

# PRACTICE GUIDE

## Youth Justice: concepts and definitions

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### An overview

The Department of Children, Youth Justice and Multicultural Affairs (Youth Justice) is responsible for:

- the administration of the *Youth Justice Act 1992*.
- the management of:
  - youth detention centres
  - youth justice service centres
  - youth justice conferencing, and
  - court services specific to youth justice proceedings.
- undertaking intervention with children involved in the youth justice system.

### **Youth Justice Act 1992**

The *Youth Justice Act 1992*, schedule 1, incorporates the Charter of juvenile justice principles, which includes:

- The youth justice system should uphold the rights of children, keep them safe and promote their physical and mental well-being.
- 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.
- If practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.

## Youth Justice concepts and definitions

### Alternatives to proceeding against the child

Before starting a proceeding against a child for an offence, other than a serious offence, a police officer must consider whether it would be more appropriate to do one of the following:

- Take no action.
- Administer a caution to the child.
- Refer the child to Youth Justice for a restorative justice process.
- Offer the child an opportunity to attend a drug diversion assessment program, if the offence is a minor drugs offence within the *Police Powers and Responsibilities Act 2000*.

### Caution

A police officer is able to administer a caution to the child, instead of bringing the child before a court for the offence, as a way of diverting a child who commits an offence from the criminal justice system.

**Child**

A person between the ages of 10 and 17 years.

**Child's community**

As defined by the *Youth Justice Act 1992*, means the child's Aboriginal or Torres Strait Islander community, whether it is:

- an urban community
- a rural community
- a community on DOGIT land under the *Aboriginal Land Act 1991*, or the *Torres Strait Islander Land Act 1991*.

**Bail**

Refers to the release of a defendant charged with an offence – the release may occur with or without bail – and if a child is being, or has been, granted bail, conditions may be applied to the grant of bail. These conditions may include a curfew, to reside at an address or to report to the QPS.

Before granting a young person bail, the Court must first consider whether a parent, guardian or other person has indicated a willingness to do one or more of the following:

- support the young person to comply with the conditions of their bail
- advise Youth Justice or the QPS of any changes in circumstances that may affect the young person's ability to comply with the bail conditions
- advise Youth Justice or the QPS of any breaches of bail by the young person.

**Bail and custody of children**

Decisions relating to a child in custody in connection with an offence may include:

- whether to release the child or keep the child in custody
- if releasing the child, whether to release the child without bail or grant bail to the child
- if the child is being, or has been, granted bail the conditions that should apply to the grant of bail.

**Bail support services**

Bail Support Services are varying non-government organisations funded by Youth Justice across multiple locations in Queensland. Bail Support Services are designed to assist young people to be released on bail and successfully remain in the community, until their charges are dealt with by:

- Targeting young people who the court believes are most likely not to comply with their bail conditions as a result of lack of support.
- Providing supports to enable a young person to find and maintain stable accommodation and assisting them to meet their bail conditions.
- Providing intensive support to young people and their families, including community-based accommodation options.

**Community based order**

A probation order, graffiti removal order, community service order, intensive supervision order, conditional release order or restorative justice order.

## Complaint and summons

A proceeding against a child for an offence, other than a serious offence, must be started by way of complaint and summons.

## Conditions of release on bail

If a court or police officer decides to grant bail to a child who is being held in custody in connection with a charge of an offence, the court/officer must either:

- Release the child on the child's own undertaking, without sureties and without deposit of money or other security.
- Unless the court/officer is satisfied it would be inappropriate in all the circumstances, consider the conditions for the release of the child on bail in the following sequence:
  - Release the child on the child's own undertaking with a deposit of money or other security of stated value.
  - Release the child on the child's own undertaking with a surety or sureties of stated value.
  - Release the child on the child's own undertaking with a deposit of money or other security of a state value and surety or sureties of state value.

## Conviction

Is defined in the *Bail Act 1980* to include a:

- finding of guilt
- finding that a person is not guilty by reason of unsoundness of mind
- conviction of an offence for which an order is made, either:
  - requiring the person to perform unpaid community service, or
  - discharging the person absolutely or conditionally.

## Custody of child pending court appearance

Until brought before a court, a child arrested on a charge of an offence or a warrant issued under the *Youth Justice Act 1992*, who is not released from custody must (wherever practicable) be placed in a detention centre until brought before a court.

## Dual orders

A child who is concurrently subject to an order under the *Child Protection Act 1999* and a youth justice order or program, is a child subject to dual orders.

## Finding of guilt

A finding of guilt, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

## Identifying particulars

A police officer may apply to a Childrens Court magistrate to have all or any of the identifying particulars of the child taken, for example, fingerprints or handwriting.

## Indictable offence

An indictable offence is an offence where the defendant has the right to trial by jury. The majority of indictable offences must be heard in the District Court or the Supreme Court.

**Keep the child in custody**

Includes, for a court, remand the child in custody.

**Parent**

A parent, as defined by the *Youth Justice Act 1992* is:

- a parent or guardian of a child
- a person who has lawful custody of a child other than because of the child's detention for an offence or pending a proceeding for an offence
- a person who has the day-to-day care and control of a child.

**Prescribed indictable offence**

The *Youth Justice Act 1992* provides that a prescribed indictable offence means:

- (a) a life offence, or
- (b) an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more, other than an offence against the Drugs Misuse Act 1986, section 9(1) for which the maximum penalty is 15 years imprisonment, or
- (c) an offence against any of the following provisions of the Criminal Code—
  - (i) section 315A
  - (ii) section 323
  - (iii) section 328A
  - (iv) section 339
  - (v) section 408A(1), if the offence involves a motor vehicle and the child charged with the offence was allegedly the driver of the motor vehicle
  - (vi) section 408A(1A) or (1B)
  - (vii) section 412.

**Show cause**

The *Youth Justice Act 1992* provides that where a young person is charged with a prescribed indictable offence that was alleged to have been committed whilst on bail for another indictable offence, there will be an onus on them (through their lawyer) to show cause why their release is justified.

**Pre-sentence report**

Before it sentences a child found guilty of an offence, a court may order the chief executive, Youth Justice, to give to the court a pre-sentence report concerning the child and containing specified information, assessments and reports relating to the child or the child's family or other matters.

**Release of child without bail**

A police officer may release a child without bail, into the custody of the child's parents or release the child to go at large – courts can also allow a young person to go at large.

**Serious offence**

Is a life sentence or an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more.

**Service provider**

Is defined by the *Child Protection Act 1999* as a 'prescribed entity' or another person providing a service to children or families.

**Starting a proceeding**

When a police officer starts a proceeding against a child for an offence including:

- obtaining a warrant for the arrest of a child on a charge for an offence
- arresting a child for an offence without a warrant.

**Support person**

As defined by the *Police Powers and Responsibilities Act 2000*, schedule 4 is:

- For an Aboriginal or Torres Strait Islander child who is at least 17 years:
  - an adult relative or another adult chosen by the person
  - a lawyer acting for the person
  - a representative of a legal aid organisation
  - a person whose name is included in a list of support persons and interpreters.
- for a child:
  - a parent or guardian of the child
  - a lawyer acting for the child
  - a person acting for the child who is employed by an agency whose primary purpose is to provide legal services
  - an adult relative or friend of the child who is acceptable to the child
  - if the child is Aboriginal or Torres Strait Islander and no-one previously mentioned is available - a person whose name is included in the list of support persons and interpreters.
  - if no-one previously mentioned is available - a justice of the peace, other than a justice of the peace who is a member of the QPS or a justice of the peace (commissioner for declarations).
  - for a person with impaired capacity - a parent or another adult who provides or is able to provide support necessary to help care for the person by looking after or managing the person's interests.

**Youth Justice orders or programs**

Children found guilty of offences may be subject to the youth justice orders outlined below.

**Sentence orders – general**

Under the *Youth Justice Act 1992*, section 175, when a child is found guilty of an offence before a court, the court may:

- reprimand the child.
- order the child to be of good behaviour for a period not longer than one year.
- order the child to pay a fine of an amount prescribed under an Act in relation to the offence.
- order the child to be placed on probation for a period not longer than:
  - One year, if the court is not constituted by a judge.
  - Two years, if the court is constituted by a judge and the child is not found guilty of a 'serious offence.'

- If a restorative justice agreement is made as a consequence of a presentence referral relating to the child—order the child to perform his or her obligations under the agreement; or
- order that the child participate in a restorative justice process as directed by the chief executive.
- order the child, if the child has attained the age of 13 years at the time of sentence, to perform unpaid community service for a period not longer than:
  - 100 hours, if the child has not attained the age of 15 years at the time of sentence.
  - 200 hours, if the child has attained the age of 15 years at the time of sentence.
- make an intensive supervision order for the child, if the child has not attained the age of 13 years at the time of sentence, for a period of not more than six months.
- Order that the child be given a detention order, with or without a conditional release order, for a period not more than:
  - one year, if the court is not constituted by a judge
  - the shorter period of the following, if the court is constituted by a judge and the child is not found guilty of a serious offence:
    - half the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve
    - five years.

### **Sentence orders – serious offences**

The *Youth Justice Act 1992*, section 176, provides for a range of sentence orders where a child is found guilty of a serious offence (before a court presided over by a judge), including:

- An order that the child be placed on probation, for a period not longer than three years.
- A detention order against the child, either with, or without, a conditional release order.

The *Youth Justice Act 1992*, section 219, provides for a final option instead of the detention of a child by allowing a court to immediately release the child into a structured program with strict conditions – conditional release order.

### **Other orders**

In addition to general and serious offence sentence orders, the court may make other orders such as restitution and compensation – *Youth Justice Act 1992*, section 181 and 235.

### **Release after fixed period of detention**

The *Youth Justice Act 1992*, section 227, provides for the release of a child after service of a period of detention. At the end of the period after which a child is required to be released under section 227, the chief executive of Youth Justice must make an order – supervised release order – releasing the child from detention.

### **Orders against parents**

In specified circumstances, the court may direct a parent/s of a child offender to pay compensation for the offence. The *Youth Justice Act 1992*, section 258, provides the circumstances in which this may be considered by the court.

The chief executive cannot be ordered to pay compensation, where the offending child is currently subject to an order under the *Child Protection Act 1999* granting guardianship to the chief executive.

### Youth justice conference

A youth justice conference may be held when:

- A diversionary referral is made by the QPS as an alternative to bringing the child before a court and starting proceedings for an offence.
- A court refers the child to participate in a restorative justice process instead of sentencing the child.
- A referral to a conference, before sentencing, is made by a court, to assist in the sentencing process.
- A court sentences a child to a restorative justice order.

An approved convenor facilitates the conference and part of their role is to identify, meet and prepare relevant parties for the conference process.

### Conditional bail programs

Youth Justice is responsible for the administration of conditional bail programs, which enable a child to be released on bail and to successfully remain in the community until their charges have been dealt with. Young people granted bail with a conditional bail program will have a youth justice caseworker and will be required to engage in programs as directed by their caseworker.

### Youth Justice court proceedings

When a child is subject to a child protection order under the *Child Protection Act 1999*, and the child is in the custody or guardianship of the chief executive, the chief executive meets the definition of parent as set out in the *Youth Justice Act 1992*.

When a child is subject to a child protection order granting custody or guardianship to a suitable person or a suitable family member **or** a child with a long-term guardian or permanent guardian, the guardian is considered the child's parent as set out in the *Youth Justice Act 1992*.

The *Youth Justice Act 1992*, section 69, outlines the general **requirement that a parent of a child be present at court**. In addition, the following provisions apply in relation to youth justice court proceedings:

- section 70: Gives the court the power to order a parent to attend proceedings.
- section 71: Outlines the provisions for a matter to be reopened if an order is made when a parent is not present.
- section 72: Outlines the court's obligation to ensure that a parent has the opportunity to be heard and participate in proceedings, and that they understand matters relating to the child's court appearance.

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## Version history

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