Children and the Criminal Law

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Introduction

Queensland's *Criminal Code Act 1899* (Qld) (Criminal Code) contains most of the offences that make up the criminal law in Queensland. It also provides that the criminal law applies to any person who has reached the minimum age of criminal responsibility (MACR). The MACR in Queensland and across Australia is 10 years.

If a child aged 10 or older is alleged to have broken the law, they can be prosecuted and sentenced if found guilty. If the child is aged 17 or under, this happens within the youth justice system. Once a person turns 18 they are dealt with in the adult system. However, as will be discussed, child offenders (those aged 10 to17 years) are not dealt with very differently to adult offenders.

There is currently discussion across Australia as to whether it is appropriate to prosecute someone as young as 10. The United Nations Committee on the Rights of the Child recommended in 2019 that the age should be lifted to 14 years. The majority of the world has a lower limit of 12 years or above, with 14 years being common.

Children are not miniature adults. The human brain is undeveloped at birth. The developing brain is directly influenced by early environmental enrichment and social experiences. Experiences can change the brain throughout life, but experiences in the first three years of life organise the brain. The experiences an infant has are crucial. Experience wires the brain and ongoing repetition strengthens the wiring.

The next critical stage is when the brain of the adolescent undergoes remodelling, transforming it into the adult brain—a process that takes until at least 24 years of age in healthy development. The emotional part of the teen brain has more intense responses than that of an adult because emotional regulation is still developing. Surges in neurotransmitters (dopamine) drive thrill-seeking behaviour in order to obtain rapid rewards. At the same time, adolescents are experiencing significant physical and emotional changes, which can make this a confusing and challenging time. If trauma or chronic stress has occurred in a teen's life, brain development is disrupted and delayed, and often disorganised and unintegrated. They experience the same changes and remodelling as the healthy teen brain, only in chaos (Hoehn, 2013).

For this chapter, the term 'child' refers to a person who has turned 10 years of age but not yet turned 18 and so are subject to the youth justice jurisdiction if alleged to have broken the law.

Human Rights and Youth Justice

In 2018, the Queensland Parliament agreed to a Human Rights Act (*Human Rights Act 2019* (Qld)). One of its objectives was '… to ensure that public functions are exercised in a way that is compatible with human rights …' (Explanatory Notes to the Human Rights Bill 2018). 'Public functions' include the criminal justice system and processes.

The International Covenant on Political and Civil Rights (ICPCR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) apply equally to children as to adults. Australia is also a signatory to the United Nations Convention on the Rights of the Child 1990 (CROC), which confirms these rights for children and contains additional protections because they are children.

Australia is also a signatory to a number of other international documents, which, recognising children's developmental issues, provide rules and guidance on how to respond to children in breach of the law such as the United Nations:

- Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)
- Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines)
- Rules for the Protection of Juveniles Deprived of their Liberty 1990.

The Convention on the Rights of the Child provides that '… in all actions concerning children, whether undertaken by … courts of law … the best interests of the child shall be a primary consideration.' (Article 3.1). The Beijing Rules provide that the wellbeing of the child is to be the guiding factor in the consideration of their case (Article 17.1(d)).

Use of detention as a last resort for remand or sentence is reiterated in CROC, the Beijing Rules, the Riyadh Guidelines and the Charter of Youth Justice Principles in the Queensland *Youth Justice Act 1992* (Qld) (Youth Justice Act) (sch 1, Principle 18). The literature overwhelmingly confirms that detention certainly does not prevent, and may well contribute to, recidivism. One Australian study found that two thirds of young people sentenced to a period in detention are re-convicted within two years (Weatherburn, Vignaendra and McGrath 2009 *The specific deterrent effect of custodial penalties on juvenile re-offending*, Australian Institute of Criminology).

The treatment of children alleged or found to have broken the law should '… reinforce the child's respect for the human rights and fundamental freedoms of others'. It should also be '… consistent with the promotion of the child's sense of dignity and worth …' and '… take into account the child's age and the desirability of promoting the child's reintegration and … a constructive role in society …' (Article 40.1 CROC).

Sections 29 to 32, 34 and 35 of Queensland's Human Rights Act set out rights for all people, including children, involved in the criminal justice system. Section 33 relates specifically to children, reflecting provisions in both the ICPCR and CROC:

> (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.

The Human Rights Act requires that statutory provisions must, to the extent possible that is consistent with their purpose, be interpreted in a way that is compatible with human rights.

Youth Offending

It is important to understand the context of youth offending.

The number of youth offenders has been decreasing for some years in Queensland, in Australia and in countries such as the UK and Canada. Of the 535 000 10-to-17-year-olds in Queensland, only 0.9% appear in court in a given year. Around 10% of child offenders (about 500 children a year) commit roughly 45% of the offences committed by all youth offenders (Youth Justice Pocket Stats 2019-20, Department of Children, Youth Justice and Multicultural Affairs).

Most young people who come into contact with police before the age of 18 will not become 'career criminals'; their contact will be short lived and relatively minor, and they will grow out of offending from late adolescence (*Snapshot 2011: Children and Young People in Queensland*, Commission for Children and Young People and Child Guardian).

The small group of those who continue to offend share a number of challenges. On a given day in 2019, of children in detention (Youth Justice Pocket Stats 2019-20):

- 60% had experienced or been impacted by domestic and family violence
- 55% were disengaged from education, training or employment
- 46% had a mental health and/or behavioural disorder (diagnosed or suspected)
- 38% had used ice or other methamphetamines
- 30% had at least one parent who spent time in adult custody
- 29% were in unstable and/or unsuitable accommodation
- 12% had a disability (assessed or suspected).

Children under 14 years old in the justice system are more likely to be experiencing underlying trauma, have an undiagnosed disability, and come from a low socioeconomic background (Australian Institute of Health and Welfare (2018) *National data on the health of justice-involved young people: a feasibility study*. Cat. no. JUV 125). The younger a child commences in the youth justice system, the more likely they are to remain in it, the more often they are in detention and the more likely they are to return (Australian Institute of Health and Welfare 2020 *Young people returning to sentenced youth justice supervision 2018–19*. Juvenile justice series no. 24. Cat. no. JUV 133. Canberra: AIHW).

Some cohorts of children are overrepresented in the justice system, in particular Aboriginal and Torres Strait Islander children but also other disadvantaged and vulnerable groups such as children in contact with the child protection system.

Aboriginal and Torres Strait Islander children accounted for 46% of all child defendants in 2019-2020 while comprising only around 7% of all 10 to 17-year-olds in Queensland. The number was significantly higher in the younger ages (93% of 10-year-olds, 82% of 11-year-olds, 66% of 12-year-olds and 59% of 13-year-olds (Childrens Court of Queensland *Annual Report 2019-20*)).

In Queensland, the Youth Justice Report 2018 (the Atkinson Report) noted that 83% of children known to the Queensland youth justice system were also known to Child Safety Services as at 30 June 2014. In 2015-16, 32% of children in youth detention in Queensland had a child protection order history (Queensland Parliament, Question on Notice, May 2017).

The Youth Justice System

Under the Queensland Criminal Code, there is an irrebuttable presumption that a child under 10 years of age cannot commit a criminal offence, and therefore no criminal proceedings can be brought against a child under 10 (s 29(1) Criminal Code) (although there could be grounds for the intervention of Child Safety Services).

Where a child has reached the age of 10, but has not yet reached the age of 14 years, there is a rebuttable presumption that the child is not criminally responsible.

As well as establishing the child has broken the criminal law, the prosecution must establish that the child had the capacity to know the conduct was wrong (s 29(2) Criminal Code).

Where a person has turned 18 or 19 either at the time of being charged or sentenced for an offence committed when under 18, the legislation sets out when they will be dealt with in the Childrens Court and when in an adult Magistrates Court (pt 6 div 11 Youth Justice Act).

However, as a general principle, a court must always have regard to the fact that the offender was a child when the offence was committed, and the sentence cannot be greater than what the offender would have received if punished as a child in relation to:

- imprisonment
- fine
- compensation and restitution (s 144(2)-(3) Youth Justice Act).

Legal representation

A child appearing in court as a defendant is able to instruct a lawyer to represent them in the same way as an adult. The child is the client and parents cannot override instructions given by the child.

A number of community legal centres, including the Youth Advocacy Centre Inc. (Greater Brisbane), Hub Community Legal (Inala) and YFS Legal (Logan), provide free specialist legal advice and representation for young people in the Childrens Court. The Aboriginal & Torres Strait Islander Legal Service specialises in assisting Aboriginal and Torres Strait Islander young people.

Legal Aid is automatically available to children charged with indictable offences (matters which could be dealt with by a higher court). A merit test is applied to applications involving simple offences. It is the policy of Legal Aid not to take the assets of the parents of the child into account, and therefore children under 18 generally meet the financial test for aid.

Youth Justice services and officers

The Minister for Children, Youth Justice and Multicultural Affairs has portfolio responsibility for the Youth Justice Act—the legislation that sets out how children who are said to have broken the law are to be dealt with. The Department of Children, Youth Justice and Multicultural Affairs is responsible for Youth Justice service centres and staff throughout Queensland, which have responsibility for children sentenced to community-based orders (e.g. community service and probation orders) and those released from detention centres on conditional release orders. Offenders undertake a range of activities as part of their orders to address education, employment, health and other issues relevant to the child concerned under the supervision of Youth Justice officers.

Youth Justice is responsible for the operation of Queensland's three youth detention centres, two at Wacol (Brisbane) and one in Cleveland (near Townsville) with a total of 306 beds.

Youth Justice officers also play a role in the court process.

Police

As for all criminal matters, police are the gateway to the criminal justice system for young people.

Interaction with police

A child does not have to go with police to a police station unless they are under arrest. Police can arrest a child:

- in relation to an identified offence or offences

- to question the child about certain offences.

It is often an offence for anyone (adult or child) to refuse to provide name, address and date of birth, and it is therefore wise to provide these. Otherwise, a person (including a child) does not have to answer questions by police or make any statement.

For traffic matters, any person must, if asked by police:

- produce their licence
- identify (if possible) any driver alleged to have committed an offence
- give police details of an accident.

Police questioning

Except for simple offences, a statement made to police by a child must be made with a support person present at the time for it to be able to be used as evidence in court (s 29 Youth Justice Act). The reason for a support person is to redress the power imbalance between the child and police.

Police statements

A statement in this context includes any conversation a child may have with a police officer (beyond providing their name, address and age). The most obvious example is where there is a formal record of an interview given by a child at a police station.

Conversations between a child and a police officer conducted elsewhere are also capable of being statements by the child and include conversations secretly recorded by way of concealed tape recorder or video camera.

In certain circumstances, the requirement to have a support person present may also apply where a child makes or gives a statement to a person other than a police officer.

Support persons

A support person for a child is defined in the Youth Justice Act by reference to the *Police Powers and Responsibilities Act 2000* (Qld) (PPR Act) (sch 6) as including:

- a parent of the child, including a person who has lawful custody of a child or a person with day-to-day control of a child
- a lawyer acting for the child
- a person acting for the child and employed by an agency whose primary purpose is to provide legal services
- an adult relative or friend nominated by the child
- a justice of the peace upon police request if none of the above are available.

It is always open to the child to nominate who they want, and this could be a youth worker or other trusted adult. In practice, police often select the support person. A common example is the use of justices of the peace who are often unknown to the child.

The Youth Justice Act does not define the role of the support person but it has been noted that the support person should provide general comfort and support to the child, and ensure that the child being interviewed is not placed under undue pressure, which includes:

- ensuring the child knows what is happening and understands their right not to answer questions
- attending to practical matters (e.g. appropriate time and length of the interview, appropriate toilet and meal breaks)
- attending to the need to take medication and any other medical issues
- ensuring the appropriateness of the language used for that child
- ensuring an appropriate questioning process (e.g. not to ask more than one question at a time)
- the support person should not be someone who is intimidating in relation to the child, which would mitigate against the child feeling supported. This could include a parent.

However, a court can allow a child's statement to be used in evidence where a support person was not present if it is satisfied there were proper and sufficient reasons for the absence of a support person and in the circumstances the statement should be admitted (s 29(2) Youth Justice Act).

Police Diversion of Child Offenders from the Court System

Before taking a matter to court, police must consider (s 11(1) Youth Justice Act):

- taking no action
- diverting the child from court by:
    - cautioning the child
    - referring the offence to a restorative-justice process
    - providing an opportunity to attend a drug diversion assessment program for minor drugs offences
    - providing an opportunity to attend a graffiti removal program for a graffiti offence.

If police consider that taking one of the above steps is appropriate, then they must take that course of action.

In deciding the above, police must consider:

- the circumstances of the alleged offence
- the child's criminal history, any previous cautions the child has received, or any other actions taken in relation to the child for any other criminal matters (s 11(2) Youth Justice Act).

Caution

The Youth Justice Act notes that the purpose of cautioning is to divert children from the criminal justice system (s 14 Youth Justice Act), but does not describe when or for what offences a caution should be given. A police officer can only administer a caution if the child:

- admits the offence and
- consents to being cautioned (s 16 Youth Justice Act).

If practicable, the caution must be given in the presence of:

- a parent
- another adult chosen by the parent or the child.

If the child is a member of an Aboriginal or Torres Strait Islander community, the police officer can request that the caution be administered by a respected Elder of the relevant community (s 17 Youth Justice Act).

The police officer administering or requesting the caution must:

- be authorised to administer cautions or do so in the presence of an officer who is authorised
- ensure that the child and the parent or adult attending with the child understand the purpose, nature and effect of the caution.

In practice, a caution is most often used for first-time offenders or, if more than once, generally for minor offences. It generally involves a meeting between police, the child and the parent or adult chosen by the child where:

- the child's behaviour is considered and why that is an offence
- the child may apologise to the victim if the child and victim are willing to participate in this
- the child receives an admonishment from the police officer
- a notice of caution is given to the child.

Police will consider whether a child has previously received a caution or cautions when considering what action to take in relation to any later offending.

Restorative-justice process

The Youth Justice Act also does not describe when and for what offences a restorative-justice process would be appropriate. A police officer may refer an offence for a restorative-justice process if the child admits committing the offence and is willing for the referral to be made, and the police officer considers:

- a caution is inappropriate
- a restorative-justice process would be more appropriate than prosecution
- a convenor will be available for the conference (s 22 Youth Justice Act)
- the nature of the offence
- the harm suffered by anyone because of the offence
- whether the interests of the community and the child would be served by having the offence considered or dealt with at a restorative-justice process (s 22(4) Youth Justice Act).

Police must tell the child about the process and consequences if they do not participate properly. Police then refer the matter to the Department of Children, Youth Justice and Multicultural Affairs and allocate it to a Youth Justice officer with responsibility for restorative-justice processes.

The restorative-justice process is to be a conference (s 31(2) Youth Justice Act) or, in specific circumstances, an alternative diversion program. A conference is a formal meeting organised by an accredited convenor. It aims to allow a child who has committed an offence and other concerned people to consider or deal with the offending in a way that is of benefit to all concerned (s 33 Youth Justice Act). Those entitled to be present are (s 34 Youth Justice Act):

- the child and at the child's request:
    - their lawyer
    - an adult member of the family
    - another nominated adult
    - the child's parents
- the convenor and:
    - a police officer
    - any other person chosen by the convenor to assist
- the victim and at the victim's request:
    - their lawyer

- a member of their family
- a support person.

A victim is entitled to attend but does not have to consent to, or participate personally in, the conference.

The conference process involves:

- a discussion of the offence
- the impact and consequences for those affected
- ways in which the child can repair the damage or harm caused to the victim.

If successful, there can be an agreement by the child to do something designed to redress their offending behaviour and to assist the child to take responsibility for their actions. This could include:

- making an apology to the victim, orally or in writing
- performance of voluntary or community work
- repair of, or payment for, any damage caused.

The convenor must ensure that the agreement is not unreasonable or more onerous than if a court had dealt with the matter.

If the conference is successful, the matter is ended and the child cannot be prosecuted. It does not form part of the child's criminal history. However, police will consider previous cautions or conferences when deciding how to proceed if a child appears to be involved in any future offending.

If the conference is not successful or the child does not comply with the agreement made at the conference, the police officer has the same options as to how to proceed with the offence as they did prior to the matter going to a conference. The police officer must consider the child's participation in the conference and anything the child has done to comply with the agreement in deciding what to do.

Alternative diversion program

If police make a restorative-justice referral and a conference cannot be convened (for reasons other than the child not being contactable after reasonable inquiries, or the child not wishing to participate), then the Youth Justice officer and the child can agree on the child's participation in some activities to help the child understand the harm their behaviour has caused and to take responsibility for the offence. These activities include:

- remedial actions

- activities to strengthen the child's relationship with their family or community
- educational programs.

The program cannot treat the child more severely than the Sentencing Principles (s 150 Youth Justice Act) allow and must be put into writing and signed by the child (s 38 Youth Justice Act).

Any admissions made during a restorative-justice process cannot be used in other proceedings (s 40 Youth Justice Act).

Police drug diversion program

The police drug diversion program is provided for under s 379 of the PPR Act and generally consists of a drug assessment, and education and counselling session that lasts up to two hours. Children are eligible for the session, including children who have previously been cautioned for a minor drug offence.

Graffiti removal program

If a child is arrested for, or is questioned by a police officer about a graffiti offence, the police officer may, at any time before the child goes to court about the graffiti offence, offer the child the opportunity to attend a graffiti removal program instead of going to court (s 379A PPR Act). The child must:

- admit having committed the offence during an electronically recorded interview
- have been at least 12 years of age at the time of the offence.

Police then directly refer the child to a graffiti removal program for two hours. If the child completes the program, that is the end of the matter. Otherwise, police can take further action including going to court.

Police Prosecution of a Child

If police decide to prosecute a child in relation to an offence, it is expected that they should give the child a 'notice to appear' on the spot or issue a 'complaint and summons' (s 12 Youth Justice Act). Police are only to arrest and charge a child where it is necessary to:

- prevent further offending
- protect any evidence relating to an offence
- ensure the child comes to court (s 13 Youth Justice Act).

The child's parents (or Child Safety Services if the child is in care) and the Youth Justice services should be provided with the complaint and summons that advises them of the details of the proceedings (s 43(2) Youth Justice Act, s 392 PPR Act).

In Brisbane, children will normally be brought as soon as possible before the Brisbane Childrens Court, which sits every weekday. The Brisbane Magistrates Court will also sit in the Childrens Court jurisdiction on Saturday mornings in relation to urgent matters.

If police proceed by way of arrest and charge, they will need to consider the issue of bail.

Taking identifying particulars

If a child is arrested, police may take the child's identifying particulars such as palm prints, fingerprints, handwriting, voice prints, footprints, a photograph of the person's identifying features (e.g. scars or tattoos) and photographs generally (s 467 PPR Act).

Where a child is given a notice to appear or a complaint and summons (i.e. they are not under arrest) in relation to offences designated as 'arrest offences' (i.e. offences for which police have the power to arrest the child without a warrant), police can take identifying particulars but have to apply for an order from a magistrate to do so first. Notice of the application must be given to the child and their parents, or the Department of Children, Youth Justice and Multicultural Affairs if they are in care (s 25(3) Youth Justice Act). In this situation, a support person must be present during the taking of the identifying particulars if they are to be admissible in court (s 26 Youth Justice Act).

If the child is found not guilty of the charges by the court or is not given a sentence (e.g. the court decides the child should have been cautioned), the identifying particulars must be destroyed (s 27 Youth Justice Act).

Taking a DNA sample with consent

Police may ask a child who is at least 14 years old for consent to a forensic procedure (consent to take a DNA sample). The police must ensure that any consent is fully informed (s 454 PPR Act).

The child must be given the opportunity to speak to a support person in private before making a decision, and a support person must be present when any consent is given (s 450 PPR Act).

If a child is under 14, police may ask a parent of the child to consent to a forensic procedure other than the taking of a sample of the child's blood (s 451 PPR Act).

Taking a DNA sample by court order

For an indictable offence, police may apply to the Childrens Court for an order authorising a sample be taken from the child for DNA analysis (s 488 PPR Act). The court must be satisfied:

- an indictable offence has been committed
- the child is reasonably suspected of having committed the offence
- a DNA analysis may tend to prove or disprove the child's involvement in the offence.

Children and Bail

Police bail

Considering bail, a significant part of the police and court processes, raises the question of whether or not a child is able to stay in the community while the allegations against them are decided. The general principle that detention should be a last resort is relevant to bail as well as sentence.

If police decide to proceed by arresting and charging the child with an offence (s 48 Youth Justice Act), they will have to decide whether or not to release the child pending their appearance in court. Once a child appears in court, the court manages the question of bail until their case is finalised.

The provisions in the *Bail Act 1980* (Qld) (Bail Act) apply to children, but the Youth Justice Act makes some specific provision for children. However, the issue of bail has become increasingly complex in recent times.

A child arrested and refused watchhouse or police bail must be brought promptly before a Childrens Court as soon as practicable and generally within 24 hours. If a court cannot be constituted within 24 hours, then as soon as this can be done (s 49(2) Youth Justice Act).

Police or the court must keep a child in custody if they are satisfied that there is an unacceptable risk the child will commit an offence that would endanger community safety or the safety or welfare of another person, and that a bail condition (e.g. not making contact with people or not going to certain places) would not practically be able to address this risk (s 48AAA(2) Youth Justice Act).

They may also decide not to release the child if satisfied that there is an unacceptable risk the child will not come to court as required, or will commit an offence of any kind or will interfere with a witness or otherwise 'obstruct the course of justice' (s 48AAA(3) Youth Justice Act).

In making the decisions above as to 'unacceptable risk', police and the court must consider a range of issues, including the type and seriousness of the offence(s) the child has been charged with, their criminal history, home environment, employment, who they associate with and whether there is someone willing to support the child to comply with bail (s 48AA(4)(a) Youth Justice Act). If the child is Aboriginal or Torres Strait Islander, there are additional considerations such as cultural matters.

Police and the court may also consider a range of matters relevant to the particular child such as whether bail or a refusal of bail would interrupt a child's living arrangements, family relationships, schooling, health issues and similar (s 48AA(4) (b)Youth Justice Act).

A decision to release a child may be subject to conditions to which the child will have to agree to to be given bail (s 52A Youth Justice Act). While a child can be released with a deposit of money or a surety (s 52 Youth Justice Act), this would be unusual as children generally do not have access to money or property.

The government is trialling the use of electronic monitoring (ankle bracelets) in five locations across Queensland (Townsville, Moreton region, Brisbane north, Logan and the Gold Coast) as a bail condition. The child must be at least 16 years old, charged with a prescribed indictable offence and found guilty of an indictable offence before. The bracelets are monitored by Queensland Corrective Services and require access to a mobile phone and the ability to regularly charge batteries. The child needs to fully understand the implications of electronic monitoring before agreeing to it.

A 'prescribed indictable offence' includes:

- an offence where an adult could be sentenced to life (e.g. murder, rape) or imprisoned for 14 years or more (e.g. robbery, burglary)
- wounding
- dangerous operation of a vehicle
- unlawful use of a motor vehicle when the child is charged with being the driver of the vehicle
- unlawfully use of a motor vehicle and using, or intending to use, it to commit an indictable offence or wilfully destroying or intending to destroy, damage or remove any part of the vehicle
- attempted robbery
- choking, strangulation or suffocation of someone where there is an intimate partner or family relationship.

Where a child is charged with a prescribed indictable offence, which is alleged to have occurred while the child was released and waiting to have a previous indictable offence dealt with, then police or the court must refuse release unless the child can 'show cause' (give good reasons) why they should be given bail in relation to the new matter (s 48AF Youth Justice Act).

There are additional requirements for bail and release from custody where the charges relate to allegations of terrorism.

Children must, where practicable, be held on remand in a detention centre (s 54(2) Youth Justice Act). A child cannot be kept in an adult prison on remand (s 56(7) Youth Justice Act). Children are able to be held in police watchhouses but this is generally regarded as inappropriate.

Court bail

The general principle that detention should be a last resort is relevant to bail as well as sentence.

The Bail Act also applies in relation to bail decisions for children in court. A court must take into account the sentence order the court would likely make if the child was to be found guilty (s 48AA(3) Youth Justice Act) when deciding bail.

Where a child's legal representative has instructions to make a bail application, they should liaise with the Youth Justice officer who may:

- ascertain the child's present circumstances so far as they are relevant to bail
- if necessary, investigate suitable placement options including a parental home
- organise a placement acceptable to the court.

If the child is released without bail, they must be given a release notice stating the time and place of their next court appearance with a warning that the court may issue a warrant for their immediate arrest if the child does not turn up.

If the child is released on bail and promises to come back to court as directed but does not come to court, the court may issue a warrant for their arrest, but no offence is committed (unlike the adult court).

If the child is released on bail with conditions and breaches a bail condition, their bail may be revoked but breaching the condition is not in itself a further offence.

If a magistrate refuses bail, the child may apply for bail to a Childrens Court judge. A child can also apply for bail directly to the judge if an application was not made to the magistrate.

Review and variation of bail

A child who is subject to bail with conditions is able to ask for a variation of those conditions if there are grounds to change the conditions (e.g. variation of a curfew to accommodate work commitments). A request for variation of conditions would usually require the young person's legal representative to provide advance notice to police before the court date when it is to happen, so police may consider their position to the proposed change.

Show cause situation

The 'show cause' provisions in s 30(3) of the Bail Act do not apply to a child. However, the rules relating to bail for children have been significantly tightened as discussed above in the section on Police bail.

The Childrens Court

Queensland has a specific Childrens Court jurisdiction that deals with youth justice and child-protection matters established under the *Childrens Court Act 1992* (Qld).

While the Act modifies the magistrate and district court jurisdictions and processes when they are dealing with children charged with criminal offences to some extent, overall the court process for a criminal matter involving a child defendant is generally no different to that for an adult. Applications for bail, adjournments, mentions, trials and sentences are dealt with in much the same way. Police prosecute matters at the Magistrates Court level and the Director of Public Prosecutions takes those cases that go to the Childrens Court of Queensland and the Supreme Court.

The court must ensure that a child and parent understand as far as practicable the nature of the alleged offence, including:

- the matters that must be established before the child can be found guilty
- the court's procedures
- the consequences of any order that may be made (s 72 Youth Justice Act).

Magistrates

As for all criminal matters, almost all prosecutions against young people aged 10 to 17 years will commence in a Magistrates Court but with the magistrate convening a Childrens Court. If the person is 18 or over and is charged with an offence that it is alleged they committed when they were 17 or under, there are rules about when the matter may still be dealt with in a Childrens Court or the sentence that can be imposed.

Magistrates hear committals for serious (indictable) offences and Supreme Court offences

The magistrate decides whether there is sufficient evidence that:

- a serious offence has been committed
- it may have been committed by the child before the court.

A 'serious offence' is an offence for which an adult could be imprisoned for 14 years or more (with a small number of exceptions) and that is not a Supreme Court offence (which is the most serious of criminal offences).

If the magistrate believes there is sufficient evidence, the matter is sent on to be dealt with by the relevant higher court.

As with adult matters, the Crown may proceed by way of ex officio indictment (where there has been no committal or where the magistrate has decided not to commit a matter) (s 101 Youth Justice Act).

Magistrates hear and decide 'non-serious' indictable offences

All matters commence as a committal hearing, but the child can decide that they want a magistrate to deal with their case rather than it being sent on to a judge provided that:

- the magistrate is satisfied that the matter can be adequately dealt with by them
- the child has been advised of their right to have their matter dealt with by a Childrens Court judge (sitting with or without a jury if the child is pleading not guilty).

A child defendant has the sole right of election and, where appropriate, a child charged with an indictable offence can be referred to the Mental Health Court (s 61 Youth Justice Act).

Magistrates sentence 'non-serious' indictable offences

Where a child pleads guilty to a non-serious indictable offence, the child can decide whether they want the magistrate to sentence them or a judge (s 93(2) Youth Justice Act).

Where there is a plea or finding of guilt after a trial, the magistrate can still refer the sentencing of a child to a Childrens Court judge if the magistrate considers the circumstances of the case call for a sentence beyond what the magistrate can impose under the Youth Justice Act (s 186).

Magistrates hear and decide simple offences

Some criminal matters are considered sufficiently minor that they have to be dealt with by a magistrate. A magistrate can do this in the absence of the child, but if they find the case proved, the only sentence they can impose is a fine and only if the child has provided information in writing about their capacity to pay a fine (s 46 Youth Justice Act).

Magistrates sentence simple offences

Where a child pleads guilty to a simple offence, the magistrate must sentence the child.

Instead of a single legally qualified magistrate, a Magistrates Court may be constituted by two non-legally qualified justices of the peace who can:

- deal with a simple offence where the child pleads guilty
- deal with procedural matters.

Two justices cannot sentence a child to detention or an immediate release order (s 67 Youth Justice Act).

Judges

The Childrens Court of Queensland comprises District Court judges who have also been appointed as Childrens Court judges. A Childrens Court judge can deal with all indictable offences that the child has elected to have dealt with by a judge and must deal with serious offences (except Supreme Court offences).

The child can choose whether their case is heard by a Childrens Court judge alone or with a jury (s 98 Youth Justice Act).

Child co-offenders will be tried by judge and jury unless all co-offenders elect judge alone. If a child is not represented, there must be a jury. There must also be a jury if the judge decides that in the particular circumstances it is more appropriate for the child.

Judges can grant bail when a child has either not made a bail application or had bail refused by a magistrate (s 59 Youth Justice Act). This right exists in addition to the right to apply to the Supreme Court.

Children and Court Processes

Open and closed courts

A Childrens court that is presided over by a magistrate is a closed court for youth justice proceedings (s 20 Childrens Court Act). The court must only allow people with a direct interest in the matter before the court in the room such as:

- the child defendant
- the prosecutor
- the victim or their representative
- the defence lawyer
- the parent(s)
- the witness(es)
- a Youth Justice officer
- the arresting police officer
- a representative of a community justice group where the child identifies as Aboriginal or Torres Strait Islander.

The court can give permission for an academic doing relevant research, the media or for specific people with an interest in the proceedings, but, as with the victim, the court must exclude them if it considers their presence would be prejudicial to the interests of the child.

The Childrens Court of Queensland and the Supreme Court, which are presided over by a judge, are open courts and members of the public and media can sit in the court.

However, no one can publish information that would identify the child in criminal proceedings before a magistrate or a judge (s 301 Youth Justice Act) (see also Publication of identifying information below for the exception to this rule).

The Childrens Court is closed to the public when hearing child protection matters, and there is also a prohibition on publishing identifying material.

Publication of identifying information

The only circumstances when a court can order the publication of the child's identifying information in a youth justice matter is if the child is found to have committed an offence and been sentenced under s 176(3)(b) of the Youth Justice Act (s 234 Youth Justice Act). This means:

- the offence the child committed was one for which there is a life sentence for an adult (murder, manslaughter, drug trafficking) and
- the court has imposed a sentence of more than 10 years up to the maximum of life because
    - there was violence against a person and
    - the court considers the offence to be a particularly heinous offence having regard to all the circumstances.

The judge must consider that it would be in the interests of justice to allow the publication considering issues such as:

- the need to protect the community
- the safety or wellbeing of a person other than the offender
- the impact that this could have on the offender's rehabilitation.

The details cannot be published before the end of the one-month appeal period. If there is an appeal, the publication is dependent on the outcome of the appeal.

The chief executive of the Department of Children, Youth Justice and Multicultural Affairs may give written authority to publish identifying information if the chief executive is satisfied publication is necessary to ensure a person's safety (s 301(3) Youth Justice Act).

The maximum penalty for publication without authority is 100 penalty units or two years imprisonment for an individual and 1000 penalty units for a corporation (s 301 Youth Justice Act). The value of a penalty unit increases every year. You can check the current value at https://www.qld.gov.au/law/fines-and-penalties/types-of-fines/sentencing-fines-and-penalties-for-offences.

Role of Youth Justice services

Youth Justice is generally not a party to the proceedings but is entitled to be heard in relation to adjournments, remand/bail, sentencing orders, publication prohibition orders, the closure of the court to the public and any other matters the court considers to be relevant (s 74 Youth Justice Act).

In practice this means that a Youth Justice officer attends court. Before a child defendant appears in court, this officer will usually interview them and attempt to establish factors contributing to the child's offending behaviour. It is the policy of Youth Justice not to interview a child regarding the details of an offence prior to the child discussing it with a legal representative.

A Youth Justice officer can apply for, or support, a remand (dealing with the case on another day) to allow:

- a parent to be in court
- a child to be legally represented
- an interpreter to be in court
- a child's identity or age to be determined
- a presentence report to be written.

The role of a Youth Justice officer with respect to submissions about bail will usually be limited to welfare issues such as accommodation. It does not address a child's general suitability for bail.

Issues concerning the likelihood of re-offending or failing to appear are matters for the prosecution and defence. The court therefore does usually not take submissions from Youth Justice officers in relation to possible bail conditions such as curfews, reporting to police or forbidding contact with a complainant or co-accused.

Conditional bail programs are often prepared by Youth Justice in circumstances where a child is highly unlikely to comply with bail conditions without substantial intervention.

In general, Youth Justice officers are not required to argue that a child receives a particular sentence order. It is required, however, that that officer provide the court with a range of alternative orders, together with information about the nature and suitability of each.

Breach of supervised orders

A Youth Justice officer has to act in a prosecuting role as they are responsible for the administration of community-based sentence orders (probation order, graffiti removal order, community service order, intensive supervision order, conditional release order or restorative-justice order) and deal with:

- breaches of orders
- complaints regarding non-compliance with conditional release and supervised release orders
- variation, discharge, revocation or resentence of orders.

These applications are made formally in writing with accompanying affidavits and may be defended by the child.

Parental involvement

The Youth Justice Act supports the involvement of parents in any proceedings where their child is a defendant, irrespective of the child's wishes, and anticipates that a parent will be present in court.

Generally, courts will not deal with a child's matter unless a parent is present. A court can adjourn a proceeding to enable a parent to be present, and can recommend the department meet a parent's travel expenses (s 69 Youth Justice Act). The court has some discretion and may proceed without the parent where, for example, the child is close to turning 18 and it is not a serious matter, or the child has not had contact with their family for a long time. The court can, however, order a parent to attend, and it is then an offence for the parent not to (the maximum penalty is currently nearly $7000) (s 70 Youth Justice Act).

If a parent cannot attend, it may be useful for the parent to write a letter to the court explaining the difficulties and providing a phone number they can be contacted on.

Parents have the right to be in court, and they are to be given full opportunity to be heard and participate in the proceedings (s 72 Youth Justice Act).

The court must ensure that the parent understands:

- the nature of the offence alleged to have been committed by the child
- the court's procedures
- the consequences of any order that may be made (s 72(2) Youth Justice Act).

Where a parent is absent and a finding or an order is made against a child, the parent can apply to have the order set aside, and the court can order this if it considers it is in the interests of justice to do so (e.g. where the child's capacity to make decision relating to the proceeding was adversely affected by the parent's absence (s 71 Youth Justice Act)). The application must be made within 28 days of the original decision and, if successful, the matter must be heard afresh. There may, therefore, be significant consequences for a child.

If a parent is absent, a court will usually ask a child if their parents know about the proceedings and if they want the matter remanded so that the parents may be present. If the child elects to

proceed, the answers to these questions are recorded and could be referred to by a parent in requesting an order be set aside.

Sentencing Regime and other Orders for Child Offenders

The sentencing regime for child offenders is not significantly different to that for adult offenders. However, the sentences that can be imposed are shorter in recognition of their youth (pt 7 div 4 Youth Justice Act). Cautions or restorative-justice referrals generally do not form part of a child's criminal history and are not provided to a court when a child is sentenced by a court for matters which are prosecuted (s 15 Youth Justice Act).

Where a caution should have been administered

The Childrens Court can dismiss a charge brought before it, on application of a child defendant, if the court considers the child should have been cautioned or no action should have been taken (s 21Youth Justice Act). The court may administer a caution or refer back to police for cautioning.

If the child is cautioned, that ends the matter. A caution does not form part of the child's criminal history and is not generally admissible in subsequent court proceedings against that person either as a child or an adult (s 15 Youth Justice Act). The prosecution can seek to rely on prior cautions in the Childrens Court:

- for a child under 14 to rebut the presumption that the child did not have the capacity to know what they did was wrong (s 147 Youth Justice Act)
- in relation to decisions about bail
- where there is a submission by a child defendant that they should have been cautioned for the matter for which they are in court.

Where a restorative-justice process should have been ordered

Similarly, under s 24A of the Youth Justice Act, the Childrens Court can dismiss a charge, on an application by the child defendant, if it considers that the offence should have been referred by police to a restorative-justice process. It may refer the matter to a restorative-justice process, in which case, if the child participates and completes the agreement, that is the end of the matter. If the child does not participate in the process or does not do what is required under the terms of the agreement, police can restart proceedings or the court can sentence the child.

The prosecution may also rely on participation in restorative-justice processes to rebut the presumption that the child did not have the capacity to know what they did was wrong (s 147 Youth Justice Act).

Orders on children found guilty (sentences)

The orders are set out in s 175 of the Youth Justice Act.

Diversionary restorative-justice process

If the court finds a child guilty of an offence after the child has pleaded 'not guilty', the court must consider referring the offence for a restorative-justice process to help the court decide the appropriate sentence (s 162(2) Youth Justice Act).

The court must be satisfied that the child:

- has been told about, and understands, the process and agrees to participate
- is a suitable person to participate in a restorative-justice process.

The court must take into account (ss 163, 192A Youth Justice Act):

- the nature of the offence
- the harm suffered by anyone because of the offence
- whether the interests of the community and the child would be served by having the offence considered or dealt with at a restorative-justice process.

The elements of a court-referred or ordered restorative-justice process are the same as that described earlier in relation to police referral to a restorative-justice process. Generally, it will take the form of a conference but can be an agreement for certain activities if holding a conference is problematic.

If the child participates and completes any agreement that results from the process, that is the end of the matter and the offence does not form part of the child's criminal history for other Childrens Court matters.

If the child does not complete the agreement, the matter must be brought back to the court, which may take no further action, allow more time for the child to comply or sentence the child.

If the child does not participate, or during the process denies committing the offence, or an agreement cannot be reached, the matter must be brought back to the court for sentence (s 164 Youth Justice Act).

Reprimand

The legislation does not provide any guidance on the delivery of a reprimand or what it should cover. In general, the magistrate will address the child in relation to their behaviour and provide some form of warning and/or advice about their future behaviour.

Good-behaviour order

The court can order the child to be of good behaviour and not break the law for a period up to one year (s 188 Youth Justice Act). If the child re-offends during that time, the fact that they were on a good-behaviour order will be taken into account on sentencing for the subsequent offence (s 189 Youth Justice Act).

Fines

There is provision for a court to fine a child, but it can only order this if it is satisfied that the child has the capacity to pay the amount (s 190 Youth Justice Act). Realistically, this is not an option for most children, particularly those under 16 years. A fine is the only order a court can impose in the child's absence for a simple offence, but the child must have provided information in writing of their ability to pay.

If, in sentencing a child, the court considers it is appropriate that the child pay a fine and an amount by way of compensation or restitution, but the child does not have capacity to pay both, preference must be given to paying compensation or restitution (s 156 Youth Justice Act).

If a fine is ordered and the child does not pay it within the time allowed, an application can be made to cancel the fine and make a community service order instead (s 192 Youth Justice Act).

Community-based orders

The court may order a presentence restorative-justice process. It operates in a similar manner as the process described above. If an agreement is made, a copy of the agreement is given to the court and also information about what the child has done to comply with it, and the court will sentence the child taking into account their participation and compliance with the agreement (s 165 Youth Justice Act). The court can make an order that the child comply with the remainder of the agreement as part of the sentence (s 175(1)(da) Youth Justice Act).

Other community-based orders are graffiti removal, probation, community service and intensive supervision orders (pt 7 div 6A–9 Youth Justice Act). The length of order depends on whether the matter is dealt with by a magistrate or a judge, and the age of the child. Children have to agree before the court can place them on a community-based order except for a graffiti-removal order (s 194A Youth Justice Act). The orders are supervised by Youth Justice, and the child must comply with reasonable directions given by Youth Justice staff, report as required, advise of any change in address, employment or school and not leave the state without permission.

If a child does not comply with the conditions of any of these orders (including the presentence restorative-justice process), they can be breached and Youth Justice takes the matter back to the

court. The court generally can extend the order, vary any of the conditions or discharge it and/or resentence the child (pt 7 div 12 Youth Justice Act).

Conditional release orders are technically detention orders but they are immediately suspended to enable the child to stay in the community and attend a prearranged program suited to their situation. If the child breaches a conditional release order, the court can revoke the order and the child has to serve the time in detention. The court can vary or extend the order if the child can satisfy the court that they should have another opportunity.

Detention

The principle of detention is a response of last resort—a fundamental principle in the common law system and international human-rights instruments.

Magistrates can sentence to a maximum of one year (s 175 Youth Justice Act) in detention and, in general, a judge up to two years. However, the length of a detention order can be significant, certainly in the context of a child's life. The maximum sentence of detention for a child for a serious offence (an offence if committed by an adult would have a maximum term of 14 years or more) is seven years (s 176(2) Youth Justice Act). A sentence of years at the age 15 or 16 will have a significant impact on the child's life as this is at a critical developmental stage physically, mentally and socially and in terms of preparing for life in general (e.g. employment prospects).

If the offence is one for which an adult could be sentenced to life imprisonment, the child offender's sentence is up to 10 years. However, if the offence involved violence against a person and the court considers it particularly heinous, imprisonment can be for a period up to and including life (s 176(3)(b) Youth Justice Act). Life in Queensland means for the term of the person's natural life, although the person may be released from custody to parole at some point.

Supervised release orders

A child must be released from detention after serving 70% of their sentence (unless the offence was terrorism related). The court may order at the time of sentence that a child be released after serving 50%. The child remains subject to the supervision of Youth Justice until the end of their sentence period in a similar manner to being on a community service order. If the child breaches the order, the matter will be referred back to the court (ss 252A–252F Youth Justice Act).

Disqualification from holding or obtaining a driver licence

The *Traffic Act 1949* (Qld) and the *Transport Operations (Road Use Management) Act 1995* (Qld) apply to children. A child who commits an offence for which an adult could be disqualified by a court from holding or obtaining a driver licence can be similarly disqualified by a court (s 254 Youth Justice Act).

A court can disqualify a child from driving at a time when they would not be able to obtain a licence because of their age. In this situation, the court will usually calculate the length of the disqualification by adding the period of time remaining until the child may obtain a provisional driver licence to the period of time which the court decides should represent the disqualification proper.

Infringement notices

A child who is at least ten years of age can be issued with an infringement notice and choose to pay the monetary penalty where it relates to a simple offence, including under an instalment arrangement. However, the enforcement-of-payment provisions of the *State Penalties Enforcement Act 1999* (Qld) (Penalties Enforcement Act) including an instalment arrangement do not apply to young people under the age of 18 (s 5 Penalties Enforcement Act).

Young people are less likely to pay an infringement notice or to make arrangements to pay the fine by instalments (generally because they do not have capacity to pay). As a result, such matters will be referred to police who can issue a complaint and summons or a notice to appear (noting that police should consider the requirements of s 11 of the Youth Justice Act as mentioned above).

As such, young people are at greater risk than adults of being prosecuted in court for minor offences. Those offences, once dealt with in court, may appear on a child's criminal history (at least for court purposes) until they turn 18.

Compensation or restitution by the child offender

Where a child is found guilty of a criminal offence and sentenced by a court, the court may also order the child to make restitution or pay compensation for loss relating to a victim's property or injury to the victim or someone else (s 235 Youth Justice Act).

A court may make an order for compensation or restitution only if satisfied the child has the capacity to pay the amount (s 235(5) Youth Justice Act), and the amount of compensation ordered must not be more than $2374 (s 235(2)(b) Youth Justice Act).

The *Victims of Crime Assistance Act 2009* (Qld) also applies to offences committed by children (s 256 Youth Justice Act).

Orders against a child's parents

Where a child is found guilty of an offence relating to the injury of a person or the property of another person, the parent of that child may be called on by a court to explain why ('show cause') the parent should not pay compensation to the victim (s 258 Youth Justice Act), but only if:

- the parent of the child may have contributed to the fact the offence happened by not adequately supervising the child and

- it is reasonable that the parent should be ordered to pay compensation for the offence.

If a parent is in court when the child is found guilty, the court may call on the parent there and then to explain (s 258(4) Youth Justice Act). Alternatively, the court may give the parent a written notice to attend a show-cause hearing at a later date (s 258(6) Youth Justice Act).

The parent may be represented at the show-cause hearing, provide evidence and make submissions to the court (s 259 Youth Justice Act). If the parent does not attend after a notice has been served on them, the court may deal with the matter in their absence (s 259(10) Youth Justice Act).

The amount of any compensation ordered depends on the parent's capacity to pay including an assessment of the effect any order would have on the parent' capacity to provide for dependants (s 259(9) Youth Justice Act).

An order for compensation against a parent is a civil debt and can be enforced by execution of judgment in the Magistrates Court (s 260 Youth Justice Act).

Convictions of child offenders

A court cannot record a conviction where the child is found guilty and sentenced to a reprimand or a good-behaviour bond (s 183(2) Youth Justice Act).

It may consider whether or not to record a conviction in relation to all other sentences (s 183(3) Youth Justice Act).

In considering whether or not to record a conviction, a court must have regard to all the circumstances of the case, including:

- the nature of the offence
- the child's age and any previous conviction
- the impact the recording of a conviction will have on the child's chances of rehabilitation and finding or retaining employment (s 184 Youth Justice Act).

Recording of a conviction is not mandatory with a period of driver licence disqualification (ss 183, 254 Youth Justice Act).

If a child later goes to court as an adult for offences committed as an adult, the court cannot be told about childhood offences where a conviction was not recorded. That is, the child has the opportunity to leave their Childrens Court criminal history behind them.

Recorded and unrecorded convictions can be referred to by:

- police or a Childrens Court when considering bail for a child where the child is alleged to have committed further offences

- a Childrens Court sentencing the child for any further offences committed as a child.

Appeals

Decisions of the Childrens Court magistrates are subject to the appeal provisions set out in pt 9 div 1 of the *Justices Act 1886* (Qld) and can be appealed only to a Childrens Court judge (s 117(3) Youth Justice Act).

Decisions of a Childrens Court judge can be appealed to the Court of Appeal in accordance with ch 67 of the Criminal Code (s 116 Youth Justice Act).

The Youth Justice Act also provides the process for a child to have a sentence order by a magistrate reviewed by a judge of the Childrens Court of Queensland (s 117 Youth Justice Act).

Child Offenders in Detention

There are two youth detention centres in Queensland, the Brisbane Youth Detention Centre at Wacol in Brisbane and the Cleveland Youth Detention Centre in Townsville.

Some young people can be a long way from their homes and communities. This may make it difficult, if not impossible, for them to have personal contact with family and friends, which may affect their behaviour and how well they deal with situations and circumstances.

Transfer to prison

Currently a child ordered to serve a sentence of detention and who, as at their 18th birthday will have at least six months remaining on their sentence, will be subject to automatic transfer to an adult prison following their birthday (pt 8 div 2A Youth Justice Act). It is possible in some circumstances to apply for a temporary delay. It would be important for the young person to talk to their lawyer if they have particular concerns about their transfer.

Visitors

The Department of Children, Youth Justice and Multicultural Affairs manages Queensland's two detention centres through Youth Justice services. Departmental policy allows a child in a Queensland detention centre up to four visits a week. This is important as it means, for example, a child does not have to choose between contact with their family or meeting their lawyer.

Ordinary visitors

Detention centre staff have the power to:

- approve the entry of visitors
- refuse entry to a person who, in their opinion, would prejudice the security or good order of the centre and does not when requested:

    - provide name, address or proof of identity
    - agree to an external search of their person or a search of anything in their possession
    - comply with a direction considered necessary for the security or good order of the centre
- require a visit to be in the presence or under the supervision of a detention centre employee
- ask the visitor to leave for failure to comply with a search or direction (s 272 Youth Justice Act).

Legal practitioners

A legal practitioner representing a child held in a detention centre is entitled to access at all reasonable times. In practice, visiting can only take place on weekdays and booking a time is required.

Any interview with the child at the detention centre must be out of the hearing of other people, and correspondence between the child and the child's legal representative must not be opened, copied, removed or read (s 276 Youth Justice Act).

Community visitors

A youth detention centre is a 'visitable site' under the *Public Guardian Act 2014* (Qld). Through its community visitor scheme, the community visitor has a responsibility to regularly:

- inspect the centre and report on its appropriateness for the accommodation of the child or the delivery of services to the child
- ensure the child's needs are being met by staff members at the centre.

A child or a child living in a visitable site can contact a community visitor by phone, SMS message or email whenever they need to. They can also request a visit from the community visitor in addition to any regular visits.

Any request for a visit must be passed on and the community visitor must then make contact or visit as soon as can reasonably be arranged.

Complaints

A child in detention or their parent can complain about something that affects the child. The detention centre has a process for dealing with complaints, but the child can contact their lawyer, the community visitor of the centre or a child advocacy officer at the Office of the Public Guardian for help in making a complaint.

Lawyers Working with Young Offenders as Clients

Legal Aid Queensland has developed best practice guidelines for working with young people.

It must be understood, however, that taking instructions from, and working with, children and young people is not the same as for adults. It is important to understand individual young people's circumstances and situations as well as the more general context of brain, physical and emotional development.

Presence of adults at interviews

As the child is the client, wherever possible the child should be given the opportunity to be interviewed alone, in the absence of the parents or anyone else. There may be some things the child is unwilling or reluctant to talk about in the presence of a parent or other person, which may therefore hinder the lawyer's ability to obtain full instructions.

Further, the parent or other person may tend to take over the interview, to speak on the child's behalf or to put words into the child's mouth.

Nevertheless, some children, particularly younger ones, feel they need a parent or other person present during an interview as a support person. In such situations it is suggested that the interview start in the presence of the other person with an explanation of the court process and of the lawyer's role. If sufficient understanding and rapport can be built up with the child in that time, it might then be suggested to the child that the parent or other person(s) leave the room prior to the taking of specific instructions.

There are situations where the child will continue to prefer the presence of a parent or other person, and times when this may be of assistance to the practitioner in building rapport and gaining understanding of the case. The practitioner must use their own judgment in deciding on the occasions when the presence of another person may be appropriate. In many cases they can provide valuable information and insights.

Where parents or others are kept waiting outside the interview room, it is often a good idea to bring them into the interview room at the conclusion of the interview so that the process and any decisions arrived at may be explained to them. This should be with the concurrence of the child.

Children's understanding of the legal process

Young people need to know that the lawyer takes instructions from the child, not from parents, police, Youth Justice services or any other adult. The lawyer is there to advocate on behalf of the child, to enable the child to have their say and their side of the story told. The lawyer has a duty of confidentiality, which means that nothing said by the child will be revealed or passed on to anyone else, including the court, police and parents without the permission of the child.

Interviews should not be rushed. The lawyer should avoid legal jargon and language should be kept simple, but not patronising. Some young people are inarticulate and have difficulty in talking about and explaining even simple events. Furthermore, they may not understand the type of information required of them. It is useful to check from time to time that the client has an understanding of what is being explained or asked of them. One way to do this is to get them to explain in their own words what has just been said.

It is important when taking instructions that lawyers do not impose or imply moral judgments on what the child may have done. Reactions of shock or disgust may dissuade a child from giving full and accurate instructions. It is not the role of the lawyer to judge. However, the range of penalties available to the court should be thoroughly explained.

No interview should be concluded without giving the client proper opportunity to ask questions.

It frequently happens that children come out of court without any idea, or with the wrong idea, of what has happened. It is important that the lawyer ensures the child understands what has taken place in court on that occasion, if and when the child must come back to court, any bail conditions and, where appropriate, the penalty and its implication.

The Youth Advocacy Centre has child-friendly information sheets that explain court process and sentences, which may be accessed by lawyers.

Taking instructions

Details of the events in question should be obtained to the same extent as if the client were an adult. Particular care should be given to exploring the circumstances surrounding any admissions or statements made by the client to police, whether at a police station or elsewhere.

Prior criminal history

The child should carefully check this record for accuracy. It is often useful to get particulars from a child about the nature of any prior matters on the record. Prior cautions and police-referred community conference agreements should not be referenced.

Bail

One of the most common problems in obtaining bail for children is the lack of stable accommodation. While homelessness is not a reason for refusing bail, the courts are often reluctant to grant bail if the child has nowhere to live. In such circumstances, the lawyer should explore the possibilities of the child returning home or residing with a relative. If this is not possible, the option of obtaining independent or refuge accommodation should be explored. This may be done through Youth Justice or directly by the lawyer. There is now a number of youth

bail support programs funded by Youth Justice across the state as well as longstanding youth homelessness services.

With respect to bail conditions, while for some children this may be the only way to convince the court to grant bail, courts should not be allowed to impose conditions as a matter of course and should not make them so stringent that it will be virtually impossible for the child to comply.

Children and the Criminal Law—Tips for Parents

Having a child involved in the criminal legal process can be confronting. It is important that parents remember:

- if police wish to question or even arrest your child, it does not mean that they have committed any offence or that they have committed the offence that police are alleging. The facts may show that the child may have broken the law but not in the way or to the extent that is being alleged
- if police come to your home, stay calm. If you are angry or upset with your child, now is not the time to deal with this
- you should ask police what it is that they believe your child has done.

If police want to search any part of your home or a car, they can only do so if they have a warrant or can give you some other reason as to why legally you must let them search (e.g. they think evidence of an offence will be removed). Otherwise, it is your choice as to whether they can come in and search.

If they enter your home with or without a warrant, you should accompany the officers on their search. They may not like you doing this but you are entitled to do so.

If police take away any property belonging to you or your child, police must provide a receipt.

Police officers should give you their name and number, and the police station they are from if you ask them for that information so that you know whom you have been dealing with.

It is your child's choice if they want to answer questions other than giving their name, address and age, however, it would be useful for them to have some legal advice as to what is best to do in their situation.

Police can charge your child whether or not they interview them if police believe they have the evidence to support the charge.

If your child is prepared to go to an interview but the time police propose is not suitable, or your child would like some legal advice before being interviewed, you can negotiate a time to allow for this.

Think about whether you are the best person to be the support person for your child at a police interview at this time. Your role is to ensure that the interview is carried out appropriately by police and you should be prepared to advocate for your child in this situation.

Parents also do not have to answer questions and care should be taken in case parents put themselves at risk of being charged with an offence. Parents may also need to seek legal advice.

Sometimes parents complain to, or call, police about their child and police then charge the child with an offence. There can be significant legal and non-legal consequences for the child in doing this. It may be better for parents to contact an agency to talk about the issues they are experiencing and attempt to resolve them without recourse to the law.

Legal Notices

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