

# Amendments to the *Youth Justice Act 1992* and *Childrens Court Act 1992*

The *Queensland Community Safety Act 2024* (the QCS Act) commenced on 30 August 2024, amending various pieces of legislation.

Amendments to the *Youth Justice Act 1992* (YJ Act) and the *Childrens Court Act 1992* (the Childrens Court Act) are detailed in this document.

For information about amendments to other Acts, see the [explanatory notes and statements of compatibility with human rights](#).

The QCS Act amends the YJ Act to:

- reword and clarify youth justice principle 18
- expand the electronic monitoring trial
- clarify the bail decision-making process
- amend the arrangements for the transfer of detainees over 18 years old, creating a presumption of prompt transfer
- enable temporary transfers from watchhouses to youth detention centres (YDCs) to facilitate participation in programs and physical exercise
- regulate the taking of photographs and video in YDCs
- enable a regulation to provide for the recording of detainees' phone calls
- ensure the YJ Act requires a child's disability needs to be met while they are in detention
- ensure that a child can participate fully in rehabilitation programs, without fear that what they say could be used in evidence against them.

The QCS Act amends the Childrens Court Act to provide greater access for the media and the families of victims to attend matters before the Childrens Court.

## Amendments to the *Youth Justice Act*

### Clarifying youth justice principle 18

There was a common misunderstanding that principle 18 prohibited courts from imposing detention when other penalties were available. This undermined public confidence in the youth justice system. The QCS Act amended principle 18 to clarify it.

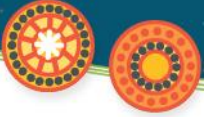
### Expanding the electronic monitoring trial

In 2021, the Queensland Parliament passed time-limited legislation to facilitate a trial of electronic monitoring as a condition of bail for children in certain circumstances. The trial is intended to assess the advantages and disadvantages of using electronic monitoring devices and draw overall conclusions as to its effectiveness at reducing reoffending by serious repeat offenders on bail, and its viability as an alternative to detention.

The Australian and international evidence of the effectiveness of electronic monitoring is inconclusive. It would be preferable for the sample size for the Queensland trial to be larger than it currently is, in order to support reliable conclusions.

The QCS Act expanded the eligibility criteria for electronic monitoring in two ways:

1. It added a number of offences involving violence or threats of violence to the list of prescribed indictable offences in section 52AA(11). The nature of these offences is intended to maintain the serious repeat offender target cohort for the trial.
2. It added children who have been charged with a prescribed indictable offence in the preceding 12 months. This includes children who become serious repeat



offenders very quickly, before the finalisation of proceedings for the first offences. These children were previously excluded by the requirement for the child to have previously been found guilty of an indictable offence.

[More detail about the trial](#) is available in separate factsheets on our website.

### Clarifying the bail decision-making process

Section 52A of the YJ Act provides the framework for decisions about bail conditions. This section had been interpreted by some as meaning that bail conditions such as electronic monitoring, curfews and residence could not be considered until after a decision was made to release the child from custody.

Section 52A(1) of the YJ Act was amended to clarify that a court or police officer should consider risks associated with granting bail, and any conditions that may mitigate those risks, in the one process, prior to a decision to release the child.

### Changing the arrangements for the transfer of detainees over 18 years old

Following amendments by the *Strengthening Community Safety Act 2023* to arrangements for the transfer of sentenced adult detainees, ways to improve these arrangements were identified.

The QCS Act established new transfer arrangements for both remandees and sentenced detainees, drawing on the 2023 arrangements for sentenced detainees.

The new arrangements establish a presumption of prompt transfer, unless there are special circumstances (such as a unique vulnerability, or a short time remaining until the detainee's release date).

All of the 2023 considerations and safeguards continue to apply, including:

- the obligation on the chief executive to arrange legal advice for the detainee
- the option of a review of the chief executive's decision by a Childrens Court judge.

### Enabling temporary transfers from watchhouses to youth detention centres

When YDCs are full, children can be detained in watchhouses. The ability to provide age-appropriate programs for children detained in watchhouses is constrained by the watchhouse built environment and the need for specialised staff.

The QCS Act amended the YJ Act to enable children being held in watchhouses to be taken to a nearby YDC for the day, for programs or physical exercise at the centre.

The process requires the agreement of:

- the child
- the youth justice chief executive
- the police commissioner.

Considerations include:

- the child's needs and background (including physical and mental health concerns)
- any impacts on the management and good order of the YDC
- suitable transportation and the distance between the watchhouse and closest YDC.

### Regulating the taking of photographs and video in youth detention centres

The QCS Act codified a pre-existing operational policy, prohibiting the taking photos or videos inside a YDC without the permission of the chief executive. There are exceptions, such as a detainee's lawyer and the various oversight entities.

### Enabling a regulation to provide for the recording of detainees' phone calls

Intelligence officers in YDCs have identified circumstances where offences are being committed or the safety of other detainees or



staff are being compromised via phone calls. Examples include:

- breaches of domestic violence orders
- intimidating witnesses
- communicating with associates in other units in the YDC or even in other YDCs, risking the good order and safety of the centres
- being on telephone calls with associates while the associates are committing offences.

This happens when the recipient of a phone call forwards the call or facilitates a conference call.

Prior to the QCS Act staff could monitor phone calls in some but not all of these circumstances. There was no ability to record any call. Most other states and territories allow the recording of calls, with appropriate safeguards.

The QCS Act created a head of power for a regulation to establish purposes, and requirements, for recording phone calls. The department committed to consultation with stakeholders in the development of a proposal for government's consideration.

### **Women's Safety and Justice Taskforce recommendations**

In March 2021, the Queensland Government established the independent Women's Safety and Justice Taskforce (WSJT), which ultimately recommended making some changes to the YJ Act relating to:

- support for victims
- a set of legislated standards for the care of girls in detention
- the participation in rehabilitative programs while on remand.

The YJ Act has been amended to:

- include in the youth justice principles a reference to the provision of disability services for children in detention, to ensure all the standards proposed by the

WSJT for girls in detention are embedded in legislation

- ensure that evidence of participation in a program or service by a child (on bail, remand, or sentence), or evidence of anything said or done in the course of the program or service, cannot be used in evidence in any proceedings, to facilitate free and open discussion about the behaviours that both the program and the child are attempting to change
- provide that identifying information about a child disclosed to persons providing counselling or support to a victim is to remain confidential.

### **Amendments to the Childrens Court Act**

All criminal proceedings against children commence, and most are finalised, in the Childrens Court constituted by a magistrate.

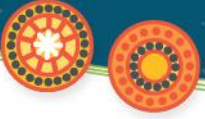
A fundamental principle of the youth justice model throughout Australia and comparable jurisdictions is that the details of such matters remain confidential. This is so that the mistakes for which young people are held to account as a child do not unduly affect their chances to enter adulthood as a productive member of society.

However, the public has an interest in knowing how the Childrens Court functions.

The QCS Act amended the Childrens Court Act following a government undertaking to enable increased access to these proceedings for the media, victims, and certain other people to give greater transparency to how justice is administered.

The amendments allow for the following parties to be present in proceedings:

- the victim
- the family of a deceased victim
- a representative of the victim
- accredited media entities
- a person who, in the court's opinion, has a proper interest in the proceeding (e.g.



students, representatives of other departments such as Education).

Courts have the power to make exclusion orders, and the amendments give guidance about the principles informing such decisions.

### **Further information**

If you would like any further information, please contact Youth Justice Strategy, Performance and Commissioning at [osed\\_spc@cyjma.qld.gov.au](mailto:osed_spc@cyjma.qld.gov.au).