



Queensland

# **Juvenile Justice Age and Alternative Sentencing Youth Bill 2009**





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**2009**

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**A Bill**

for

**A Youth Act to allow the courts to have alternative sentences which fit the nature of the crime and age of the child and to amend the *Juvenile Justice Act 1992* for related purposes**

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[s 1]

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**The Youth Parliament of Queensland enacts—** 1

**Part 1 Preliminary** 2

**1 Short title** 3

This Act may be cited as the *Juvenile Justice Age and Alternative Sentencing Youth Act 2009*. 4  
5

**2 Commencement** 6

This Youth Act commences on a day to be fixed by proclamation. 7  
8

**3 Definitions** 9

In this Youth Act— 10

*Aboriginal or Torres Strait Islander community* means— 11

(a) an urban community; or 12

(b) a rural community; or 13

(c) a community on DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*. 14  
15  
16

*Aboriginal or Torres Strait Islander youth* means a child who is a member of an Aboriginal or Torres Strait Islander community. 17  
18  
19

*adult* means a person who is not a child. 20

*electronic surveillance*, of a person, refers to surveillance by electronic means. 21  
22

*child* or *juvenile* means a person of less than 18 years of age. 23

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**common law** means a system of jurisprudence based on  
judicial precedents rather than statutory laws made by  
government.

**crime** means an unlawful act punishable by law.

**identifying information**, about a child, means information  
that identifies the child, or is likely to lead to the identification  
of the child, as a child who is being, or has been, dealt with  
under this Youth Act.

**indictment** means a formal document accusing one or more  
persons of committing a crime or series of crimes and is  
usually read out to the accused at the commencement of the  
trial before they are asked to plead.

**indictable offence** means a crime for which a jury rules that  
there is enough evidence to charge the defendant and punish  
them for their actions.

*Note—*

These crimes include murder, manslaughter, rape, kidnapping, theft,  
robbery, burglary, arson, conspiracy, fraud and other major crimes,  
including an attempt to commit them.

**national service** means service to the Commonwealth of  
Australia whether it be army, navy, air force or any other  
branch of service.

**offender** means a person who commits an offence.

**parent** means—

(a) a parent or guardian of a child; or

(b) a person who has lawful custody of a child, other than  
because of the child's detention—

(i) for an offence; or

(ii) pending a proceeding for an offence; or

(c) a person who has the day-to-day care and control of a  
child.

**private offence** means an offence or crime committed inside a  
private house or building.

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<i>public offence</i> means an offence or crime committed in a street, park or any area where the public gathers, other than in a private house or building.	1 2 3
<i>publish</i> means to publish to the public by multimedia, television, radio, newspaper, periodical, notice, website or other form of broad communication.	4 5 6
<i>repeat offender</i> means a person who has been convicted of a crime or offence of the same nature on more than one occasion within the last 5 years.	7 8 9
<i>serious offence means—</i>	10
(a) a life offence; or	11
(b) an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 10 years or more.	12 13 14
<i>statutory law</i> means a law written by a legislature or other governing authority, such as the executive arm of government, in response to a perceived need to clarify the functioning of government, improve civil order, to codify existing law or for an individual or company to proceed with an act previously not covered or prohibited by law.	15 16 17 18 19 20
<i>summary offence</i> means a criminal act, in some common law jurisdictions, that can be proceeded with summarily without the right to a jury trial or indictment.	21 22 23
<i>Note—</i>	24
A <i>summary offence</i> is also known as a petty crime.	25
<i>youth</i> means a person who is between 12 and 25 years of age.	26

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<b>Part 2</b>	<b>Sentencing</b>	1
<b>4</b>	<b>Classification of offences</b>	2
(1)	All offences, including summary offences, committed by juveniles will be classed according to the severity of the offence and its effect on the community.	3 4 5
(2)	The following are considered forms of juvenile offences under this Youth Act—	6 7
(a)	an act committed by a juvenile against another person or persons;	8 9
(b)	an act committed by a juvenile that causes unlawful damage to public or private property;	10 11
(c)	an act committed by a juvenile against himself or herself which may lead to further law violations.	12 13
(3)	Juvenile offences shall be classed in direct correlation to the recommended standard minimum sentence.	14 15
<b>5</b>	<b>Recommended standard minimum sentencing system</b>	16
(1)	Recommended standard minimum sentences will be—	17
(a)	determined by sentences that were given in similar previous cases; or	18 19
(b)	chosen by a panel of judges and magistrates; or	20
(c)	determined by any combination of the methods mentioned in paragraphs (a) and (b).	21 22
(2)	A sentencing official is prohibited from sentencing a juvenile offender to less than the recommended standard minimum sentence unless the sentencing official reasonably believes that special consideration should be awarded to the offender.	23 24 25 26
(3)	Special consideration may only be awarded under the following circumstances—	27 28
(a)	mental impairment;	29

[s 5]

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- (b) a home or living environment that may contribute to the juvenile offender re-offending. 1  
2
- (4) Special consideration must be applied for by the defendant's legal representation after the defendant pleads guilty or the verdict is given and before the sentence is handed down. 3  
4  
5
- (5) Under the juvenile offence and classification and recommended standard minimum sentencing system— 6  
7
- (a) a juvenile offender aged between 13 and 17 years will be tried and sentenced as a young adult; and 8  
9
- (b) a juvenile offender aged between 5 and 12 years will be tried and sentenced as a child. 10  
11
- (6) Offences are classed on a scale from level 1 offences to level 5 offences, each level having stricter, harsher and more prolonged sentences. 12  
13  
14
- (7) Level 1 offences to level 3 offences will encompass minor summary offences, minor public offences and minor private offences. 15  
16  
17
- Note—* 18
- These offences do not have severe effects on the community or other persons but are still in violation of state law. 19  
20
- (8) Level 4 offences and level 5 offences will encompass summary offences, public offences, private offences and indictable offences. 21  
22  
23
- Note—* 24
- These offences have severe effects on the community and other persons. 25
- (9) An offence committed by an individual that is classed as a level 4 offence or level 5 offence qualifies them to be tried and sentenced within the next age bracket. 26  
27  
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<b>Part 3</b>	<b>Indigenous Youth Court</b>	1
<b>6</b>	<b>Establishment committee</b>	2
(1)	The Indigenous Youth Court establishment committee will be formed in conjunction with the Department of Justice and Attorney-General, Department of Communities and Queensland Police.	3 4 5 6
(2)	Members of the committee will be selected at the discretion of the Attorney-General, having regard to those suitable for the position, and must include at minimum—	7 8 9
(a)	members of the Aboriginal and Torres Strait Islander community of Queensland; and	10 11
(b)	representatives of the Department of Communities; and	12
(c)	senior police officers with experience in dealing with youth offenders; and	13 14
(d)	a member of the Queensland Legislative assembly; and	15
(e)	a youth representative.	16
<b>7</b>	<b>Function of the establishment committee</b>	17
(1)	The function of the establishment committee will be to form a permanent court in Queensland to hear cases in which the offender is an Aboriginal or Torres Strait Islander youth and the offence to be dealt with is not a serious offence, as defined by this Act.	18 19 20 21 22
(2)	Unless specified by this Act, all operations, management, selection of bench members, and other matters regarding the court is at the full discretion of the committee.	23 24 25
<b>8</b>	<b>Particulars of the court</b>	26
(1)	The bench of the Indigenous Youth Court must consist of the following—	27 28
(a)	a magistrate;	29

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- (b) a respected community elder; 1
  - (c) a member of the Department of Communities. 2
- (2) The magistrate will determine the sentence of the offender with regard to other members of the bench, however, the magistrate's decision prevails over those members. 3  
4  
5
- (3) Where the offence is of a serious or indictable nature, the case is to be immediately referred to a superior court. 6  
7
- (4) The magistrate may make orders for the offender to engage in the following— 8  
9
  - (a) employment; 10
  - (b) an education program; 11
  - (c) a community based order; 12
  - (d) community service; 13
  - (e) an injunction; 14
  - (f) an apology to victims; 15
  - (g) a detention order; 16
  - (h) any other measure the magistrate believes appropriate. 17
- (5) Sentencing should take into account juvenile justice principles and the following— 18  
19
  - (a) any cultural considerations; 20
  - (b) any impact of the offence on a victim; 21
  - (c) the fitting proportion between the sentence and the offence; 22  
23
  - (d) that a non-custodial order is better than detention in promoting a child's ability to re-integrate into the community; 24  
25  
26
  - (e) that the rehabilitation of a child found guilty of an offence is greatly assisted by— 27  
28
    - (i) the child's family; and 29
    - (ii) opportunities to engage in educational programs; 30  
and 31

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	(iii) employment;	1
	(f) that a detention order should be imposed only as a last resort.	2 3
<b>Part 4</b>	<b>Amendment of Juvenile Justice Act 1992</b>	4 5
<b>9</b>	<b>Act amended</b>	6
	This part amends the <i>Juvenile Justice Act 1992</i> .	7
<b>10</b>	<b>Replacement of s 6 (Child’s age regulation)</b>	8
	Section 6—	9
	<i>omit, insert—</i>	10
<b>‘6</b>	<b>Child age restriction</b>	11
	‘(1) A child can not be tried as an adult, as defined by this Act or the <i>Juvenile Justice Age and Alternative Sentencing Youth Act 2009</i> , if they have not reached 18 years of age.	12 13 14
	‘(2) If the person turns 18 years during the course of legal proceedings they will continue to be treated as a child in regards to sentencing as prescribed by this Act and the <i>Juvenile Justice Age and Alternative Sentencing Youth Act 2009</i> .	15 16 17 18 19
	‘(3) If the person turns 18 years during legal proceedings, any punishment which involves detention will be served at an adult correctional facility.’	20 21 22
<b>11</b>	<b>Replacement of s 234 (Court may allow publication of identifying information)</b>	23 24
	Section 234—	25
	<i>omit, insert—</i>	26

[s 11]

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<b>‘234 Identifying offenders</b>	1
‘(1) A court will allow publication of identifying information if—	2
(a) a court makes an order relating to a youth found guilty of a indictable offence; or	3 4
(b) the offence involves the commission of violence against a person; or	5 6
(c) the offending youth is a repeat offender of multiple summary offences.	7 8
‘(2) The identifying information is all of the following—	9
(a) the initial of the offender’s first name;	10
(b) the offender’s surname;	11
(c) what crime was committed;	12
(d) where the crime was committed;	13
(e) what sentence was given.’	14

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