



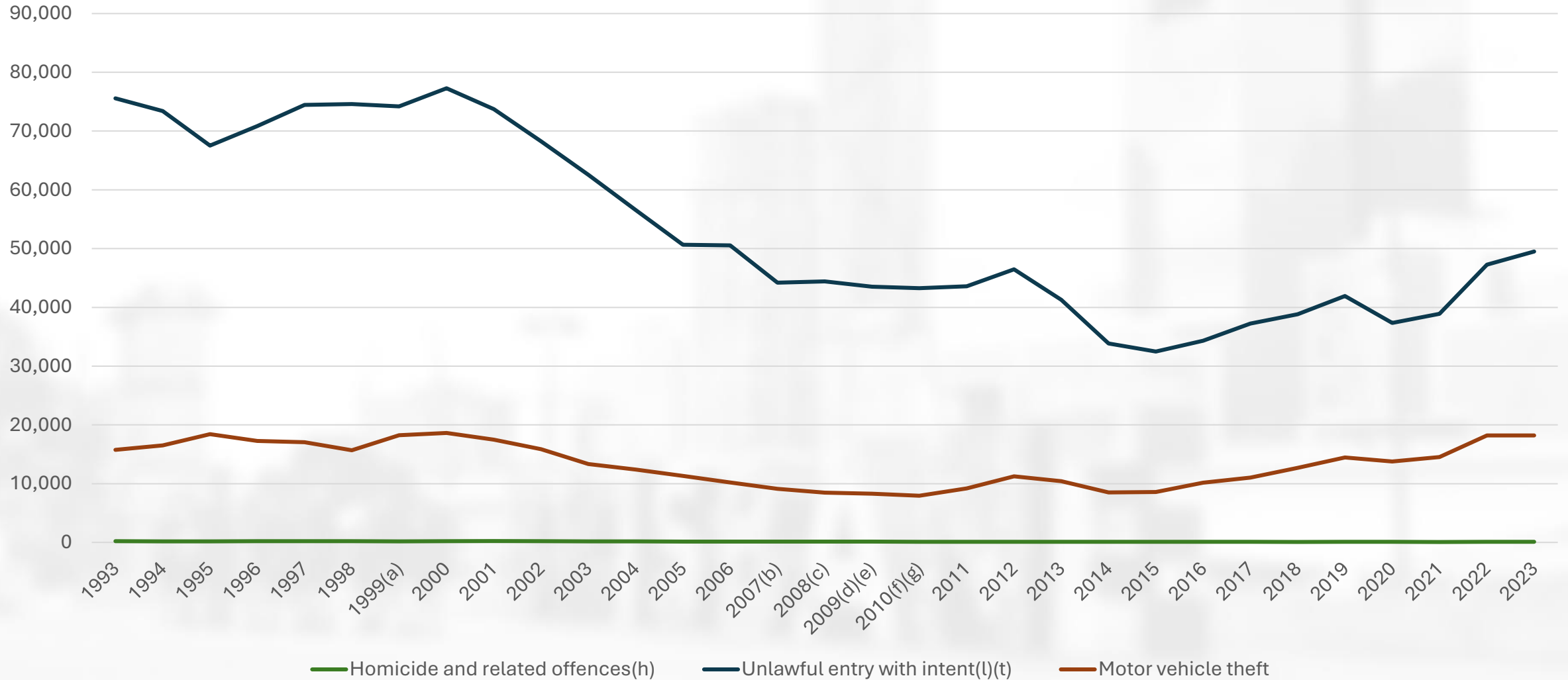
YOUTH
ADVOCACY
CENTRE INC

Get the Facts Straight:

A Layman's Guide to Youth Justice Laws in Queensland

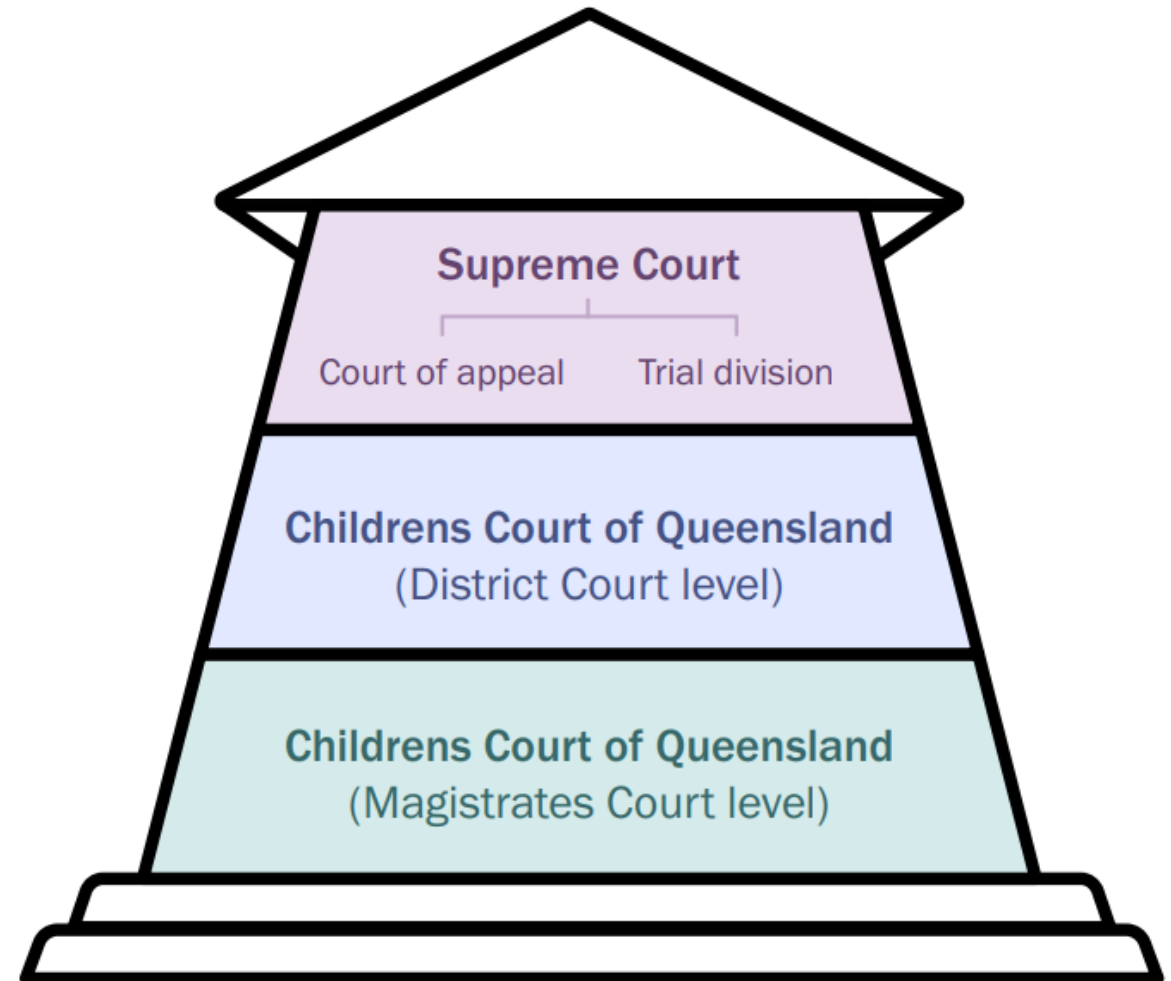
Presented by: **Katherine Hayes & Damian Bartholomew**

Recorded Crime: Victims, Selected offences Queensland, 1993–2023 (ABS)



Courts that deal with children charged with an offence

Source: QSAC Guide to Sentencing of Children in Queensland, 2024



“Criminal responsibility for a child under 14 years is based on a common law presumption known as **‘doli incapax’** which means ‘incapable of crime’ or doing wrong.”

Source: QSAC Guide to Sentencing of Children in Queensland, 2024

Diversions



Police



Police
diversion



Court



Court
diversion



Sentencing

Source: QSAC Guide to Sentencing of Children in Queensland, 2024

Getting bail

Children **must** be kept in custody if the police (before first court appearance) or court (after first court appearance) are satisfied that there is an **unacceptable risk** that:

1. The child will commit an offence that would endanger others, and the bail conditions will not be able to address that risk;
2. The child will not attend court, or will commit an offence, interfere with witnesses, or obstruct justice.

The police and courts **must** consider a wide range of factors.

In addition, a child **must not** be granted bail if they are charged with serious offences such as murder, manslaughter, rape or robbery while on bail, and are unable to show cause why they should be released.

Breach of bail conditions

Breaching bail is a criminal offence, with a maximum penalty of one year detention.

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).

Many of the youth justice principles are based on Australia's obligations under the United Nations Convention on the Rights of the Child.

Youth Justice Act 1992 (Qld) Charter of youth justice principles:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21

1 The community should be protected from offences and, in particular, recidivist high-risk offenders.

Youth Justice Act 1992 (Qld) Charter of youth justice principles:

1 2 3 4 **5** 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21

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.

Youth Justice Act 1992 (Qld) Charter of youth justice principles:

1 2 3 4 5 6 7 8 **9** 10 11 12 13 14 15 16 17 18 19 20 21

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

Youth Justice Act 1992 (Qld) Charter of youth justice principles:

1 2 3 4 5 6 7 8 9 **10** 11 12 13 14 15 16 17 18 19 20 21

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.

Youth Justice Act 1992 (Qld) Charter of youth justice principles:

1 2 3 4 5 6 7 8 9 10 **11** 12 13 14 15 16 17 18 19 20 21

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.

Youth Justice Act 1992 (Qld) Charter of youth justice principles:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 **17** 18 19 20 21

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.

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 child's ability to reintegrate into the community is better supported through a sentence served in the community (a non-custodial order) than detention
- 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 that 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. For more information, see 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
- the fitting proportion between the sentence and the offence (this is the common law principle of proportionality)

Other factors cont.

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

- 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
- the hardship any sentence would have on a child due to their personal characteristics, including disability, gender identity, parental status, race, religion, sex, sex characteristics and sexuality
- the probable effect any sentence would have on another person, such as:
 - a person of a family relationship with whom the child is their primary caregiver
 - a person with whom the child is in an informal care relationship, and
 - if the child is pregnant, the child of that pregnancy.⁸²
- if the child is sentenced for a 'relevant serious offence' against a pregnant person that resulted in the unborn child's life being destroyed, this is an aggravating factor unless there are exceptional circumstances.

A 'relevant serious offence' is an offence of murder, manslaughter, grievous bodily harm, wounding, dangerous operation of a vehicle, assaults occasioning bodily harm and careless driving of motor vehicles.

Mitigating factors

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 include:

- 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 (such as Foetal Alcohol Syndrome Disorder, Attention Deficit Hyperactivity Disorder or schizophrenia)
- whether the child pleaded guilty, and the stage in the proceedings that this occurred
- the effect of or exposure to domestic violence on a child and if that can be attributed in whole or part to the commission of an offence by the child.

Aggravating factors

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 include:

- 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 fake weapon or pretending to have a weapon
- committing the offence as part of a group (called in company)
- the degree of any violence and harm caused
- committing the offence while on bail or while the child was subject to a court order
- if the child is sentenced for a 'relevant serious offence' against a pregnant person that resulted in the unborn child's life being destroyed, this is an aggravating factor unless there are exceptional circumstances, and
- if a 'relevant serious offence' committed resulted in an unborn child's life being destroyed.

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

Serious Repeat Offender

If a court is sentencing a child for a **'prescribed indictable offence'**, the court may declare the child is a **'serious repeat offender'**.

A 'prescribed indictable offence' 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.

It also includes choking, suffocation or strangulation in a domestic setting, wounding, dangerous operation of a vehicle, assaults occasioning bodily harm, unlawful use or possession of motor vehicles or if the vehicle was used for an indictable offence, attempted robbery, or entering premises with intent to commit an indictable offence.

Convictions recorded

Although the Youth Justice Act provides a presumption that a conviction will not be recorded the court does however have discretion to record a conviction after considering the

- Nature of the offence
- The age of the young person and any previous convictions
- The impact this will have on rehabilitation or finding employment

Any offence that a conviction is recorded on will be told to adult court on sentence for any adult offending

Conviction and history

Regardless if a conviction is recorded all Childrens Court history for finalised offences is able to be considered for any adult making an application for bail.

All police and court diversions – including cautions, restorative justice process and drug diversion are available to a court when considering bail for any young person appearing in the Childrens Court.

Questions

Do you have any questions about the Youth Justice system?

Do you work with young people?

YAC is currently updating our 'Laying Down the Law' course which covers important laws for professionals working with young people in Queensland, as well as providing a decision-making framework.

Contact us at elearn@yac.net.au or via our website if you would like to be notified when the update is launched.