193 – 194
- Graffiti removal order – ss 176A, 194A-194L
- Community service order – ss 175(1)(e), 195-202
- Intensive supervision orders – ss 175(1)(f), 203-206
- Conditional release orders – ss 175(3), 221
- Detention – ss 175(1)(g), 176

*monetary orders (fines/compensation/restitution) are rare

Sentencing – adult crime, adult time

Children can now receive the same penalty as an adult for:

- Unlawful use of a motor vehicle
- Unlawful entry of a motor vehicle
- Dangerous operation of a motor vehicle
- Break and enter premises
- Burglary
- Robbery
- Serious assault
- Wounding
- Acts intended to cause grievous bodily harm
- Grievous bodily harm
- Unlawful striking causing death
- Manslaughter
- Murder

Adult time, adult crime – Making Queensland Safer Bill 2024

What else has changed?

- Juvenile criminal histories are admissible in adult proceedings
 - *If there is an entry within the last 5 years, the history becomes admissible*
- If you turn 18 in detention, you will be transferred to an adult prison
 - *Previous laws included ability to oppose transfers, to apply to a court for a review of a decision to transfer a person to adult prison*
- More people allowed in Children's Court
 - *Victim, victim's relative or representative, media*
- Mandatory sentencing applies to some matters
 - Eg – an adult charged with common assault (whilst adversely affected) would be required to perform mandatory community service as part of their sentence. Previously, this mandatory sentence did not apply to children in the same way. Now it does.*

Rights & dignity in practice

Rights & dignity

What does it look like in practice?

- Children in watch houses
- Children in detention
 - Separation and 'night mode'
- Show cause – not entitled to bail for certain offences/circumstances
- Media and victims in the court room
- Non-publication of names
- Taking instructions from children

Youth Justice resources

Legislation

- *Children's Court Act 1992*
- *Youth Justice Act 1992*

Legal Aid resources

- Youth Legal Aid Hotline – 1800 LAQ LAQ
- Youth Justice Practitioner's Guide
- Duty Lawyer Handbook

Other resources

- Youth Justice Benchbook (QLD Courts)
- Guide to sentencing of children in QLD (QLD Sentencing Advisory Council)

Questions?