

Making Queensland Safer Act 2024

Custody of persons aged 18 or over being dealt with for child offences

Fact sheet for legal representatives

Section references are to the *Youth Justice Act 1992* unless otherwise indicated.

CAUTION: Hyperlinks to former provisions are to an expired version of the Act.

Glossary

DYJVS means the Department of Youth Justice and Victim Support.

Chief Executive means the Director-General of DYJVS.

CS Act means the [Corrective Services Act 2006](#).

MQS Act means the [Making Queensland Safer Act 2024](#).

YJ Act means the [Youth Justice Act 1992](#).

Background

The MQS Act made amendments to the YJ Act to establish new arrangements for the custody of persons aged 18 or over who are remanded in custody or sentenced to detention for child offences. These provisions commenced on assent on 13 December 2024.

This fact sheet describes the new arrangements.

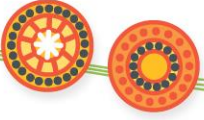
These provisions relate only to where the person is held in custody. There have been no changes to jurisdiction or procedure.

Where a person over 18 is to be detained on remand

S.135 sets out a number of remand scenarios in which a person aged 18 or over and in custody for a child offence is to be held in a corrective services facility, rather than a youth detention centre:

- (a) the person is already in youth detention, but is remanded in custody on an adult offence
- (b) the person is not already in youth detention, and is remanded in custody on a child offence, or on child and adult offences
- (c) the person is already in adult custody and is remanded in custody on a child offence.

There is one exception—where the Chief Executive has directed, under s.276D, that the person be held in a youth detention centre. This can only have occurred under scenario (a) because s.276D



only applies in relation to a person already being held in a detention centre (s.276D(1) & s.276C(1)). Such a direction could therefore not be in effect under scenario (b) or (c).

DYJVS staff will be able to advise whether a s.276D direction is in effect.

If a s.276D direction is in effect and the person is sentenced to imprisonment for the adult offence, they serve the imprisonment in a youth detention centre (s.135(3) to (5)).

If a person described in scenario (b) or (c) is sentenced to detention for the child offence, they serve the detention in adult custody (s.135(6) & (7)).

A detainee in adult custody because of the operation of s.135 is taken to be a prisoner under the CS Act for the purpose of being held in a corrective services facility, and if sentenced for a child offence, they will be released on parole (treated as court ordered parole under the CS Act) on the day they would have been released on a supervised release order under s.227 (s.136).

A detainee who turns 18 in a youth detention centre will generally be transferred to adult custody within 30 days – see ‘Transfer of detainees from youth detention centres to adult custody’ below.

Transitional arrangements

These provisions apply regardless of when the relevant offences were committed (s.430).

Where a person over 18 is to be detained on sentence

A person will go directly to a corrective services facility if they are already 18 or over when they enter custody:

- to serve a period of detention for a child offence (s.276B(1)(b)(i)), or
- to continue or complete a period of detention, for example, because of a contravention of a conditional release order or supervised release order (s.276B(1)(b)(ii)).

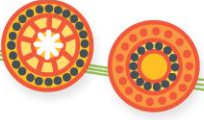
In these cases, the CS Act applies for the purpose of holding the person in a corrective services facility (s.276E(2)(a)). If the person is serving a period of detention, they will be released on parole (treated as court ordered parole under the CS Act) on the day they would have been released on a supervised release order under s.227 (s.276E(2)(c)(ii) & (3)).

Transitional arrangements

These provisions apply regardless of when the person was sentenced (s.435(1)(b)).

Persons who turn 18 while being held in a watchhouse

Sections 56 and 210 establish arrangements for remanded or sentenced children to transition from being prisoners of the court to the custody of the Chief Executive, via police custody. These children are held in watchhouses until the Chief Executive notifies the Police Commissioner when



delivery of the child to a youth detention centre can be accepted. S.276A(3) provides that s.56 and s.210 stop applying when the detainee turns 18.¹

Instead, [CS Act s.6](#) applies, and the 21 day period referred to in that section is taken to have started on the day the detainee was taken into police custody under s.56 or 210 (s.276A(4)(b)).

The detainee is then taken to be a prisoner under the CS Act for the purpose of being held in a corrective services facility, and if sentenced, they will be released on parole (treated as court ordered parole under the CS Act) on the day they would have been released on a supervised release order under s.227 (s.276E(2) & (3)).

Transitional arrangements

These provisions apply regardless of when the person was taken into police custody (s.435(1)(a))².

Transfer of detainees from youth detention centres to adult custody

A detainee, whether on remand or sentenced, is to be transferred to a corrective services facility within 30 days after they turn 18 (s.276C).

A failure to transfer the detainee within 30 days does not affect the requirement to transfer, or the validity of the transfer (s.276C(3)).

The transfer is subject to an exclusive Chief Executive discretion to direct otherwise, with no appeal or review (except judicial review) (s.276D). In giving the direction, the Chief Executive *must* have regard to the interests of the detainee and the interests of other detainees and staff at the detention centre, and *may* have regard to any other matter the Chief Executive considers appropriate (s.276D(3)). The Chief Executive can revoke the direction, and therefore transfer the detainee to adult custody, at any time (s.276D(5)). The Chief Executive is not required to provide procedural fairness in giving or revoking a direction (s.276D(7)).

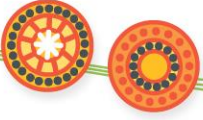
DYJVS will inform Queensland Corrective Services (QCS) about a detainee who is to be transferred (s.276A(2)) and make arrangements for QCS staff to visit the youth detention centre to talk with the detainee about the transfer and what they can expect in adult custody.

Where the detainee has ongoing criminal proceedings, DYJVS will also notify legal representatives about the transfer, and facilitate any consultations if requested by the lawyer or the young person.

Once the detainee has been transferred to adult custody, the CS Act applies for the purpose of holding the detainee in adult custody (s.276E). The detainee will be released on parole on the date they would have been released on a supervised release order under the YJ Act (s.276E(2)(c)(ii)). The parole will be treated as court ordered parole under the CS Act (s.276E(3)).

¹ Until the detainee turns 18, the Chief Executive must continue to plan to accept the detainee into a youth detention centre as soon as reasonably practicable under the prioritising arrangements set out in s.56 or s.210, with no regard to the effect of s.276A (s.56(4A); s.210(4A)).

² Except if a notice had been given or certain applications made prior to commencement under former [part 8, division 2A](#). See 'Other transitional arrangements' below.



Transitional arrangements

These provisions apply regardless of when the person entered custody (s.435(1)(c))³.

A person aged 18 or over in a youth detention centre on the day of commencement (13 December 2024) is deemed to have turned 18 on that day (s.435(2)). This means that the 30-day period within which the person is to be transferred to adult custody started on 13 December 2024⁴.

Other transitional arrangements

A person aged 18 or over in a youth detention centre on the day of commencement (13 December 2024) pursuant to [former s.135](#) or [former s.136](#) is deemed to have turned 18 on that day (s.431). This means the 30-day period within which the person is to be transferred to adult custody started on 13 December 2024.

The [former part 8, division 2A](#) continues to apply if, before commencement:

- a notice to temporarily delay a transfer had been given to a detainee under [former s.276D](#), with a specified date after commencement (s.436(1)(a)(i) and (b)); or
- a prison transfer notice had been given to a detainee under [former s.276F](#) (s.436(1)(a)(ii)); or
- an application to a court under [former s.276P](#) or [former s.276T](#) had been made but not decided (s.437).

This means the arrangements for internal review by the Chief Executive, and review by a Childrens Court judge, continue to apply.

Another transitional provision provides for where an application to be held in a detention centre had been made under [former s.139](#) but not decided prior to commencement (s.432), but on the day of commencement there were no such undecided applications.

³ See note 2

⁴ See note 2.