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Submission¹ to Integrity and Community Safety Committee in relation to the Making Queensland Safer Bill 2024 into the Queensland Parliament 2024, by Associate Professor Terry Goldsworthy².

Introduction

This submission will deal with the issues around the proposed the *Making Queensland Safer Bill 2024* into the Queensland Parliament. The bill proposes, among other things, to amend the various acts:

The Making Queensland Safer Bill 2024 will amend the Youth Justice Act 1992 to:

- *introduce 'adult crime, adult time';*
- *remove the principle of detention as a last resort and that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community;*
- *promote the consideration of the impacts of offending on victims in the Charter of Youth Justice Principles and when sentencing a child;*
- *ensure a child's criminal history reflects their full history;*
- *enable a person's child criminal history to be admitted when sentenced as an adult;*
- *default to an 'opt out' mechanism for victims on the victim information register; and*
- *alter the process relating to the transfer of 18-year-old detainees from youth detention centres to adult correctional centres.*

The Bill will also amend the Childrens Court Act 1992 to:

- *ensure the victim or a member of the victim's family can be present during criminal proceedings; and*
- *enable the media to be present during criminal proceedings by omitting the ability of a court to make an exclusion order under section 20(2).*

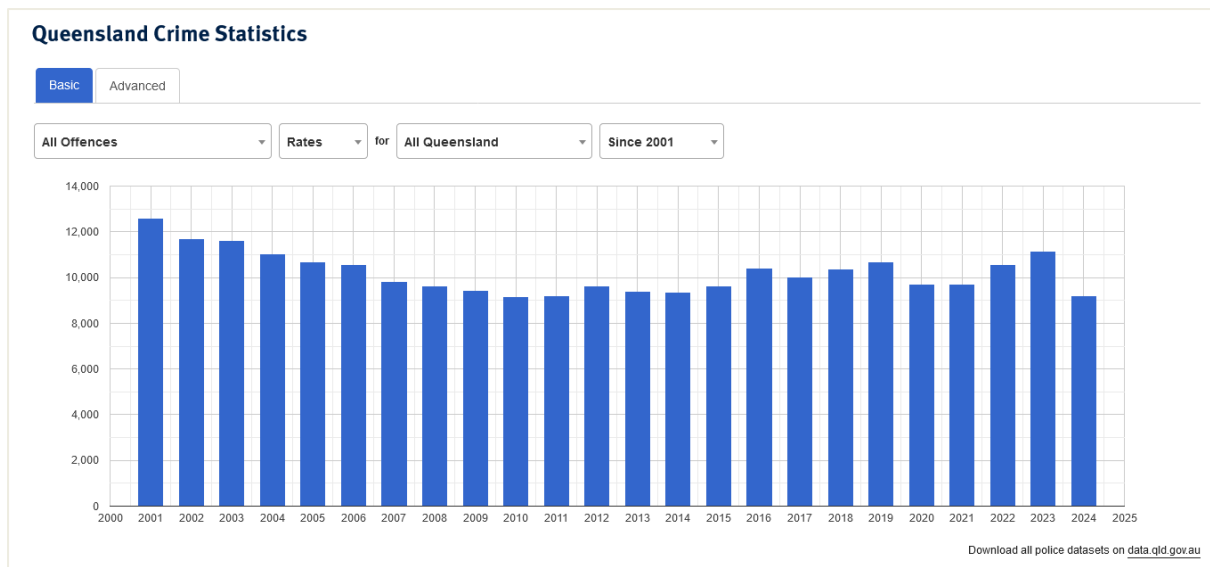
¹ The authors stress that, throughout this submission, the views expressed are those of the authors; and do not necessarily reflect the opinions of their employer, Bond University.

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It is disappointing that such a tight timeframe was imposed on submissions in relation to this bill. It would have been much more prudent to allow sufficient time for comprehensive submissions to be made. The last time legislation was rushed through the parliamentary process like this it resulted in the ill-conceived and problematic VLAD anti-bikie laws that were a dismal failure in terms of combating organised crime.

The context of crime in Queensland

To say that Queensland is experiencing a crime crisis is a statement of fact. The Queensland Police Service (QPS) Mypolice website provides public data on crime rates. It shows that the Queensland crime rate has in fact been rising since 2021. In fact, the Queensland crime rate in 2023 was the highest it has been for 20 years as indicated by the data table below (Queensland Police Service, 2024).



The latest Queensland Crime report for 2022-23 showed that (Queensland Government Statisticians's Office, 2024):

Queensland police recorded 596,702 offences in 2022–23, an increase of 13.5% (+71,050 offences) on the previous financial year. The recorded offence rate, at 11,088.8 offences per 100,000 persons, increased 11.2% compared with 2021–22. While property offences showed the greatest increase in terms of volume (+42,056 offences), the increase in percentage terms was almost identical for personal (+17.7%) and property (+17.1%) offences.

The below figure shows the crime rates for various offence categories, all of them increasing to historic highs (Queensland Government Statisticians's Office, 2024).

Table 2 Count and rate of recorded offences by category

	Offences recorded			Offences recorded per 100,000 persons		
	2021–22 ^(a)	2022–23	change	2021–22 ^(a)	2022–23	change
Offence category	– number –		%	– rate –		%
Offences against the person	67,815	79,845	17.7	1,286.3	1,483.8	15.4
Offences against property	245,402	287,458	17.1	4,654.7	5,342.0	14.8
Other offences	212,435	229,399	8.0	4,029.4	4,263.0	5.8
Total	525,652	596,702	13.5	9,970.4	11,088.8	11.2

The latest available public data shows that crime across Queensland rose by 0.1 percent in the last twelve months. As newly appointed QPS Commissioner, Steve Gollschewski, said recently “And whilst you might think ‘oh that’s good it’s stabilised’, it’s not good,” he said. “I’m not satisfied at all because we’re on a really high level” (Chamberlin, 2024). A sense of crisis is created to some degree by not only rising crime rates, but also a sense of helplessness felt by the community and a perceived failing of the previous Labor government to provide for a safe and secure community.

How the public perceives crime issues is just as important as the reality of crime trends themselves. The Commonwealth Report on Government Services provides a snapshot of perceptions of safety. In 2022-23, 82.5% of people felt safe at home at night, while just 29.6% felt safe on public transport and 48.5% on the street (Productivity Commission, 2024) .

It is what is happening now that is important to the community. Telling people, it was worse 20 years ago does not reassure the community. Victims of crime also have a right to be heard, and their needs and rights are just as important as an offender.

Youth Crime in Queensland

Let me state from the outset that I do not agree with the proposition that these proposed changes are discriminatory in anyway. The provisions will apply equally to all members of our society, this is not discrimination. To argue that a certain punishment is discriminatory must extend the logic that the offence itself is discriminatory. But for the offence, there would be no punishment. Just because one section of society may commit an offence with more regularity does not make that offence discriminatory. Take for example unlawful use of a vehicle, no one would dare suggest that making this act unlawful is discriminatory and unfair. Yet many are prepared to try and argue that the punishment we choose to impose for this offence is. The question of how this could be the case begs to be asked? The act of the offender is a willed act to steal the vehicle, it is a choice, just because it has a certain punishment attached to the finding of guilt does not render the punishment discriminatory in its application. If you don’t want to suffer the punishment, do not choose to commit the act, the outcome is totally avoidable for the offender.

The Queensland Audit Office conducted a review of serious youth crime in 2024. Youth offenders make up 18 percent of all offenders in Queensland but account for more than 50 percent of robbery, stolen vehicle and break and enter offenders. The Auditor General found that in 2018-19 there were 442 serious repeat offenders, in 2022-23 there were 728 and that they accounted for 55 percent of all youth crime (Queensland Audit Office, 2024). The report noted that serious repeat offenders were failing to be monitored or rehabilitated. The report found that constant government restructures, legislative changes and instability in leadership positions had contributed to the youth crime problems (Queensland Audit Office, 2024). For

instance, the QPS has seen fit to have at least four people fill the position of Assistant Commissioner for youth justice.

The Queensland Sentencing Council lists the purposes of sentencing as follows (Queensland Sentencing Advisory Council, 2024a):

In Queensland, the Penalties and Sentences Act 1992 says that there are 5 reasons why a court can sentence a person:

Punishment — to punish the person in a way that is just (fair)

Rehabilitation — to help a person change their behaviour so they don't commit an offence again

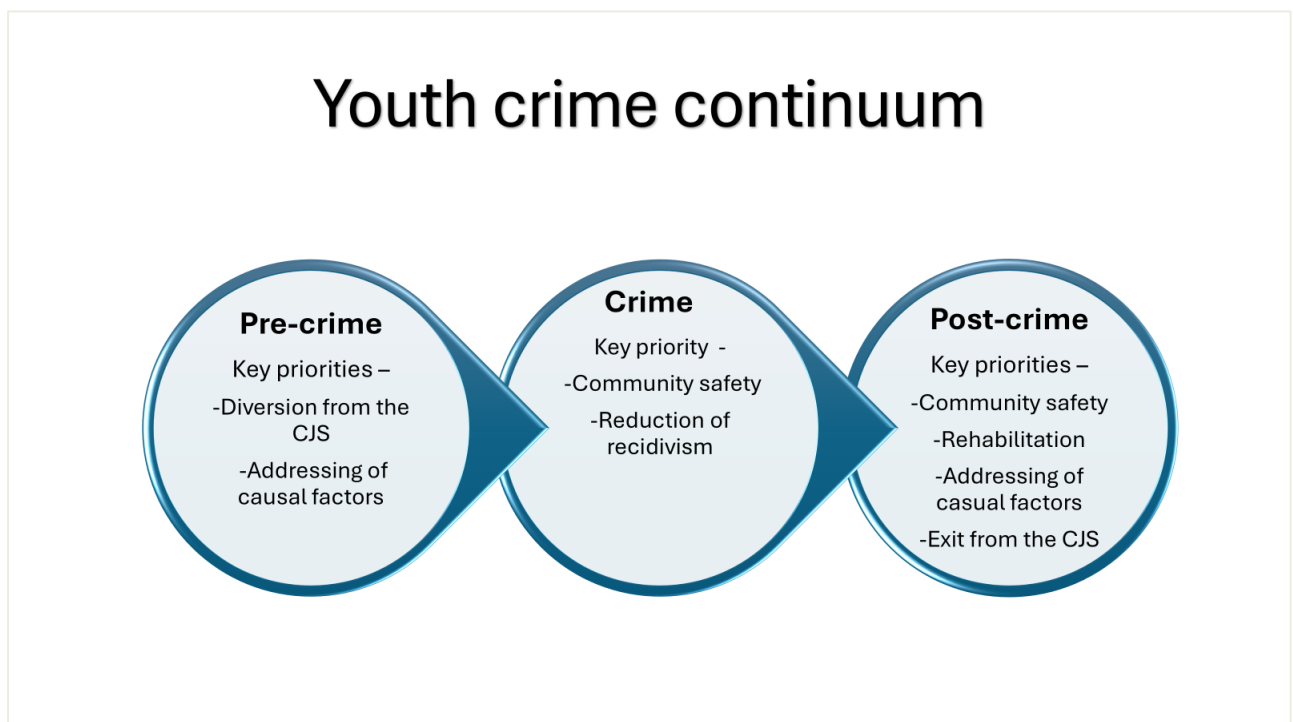
Deterrence — to discourage that person and other people from committing the same type of offence by showing them what might happen if they do

Denunciation — to express in a formal public way that the person's behaviour is unacceptable to the community

Protection — to keep the community safe

The court must give a sentence that meets one, some or all these purposes. What purposes apply and are most important depends on the type of offence the person has committed and their personal circumstances.

Each of these purposes can be present in different phases of what I call the Youth Crime continuum. Each phase is accompanied by different priorities. It is assumed by some that various sentencing purposes are exclusive, I would argue this is not the case. In many cases sentencing outcomes can be mutually beneficial and inclusive.



A tough on crime approach does not necessarily preclude attempts to rehabilitate. Indeed, sentencing a youth offender to adult time can serve the purposes of protecting the community and allowing the offender to access suitable rehabilitation programs whilst incarcerated. The key is having such programs available to youth offenders who are sentenced. As noted in the Queensland Audit report, more can be done to monitor and rehabilitate serious repeat youth offenders (Queensland Audit Office, 2024).

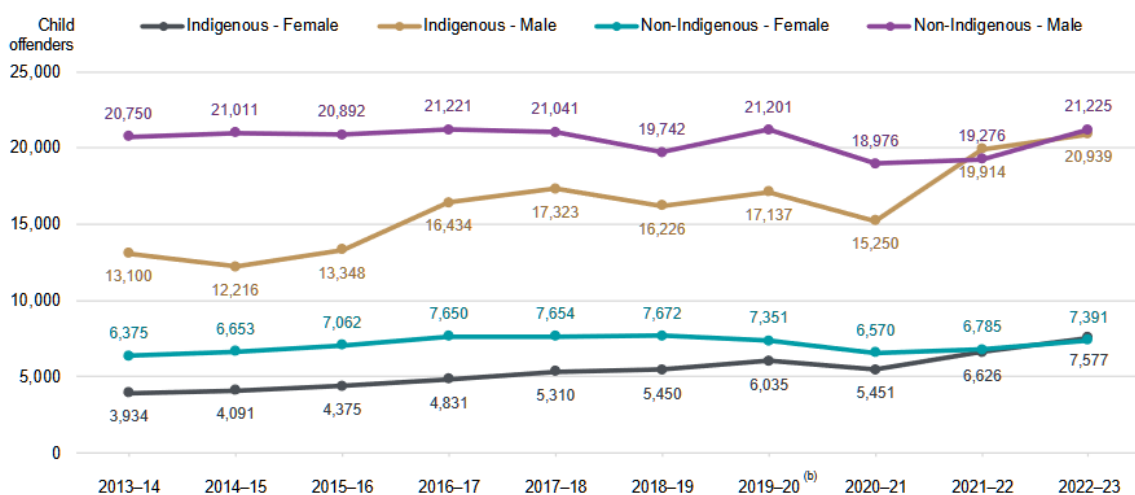
The 2022-23 Queensland Crime Report stated the below in relation to rising youth offending (Queensland Government Statisticians's Office, 2024).

In 2022–23, the number of non-unique offenders aged 10–17 years proceeded against by police increased to 57,410, representing an increase of 8.6% (+4,564) from 2021–22.

2021-22 the Queensland Crime Report showed a 13.7% increase in the number of children aged ten to 17 being proceeded against by police, compared to the previous year. The total number of youth offenders reached 52,742, the highest number in ten years (Queensland Government Statistician's Office, 2023).

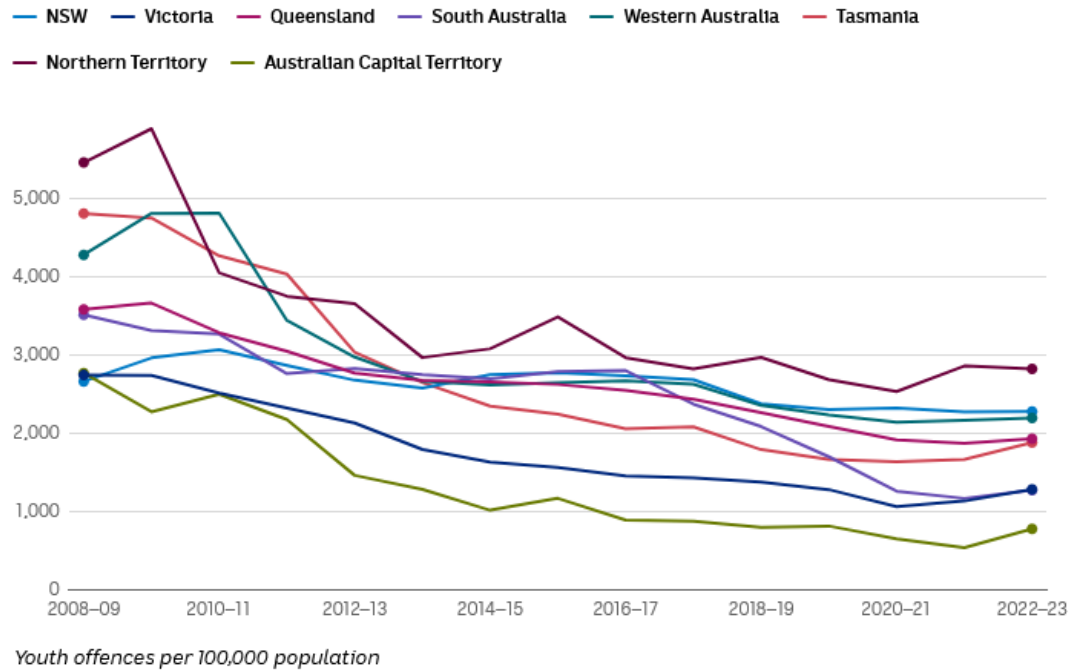
The Queensland Crime report shows the following in relation to youth offender numbers (Queensland Government Statisticians's Office, 2024).

Figure 23 Child offenders proceeded against by police, by Indigenous status and sex^(a) – time series



In most of the states and territories, Australian Bureau of Statistics data shows the youth offending rates have trended downward over the past decade.

The ABS data shows that in 2022-23 the youth offender rate rose in every state except for the Northern Territory (Australian Bureau of Statistics, 2024). It should be noted the ABS youth offender rate only counts how many unique offenders came into contact with police – each offender is only counted once, regardless of how many times they may have offended in the period. This means it does not provide an indication of overall recidivism rates by individual young people. The below graph shows the ABS youth offender rate over time (Sato, 2024).



The seeds for the current crime crisis in Queensland were sowed by the former Labor government in 2016 when they removed breach of bail as an offence for youth offenders and also reintroduced the principle of detention as a last resort back into the Youth Justice Act.

The Atkinson review of the governments youth justice reforms released in 2022 showed that offending by young people on bail had increased (Atkinson, 2022). Some 53 percent of young people on bail reoffended whilst on bail, 19 percent committed serious offending and seven percent committed an offence leading to death or serious injury whilst on bail (Atkinson, 2022).

Table 45: Distinct young people and offending on bail 1 May to 31 October, 2018 to 2021

Measure	2018		2019		2020		2021		% change 2019 to 2021
	Number	%	Number	%	Number	%	Number	%	
Distinct young people on bail	1338	100%	1146	100%	932	100%	1123	100%	-2%
Offended on bail	648	48%	541	47%	439	47%	597	53%	10%
Serious offending on bail	185	14%	164	14%	163	17%	211	19%	29%
Offence on bail leading to death or serious harm	59	4%	60	5%	64	7%	78	7%	30%

Source: Performance Reporting and Analytics - Youth Justice, DCYJMA. Reference: YJ_2131

In 2023 the Labor government scrambled to reintroduce the breach of bail for youth offenders. Since then, the true extent of the problem has been revealed. In the 12 months up to May this year 1144 young people were charged with 8464 breach of bail offences (Sharma, 2024).

The age of criminal responsibility

There is a national push to raise the age of criminal responsibility from 10 to 14 years. Currently in Australia, the Commonwealth and most states set the minimum age of criminal responsibility at ten.

This push is being led by a campaign called Raise the Age. It has a slick website makes emotional appeals such as “right across Australia, children as young as 10 are arrested, charged with an offence, hauled before courts and locked away in prison cells” (Raise the age, 2024). It has downloadable information packs, links to email politicians directly and a messaging guide.

The messaging guide includes such suggestions as don’t use youth, say child, use wording that puts the blame on politicians, so they feel pressured. Ironically victims of crime hardly rate a mention on the website. That this misleading messaging has been effective is evidenced by the responses of governments around Australia.

The Tasmanian, ACT and Victorian governments have all committed to raising the age to 14 years. The ACT by 2025, Victoria by 2027 and Tasmania by 2029.

In the Northern Territory the Labor government raised the age of criminal responsibility to 12 years in 2023, this was on the back of a youth crime epidemic in the territory. That government was removed from office, and the newly elected CLP government has passed law that lower the age of criminal responsibility back down to 10 years of age (Bowles, 2024).

So, are we locking all our kids up? The answer is no.

The Queensland Sentencing Advisory Council looked at offences committed by youth offenders aged under 14 years for the period 2005-2022. Out of 17,694 cases only 2.1 percent received a custodial sentence, with the average period of detention being 5 months (Queensland Sentencing Advisory Council, 2023).

The most common court outcomes for youth offenders under 14 years were reprimands 27.4 percent, probation orders 23.1 percent and court diversions 15.4 percent. On average 17 youth offenders aged under 14 years received a custodial sentence in Queensland each year in Queensland (Queensland Sentencing Advisory Council, 2023).

As the report noted: “children under 14 were rarely sentenced to detention” (Queensland Sentencing Advisory Council, 2023, p. 2).

What this data shows is that we are clearly not locking up our kids, nor are we throwing away the keys on the rare occasion when we do sentence a youth offender to detention.

The next issue is do children aged between 10 and 13 understand the difference from between right and wrong.

Operating in conjunction with the age limit is the “doli incapax” presumption, which is available in all states and territories. This means a child aged 10-13 years isn’t criminally responsible for any offence, unless it can be shown the child had the capacity to know they ought not to commit the offence. This places the onus of proof on the prosecution.

Certainly, by the age of 10 years this sense of reasoning would be developed in most children. At school we educate our young people about the dangers of tobacco, drugs and healthy relationships etc. Yet some would argue we should not hold a child over the age of 10 years responsible for breaking into your house?

The Raise the Age proponents argue that because a child may not realise the consequences of their actions, they should not be held accountable. Understanding the consequences of your actions is a separate issue to knowing if what you did was right or wrong. How do we teach young people responsibility for actions and consequences if we do not hold them accountable?

How we, as a society, punish those young people who transgress is also a separate issue. If we don't want any youth offenders in detention, we can do that without raising the age of criminal responsibility, one is not dependent on the other.

We must ensure that we do not weaken our criminal justice system in a way that will ultimately fail our young people by creating a generation with no sense of personal responsibility that can only weaken our social fabric.


The dismissal of imprisonment as a useful sentencing option is not as clear cut as you might as you think. A research paper by the Australian Productivity Commission (2021, p. 51) noted: "The literature has consistently found that incapacitation through incarceration leads to significant reductions in crime."

Indeed, imprisonment run well can achieve more than is often realised.

And it is not necessarily the case the non-prison alternatives are that more successful. Data from the Queensland government shows that 61% of youth offenders who underwent a court diversion process between 2022-2023 re-offended within 12 months (Queensland Parliament, 2024).

Number of youth offenders in Qld who reoffend within 12 months after undergoing a court diversion process 2022-23

Year	Court caution	Reoffending number	%	Restorative justice processes	Reoffending number	%	Drug diversions	Reoffending number	%
2022	295	154	52%	891	547	61%	61	32	52%
2023	274	161	59%	793	520	66%	43	20	48%
2024	239	Not available	Not available	976	Not available	Not available	49	Not available	Not available

 • 61% of youth offenders who underwent a court diversion process between 2022-2023 reoffended within 12 months.

The LNP have brought forward the issue of reset camps, which have been largely dismissed as being a replication of the Newman era boot camps. The research evidence tells us that boot camps are ineffective in stopping recidivism. But these camps are a different concept to boot camps, which are court ordered alternatives to incarceration. These camps would be voluntary and before a problematic youth enters the criminal justice system with the focus on education, discipline, counselling, training and employment. These are relevant given that 48 percent of youth offenders are disengaged from education, training and employment. They might just work.

Adult crime adult time

A central plank of this bill is adult crime and adult time.

The proposed bill would implement detention times for youth offenders complicit with adult punishments for the following offences in the Criminal Code:

- murder (section 302, 305);
- manslaughter (section 303, 310);
- unlawful striking causing death (section 314A);
- acts intended to cause grievous bodily harm and other malicious acts (section 317);
- grievous bodily harm (section 320);
- wounding (section 323);
- dangerous operation of a vehicle (section 328A);
- serious assault (section 340);
- unlawful use or possession of motor vehicles, aircraft or vessels (section 408A);
- robbery (section 409, 411);
- burglary (section 419);
- entering or being in premises and committing indictable offences (section 421); and
- unlawful entry of vehicle for committing indictable offence (section 427).

The Queensland Sentencing data hub does not provide any data for sentencing length of youth offenders for murder offences. It has however conducted a review of sentencing outcomes between 2005-16, some ten youth offenders were convicted of murder in Queensland. Only six got life sentences, the rest received sentences between 8-14 years (Queensland Sentencing Advisory Council, 2017).

The adult crime adult time policy will mean life for youth offenders who commit murder. It will make little difference to other offences as only about six percent of youth offenders in Queensland receive custodial sentences and hardly any receive the maximum sentence.

Data from the Queensland Sentencing Advisory Council provides sentencing trends for 2022-23 (Queensland Sentencing Advisory Council, 2024b). Of Children sentenced in the higher courts 17 percent received a period of detention. For the same period in the Magistrates Courts only 4.7 percent of youth offenders received a period of detention.

The Sentencing Council also provides a data hub that allows examination of a longer trend of sentencing outcomes for youth offenders for the offences subject of the bill.

Number of sentenced cases by type of penalty for 2019-20 to 2023-24

Offence	Percentage Detention	Percentage conditional release order	Percentage non-custodial
Murder	100	0	0
Manslaughter	100	0	0
Grievous bodily harm	22	32	46
Wounding	14	14	72
Dangerous Op of vehicle (all)	19	17	64
Robbery non-aggravated	10	31	89
Robbery aggravated	14	11	75
Serious assault (all)	10	7	83
Unlawful use of a motor vehicle (non-aggravated)	5	3	92
Unlawful use of a motor vehicle (aggravated)	6	4	90
Burglary (non-aggravated)	10	9	81
Burglary (aggravated)	13	12	75
Unlawful entry of (non-dwelling) premises	2	3	95
Unlawful entry of (non-dwelling) premises and commit offence (non-aggravated)	2	2	96
Unlawful entry of (non-dwelling) premises and commit offence (aggravated)	5	6	89
Unlawful entry of a vehicle for committing indictable offence (non-aggravated)	0	0	100
Unlawful entry of a vehicle for committing indictable offence (aggravated)	20	6	74
Acts intended to cause grievous bodily harm and other malicious acts	90	3	7

As can be seen for the majority of the offences nominated in the bill no-custodial sentences are the outcome in the majority of cases. Of concern is that the explanatory statement of the bill states the following in relation to conditional release orders:

The court can still make a conditional release order under section 220 of the Youth Justice Act for any child sentenced for these offences, even where a mandatory sentence applies (except for the offence of murder).

Essentially these orders allow a court to decide not to send a youth offender immediately to detention and instead make a conditional release order. This means the offender will be released into the community straight away, to take part in a structured program with strict conditions. As can be seen by the above data, such orders make up a substantial amount of sentencing outcomes. The ability to make these order would defeat the purpose of the bill to impose adult crime for adult time.

In 2022-23 in youth offender matters in the higher courts conditional release orders accounted for 11 percent of sentencing outcomes, the Magistrates courts they accounted for 4.5 percent of sentencing outcomes (Queensland Sentencing Advisory Council, 2024b). A revision to the bill should be made to exclude youth offenders who are classified as serious repeat offenders from having the ability to access a conditional release order.

It is also of concern that the bill will amend section 227 of the *Youth Justice Act* to allow judges the discretion to set a release date, rather than adhering to the 70 percent that is currently the threshold (50 percent in certain circumstances). This would seem to be a provision that would

lend itself to judges using their discretion to set lower thresholds rather than a threshold higher than 70 percent. Again, this would seem to undermine the central purpose of the bill to impose punitive sanctions of serious repeat youth offenders.

There is no mention of minimum mandatory sentencing in the bill, this is a concept that the government should explore in terms of its utility in being applied to serious repeat youth offenders for a specific offences.



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