Childrens Court of Queensland

Third Annual Report 1995-1996

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LAID UPON THE TABLE OF THE HOUSE

THE CLERK OF THE ASSEMBLY

LEGISLATIVE ASSEMBLY
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12 FEB 1997
QUEENSLAND

CHILDRENS COURT OF QUEENSLAND

Chambers of the President

31 January 1997

The Honourable Denver Beanland MLA
Attorney-General and Minister for Justice

Sir,

In accordance with the requirements of s.22 of the *Childrens Court Act 1992*, I have the honour to submit to you for presentation in Parliament the Third Annual Report of the Childrens Court of Queensland.

I very much regret that it has not been possible to submit the report within the statutory time constraints. The reasons for the delay are explained in my letter to you of 14 October 1996.

Judge McGuire
President of the Childrens Court of Queensland

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1. INTRODUCTION: A MODICUM OF SUCCESS AT LAST

This is the Third Annual Report of the administration and operation of the Childrens Court of Queensland. In the first and second annual reports I recommended a number of changes to the *Juvenile Justice Act 1992.*

I am pleased to report that in August 1996 a good number of the recommendations were adopted either in their entirety or in a modified form; the others were not adopted. The fate of each recommendation is parenthetically disclosed under the respective recommendations, which are set out in full hereunder:

RIGHT OF ELECTION

1. That 'serious offence' be redefined to mean:
   (a) a life offence; or
   (b) an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for seven years or more. (NOT ADOPTED.)
2. That the right of election (which applies only for serious offences) be abolished and children committed on serious offences be committed to a Childrens Court Judge. (NOT ADOPTED.)
3. That, to cope with the consequential increase in committals of children to a Childrens Court Judge, the President of the Childrens Court of Queensland be empowered to delegate Childrens Court jurisdiction to any District Court Judge according to the exigencies of each district. (NOT ADOPTED.)
4. That a Childrens Court Judge be appointed to Cairns and another to Rockhampton. (ADOPTED.) In addition, Judge O'Brien and Judge Wall (Townsville) and Judge Robertson (Ipswich) have been appointed Childrens Court Judges.

SENTENCING POWERS

1. That a Judge be empowered to accumulate individual sentences of detention for multiple non-serious offences for up to seven years and that a Childrens Court Magistrate be empowered to accumulate such sentences for up to one year. (ADOPTED. See the *Juvenile Justice Legislation Amendment Act 1996*, s.171.)
2. That a Childrens Court Magistrate, a Childrens Court Judge and a Court of competent jurisdiction be empowered to sentence a juvenile to detention for up to six months with follow-up probation for a period not longer than one year. (ADOPTED. See the *Juvenile Justice Legislation Amendment Act 1996*, s.121A and C.)
3. That the maximum number of hours community service a child aged 13 to 15 may be ordered to serve be raised from 60 to 100, and for a child aged 15 to 17 from 120 to 200. (ADOPTED. See the *Juvenile Justice Legislation Amendment Act 1996*, s.120E.)

to order both probation and community service. (ADOPTED. See the *Juvenile Justice Legislation Amendment Act 1996*, s.121A and B.)

PUBLICATION

1. That publication of Magistrates' Childrens Court proceedings involving children aged 15 to 17 years be permitted, subject to the constraint on publication of any 'identifying matter' (*Juvenile Justice Act 1992*, s.62). (ADOPTED IN MODIFIED FORM by amendment to s.20(2) of the *Childrens Court Act 1992*. See Part 5 of the *Juvenile Justice Legislation Amendment Act 1996*.)
2. That attendance at Childrens Courts be included in the State School curriculum for all children over the age of 10 years, and to facilitate the implementation of this recommendation, liaison officers from the Departments of Justice and Education be appointed. (NOT ADOPTED.)

CAUTIONING

1. That if a child has been cautioned for an indictable offence that would attract seven or more years imprisonment if he were an adult, the caution be revealed to the court if the child subsequently re-offends as a child. (ADOPTED. See the *Juvenile Justice Legislation Amendment Act 1996*, s.18N.)
2. That if a person has been found guilty of two or more indictable offences for which convictions were not ordered to be recorded and the offences are of a type that, if committed by an adult, would make the adult liable to imprisonment for seven years or more, then that part of his juvenile criminal history should be revealed to a court when sentencing the person for an offence committed by him as an adult. (ADOPTED IN MODIFIED FORM. See *Juvenile Justice Legislation Amendment Act 1996*, s.114.)
3. That the victim of an offence committed by a child be entitled to be advised of the outcome of the offence involving the victim, if the victim so requests. (ADOPTED IN MODIFIED FORM. See *Juvenile Justice Legislation Amendment Act 1996*, s.18K.)
4. That Section 19 of the Juvenile Justice Act be repealed. (NOT ADOPTED.)
5. That a child who is cautioned be given a 'Notice' of caution instead of a 'Certificate' of caution. (ADOPTED. See Act No. 87 of 1994.)
6. That senior police officers of the rank of Inspector or above, if available, administer cautions to children for indictable offences. (NOT ADOPTED.)

7. That statutory recognition be afforded to Aboriginal elders and respected persons to administer cautions to children of their communities in appropriate cases in their own right. (NOT ADOPTED.)

PARENTAL PARTICIPATION

1. That where the parent of a child in a proceeding before a court has failed to attend the proceeding and the court is satisfied on reliable evidence placed before it that there are reasonable grounds for believing that the parent has neglected the child or has failed or refused without good cause to exercise proper parental control over, or responsibility towards, the child, the court be empowered to cause the proper officer of the court to give written notice to the parent requiring the parent to attend the court as directed in the notice and, in default of attendance without reasonable excuse, the parent be considered in contempt of court and be dealt with accordingly. (ADOPTED IN MODIFIED FORM. See *Juvenile Justice Legislation Amendment Act 1996*, s.56A.)

2. That the Department of Family Services and Aboriginal and Islander Affairs should assume the responsibility for ensuring that a parent of a child is advised of the time and place of the proceeding involving the child and that the Department should ensure, as far as practicable, that transport is provided for a reluctant or impecunious parent from his or her home to the court and return. (ADOPTED IN MODIFIED FORM. See *Juvenile Justice Legislation Amendment Act 1996*, s.56A(5).)

POWER OF ARREST

1. That the power of arrest contained in s.20 of the Juvenile Justice Act be extended to cover a 'serious offence' as defined by the Act (or the recommended re-definition thereof). (ADOPTED. See *Juvenile Justice Legislation Amendment Act 1996*, s.20(1).)

2. That s.32(1) of the Juvenile Justice Act be amended to provide that, consistent with the requirements of service of an attendance notice on a parent, a complaint need not be served on a parent if the parent cannot be found after reasonable inquiry. (ADOPTED. See *Juvenile Justice Legislation Amendment Act 1996*, s.32(2)(a).)

SENTENCE REVIEWS

That the prosecution be given an equal right to apply for a sentence review of a sentence order made by a Childrens Court Magistrate as a child or chief executive acting in the interests of the child presently has pursuant to s.88 of the Juvenile Justice Act. (ADOPTED IN MODIFIED FORM. See *Juvenile Justice Legislation Amendment Act 1996*, s.89(1).)

Ex Officio Indictments	That where proceedings are commended by ex officio indictment the child have the right to elect to be dealt with by a Childrens Court Judge. (Not Adopted.)
Childrens Court Budget	That the financial administration of the Childrens Court of Queensland be brought under the Department of Justice. (Adopted.)
Aurukun	1. That responsible and respected leaders of Aboriginal communities be empowered to participate actively in the juridical process and, in particular, be afforded statutory recognition as approved supervisors of probation and community service orders. (Not Adopted.) 2. That there be created a position, designated 'Aboriginal Assistant to the Court', to act in an advisory capacity to a Magistrate or a Judge sitting on a community court. (Not Adopted.)

In the Second Annual Report (at pp. 23–4) I also recommended that in certain circumstances parents should be made financially responsible for the consequences of their child's criminal conduct. This recommendation was adopted in a substantially modified form in s.197 of the *Juvenile Justice Legislation Amendment Act 1996*.

2. A Case Stated for the Third Time

It is of particular disappointment to me that the Right of Election recommendations were not adopted. For a proper understanding of the meaning and effect of the right of election it is regrettably necessary that I state for a third time the case for the abolition of the right of election.

Right of Election

The jurisdictional, procedural and administrative imbroglio to which the right of election has given rise persists in increasing degree. For a proper understanding of the meaning and effect of the right of election, it is necessary that I reproduce here an abridged version of what I said on the subject in the First Annual Report and repeated in the Second Annual Report:

> The legislation makes a twofold classification of indictable offences: serious offences and indictable offences (other than serious offences).
>
> A serious offence means a life offence (e.g. murder, robbery, and rape), or an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more (e.g. housebreaking).
>
> **Serious Offences**
> The procedure for dealing with a serious offence is set out in Division 2 of Part 4 of the Juvenile Justice Act (ss.68–75). A child charged with a serious offence cannot be committed for trial or sentence unless a Childrens Court Magistrate is satisfied after a committal proceeding has been conducted that the child has a case to answer. At this point the child, if legally represented, has the right to elect to be committed for trial before a Childrens Court Judge sitting without a jury or, if the child pleads guilty at committal, to be committed for sentence before a Childrens Court Judge; or he may elect to be committed for trial or sentence, as the case may require, before a court of competent jurisdiction (i.e. the Supreme Court or the District Court, depending on the nature of the charge).
>
> If the child is not legally represented, the Magistrate must commit the child for trial before a court of competent jurisdiction.
>
> **Non-Serious Indictable Offences**
> In a proceeding before a Childrens Court Magistrate in which a child is charged with an indictable offence (other than a serious offence) and is legally represented, the child may elect to have the committal proceeding discontinued and any further proceeding conducted as a hearing and determination of the charge summarily by the court; otherwise the proceeding must continue as a committal proceeding. If the child enters a plea of guilty at the committal proceeding, the child may elect to be committed for sentence before a court of competent jurisdiction or to be sentenced by the Childrens Court Magistrate (ss.76–79).
>
> If the child is charged with an indictable offence (other than a serious offence) and the child is not legally represented, the Magistrate must

conduct a full committal proceeding before calling on the child to elect. The child then has the same right of election as when he is legally represented.

A Childrens Court Magistrate, however, must refrain from exercising summary jurisdiction where a child elects to be dealt with summarily for a non-serious indictable offence unless he is satisfied that the charge can be adequately dealt with summarily by him or her. The Magistrate should refrain from dealing summarily with the non-serious indictable offence if it involves complex questions of law and/or fact.

The position with non-serious indictable offences then may be summarised thus. A Childrens Court Magistrate can, in the circumstances adumbrated above, exercise summary jurisdiction over a child who elects to be dealt with summarily, but may refrain from so doing in a complex case. Alternatively, the child may elect to be committed for trial or sentence, as the case may require, to a court of competent jurisdiction, that is the Supreme Court or the District Court, according to the jurisdiction of the court to try or sentence the child for the charge on which he has been committed.

The Jurisdiction of a Childrens Court Judge

In the result, the jurisdiction of a Childrens Court Judge is restricted to trying or sentencing a child for a serious offence where there has been an election at committal to be committed for trial or sentence to a Childrens Court Judge. In all other cases, where the child is committed for trial or sentence on an indictable offence (whether serious or non-serious), except when, in the case of an indictable non-serious offence, the child elects to be dealt with summarily, the jurisdiction to try or sentence is vested in either the District Court or the Supreme Court, that is, in a jurisdiction other than a Childrens Court Judge.

There is one notable exception to this general statement of the position. Section 127 of the Juvenile Justice Act provides:

'**127.(1)** If, in a proceeding for the sentencing of a child for an offence, a Childrens Court Magistrate considers that the circumstances require the making of a sentence order—

(a) beyond the jurisdiction of a Childrens Court Magistrate; but

(b) within the jurisdiction of a Childrens Court Judge;

the Magistrate may commit the child for sentence before a Childrens Court Judge.

(2) In relation to a committal under subsection (1), the Childrens Court Magistrate may make all orders and directions as if it were a committal following a committal proceeding.

(3) The Childrens Court Judge may exercise sentencing powers to the extent mentioned in section 120 (Sentence orders-general).'

Here, it would plainly seem, a Childrens Court Magistrate can refer to a Childrens Court Judge only a sentence which the Magistrate considers

his or her limited sentencing powers cannot adequately deal with. The child's right of election is in such a situation abrogated. The child is not asked whether he elects to be dealt with by a Childrens Court Judge. In an appropriate case, the sentencing power is unilaterally transferred by the Magistrate to a Childrens Court Judge regardless of the wishes of the child. This exception to the general rule points up the anomalous position to which the right of election entrenched in the Act has given rise.

Disadvantages of the Right of Election

As President of the Childrens Court I have had great difficulty in coming to terms with the right of election. The philosophic basis for making it a significant feature of the legislation appears to be to give the child freedom of choice. But if that is the rationale for the right of election then, in my opinion, it is, while noble in concept, misguided in practice. If it is a policy decision to set up a new court with new powers to deal with serious juvenile crime, then to properly fulfil its charter that court should deal with all serious crime, and not such portions of it as children choose to allow it to deal with.

With all due respect, there is, in my considered opinion, no point in creating a special court and appointing special Judges to deal with serious juvenile crime if the newly created court does not exercise exclusive jurisdiction over juvenile offenders. One might as well revert to the old system of having all juvenile offenders committed on indictable offences (whether serious or non-serious) to the District Court or the Supreme Court according to the nature of the offence; and, in that event, 31 District Court and 20 Supreme Court Judges would between them exercise jurisdiction over all juveniles committed to higher courts on indictable offences. If the real object and the true intent of the enlightened new legislation is to devise a better means than before for dealing with juvenile crime, then juvenile crime should be dealt with exclusively by Childrens Court Judges.

Let me give an example of how farcical the right of election can appear in practice. Under the present system it is both theoretically and practically possible for a child who has elected to be committed for sentence before a Childrens Court Judge for, say, robbery to be sentenced by the Childrens Court Judge in one courtroom, and for another child also charged with robbery who has elected to be committed for sentence before a court of competent jurisdiction, namely the District Court, to be sentenced by a District Court Judge in an adjacent courtroom on the same day. Can this be right? Does this reflect the true spirit of the legislation? I think not.

Section 5 of the Juvenile Justice Act defines terms used in the Act. 'Concurrent jurisdiction' means:

(a) in relation to a Childrens Court Judge—the jurisdiction of the Judge when constituting a District Court for a proceeding in its criminal jurisdiction; or

(b) in relation to a District Court—the jurisdiction of the Judge when constituting the Childrens Court.

The *Childrens Court Act 1992* defines a Childrens Court Judge to mean a District Court Judge appointed to the Childrens Court. The appointment of a person as a Childrens Court Judge does not affect the person's appointment as a District Court Judge or the person's powers as a District Court Judge. In appointing a District Court Judge as a Childrens Court Judge, regard must be had to the appointee's particular interest and expertise in jurisdiction over matters relating to children (s.11). A Childrens Court Judge therefore wears two hats, which are interchangeable.

The Juvenile Justice Act was proclaimed on 1 September 1993. Because of the existence of the right of election, it was impossible to predict how this right would in practice be exercised by children committed for serious offences. I decided to treat the first six months of the life of the Act as an experimental period.

At the end of that period it became apparent that a good proportion of serious crime was going to the District Court, that is to say, children charged with serious offences were electing to be committed to the District Court rather than to a Childrens Court Judge. This, to some extent, was understandable. It is not at all uncommon for persons charged with indictable offences (whether as adults or as children) to choose to be committed for trial before a Judge and jury, which means, of course, that the committal must be to either the District Court or the Supreme Court. Quite frequently, indeed I understand in about 80% of cases, persons committed for trial by jury change their pleas close to the assignment of a trial date and the case is disposed of by the District Court or the Supreme Court as a sentence, and not as a trial. The reason why criminal litigants choose this course is to enable their legal representatives to consider the committal evidence in detail and advise whether the litigant should stand trial or change his not guilty plea to one of guilty, and plead in mitigation of sentence. This, as I say, is what frequently happens.

Now, the Juvenile Justice Act does not allow for a withdrawal or a reversal of an election once made at committal stage, with two exceptions. First, if the child elects to be committed for trial by a Childrens Court Judge sitting alone without a jury (i.e. if he elects to waive his right of trial by Judge and jury), he may withdraw his election to be tried before a Childrens Court Judge without a jury at any time before arraignment (i.e. before the commencement of the trial). In that event, the child will be tried by a District Court or Supreme Court Judge and jury. Second, a child who is committed for sentence before a Childrens Court Judge on an indictable offence is entitled to reverse his plea and enter a plea of not guilty and, although the relevant section is silent on the matter, it would appear by necessary implication that he should then stand trial before a District Court Judge and jury (s.73).

At the end of the experimental period of six months from the inception of the Act I was concerned that the 'Right of Election' question was a source of serious administrative problems. I therefore spoke to officers of the Family Services Department about proposed resolutions of the problems. I also wrote to the then head of the District Court, His Honour Chief Judge Helman, in the following terms:

8 March 1994

Chief Judge Helman
District Court
BRISBANE Q 4000
Dear Chief Judge,

I request that in future you identify and segregate juvenile criminal cases committed to the District Court at call-overs and list them for hearing before myself or Judge McMurdo.

In my opinion, it is highly desirable that Childrens Court Judges sit on all juvenile cases—both sentences and trials—even though they have not been committed to a Childrens Court Judge.

As you are aware, a Judge of the Childrens Court is not divested of District Court jurisdiction in relation to juvenile crime. He (or she) wears two hats, which are easily interchangeable.

Yours faithfully,

McGUIRE D.C.J.

The Chief Judge replied:

March 23, 1994

His Honour Judge F. McGuire,
Judges' Chambers,
District Court,
BRISBANE Q 4000

Dear Judge,

I have your letter dated March 8, 1994 in which you requested that in future I identify and segregate 'juvenile criminal cases' committed to a District Court and list them for hearing before you or Her Honour Judge McMurdo.

Having considered the matter at some length and bearing in mind the provisions of the *Juvenile Justice Act 1992*—and in particular ss.70 and 71, I have concluded that I should not do as you requested. As I construe ss.70 and 71 of the Juvenile Justice Act, it was not intended that the effect of an election, or s.70(6)(a), should be circumscribed in the way you have suggested.

The present practice is that cases are listed before any available judge of District Courts, including of course judges who are also Childrens Court judges. I do not propose to take any steps to bring about an alteration to that practice. I see no point of principle that would require such a course. If the Parliament had intended that all children who elect to be committed to a District Court should go before a judge of District Courts who is also a Childrens Court judge it would no doubt have included a provision to that effect in the Act.

I have discussed this matter with the Director of Prosecutions, Mr R.N. Miller QC, who has told me that in his opinion the provisions of ss.70 and 71 preclude a judge of District Courts who is also a Childrens Court judge from hearing in a District Court a matter in which a child is the accused person. As will be apparent from the above I do not share Mr Miller's opinion, but I think you should be aware of it.

Yours faithfully,

CHIEF JUDGE

I then wrote to the Director-General of Family Services as follows:

28 March 1994

The Director-General
Department of Family Services
and Aboriginal and Islander Affairs
GPO Box 806
BRISBANE Q 4001

Dear Director-General,

In our recent discussion you will recall that I raised the problem associated with a child's right under the Juvenile Justice Act to be tried or dealt with by a Childrens Court Judge or a District Court Judge. It seems to me that the right of election frustrates the whole purpose of the legislation, which is to constitute a Childrens Court to deal exclusively with juvenile crime.

I have made a genuine attempt to sort the matter out at an administrative level with the Chief Judge of the District Court, but alas! to no avail (see attached correspondence). I should say that I think the Director of Prosecution's opinion, assuming it is accurately recounted in the Chief Judge's letter, is a rather strained interpretation of the relevant provisions of the Act.

As a consequence of the legislation and the Chief Judge's attitude as disclosed in his letter, you have not only in effect, but in fact, two heads of court administering juvenile justice. In my opinion, the head of the Childrens Court should have complete control over the administration of juvenile justice in Queensland: nothing short of that will do. The present administrative arrangements are, I must say emphatically, wholly unsatisfactory and should not be allowed to continue. If the present dual arrangements are not terminated I cannot be expected to accept responsibility—as I am prepared to do—for the administration of juvenile justice State-wide.

I am adamant in the view that the new Childrens Court should deal with ALL juvenile crime—otherwise public confidence in the new legislation and the Court will be seriously and perhaps irreparably undermined. The public perception is that a special court is dealing exclusively with juvenile crime, and, if I may say so, despite criticism from certain quarters, which is likely to persist, there seems to be a generally favourable public reaction to the new approach to juvenile crime. A report such as appeared in the *Courier-Mail*, 23 March would, I think, tend to quickly disabuse the public of that perception (report attached).

I regard the matter of sufficient importance to seek a conference with your Minister and also the Attorney-General. It seems to me that the relevant legislation should be reviewed with a view to correcting what I believe is a fundamental flaw in the management of juvenile justice.

I should foreshadow that in my annual Report to Parliament I will be obliged to make conspicuous reference to the anomalous position which has arisen, albeit unintentionally, unless, of course, in the meantime, the matter is corrected either administratively or legislatively.

I refer to the following observation I made in my inaugural address (pp. 11–12) on 6 July 1993, before the Act was proclaimed: 'A Childrens Court Judge is empowered, inter alia, to review sentence orders made by Magistrates and to try serious offences sitting alone without a jury. *There is, however, a severely limiting feature to the exercise of this jurisdiction: the child must be legally represented and consent to conferring the jurisdiction on a Childrens Court Judge.*' (Emphasis added).

Turning to another topic, it will be of interest to you to know that I am presently making arrangements to visit Aurukun during the week commencing 30 May 1994, where I intend to conduct Childrens Court cases and speak to the local population,

including the elders. I understand that the Justice Department is agreeable in principle to meet the costs of the visit.

I should be pleased to confer with you at a mutually convenient time about these and any other matters of concern or interest.

It would be appreciated if you could give your urgent attention to the matters raised in this letter.

Yours truly,

President, Childrens Court of Queensland

Discussions with officers of the Department ensued. I once again highlighted the problems and advised abolition of the right of election save where a child elects to be tried by Judge and jury. Trial by jury clearly raises a fundamental constitutional question about which I hold the firmest views. Waiver of right to trial by jury must be the result of an informed, conscious and free decision. Nothing short of that will suffice. There is therefore not the slightest suggestion that the right to elect for trial by Judge and jury should be abolished.

In my discussion with the officers of the Department of Family Services, there seemed to be general agreement in principle to the adoption of the advice I gave. However, there were other related problems of an administrative character which needed talking about and resolving before abolition of the right of election could be contemplated.

Following my discussion with Departmental officers I received a formal written reply to my letter to the Director-General quoted above. The Director-General's reply was in these terms:

15 August 1994

His Honour Judge F. McGuire,
President,
Children's Court of Queensland,
Judges Chambers,
District Court,
P.O. Box 167 Brisbane,
ALBERT STREET 4002

Dear Judge,

I refer to your letters of 28 March and 29 April 1994. Please accept my apology for the delay in replying to your letters. You can be assured that I have taken steps to ensure prompt replies in future.

I share your concern about present arrangements with respect to children who elect jury trial in the District Court. I have recently written to Barry Smith, Director-General, Department of Justice and Attorney-General on this very issue in response to his request for clarification. In summary, I advised in the following terms:

- The *Juvenile Justice Act 1992* retained a child's right to elect to be dealt with summarily by a Childrens Court Magistrate or jury trial before a District Court Judge for an indictable offence other than a serious offence.
- The jurisdiction of the Childrens Court Judge was conceived of as a new summary jurisdiction for dealing with 'serious' indictable offences that previously could only be dealt with by the Supreme Court or the District Court acting with jurisdiction delegated by the Supreme Court.

- The possibility of Childrens Court Judges holding jury trials for children who elect has merit and I could see no policy objections to it as a concept. Indeed it would further the intentions of the Act for children to be tried before judges with a declared interest and expertise in dealing with matters affecting children. I recall that the idea was not pursued during the development of the legislation because resources were likely to extend only to the creation of one additional full-time equivalent judge and the workload implications of the judge's summary and appellate jurisdiction were not known. The main issue will be the ability of Childrens Court Judges to deal with the workload and cost implications for the Department of Justice and Attorney-General of such an approach.
- Cost implications aside, it would be possible to achieve the desired outcome by the establishment of administrative arrangements to co-ordinate the appearance of children who have elected jury trials before Childrens Court Judges sitting in their concurrent District Court jurisdiction.
- The creation of a separate list of children appearing in higher courts drawn up in consultation with the President of the Childrens Court would appear to be essential to facilitate this.

I finally indicated that I would strongly support such an approach as it would also have the potential to reduce the time it takes a child to get a date for trial.

I am awaiting the outcome of this letter before I consider further options including the need for amendment to the Act. You will be advised of any developments as they emerge.

I am aware that you recently discussed this matter with senior officers of the Department and reiterated your wish to meet with the Honourable the Minister and myself about the issue. Perhaps your Clerk could contact my Executive Support Officer, Ms Liane Kinlyside, on telephone number 224 7038 to arrange a meeting at a mutually convenient time.

Congratulations on your recent visit to Aurukun which, I understand was a success and helped to make the new Childrens Court a tangible reality for that community. I am pleased to hear that my staff were of assistance to you during the visit.

Yours sincerely,

R.L. Matchett (Ms)
Director-General

I have to concede that there were initially good pragmatic reasons for inserting the 'right of election' provisions in the *Juvenile Justice Act*. The plain fact was that with so restricted a number of appointees as Childrens Court Judges it was, in practical terms, quite impossible to service the whole State, especially when one bears in mind that there are 30 District Courts in Queensland. However, I have proposed a plan to overcome these formidable practical difficulties. The plan I have in mind is revealed in recommendations made later in this section of the Report.

The above lengthy preamble leads me to make the following recommendations:

1. The right of election (which applies only for serious offences) should be abolished and children committed on serious offences should be committed to a Childrens Court Judge.

2. A Childrens Court Judge should be appointed to Cairns and another to Rockhampton.

3. To cope with the consequential increase in committals of children to a Childrens Court Judge, I, as President of the Court, should be empowered to delegate Childrens Court jurisdiction to any District Court Judge according to the exigencies of each district. This means that if, for example, a child is committed to a Childrens Court Judge at Charleville on a serious offence for a particular sittings of the District Court at that place, and a Childrens Court Judge is not available to go to Charleville to hear the case, then I, as President, should be empowered to delegate jurisdiction to hear and determine the case to a District Court Judge visiting Charleville to do the regular District Court sittings there in accordance with the legal arrangements for the year. It is only in this way that proper control can be exercised over Childrens Court work in every part of the State.

The head of the Childrens Court of Queensland should be in a position to report to the head of the District Court and to the responsible Minister the precise state of juvenile crime in any place in Queensland and in Queensland as a whole on at least a quarterly basis.

Delegation of jurisdiction is not a novel concept. Section 126 of the Juvenile Justice Act provides for a Childrens Court Judge's extended sentencing powers in respect of detention and probation to be delegated to a Magistrate in a particular case. Where the Magistrate considers that the maximum period of probation or detention would be inadequate in the circumstances of the case, the Magistrate may request a Childrens Court Judge to delegate increased sentencing power. In country centres, where the court sits infrequently, such a delegation may prevent a child from being subjected to lengthy adjournments and possible remand in custody.

The point I make is this: the head of the Childrens Court of Queensland must have complete control over the management of juvenile crime; otherwise he cannot be expected to accept responsibility for juvenile crime State-wide. Under the present arrangement of dual control, neither the head of the District Court nor the head of the Childrens Court of Queensland can hope properly to advise the government of the day on the true state of affairs. Either the position of President of the Childrens Court of Queensland should be abolished or he should be given full control over the management of juvenile crime in Queensland. I made this point strongly, it will be recalled, in my letter to the Director-General of Family Services which is quoted in full above.

The Chief Judge of District Courts, his Honour Judge Shanahan, and I have conferred on ways and means of eliminating, or at least reducing, the problems associated with the right of election. As a result, the Chief Judge wrote to the Honourable the Minister for Family and Community Services on 7 April 1995 in the following terms:

Dear Minister,

Since my appointment as Chief Judge of District Courts on 17 July 1994, it has become apparent to me that the 'right of election' afforded children under the *Juvenile Justice Act* has resulted in serious jurisdictional and procedural problems which have made the administration of the District Court and the Childrens Court of Queensland, over which I as head of Court have general superintendence, difficult.

I have discussed these problems with the President of the Childrens Court, Judge McGuire, on a number of occasions and have carefully studied his analysis of the problems to which the right of election has given rise in the First Annual Report of the operation of the Childrens Court of Queensland.

It seems to me that Judge McGuire's arguments for the abolition of the right of election are persuasive and I endorse his recommendation that the right of election should be removed.

It comes down to this—the Childrens Court should deal with all children who are to be tried and/or sentenced for indictable offences.

At present we have two systems operating side-by-side—the District Court and the Childrens Court.

This leads to inefficiencies, waste of court time and resources and unnecessary expense.

The problem has been around for a while now and I believe that it is time that a decision, one way or the other, should be made.

Yours sincerely

CHIEF JUDGE

The Minister's reply dated 19 May 1995 is as follows:

Dear Justice Shanahan,

Re: *Juvenile Justice Act 1992*—Right of Election

I refer to your letter in relation to the right of election afforded children under the *Juvenile Justice Act 1992*.

I have noted your endorsement of Judge McGuire's recommendation that the 'right of election' be removed. I am familiar with Judge McGuire's concerns regarding the current arrangements. This matter has been raised by the Judge with me and officers of my Department on a number of occasions.

On 15 August 1994, the Director-General of my Department wrote to the Judge, indicating that the Department had no policy objections to the concept of Childrens Court Judges conducting jury trials. However, as there would potentially be resource implications arising from the implementation of such a change, this matter will require the support of my colleague, the Honourable Dean Wells, MLA, Minister for Justice and Attorney-General and Minister for the Arts. I have therefore forwarded a copy of your letter to him for his consideration.

In his Annual Report, Judge McGuire raised a number of issues relating to the function and operation of the *Juvenile Justice Act 1992*, suggesting legislative amendment. These and other matters will be considered in the context of the comprehensive review of the Act to be undertaken following two years of operation, that is, after September 1995. In the interim, I strongly support the establishment of a separate listing for children with an arrangement involving children being dealt with by Childrens Court Judges sitting in their concurrent District Court jurisdiction. I understand this matter is currently being given consideration.

I thank you for bringing your views on this matter to my attention. If any additional information is required, please contact Mr Steve Armitage, Manager, Legislation and Policy, Juvenile justice Branch, on telephone number 224 2567.

There the matter stands. I unreservedly accept the Department's assurance that the matter of the right of election is under active consideration as part of a

> comprehensive biennial review of the legislation. I am the first to acknowledge that in the difficult and sensitive area of juvenile crime criticism comes easily; solutions are harder to come by. Good faith is not in issue—it is a question of when?
>
> For the reasons adumbrated above, a decision on the Right of Election issue is required urgently.

A further important reason for restating the right of election implications is that the statistical tables published later in the report would be unintelligible without a proper understanding of those implications.

The statistics reveal that for every serious offence dealt with in the Childrens Court of Queensland three serious offences are dealt with in the District Court. In other words, the Childrens Court of Queensland deals with only one-quarter of serious offences: the remaining three-quarters are dealt with in the District Court. About the same ratio between the two courts applies for non-serious indictable offences. See Statistical Tables (Table 2, Figure 2). These figures demonstrate that the new Childrens Court of Queensland (i.e. a court presided over by a Childrens Court Judge) is dealing with only one-quarter of indictable offences (serious and non-serious) committed by magistrates to higher courts.

I regard the position as wholly unsatisfactory. What has to be emphasised is that I, as President of the Childrens Court of Queensland, have no control whatever (administrative or otherwise) over what happens in three out of four indictable offences committed to higher courts.

Unless all juvenile crime dealt with in higher courts is brought under one control the administrative imbroglio to which I have repeatedly drawn attention will continue to blight the proper administration of the juvenile justice system in Queensland.

If the task of controlling juvenile crime is to be tackled in a proper and effective manner there has to be a person put in charge of the ***whole*** operation, and not, as now, of one-quarter of the operation. The public perception is that the Childrens Court of Queensland deals with ***all*** indictable offences committed by magistrates to higher courts. It would, I suspect, come as a great surprise to the trusting public to learn that in fact the new court deals with a minority of such cases, and that the great majority are spread over a large amorphous system beyond the control of the head of the Childrens Court of Queensland.

I think the time is long overdue for the removal of this grave public misapprehension, nay, deception (albeit unintended).

The proper administration of juvenile justice will suffer, and suffer irretrievably, if the right of election continues unabated.

As head of the Childrens Court of Queensland I absolutely refuse to accept responsibility for something over which I have no control. I trust steps will be taken to remedy this most unsatisfactory situation without further delay.

3. CONFERENCING AND CAUTIONING

A welcome innovation in the amending legislation is community conferencing. Police powers in relation to initiating a community conference may be summarised as follows.

A community conference may be initiated by a police officer or the court. (The court may refer an offence to a community conference only after a finding of guilt for the offence is made against the child before the court and with the victim's consent. See *Juvenile Justice Legislation Amendment Act 1996*, s.199A.)

The salient considerations for determining whether an offence committed by a child should be referred to a community conference are:

1. the nature of the offence;
2. the harm suffered by anyone because of the offence;
3. whether the interests of the community and the child would be served by having the offence dealt with in an informal way.

If in the opinion of the police officer these considerations are satisfied, two other conditions precedent must be met before the officer can refer the offence to a community conference:

1. the child must admit the offence to the police officer; and
2. the victim of the offence must consent to such conference.

The victim at his or her request may participate in the conference or may appoint a legal representative or a family member to act on his or her behalf.

The convenor of the conference of a police-referred offence may terminate the conference if the convenor considers the offence unsuitable for a community conference.

If a conference is conducted and a conference agreement is made, the victim is a signatory to the agreement if the victim participates in the conference.

There are therefore two safeguards against arbitrary police conference references: the victim must consent and the convenor may refuse to conduct the conference if he or she considers the offence unsuitable for a community conference. A third safeguard may be added: the victim who participates in the conference may refuse to sign the conference agreement.

By way of comparison, police powers in relation to administering cautions may be summarised as follows.

Before a police officer decides whether a caution would be appropriate he or she must have regard to the circumstances of the alleged offence and the child's previous history. As conditions precedent to the administering

of a caution the child must admit committing the offence to the police officer and consent to being cautioned.

At the administration of the caution a parent of the child or a person chosen by the child should be present. An 'authorised' police officer should administer the caution. If a police officer administering a caution is not an authorised officer, the caution must be administered in the presence of an authorised officer. An 'authorised officer' is a police officer whom the Commissioner of Police certifies has sufficient training or experience to administer cautions. A police officer who administers a caution must ensure that the child and the person present understand the purpose, nature and effect of the caution.

It is important to note that nowhere in the cautioning process is the victim of the offence involved. There is, however, one exception. If a police officer administering the caution considers that an apology to the victim is appropriate he may make it a term of the caution that the child apologise to the victim, but such apology is dependent on the child's willingness to apologise and the victim's willingness to participate in the procedure.

Section 18K of the *Juvenile Justice Legislation Amendment Act 1996* provides that a member of the Queensland Police Service must not give to anyone other than a member of the Police Service information likely to identify the child as a person to whom a caution is to be or has been administered. However, this general proscription does not prevent the information being given, inter alia, to a complainant for an offence.

I publish on pages 22–24 police caution statistics for the current year (1995–96) and the two preceding years, for comparative purposes.

There was a slight decrease in cautions administered in 1995–96 as compared with last year but a slight increase on those administered in 1993–94. However, the total number of cautions (15,681) for 1995–96 is still very high.

It is clear that cautioning is not being restricted to trivial or minor offences. It is being used liberally not only for simple offences but also for indictable offences. On analysis, the statistics disclose:

1. That for 1995–96 15,681 cautions were administered.
2. That of that total number–
   (a) 918 were for offences against the person;
   (b) 11,265 were for offences against property;
   (c) 3,498 were administered for other offences of which 2,085 were for drug offences.

It is important to point out that of the property offences 2,138 were breaking and entering offences, 465 were motor vehicle thefts (unlawful

Table 1 **Offences against the person—Offenders proceeded against by caution, offence by age 1993–1996**

Offence	1993–94					1994–95					1995–96					Total
	10–14	15	16	17	Total	10–14	15	16	17	Total	10–14	15	16	17	Total	1993–96
Murder	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Attempted murder	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Manslaughter excl. M.V.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Driving causing death	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total homicide	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Serious assault	139	72	58	1	270	207	96	77	2	382	189	98	72	0	359	1,011
Minor assault	203	100	62	0	365	180	62	34	1	277	209	65	37	0	311	953
Total assault	**342**	**172**	**120**	**1**	**635**	**387**	**158**	**111**	**3**	**659**	**398**	**163**	**109**	**0**	**670**	**1,964**
Rape & attempted rape	0	1	1	0	2	0	0	1	0	1	1	0	0	0	1	4
Other sexual offences	107	48	35	0	190	59	41	20	0	120	65	27	25	2	119	429
Total sex offences	**107**	**49**	**36**	**0**	**192**	**59**	**41**	**21**	**0**	**121**	**66**	**27**	**25**	**2**	**120**	**433**
Armed robbery	2	2	2	0	6	32	0	0	0	32	12	33	24	0	69	107
Unarmed robbery	12	8	1	0	21	12	4	4	0	20	10	6	2	0	18	59
Total robbery	**14**	**10**	**3**	**0**	**27**	**44**	**4**	**4**	**0**	**52**	**22**	**39**	**26**	**0**	**87**	**166**
Extortion	7	0	3	0	10	4	3	0	0	7	2	3	0	0	5	22
Kidnapping & abduct'n etc.	0	0	0	0	0	6	3	2	0	11	1	1	1	0	3	14
Other offences against the person	21	17	17	0	55	20	10	12	0	42	18	6	9	0	33	130
TOTAL OFFENCES	**491**	**248**	**179**	**1**	**919**	**520**	**219**	**150**	**3**	**892**	**507**	**239**	**170**	**2**	**918**	**2,729**

Table 2 **Offences against property—Offenders proceeded against by caution, offence by age, 1993–96**

Offence	1993–94					1994–95					1995–96					Total
	10–14	15	16	17	Total	10–14	15	16	17	Total	10–14	15	16	17	Total	1993–96
Breaking & entering dwelling	369	193	131	1	694	405	154	122	1	682	343	119	102	0	564	1,840
Breaking & entering shop	239	303	120	0	662	185	73	75	0	333	123	78	55	0	256	1,251
Breaking & entering other	603	690	223	1	1,517	802	156	137	2	1,097	726	334	255	3	1,318	3,932
Total breaking & entering	**1,211**	**1,186**	**474**	**2**	**2,873**	**1,392**	**383**	**334**	**3**	**2,112**	**1,192**	**531**	**412**	**3**	**2,138**	**7,123**
Arson	**15**	**5**	**3**	**0**	**23**	**38**	**3**	**5**	**0**	**46**	**21**	**5**	**9**	**0**	**35**	**119**
Other property damage	**804**	**315**	**330**	**1**	**1,450**	**1,000**	**346**	**334**	**5**	**1,685**	**957**	**372**	**299**	**4**	**1,632**	**4,767**
Motor vehicle theft	**169**	**126**	**128**	**0**	**423**	**163**	**112**	**104**	**1**	**380**	**173**	**136**	**156**	**0**	**465**	**1,268**
Stealing from dwelling	193	54	45	1	293	203	66	61	1	331	189	64	69	0	322	856
Stealing from shop	2,964	1,015	674	5	4,658	3,458	999	668	3	5,128	2,921	752	563	3	4,239	14,025
Stock stealing	6	0	0	0	6	0	0	2	0	2	0	0	0	0	0	8
Other stealing	948	371	421	3	1,743	1,377	348	525	5	2,255	1,016	815	543	5	2,379	6,377
Total stealing	**4,111**	**1,440**	**1,140**	**9**	**6,700**	**5,036**	**1,413**	**1,254**	**9**	**7,712**	**4,126**	**1,431**	**1,175**	**8**	**6,740**	**21,152**
Fraud by cheque	5	2	6	0	13	26	5	17	0	48	12	9	7	1	29	90
Fraud by credit card	2	1	3	0	6	4	2	7	0	13	0	3	0	0	3	682
Other fraud	160	53	86	0	299	143	28	64	0	235	128	43	46	2	219	333
Total fraud	**167**	**56**	**95**	**0**	**318**	**173**	**35**	**88**	**0**	**296**	**140**	**55**	**53**	**3**	**251**	**1,097**
Other offences against property	1	1	1	0	3	1	0	0	0	1	0	2	2	0	4	2,112
TOTAL OFFENCES	**6,478**	**3,129**	**2,171**	**12**	**11,790**	**7,803**	**2,294**	**2,121**	**18**	**12,236**	**6,609**	**2,532**	**2,106**	**18**	**11,265**	**35,291**

Table 3 **Other Offences—Offenders proceeded against by caution, offence by age, 1993–96**

Offence	1993–94					1994–95					1995–96					Total
	10–14	15	16	17	Total	10–14	15	16	17	Total	10–14	15	16	17	Total	1993–96
Handling stolen goods	144	65	58	0	267	191	69	64	1	325	189	72	46	1	308	900
Drug offences	543	451	587	8	1,589	718	459	552	6	1,735	729	648	702	3	2,082	5,398
Prostitution offences	0	0	0	0	0	0	1	0	0	1	0	0	0	0	0	1
Liquor (excl. drunkenness)	10	20	50	1	81	45	44	84	7	190	25	56	88	4	173	444
Racing & betting offences	1	0	0	0	1	24	0	0	0	24	6	24	18	0	48	73
Gaming offences	2	0	0	0	2	4	1	0	0	5	1	4	3	0	8	15
Vagrancy offences	3	0	2	0	5	3	8	9	0	20	8	4	9	0	21	46
Good order offences	29	16	23	0	68	30	17	12	0	69	41	15	23	0	89	226
Driving offences	11	4	7	0	22	17	12	9	0	38	15	11	17	0	43	103
Miscellaneous offences	234	124	108	0	466	370	191	155	3	719	413	159	148	6	726	1,911
TOTAL OFFENCES	**977**	**680**	**835**	**9**	**2,501**	**1,402**	**802**	**885**	**17**	**3,106**	**1,427**	**1,003**	**1,054**	**14**	**3,498**	**9,105**

Table 4 **Offences proceeded against by way of caution 1993–96**

Offence Category	1993–94	1994–95	1995–96	Total for 3 years
Offences against the person	919	892	918	2,729
Offences against property	11,790	12,236	11,265	35,491
Other offences	2,501	3,106	3,498	9,105
YEARLY TOTALS	**15,210**	**16,234**	**15,681**	**47,325**

use of a motor vehicle) and 6,740 were stealing offences. And of the offences against the person, 87 were robbery offences (67 armed robbery).

I estimate that of the total cautions administered about one-half were for indictable offences, including 'serious offences' as that term is defined in s.8 of the *Juvenile Justice Act 1992* (see section on Right of Election).

Inquiry leads me to believe that it is the popular perception that cautions are administered for trivial or minor offences, not indictable or serious offences.

It is true that the cautioning provisions of the Juvenile Justice Act do not define the types of offences for which a caution may properly be administered. The Act (s.10) merely provides that in deciding whether a caution would be appropriate the police officer must have regard to the circumstances of the alleged offence and the child's previous history.

Notwithstanding that the legislation is silent as to the types of offences for which cautions may be administered, I do not think that it was ever envisaged by the Parliament when the legislation was passed that the police should be given carte blanche in administering cautions. Up until the recent amendments to the Juvenile Justice Act the confidentiality surrounding cautions made it impossible for anyone outside the Police Service to know whether and under what circumstances a police caution had been administered. The courts, in particular, were kept in the dark about police cautions. That strict confidentiality has now been partially lifted by the amending legislation. If a child has been cautioned for an offence that, if committed by an adult would attract a sentence of seven years or more imprisonment, and reoffends as a child, the caution can be disclosed to the sentencing court.

With respect to the caution statistics for 1995–96 it is reasonable to ask, why were 2,138 cautions administered for breaking and entering offences and 87 for robbery offences, to take but two examples? It may be that although the offences are serious the circumstances surrounding their commission were such that a caution could be justified. I must say that I harbour strong reservations about police cautioning for indictable offences, especially 'serious' indictable offences.

One of the consequences of police cautioning for 'serious' offences is that the court process is circumvented. Some may say, 'Well, that is a good thing'. I would take issue with such an attitude.

Mrs Rosemary Thomson JP, described as England's leading magistrate in an article in *The Times* (25 October 1996) on juvenile delinquency, when recounting some of her court experiences, stated: 'One lad this morning, to my horror, had been cautioned twice, once after seven burglaries and once for four thefts of cars. Frankly, he should have been in court before now. But really the court comes into the process far too late. Our youth

court magistrates feel passionately that we can do little more than mop up. Young men have got thoroughly into offending before the court ever gets at them.'

And Mr Jack Straw, Shadow Home Secretary in the Labour Opposition, in a report in *The Times* (3 October 1996) said: 'A magistrate told me earlier this year of a young offender who had complained bitterly about being taken to court, "because he hadn't had his five cautions yet". However, in half the cases that do finally reach court, the offender walks away with another warning. Is it any wonder that young offenders get a clear sense of their entitlement to commit crime, and impunity from its consequences.'

There are almost no effective safeguards for preventing police abuse of their cautioning powers. The victim of the offence is not involved in the cautioning process. The victim is not consulted before a police officer determines whether a caution would be appropriate in a particular case. The victim's consent to the administering of a caution is neither sought nor required under the relevant provisions of the Juvenile Justice Act.

The only time a victim is brought into the cautioning process is if the cautioning officer considers that as a term of the caution the offending child should apologise to the victim, but before an apology can be tendered both the child and the victim must be willing to participate in the procedure.

There is no statistic available to me to show what percentage of the total cautions administered in a year include an apology component. However, I would be surprised if there were more than a handful.

I had recommended in previous reports that the victim of an offence committed by a child who is cautioned be entitled to be advised of the outcome of the offence involving the victim if the victim so requests. This recommendation was adopted in a somewhat modified form in the *Juvenile Justice Legislation Amendment Act 1996* (s.18K).

So far as is relevant, the section provides that if for an offence committed by a child a caution is to be or has been administered a police officer may give the complainant for the offence information concerning the caution about to be or already administered to a child even though such information may identify the child. Although this is a salutary measure in that it throws some light on the cautioning process, the consent of the victim to the administering of a caution is not only not sought but is not necessary. In other words, a caution can be administered by a police officer without regard to the victim's wishes in the matter. I see nothing wrong with this if cautions are restricted to trivial or minor matters. But I take objection to the practice of excluding the victim from the cautioning

process for indictable offences, especially 'serious' indictable offences. Section 8 of the Juvenile Justice Act defines a 'serious offence' as a life offence or an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more. In the 1995–96 caution statistics published above I suspect a good number of the breaking and entering offences and certainly all the robbery offences would be in the 'serious offence' category.

By way of illustration of the misuse of the cautioning procedure, let me cite a recent case before me. A boy aged 16 years was charged with breaking, entering and stealing. The offence was committed in conjunction with another boy also aged 16 years. Between them they broke into shop premises by smashing a glass door and stole from the shop goods to the value of $2,000. The only apparent difference in the history of the two boys was that the child before me had a conviction for a minor drug offence whereas the other boy had no criminal history. Although equally implicated in the offence, one was charged and the other cautioned. If the facts placed before me are accurate, I would say unhesitatingly that the caution administered to one of the offenders was wholly unwarranted having regard to the nature and circumstances of the offence. I fear instances like this abound.

What I am trying to say is that the cautioning procedure needs looking at afresh. In my opinion, police cautions should generally be confined to first offenders who admit to trivial or minor offences. If it is thought appropriate that a caution should be administered for an indictable offence having regard to the nature and circumstances of the offence, a caution should be administered only on the authority of an officer of the rank of Inspector or above, who, if he authorises a caution, should state in writing his reasons for considering a caution appropriate in the circumstances of the case.

Indeed now that community conferencing is available one wonders whether in the future cautions should be administered for 'serious' indictable offences. As I have pointed out, community conferencing has inbuilt safeguards. They are:

1. the victim must consent to a community conference;
2. the convenor may refuse to conduct a conference if he considers the offence unsuitable for a community conference;
3. the victim, if he or she participates in the conference, must be a signatory to a conference agreement.

As I have been at pains to explain, none of these safeguards exist with respect to cautions.

RECOMMENDATIONS

1. That generally cautions be restricted to trivial or minor offences.
2. That if a caution is considered appropriate for an indictable offence, and especially a 'serious' indictable offence, such caution can be administered only on the authority of an officer of or above the rank of Inspector who must state in writing his or her reasons for authorising the caution.

4. THE AGE OF CRIMINAL RESPONSIBILITY

Section 29 of the Criminal Code provides:

> 'A person under the age of ten years is not criminally responsible for any act or omission.
>
> A person under the age of fifteen years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.'

This provision encapsulates the common law of England. The common law rule, however, is somewhat differently formulated. In England there is an irrebuttable presumption that a child under the age of 10 years is not criminally responsible and a rebuttable presumption that a child aged between 10 and 14 years is not criminally responsible.

The spotlight was turned on the *doli incapax* rule, as it is called, in the recent House of Lords case of *C* (a minor) *v. Director of Public Prosecutions* (1995) 2 WLR 383. The facts of the case were as follows. On 8 June 1992 two policemen saw two boys tampering with a motorcycle parked on the private driveway of a house in Liverpool. The appellant was holding the handlebars while the other boy tried with a crowbar to force open the chain and padlock securing the motorcycle.

The police approached and the boys ran off. One policeman chased the appellant who then climbed over a wall and was arrested by another policeman.

At the end of the prosecution's case the appellant's solicitor submitted that the prosecution had not adduced sufficient evidence to prove that the appellant, who was just under 13 at the time of the offence, had guilty knowledge and knew that what he was doing was seriously wrong as opposed to merely naughty or mischievous.

The justices found that the appellant knew that what he had done was seriously wrong, observing that the damage to the motorcycle was substantial and that the appellant and his accomplice ran from the police, leaving the crowbar behind. They drew from those facts the inference that the appellant 'knew he was in serious trouble because he had done something wrong'. The justices accordingly convicted the appellant, fined him and bound him over to ensure his future good behaviour.

The question stated for the opinion of the High Court was 'whether or not there was any, or sufficient, evidence to justify the finding of fact made by us, that this particular defendant knew that what he was doing was seriously wrong'. The Divisional Court of its own motion took the point that it was a matter for consideration whether the presumption of *doli incapax* had outlived its usefulness and should no longer be regarded as part of the common law.

Delivering what was in fact if not in form the judgment of the court Mr Justice Laws said (at p. 894): '... the cases demonstrate, that if this presumption is to be rebutted, there must be clear positive evidence that the defendant knew his act was seriously wrong, not consisting merely in the evidence of the acts amounting to the offence. On that basis, there having been no such evidence here, this appeal must succeed if the presumption ... remains part of our law.'

Having marshalled the arguments against the continued application of the presumption, Mr Justice Laws concluded that it had no utility in the present era and held that the presumption was no longer part of the law of England.

The Divisional Court stated the following case for the consideration of the House of Lords:

> 'Whether there continues to be a presumption that a child between the ages of 10 and 14 is *doli incapax* and, if so, whether that presumption can only be rebutted by clear positive evidence that he knew that his act was seriously wrong, such evidence not consisting merely in the evidence of the acts amounting to the offence itself.'

The House of Lords answered the question 'Yes'. Lord Lowry (with whom Lord Jauncey, Lord Bridge, Lord Ackner and Lord Browne-Wilkinson agreed) was of the view that the imperfections which had been attributed to the doctrine of *doli incapax* could not provide justification for saying the presumption was no longer part of the common law of England. To sweep it away under the doubtful auspices of judicial legislation was impracticable.

In my capacity as head of the Childrens Court of Queensland I had to consider how the House of Lords decision impacted on s.29 of the Queensland Criminal Code. I refer to the case of *R v. J* (Childrens Court of Queensland, judgment delivered 20 June 1996, unreported). In my judgment I comprehensively discuss the law of juvenile criminal responsibility. I reproduce the judgment hereunder:

> "The child J was committed for trial before a Childrens Court Judge on one count of entering a dwelling-house and one count of stealing. The alleged offences were committed on 25 February 1996. Because J was aged under 15 at all material times section 29 of the Criminal Code has relevance. The section provides:
>
> > 'A person under the age of ten years is not criminally responsible for any act or omission.
> >
> > A person under the age of fifteen years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.'

A question arises for consideration under section 29. The defence has put in issue the capacity of J to know that he ought not to do the acts constituting the offences. The effect of section 29 is that there is an irrebuttable presumption that a child under the age of 10 years is incapable of committing a crime and there is a rebuttable presumption that a child over the age of 10 and under the age of 15 years is incapable of committing a crime. The onus is upon the Crown to rebut the presumption that a child under 15 years is not criminally responsible for the acts which constitute the offence with which he is charged. The standard of proof is proof beyond a reasonable doubt.

The law is set out in a judgment of my own, *R v. N* (judgment delivered 17 November 1995). The law is set out on pp. 9–16 of that judgment as follows:

In the case of *R v. L* (1995) 16 QLR 27, decided on 13 December 1994, I outlined the law, as I then apprehended it to be, in relation to the age of criminal responsibility. I quote the following from the report:

> From the experience of the ages have evolved special rules for child criminal conduct. Of particular relevance is the age of criminal responsibility. The law in its wisdom has determined that there is an irrebuttable presumption that children under the age of criminal responsibility (which varies from jurisdiction to jurisdiction) are incapable of committing crimes; and there is a rebuttable presumption that children over the age of criminal repsonsibility and under the age of 14 (15 in Queensland) are incapable of committing crimes.
>
> The age of criminal responsibility in Tasmania and Western Australia is seven, eight in Victoria and the Australian Capital Territory and 10 in New South Wales, South Australia, Queensland and the Northern Territory. The age of responsibility is not the age at which the child can tell right from wrong—most five-year-olds can do that—but the point at which society feels it can publicly and unashamedly punish.
>
> There is an almost universal feeling founded on humanity and good sense that children of very tender years, no matter how shocking their behaviour, should be shielded from the rigours of the criminal law. It would, for example, be generallly unacceptable to subject a five-year-old to a criminal trial and to criminal penalties. Criminal proceedings are a public demonstration of disapproval of grossly anti-social conduct, but there are many social problems for which they do not offer an appropriate solution.
>
> The various ages of criminal responsibility which currently apply in the multiple jurisdictions which constitute the Australian Federation are, it can fairly be said, arbitrarily fixed. The ages do not reflect universally observable facts of child development. However, the inescapable fact is that formal criminal prosecutions are often an inappropriate and harmful response to most youthful offending.

Under the common law there is a presumption that a child over the age of criminal responsibility and under 14 is incapable of committing a crime. In Queensland, the presumption of incapacity applies to children under the age of 15. This presumption can be rebutted if the prosecution proves that the child knew that the act was wrong. The evidence which the prosecution must present in order to rebut the presumption is of a different kind from that needed to establish any mental element which is an ingredient of the offence charged. It is conceivable that a child who commits a crime may intend the act constituting the crime and yet not realise that what he was doing was wrong. In order to displace the presumption of criminal incapacity where a child is aged between 10 and 15, the presuction must prove not only the ordinary elements of the offence charged, but also that the child knew that what he was doing was wrong and not merely naughty or mischievous. In other words, the prosecution must prove that the child was aware of the wrongness of the act. The knowledge which must be established to rebut the presumption is knowledge of wrongness and now knowledge of illegality.

Some formulations of the rule suggest that the prosecution must go beyond proving that the child knew that the act was wrong. It must prove that there existed knowledge of 'grave' or 'serious' wrongdoing.

The above is a general outline of the law. It may be instructive to discuss the effect of particular cases. First, some English authorities.

In *R v. B* (1979) 69 CrAppR 362, the Court of Appeal adopted the dictum of Lord Parker CJ, in *R v. Padwick* (*The Times*, 24 April 1959) that 'the question was whether there was strong and pregnant evidence of a mischievous disposition which was required before the child could be convicted'.

The report of Padwick's case records (at 365) the following interchange between Bar and Bench:

> Mr Ruttell appearing for the boy submitted that 'all the evidence called by the prosecution was quite consistent with an innocent mind when the boy did the acts complained of'. Mr Inskip for the prosecution said that 'having regard to the present state of education generally, it was very hard to suggest that the boy did not know that what he was doing was wrong'. Then the Lord Chief Justice said: 'Before they rule in a case like this, the Justices should hear evidence of the boy's home background and all his circumstances. In a rotten home, what is more likely than that a child is brought up without knowledge of right and wrong?' Counsel: 'This would give information about the child which might be highly prejudicial to him'. Donovan J: 'These matters are inevitably let in. It cannot be helped. Salmon J said: 'It is most important to hear this evidence'.

In *JM* (a minor) *v. Runeckles* (1984) 79 CrAppR 255 at 259, the Divisional Court (Goff LJ and Mann J) approved the direction of Salter J in *R v. Gorrie* (1919) 83 JP 136, where he said:

> The boy was under 14, and the law presumed that he was not responsible criminally; and if the prosecution sought to show that he was responsible although under 14, they must give them (that is, the jury) very clear and complete evidence of what was called mischievous discretion: that meant that they must satisfy the jury

that when the boy did this he knew that he was doing what was wrong—not merely what was wrong, but what was gravely wrong, seriously wrong.

In his judgment, Mann J said (at 259):

I would respectfully adopt the learned judge's use of the phrase 'seriously wrong'. I regard an act which a child knew to be morally wrong as being but one type of those acts which a child can appreciate to be seriously wrong. I think it is unnecessary to show that the child appreciated that his or her action was morally wrong. It is sufficient that the child appreciated the action was seriously wrong. A court has to look for something beyond mere naughtiness or childish mischief.

And in his judgment, Goff JL said (at 260):

I do not, however, feel able to accept the submission that the criterion in cases of this kind is one of morality. As we can see from the direction to the jury by Salter J in *R v. Gorrie* (1919) 83 JP 136, to which Mann J has just referred, the prosecution has to prove that the child knew that what he or she was doing was seriously wrong. The point is that it is not enough that the child realised that what he or she was doing was naughty or mischievous. It must go beyond childish things of that kind. That, as I understand it, is the real point underlying the presumption that a child under the age of 14 has not yet reached the age of discretion, because children under that age may think that what they are doing is nothing more than mischievous.

The same view was taken in *R v. Coulburn* (1988) 87 CrAppR 309.

In the Queensland case of *R v. B* (An Infant) (1979) QdR 417, the Court of Criminal Appeal quoted with approval the following dictum of Lord Parker CJ in *B v. The Queen* (1958) 44 CrAppR 1:

... the lower the child is in the scale between eight and 14, the stronger the evidence necessary to rebut that presumption, because in the case of a child under eight, it is conclusively presumed he is incapable of committing crime. It has often been put this way; that in order to rebut the presumption, 'guilty knowledge must be proved and the evidence to that effect must be clear and beyond any possibility of doubt', or, as it has also been put, 'there must be strong and pregnant evidence that he understood what he did'.

For myself, I think the best historical perspective of criminal responsibility of persons of immature age and the clearest enunciation of the law thereon is to be found in Chief Justice Bray's judgment in *R v. M* (1977) 16 SASR 589. I quote the following passages (which are non-consecutive) from his judgment:

What must be proved to rebut the presumption? According to Hale, Pleas of the Crown (1800), Vol. 1, pp. 24–25, it is the power to discern between good and evil. Blackstone, Vol. 4, p. 23, lays down the same test. What is meant by knowing that the act was wrong? Does it mean knowing that it was contrary to law, or knowing that it would be considered to be wrong by the ordinary man or the reasonable man, or knowing that it was wrong according to the child's own subjective and, it may be, idiosyncratic ethical standard. The phrase 'knowing what he was doing was wrong' is of course a familiar one. It forms part of the second limb of the M'Naghten Rules. In England it has been held that the test is whether he knew that the act was contrary to law (*R v. Windle* [1952] 2 QB 826), but the High Court has disagreed with this, and in Australia it must be taken that the test is whether he knew that it was wrong according to the ordinary principles of reasonable men (*Stapleton v. The Queen* (1952) 86 CLR 358) '... If, then, knowledge that something is wrong means, for the purpose of insanity, knowing that it is wrong according to the ordinary principles of reasonable men, is there any reason why it should mean something

> else for the purpose of infancy? I confess, I can think of none ... The Crown, in addition to proving the ingredients of the charge, had to prove that the appellant has sufficient knowledge of the distinction between right and wrong to be guilty of the charge and she (the judge) made it plain that the onus was on the Crown to prove all the matters it had to prove beyond a reasonable doubt ... In the case of *R v. Gorrie* (1918) 83 JP 136, Salter J directed the jury that the prosecution 'must satisfy the jury that when the boy did this, he knew that he was doing what was wrong—not merely what was wrong but what was gravely wrong, seriously wrong' ... I cannot find any authority for the proposition that it is a misdirection to omit the adverbs used by Salter J ...

The Chief Justice concludes with these words:

> I think it is hard to regard this ancient rule about the capacity of a child between 10 and 14 as altogether satisfactory or suited to modern conditions and I draw attention to the pointed criticisms of Professor Glaville Williams in the article to which I have referred, and also to his *Criminal Law: The General Part* (2nd ed, 1961), pp. 815–820. Nevertheless, it is clearly the law and we have to enforce it.

See also the First Annual Report of the Children's Court of Queensland, pp. 29–33; *R* (A Child) *v. Whitty* (1933) 66 ACrimR 462; *R v. Richards* (unreported, CA No 49/1995, judgment delivered 28 April 1995).

Since handing down judgment in *R v. L* (supra) there has been a very important judgment of the House of Lords which calls for close consideration.

The case is *C* (a minor) *v. The Director of Public Prosecutions* (1995) 2 WLR 383. The House of Lords made it clear that 'as the law stands the Crown must, as part of the prosecution's case, show that a child defendant is *doli capax* before the child can have a case to meet'. (p. 400 H).

The judgment of the House was delivered by Lord Lowry with whom the other Law Lords agreed. The essence of the judgment is, I think, encapsulated in the following passage at pp. 401–2:

> A long and uncontradicted line of authority makes two propositions clear. The first is that the prosecution must prove that the child defendant did the act charged and that when doing that act he knew that it was a wrong act as distinct from an act of mere naughtiness or childish mischief. The criminal standard of proof applies. What is required has been variously expressed, as in Blackstone, 'strong and clear beyond all doubt or contradiction', or, in *Rex v. Gorrie* (1918) 83 JP 136, 'very clear and complete evidence', or, in *B v. R* (1958) 44 CrAppR 1, 3 per Lord Parker CJ, 'It has often been put in this way, that ... "guilty knowledge must be proved and the evidence to that effect must be clear and beyond all possibility of doubt"'. No doubt, the emphatic tone of some of the directions was due to the court's anxiety to prevent merely naughty children from being convicted of crimes and in a sterner age to protect them from the draconian consequences of conviction.
>
> The second clearly established proposition is that evidence to prove the defendant's guilty knowledge, as defined above, must not be the mere proof of the doing of the act charged, however horrifying or obviously wrong that act may be. As Erle J said in *Reg v. Smith* (Sidney) (1845) 1 Cox CC 260:
>
> > A guilty knowledge that he was doing wrong must be proved by the evidence, and cannot be presumed from the mere commission of the act. You are to determine from a review of the evidence whether it is satisfactorily proved that at the time he fired the rick (if you should be of opinion he did fire it) he had a guilty knowledge that he was committing a crime.

> The report of *Rex v. Kershaw* (1902) 18 TLR 357, 358, where a boy of 13 was charged with murder, states:
>
> '(Bucknill J), in summing-up, pointed out that the commission of a crime was in itself no evidence whatever of the guilty state of mind which is essential before a child between the ages of 7 and 14 can be condemned.'
>
> In that case, the jury found the prisoner guilty of manslaughter and he was sentenced to 10 years' penal servitude.
>
> The cases seem to show, logically enough, that the older the defendant is and the more obviously wrong the act, the easier it will generally be to prove guilty knowledge. The surrounding circumstances are of course relevant and what the defendant said or did before or after the act may go to prove his guilty mind. Running away is usually equivocal, as Laws J rightly said it was in the present case, because flight from the scene can as easily follow a naughty action as a wicked one. There must, however, be a few cases where running away would indicate guilty knowledge, where an act is either wrong or innocent and there is no room for mere naughtiness. An example might be selling drugs at a street corner and fleeing at the sight of a policeman.
>
> The Divisional Court here, assuming that the presumption applied, would have reversed the Youth Court, rightly, in my opinion, because there was no evidence, outside the commission of the 'offence', upon which one could find that the presumption had been rebutted.
>
> In order to obtain that kind of evidence, apart from anything the defendant may have said or done, the prosecution has to rely on interviewing the suspect or having him psychiatrically examined (two methods which depend on receiving co-operation) or on evidence from someone who knows the defendant well, such as a teacher, the involvement of whom adversely to the child is unattractive.
>
> As I apprehend it, what the House is saying is that, whilst the commission of a crime is in itself no proof whatever of a guilty state of mind, there may exceptionally be inferences to be drawn from the circumstances surrounding the commission of the crime which would entitle the Court to be satisfied that the child had at the time a guilty mind, that is to say, that he knew that what he was doing was seriously wrong.

The facts on which the Crown rely are essentially in the record of interview. On 25 February 1996 the complainant's house at Ashgrove was entered and goods stolen therefrom. The child was interviewed by police on 27 February 1996 about this matter in the presence of his mother. The effect of his statement to the police is this: He and other boys, whom he would not name, were walking along the street where the complainant's house was located. The other boys said they needed money for cigarettes. He saw his friends go towards the complainant's house. He went 'cockatoo'. He stood on a corner across the road from the house. He saw his role as keeping watch, to whistle if anyone came. He said that there was no discussion about what the other boys were going to do. They simply told him to wait on the corner. The term 'cockatoo', his mother said, he had learnt from her. J said he was told what the other boys were going to do 'just before' they went to the house. J acknowledged that he knew it was an offence to break and enter someone's house and that you could be punished for doing so. J maintains that he did not know how

his friends entered the house or how they emerged. When they joined him afterwards he saw them with a jacket and a video. J did not handle any of the goods then or later. He did not receive anything from the proceeds of the offence. J was aware that the stolen goods were hidden in the house to which he and his companions repaired after the commission of the offence. The goods actually stolen were a video recorder, a jacket, a radio and a micro cassette recorder.

The complainant came to the house where a number of the youths were gathered and made vigorous inquiries about the whereabouts of the stolen goods and the possible involvement of the youths present in the offence. Three, excluding J, volunteered involvement, one wrongly.

The goods, I understand, have been returned to the complainant and the two youths responsible for the actual entering of the dwelling-house and stealing therefrom have been charged.

The complainant phoned J on 26 February. During the complainant's discussion with J, he denied any involvement in the offence. J maintains that he was told after the event by the two youths who entered the premises that they entered by a window.

The evidence on which I am to base my decision suggests that there was no pre-planning of the offence. The evidence suggests that as the youths were walking along the street a quick decision was made to get some money for cigarettes. It would seem reasonably clear that J knew or ought to have known that his companions were going to break into the house. He was told to stand on the corner to keep watch. J had no further involvement in the offence. There is nothing in his conduct after the offence to suggest that he was more deeply involved than he claims.

If the matter went to trial the Crown case is that J aided the two who entered the house by keeping watch with knowledge that an offence was about to be committed. J was 14 years less one month old when the offence was committed.

As the authorities show, the Crown must prove beyond a reasonable doubt that J knew that his act of standing on the corner keeping watch was seriously wrong. One has to look at the matter with the perceptions of a 14-year-old boy. J did not actually break in and steal the goods. He did not at any time handle the goods or derive any benefit from them. It is quite possible that he did not perceive that he had done anything seriously wrong. The fact that he knew that an offence was about to be committed does not of itself mean that he, having regard to the non-active role he took, believed that he was doing something seriously wrong.

The law of aiding (s.7 of the Code) is technical law, the implications of which a 14-year old would probably not comprehend. Indeed, many

adults do not fully comprehend it. It is possible that a 14-year-old boy might think that by not actually going into the house and stealing the goods he had not done anything seriously wrong, whereas the others had.

I have been told that J has not been convicted before of a breaking and entering offence. I know little about his background except that he does not attend a regular school.

The child has elected to be tried by Judge alone. I must therefore act as Judge and jury. The issue for decision is a question of fact. I have argued with myself whether the Crown has discharged the onus of proof. I think the case is borderline but at the end of the day I harbour a lingering doubt whether on the limited facts before me J could possibly have believed that by acting as he did he was not doing anything seriously wrong and that he did not commit any offence himself. In the result, I am not satisfied, that is satisfied beyond a reasonable doubt, that the Crown has discharged the onus of rebutting the presumption that J was not criminally responsible for his acts, that is to say I am not satisfied that the Crown has proved beyond a reasonable doubt that at the time of doing the acts J then had the capacity to know that he ought not to do the acts.

In the result, J is discharged.

Postscript: The rule of *doli incapax*, as it is called, has been severely criticised in recent times by courts, legal writers and commentators. For example, in *C* (a minor) *v. DPP* (1995) 2 WLR, 383, the House quoted this passage from Mr Justice Laws' judgment in the Divisional Court (p. 387):

> 'In my view, the cases demonstrate that if this presumption is to be rebutted, there must be clear positive evidence that the defendant knew his act was seriously wrong, not consisting merely in the evidence of the acts amounting to the offence itself. On that basis, there having been no such evidence here, this appeal must succeed if the presumption together with the manner of its application through the authorities remains part of our law. Whatever may have been the position in an earlier age, when there was no system of universal compulsory education and when, perhaps, children did not grow up as quickly as they do nowadays, this presumption at the present time is a serious disservice to our law. It means that a child over 10 who commits an act of obvious dishonesty or even grave violence, is to be acquitted, unless the prosecution specifically prove by discrete evidence that he understands the obliquity of what he is doing. It is unreal and contrary to commonsense. And it is no surprise to find that modern judges–Forbes J in *JBH and JH* (minors) *v. O'Connell* (1981) CrimLR 632, Bingham LJ in *A v. Director of Public Prosecutions* (1992) CrimLR 43–had looked upon

the rule with increasing unease and perhaps rank disapproval.'

And in *R v. M* (1977) 16 SASR 598, Chief Justice Bray said:

> 'I think it is hard to regard this ancient rule about the capacity of a child between 10 and 14 as altogether satisfactory, or suited to modern conditions, and I draw attention to the pointed criticisms of Professor Glanville Williams in the article to which I have referred, and also to his *Criminal Law: The General Part* (2nd ed, 1961) pp. 815–20. Nevertheless, it is clearly the law and we have to enforce it.'

My own view, for what it is worth, is that the *doli incapax* rule should be reconsidered for the reasons stated by the modern authorities. For myself, I would echo Mr Justice Laws' considered opinion:

> 'It is unreal and contrary to commonsense.'"

Criticism of the Rule
A call for reform

The doctrine is summarised in *Archbold, Criminal Pleading Evidence and Practice* (1993), Vol. 1, p. 52, para. 1–96:

> "At common law a child under 14 years is presumed not to have reached the age of discretion and to be *doli incapax*; but this presumption may be rebutted by strong and pregnant evidence of a mischievous discretion ... Between 10 and 14 years a child is presumed not to know the difference between right and wrong and therefore to be incapable of committing a crime because of lack of mens rea ... Wrong means gravely wrong, seriously wrong, evil or morally wrong."

In the 17th century the 'age of discretion' was fixed by Coke at 14. It was accepted as such by Hale.

Reformers have called for the abolition of the presumption and to let a child pass from complete criminal irresponsibility to full responsibility without any intermediate step.

It is always a worry at any level of adjudication when what is thought to be the law and what is alleged to represent common sense do not appear to coincide. Because of this the presumption has in recent years been the object of much forceful criticism.

The presumption itself is not and never has been completely logical. It provides a benevolent safeguard which evidence can remove, but it has to be adduced as part of the prosecution case or else there will be no case to answer.

In 1985 the English Law Commission comprising a committee of distinguished academic lawyers headed by Professor J.C. Smith CBE, QC, reported as follows:

> "11.22 *Child over ten but under fourteen.* The law at present is that such a child can be guilty of an offence but only if, in addition to doing the prohibited act with such fault as is required in the case of an adult, he knows that what he is doing is 'seriously' wrong. It is presumed at his trial that he did not have such knowledge, and the prosecution must rebut this presumption by proof beyond reasonable doubt. The presumption, it has been said, 'reflects an outworn mode of thought' and is 'steeped in absurdity'; and it has long been recognised as operating capriciously. Its abolition was proposed in 1960 by the Ingleby Committee on Children and Young Persons. We believe that there is no case for its survival in the Code."

I refer next to an article by Professor Glanville Williams in [1954] CrimLR 493 which appears to have formed the basis for his treatment of the presumption in *Criminal Law: The General Part.* In his article the learned author set out the conventional view and observed that the test of knowledge of right and wrong was bound up with the theory of moral responsibility, and the right to inflict retributive punishment, since no one can justly be punished unless he is morally responsible. He then said, at pp. 495–6:

> "The 'common sense' view of moral responsibility and retributive punishment is still widely maintained in respect of the sane adult who commits a crime. Yet in respect of children it is just as generally abandoned. No one whose opinion is worth considering now believes that a child who does wrong ought as a matter of moral necessity to expiate his wrong by suffering. Punishment may sometimes be the best treatment, but if so it is because this is the only way in which the particular child can be made to see the error of his ways ... In this climate of opinion, the 'knowledge of wrong' test no longer makes sense ... Thus at the present day the 'knowledge of wrong' test stands in the way not of punishment, but of educa-tional treatment. It saves the child not from prison, transportation, or the gallows, but from the probation officer, the foster-parent, or the approved school. The paradoxical result is that, the more warped the child's moral standards, the safer he is from the correctional treatment of the criminal law. It is perhaps just possible to argue that the test should now be regarded as even legally obsolete. The test was designed to restrict the punishment of children and should not be used where no question of punishment arises. This argument has to face the difficulty that the test traditionally protects the child from conviction, whereas the choice between punishment and other treatment is only made after conviction."

Professor Glanville Williams went on to say:

> "Some magistrates interpret this rule so strictly that if the prosecution gives no evidence of this knowledge, they find that there is no case to answer. Now, if the police have not interrogated the child before the trial, to obtain an admission from him, they may be wholly without evidence of the child's knowledge.
>
> As a matter of policy it is highly desirable that a child who has committed what, for an adult, would be a crime, should be put to answer, even if he is afterwards acquitted on the ground that he did not know his act to be wrong."

In *Criminal Law: The General Part*, which in other respects closely follows the article in the Criminal Law Review, the learned author does not advert to the possibility of reversing the evidential burden, but at p. 820, after reviewing the cases, he says:

> "These decisions show that the present law is steeped in absurdity ... But if the machinery of the law has to be invoked for the protection of society and of the child, it should not be liable to be defeated by a rule which reflects an outworn mode of thought."

A modern case illustrates the absurdity of the rule. *JBH and JH* (minors) *v. O'Connell* (1981) CrimRL 632 was decided by the Divisional Court (Donaldson LJ and Forbes J). The facts of the case were that two boys aged 13 and 11 broke into a school and stole a screwdriver, three spanners, a lighter, three soldering leads, two watches, a ring and necklace and other articles. They equipped themselves with eggs, flour, cornflakes and 12 tubes of duplicating ink, with which they 'redecorated' the school, thereby causing £3,000 worth of damage. When charged with burglary and malicious damage they called no evidence. The justices convicted, made a supervision order and fined one boy £100 and the other £50.

Donaldson LJ observed that the defence submission of no case 'would strike any non-lawyer as a quite remarkable submission', but pointed out that it was based on the presumption. He continued:

> "These magistrates in this particular case considered the matter very carefully. They set out in the case stated that: 'We were of opinion that the respondent'–that is to say the prosecutor–'had to prove the appellants knew that what they were doing was wrong morally, whether or not they knew it was an offence'. That is absolutely right.
>
> Had the matter been left like that, I think that the justices' decision might well have been upheld. But unfortunately there is a clear self-misdirection revealed by the case because the justices also say: 'There being no evidence before us about the appellants' upbringing or their mental capacity we had to treat them as ordinary boys of their respective ages and to make our decision on the basis of the evidence concerning their activities on 29 April 1979 and their

conversations with the Police thereafter'. What the justices are there saying is that it was for the defence to call evidence to show that the appellants were not ordinary boys of their respective ages. That in fact contradicts what they said in the previous paragraph of the case that it was for the respondents to prove that the appellants knew that what they were doing was wrong. It is for the prosecution to rebut this presumption. They can only rebut it by relying upon what the children did if they also call evidence showing that the children were ordinary children with ordinary mental aptitudes."

Donaldson LJ concluded that the presumption was part of the substantive law and that there was an error of law by the magistrates.

Forbes J, on whose criticisms of the doctrine Laws J relied, said:

"I agree. That children between 10 and 14 are presumed to be exempt from criminal responsibility unless this presumption is rebutted by some evidence that they did the criminal act not only with mens rea but with a mischievous discretion is a common law rule that goes back certainly as far as Hale. No doubt it was a sensible and merciful rule in Hale's days, but in these days of universal education from the age of five it seems ridiculous that evidence of some mischievous discretion should be required if a case of malicious damage is committed as it was in this case. But on the principle of stare decisis the common law rule, supported as it is by recent cases, is binding on this court, and I agree that the justices appear to have reversed the presumption and therefore this conviction cannot stand."

In *C* (a minor) *v. DPP* (supra) Lord Lowry said at p. 403:

"But the judges in the court below have achieved their object, at least in part, by drawing renewed attention to serious shortcomings in an important area of our criminal law. Forty years have passed since the article by Professor Glanville Williams and the years between have witnessed many criticisms and suggested remedies, but no vigorous or reasoned defence of the presumption. I believe that the time has come to examine further a doctrine which appears to have been inconsistently applied and which is certainly capable of producing inconsistent results, according to the way in which courts treat the presumption and depending on the evidence to rebut it which is available in each case."

In his speech Lord Bridge said at p. 385:

"In today's social conditions the operation of the presumption that children between the ages of 10 and 14 are *doli incapax* may give rise to anomalies or even absurdities. But how best to remedy this state of affairs can, in my view, only be considered in the context of wider issues of social policy respecting the treatment of delinquency

in this age group. These issues are politically controversial and this is pre-eminently an area of the law in which Parliament alone is competent to determine the direction which any reform of the law should take."

And in his speech Lord Jauncey made observations about the desirability of retaining the presumption in its present form. He said at p. 385:

> "It is, no doubt, undesirable that a young person who commits an offence and who genuinely does not know that he is doing something seriously wrong should suffer the rigours of the criminal law. But is a blanket presumption such as exists in England and Wales at the moment the best way to achieve protection for such a person? There must be many youthful offenders under the age of 14 who are very well aware that what they are doing is seriously wrong. Indeed it is almost an affront to common sense to presume that a boy of 12 or 13 who steals a high powered motor car, damages other cars while driving it, knocks down a uniformed police officer and then runs away when stopped is unaware that he is doing wrong.
>
> The presumption has been subject to weighty criticism over many years, by committees, by academic writers and by the courts as explained in detail in the speech of my noble and learned friend. I add my voice to those critics and express the hope that Parliament may once again look at the presumption, perhaps as part of a larger review of the appropriate methods in a modern society of dealing with youthful offenders."

As we have seen, there are strong arguments that the presumption should be swept away, or alternatively, that in recognition of its frailties the courts should by judicial intervention effect a change by laying it down that the prosecution's initial burden of showing a prima facie case against a child should be the same as if the accused were an adult but that the child should be able by evidence to raise as a defence the issue that he was *doli incapax*. It would then be for the prosecution to prove to the criminal standard that he was *doli capax*.

It is of interest to observe that the O'Regan Criminal Code Review Committee in its interim report (March 1991) made no recommendation for changes to s.29. However, the Connolly Criminal Code Advisory Working Group in their report of July 1996 recommended that s.29 be amended to read:

> "*29. Immature age*
>
> (1) A person under the age of ten years is not criminally responsible for any act of omission.
>
> (2) A person under the age of *fourteen* years is not criminally responsible for an act or omission, unless it is proved *by the accused*

> *person* that at the time of doing the act or making the omission *he* had capacity to know that *he* ought not do the act or make the omission."

Actually, subsec. (2) is not accurately recorded. It should read:

> "A person under the age of 14 years is criminally responsible for an act or omission, unless it is proved by the accused person that at the time of doing the act or making the omission he did not have the capacity to know that he ought not do the act or make the omission."

However, in the Criminal Law Amendment Bill introduced in Parliament on 4 December 1996 the Connolly recommendation was not adopted. The only change made to the existing s.29 was to lower the age of criminal responsibility from 15 to 14 years.

In 1990 the Review of Commonwealth Law Committee recommended that a child under the age of 14 years should not be guilty of an offence if he is unaware that what he did was an offence or seriously wrong, but that the evidential onus of the absence of awareness should rest on the child defendant.

My first preference is that the rule be swept away altogether, but if a compromise is thought more appropriate, with respect, I favour the wording of the Commonwealth recommendation over the Queensland recommendation referred to above. The Commonwealth wording is simpler and more readily understood by a cross-section of the community comprised in a jury.

The plain fact is, as the law now stands, a child aged under 15 can steal cars and housebreak with impunity unless the prosecution as part of its case proves beyond a reasonable doubt that the child knew at the time he did the acts constituting the offence that what he did was seriously wrong as opposed to being merely naughty or mischievous. As I apprehend a series of cases on the subject culminating with *C* (a minor) *v. DPP* (supra) a court is not entitled to draw an inference of serious wrongdoing from the objective facts alone. The result of this rule is that children criminally inclined and astutely advised would refuse to be interviewed lest they fall into the trap of admitting that they knew that what they did was seriously wrong.

Since the decision in *C* (a minor) *v. DPP* (supra), in the Childrens Court of Queensland there has been an increasing tendency to raise the issue of capacity.

At the time of writing this report I decided a case on capacity (*R v. B*, 6 December 1996). I publish it here as it is yet another illustration of the unsatisfactory results (often with catastrophic consequences) which can be achieved by a strict application of the *doli incapax* rule:

"The accused is a boy aged 12 years. He is charged with the arson of a house. The boy was being reared by his maternal grandparents; his mother is deceased. His grandparents lived in a house adjacent to the house which was allegedly arsoned. The arsoned house was vacant at the relevant time. On 5 July 1996 the boy got into the house via a window. He turned on the plate of an electric stove in the kitchen. He then left the house and returned with some newspaper which he had obtained from a bin. He placed the paper on the stove plate. It ignited. He then took the ignited paper into the lounge and placed it in a wooden cabinet. The cabinet caught fire. The boy fled. Smoke was observed coming from the building. The fire brigade were alerted. They came to the scene and put out the fire. As the photographic exhibits demonstrate a fair amount of damage was caused by the fire.

The boy was interviewed by the police the same day. At first he denied any involvement but later, after he had spoken to his grandfather, admitted that he had lit the fire. In a formal record of interview the boy made inconsistent and at times ambiguous statements about his understanding of the possible implications of his actions. Early in the interview he said that he did not think that the fire which occurred would happen. When asked what he thought would happen he replied, 'It would just burn the paper and die down'. Later in the interview he acknowledged that what he did was wrong and that he could get into trouble. He also said that people could go to gaol for lighting fires because it was against the law. He further stated that he had been spoken to previously by a police officer and told that fires could burn you and cause much damage.

The issue for decision is capacity under section 29 of the Criminal Code. This issue had been a recurring theme in this Court since the decision of the House of Lords in *C* (a minor) *v. Director of Public Prosecutions* (1995) 2 WLR 383. In *The Queen v. J* (Childrens Court of Queensland, No. 75 of 1996, judgment delivered on 20 June 1996, unreported) I comprehensively discuss the law on capacity, especially in the light of the House of Lords decision. I notionally attach my judgment in J's case to this judgment.

It transpires that the boy is severely mentally retarded. In a report prepared by Mrs U, a guidance officer at the State Primary School, dated 10 October 1996, the author says:

> 'Assessment results indicate that J functions overall in the borderline (slow learners) range of intellectual abilities. There is a significant discrepancy between his verbal (ability to reason using language) scores and his performance (ability to reason using concrete materials e.g. blocks and puzzles) scores.

> Performance scores are notably higher scoring within the average range of abilities ... His academic achievements remain delayed at approximately year two standard.'

A psychologist, Mr D, said in a written report that J's overall IQ is equivalent to the fifth percentile, that is 95 per cent of children his age would probably score higher on the intelligence tests. J showed a high tendency towards impulsivity and over-activity. Mr D went on to express this opinion as to J's involvement in the incident:

> 'The incident is suggestive of episodic dyscontrol. Episodic dyscontrol is a pattern of rare and infrequent behavioural outbursts. They tend to occur in people with J's configuration of learning difficulties because the person has great difficulties expressing and communicating themselves and their emotions through the verbal channel. They are therefore drawn towards expressing their feelings through behavioural means. In J's case he appears to have been building up a high level of frustration because of his learning problems and this frustration has resulted in an impulsive act of episodic dyscontrol.'

Mr D was of the opinion that J had the intellectual capacity of a child of eight and Mrs U thought that J had the intellectual capacity of a child of six. J prefers to associate with children of this age group.

Miss K teaches year seven at a State School. She is J's teacher for this year. In her opinion his intellectual functioning is at year one or year two level, which means he has an intellectual capacity of a five or six year old. She stated:

> 'His behaviour, his understanding, his general attitude, his communication with other children within the room is that of a level five or six year old child.'

As to the fire, she believed that J would not have comprehended the consequences of his actions. Mrs K has been a teacher for 25 years.

To prove arson the Crown must show that the arsonist wilfully set fire to the building. As to the 'wilful' element of the offence the Court held in Lockwood's case that the Crown must prove that the accused either: (1) had an actual intention to do the particular kind of harm that in fact was done; or (2) deliberately did an act (that is, it was a willed act) aware at the time he did it that the result charged in the indictment was a likely consequence of his act and that he recklessly did the act regardless of the risk.

The onus is on the Crown to prove beyond a reasonable doubt that the accused knew that what he did was seriously wrong as opposed to being naughty or mischievous. As the authorities on capacity demonstrate, the court cannot infer from the mere objective facts of the offence the requisite capacity. There has to be some additional

evidence that the accused knew that what he was doing was seriously wrong. It is true that in his interview the accused made various statements which, viewed in isolation, might suggest that he understood the nature of his actions and appreciated the wrongness of them. But when viewed as a whole, and against the background of his intellectual capacity, which is that of a child aged between six and eight, I am left with a lingering doubt (amounting to a reasonable doubt) as to whether the accused really had the capacity to understand that what he did was seriously wrong.

The *doli incapax* rule has been the subject of much trenchant criticism both before and after the House of Lords decision in *C* (a minor) *v. DPP* (supra). I regard the rule as altogether unsatisfactory and unsuited to modern conditions. Nevertheless it is the law and I am obliged to enforce it.

One of the undesirable consequences of this decision is that although the child has admitted that he lit the fire he will leave the court with both impunity and immunity: impunity in the sense that the court cannot punish the child, and immunity in the sense that no restraining hand can be placed on him. The court cannot order restraint, treatment, supervision or counselling. The child is left to go his own way as if nothing had happened. This cannot be right.

The child is discharged."

Recommendations

The cruel irony of the *doli incapax* rule is that the more warped or underdeveloped a child's moral standards are the safer he is from the correctional treatment of the criminal law. In my opinion, the adjudicating court which discharges a child for want of capacity under s.29 of the Criminal Code should, in appropriate circumstances, be empowered to make an order placing the child under the supervision of the Department of Families, Youth and Community Care for a stipulated period. If the child is found to be suffering from a serious psychiatric condition the relevant provisions of the Mental Health Act should be invoked. And I so recommend.

I also recommend that the *doli incapax* rule be abolished by the repeal of s.29 of the Criminal Code. Alternatively, I recommend that s.29 be repealed and replaced with:

A child under the age of 14 is not guilty of a criminal offence if he is unaware that what he did was an offence or seriously wrong, but the evidential onus of proving the absence of awareness rests on the person charged.

5. SHOCKWAVES THROUGH BRITAIN

'FAILURE' OF THE YOUTH JUSTICE SYSTEM

The very recent release (20 November 1996) of the English Audit Commission's report entitled 'Misspent Youth' has created a stir in political and justice administration circles.

Of an estimated seven million offences a year committed by 10- to 17-year-olds only 19 per cent are recorded by the police; 5 per cent are cleared up; 3 per cent lead to an arrest; 1.8 per cent to a caution and an infinitesimal 0.6 per cent result in punishment by the courts.

These shocking statistics are revealed by the Audit Commission, which monitors spending for the government. It calls for a radical overhaul of the whole system to avert what it describes as a 'crime timebomb'.

The battle against juvenile crime costs police, social services and the courts nearly £1 billion a year. The crimes cost victims a further £3 billion.

In the wake of the Report, the *Daily Mail* commented scathingly on the condition of juvenile crime in England. It said:

> "Young crooks are slick, quick and shameless. The police, who should catch them, are handicapped by bureaucracy. The courts, which should discipline them, are crippled by arthritic procedures.
>
> It sounds like some crazy joke. Has modern society taken leave of its senses?
>
> The hard core of young 'untouchables', who are responsible for an outrageously disproportionate number of crimes, must be taken off the streets. Secure places may not come cheap, but they must be provided.
>
> The courts must back the police. Juvenile offenders must be brought to justice by the fast track. The schools must learn to control more of their own troublemakers rather than expel them in droves to prey on the community.
>
> For what stark crime statistics can never portray is the random misery inflicted on vulnerable and decent people and the brutalising of the places where they live."

We must learn from the English experience. We must be ever vigilant to ensure that juvenile crime does not reach such crippling proportions in Australia.

In a report in *The Times* (3 October 1996) Mr Jack Straw, Shadow Home Secretary in the Labour Opposition, severely criticised the youth justice system in England. He described it as a 'failure'. He said:

> "There are 56,000 adult prisoners in Britain's jails, and the number is rising by nearly 1,000 a month. Almost every one of them began offending when young.

> The facts of the failure are these. The kinds of crimes which young people commit–burglary, theft, handling–increased by 40 per cent between 1984 and 1993, while the number of young offenders dealt with by courts, or cautioned by police, fell 35 per cent over the same ten years.
>
> Self-delusion and secrecy lie at the heart of this failure. For years, government and criminal justice professionals have convinced themselves that far from failing, the system has somehow been an outstanding success. With stupefying complacency, the Home Office–under Michael Howard–told the Home Affairs Select Committee in 1993 that there had been a 'real fall in the number of juvenile offenders per head of population since 1981'. The deliberate error was to assert that a fall in the number of youngsters going to court represented a fall in the number of young criminals.
>
> Some of the professionals are still trapped in an intellectual 'secret garden', in which a culture of excuse for the failure of the system–and the offender–is all too prevalent. The complacent and mistaken idea that young offenders will grow out of this behaviour without correction or instruction is deeply entrenched.
>
> But with the youth justice system, we will have to start again. The system can work only if it replicates the manner in which families and schools best cope, by acting swiftly, consistently, and by confronting the youngster and the parents with the consequences of offending behaviour. To achieve this, the paralysing legal confusion between 'welfare' and 'punishment' must be ended.
>
> The youth justice system in England and Wales has been so ineffective for so long that we now lock up a larger proportion of our adult population than any other European country except Turkey. If we are firmer and more focused when the offenders are young, we can reverse this unenviable record, reducing both the numbers of potential adult offenders and their victims."

Mr Straw's strongly stated views echo the sentiment of my own views expressed two years ago in the First Annual Report. In that report (at pp. 5 and 6) I explained my reasons for accepting the newly created position of President of the Childrens Court of Queensland. In the light of recent disturbing developments in England and elsewhere they may be worth repeating. I said:

> "I had harboured a belief for a long time that the present approach to combating crime generally was not proving very effective and was not producing the desired results. There was therefore something fundamentally wrong with the approach.

Experience gained over 40 years in the practice of the legal craft (21 as a barrister and 19 as a Judge) told me that adult professional or career criminals persistently causing the greatest damage to our society started their careers as juveniles and that perhaps we were expending too much time, effort and money at the wrong end of crime control. It was, I thought, a case of closing the gate after the horse had bolted. What was needed was to attack crime at the right end: at its beginning, with the incipient young offender, and nip it in the bud, if possible, there and then, before it burgeoned out of control. So I concluded that the juvenile courts were probably the most important courts in the land. Long and bitter experience in the criminal courts had taught me that a high percentage of persistent professional criminals started as juvenile delinquents who made repeated appearances in the Childrens Court. If their criminal tendencies could have been curbed or controlled through a judicious management of the juvenile justice system, society would have benefited beyond measure and would have been spared untold anguish and expense."

6. DETENTION CENTRES

It is generally accepted that detention should only be ordered where it is unavoidable. The avoidance of detention, wherever possible, is a manifestation of society's greater tolerance of the misbehaviour of children. Alternatives, such as probation and community service, can be justified in many instances not only as expressions of a policy of lenience and benevolence in mitigating the impact of the law on the young, but also as methods of helping the offenders by endeavouring to bring good influences to bear on their lives.

The 6th United Nations Congress on the Prevention of Crime and Treatment of Offenders (1980) stated:

> "Juvenile offenders should not be incarcerated in a correctional institution unless adjudicated of a serious act involving, above all, violence against another person or of persistence in committing other serious offences; moreover, no such incarceration should occur unless it is necessary for their protection or unless there is no other response that will protect the public safety or satisfy the ends of justice and provide the juvenile with the opportunity to exercise self control."

No one would quarrel with such a philosophy. Indeed, I believe it has been fairly consistently applied in the Childrens Court of Queensland, despite some critical comments to the contrary.

The court's sentencing aim is–

1. to act in the best interests of the child and his or her family;
2. to protect the community; and
3. to uphold the dignity of the law and public faith in the judicial system.

So far as juvenile offenders are concerned, a sentence of detention is reserved for those guilty of serious crimes (especially of violence) and for those intractable offenders who have proved to be impervious to community-based orders and who treat the court with defiance and contempt.

There is a 'wave of anxiety' which the public at present feel about crime– and especially juvenile crime. Youngsters who appear to be thumbing their nose at society, who appear not to give a damn about their offending, are a real problem. If such offenders are detained in a detention centre they are out of harm's way for the time being and cannot commit crimes against society. However, detention will not work, if when they come out, they are more criminally inclined than when they went in. It is therefore vitally necessary that detention centres be adequately equipped, properly staffed and efficiently managed.

I read and hear mention from time to time (disappointingly, quite often in pre-sentence reports) of the degrading and corrupting environment of a detention centre. It is said in certain quarters that sending juvenile offenders to a detention centre, instead of having a reformatory effect, brings them into association with persistent and incorrigible young offenders with the result that they are irretrievably contaminated.

Such an attitude bespeaks a dismal lack of confidence in the rehabilitative possibilities of detention and is tantamount to an admission that detention centres as presently administered are an unmitigated failure.

I understand that the government has approved the building of a new detention centre, and that $24 million has been allocated for the building and equipping of the centre. If I may say so, it is of paramount importance that there be wide consultation as to the concept and design of the new centre. A detention centre is essentially a place of restraint. Once a child is placed under restraint in a detention centre, he or she should be made to comply with a strict daily regime, which should include as its principal components schooling and trade and vocational training; in other words, the child should be usefully occupied. To that end, there should be extensive quality trade and other vocational training facilities. Workshops staffed by tradespeople should have a high priority. If the primary object of detention is to restrain the child, the secondary, but equally important object, is to school him and trade-train him in a disciplined way so that when he is released he will be better equipped to conform to societal norms.

I am convinced that children in detention centres should have their time fully occupied doing interesting and beneficial things so that time does not hang heavily on their hands.

I must confess that I have for some time had an uneasy feeling that discipline in detention centres is not enforced as rigorously as it should be. And I am not satisfied that some children are usefully occupied as much as they should be. I often question detained children who appear before me about how they are spending their time in detention with, as you might expect, surprising results. For instance, one boy told me recently that he spent most of his time watching television. And in the December sittings of the court another boy told me that he spent most of his time learning to play the guitar. These, I concede, may be exceptional cases, but they highlight the point I am trying to make: there must be strong discipline combined with full and useful occupation and recreation. The main reason for sending children to detention is that they are unrestrained and undisciplined.

I regret to say that detention centres have failed to live up to the expectations I had for them when I made the following observations in the First Annual Report:

> "Children who are sentenced to detention are to be held in centres established under the Act. The Chief Executive Officer has the responsibility for establishing programs and services designed to rehabilitate and educate the child so that on his release he will be integrated into the community and become a useful, law-abiding member of it.
>
> I should like to say right at the beginning that the quality of the staffing of detention centres and the educational and other programs undertaken by detainees will be of vital importance in the rehabilitation of offenders and therefore the long-term success of the endeavour. The whole idea of detention centres is to segregate young offenders from adult prisoners–some of them old lags–held in conventional prisons. I am hopeful that the detention centres will prove to be places of learning and enlightenment and, we must hope, discipline. No-one wants to return to Dickens's time, when workhouses were places of dark inhumanity. I should let it be known that I intend to make periodic visits to the centres to inform myself of their standards and utility."

In the absence of proper arrangements for detention, the purpose of detention, which is not only to restrain, but to teach, to inculcate good values and to discipline, will be defeated.

Alternative to Detention

Is there a reasonable alternative to detention?

Sadly, it is the case that there is a disproportionate number of Aboriginal children in detention centres. One therefore has to ask, Why?

In the Second Annual Report I attempted to answer the question. (See 'Over Representation of Aboriginals and Torres Strait Islanders in Detention Centres', pp. 35–8.)

The plain, unpalatable fact is that a good number of Aboriginal children are more prone to criminal conduct because they are more vulnerable. Their vulnerability stems from complex cultural and social causes which are easier to identify than to correct. Amongst other things, the Aboriginal community feels a sense of rejection and isolation and a painful hostility to the established system.

Some Aboriginal leaders and historians attribute the destruction of the structured Aboriginal family to white man's influence and white man's law, pointing particularly to dispossession followed by dispersion and displacement. I think there may well be much truth in these theories. On the other hand, it would not be right to say that the modern Aboriginal community should not accept responsibility for their own errant children. And indeed the same can be said about the non-Aboriginal community. In all civilisations and cultures parents should accept

primary responsibility for their own children at least until they reach the age of discretion.

I have considerable sympathy for the perceived oppression of the Australian Aboriginal community. But to blame the courts for the plight of Aborigines is hardly fair. Courts see the end result of criminal activity–the committed crime–and must deal with it as best they can. Courts cannot make people good or more responsible to one another. That responsibility rests with the family and the community.

I have a feeling that the traditional Aboriginal extended family is disintegrating and may be close to collapse. This fact accounts in part for the apparent inability of the Aboriginal community to effectively manage their own delinquent children. When a Childrens Court returns to the community an offending child by ordering probation or community service, the community quite often seems to lack the capacity to control and rehabilitate the child. Of course, these remarks apply with equal force to non-Aboriginal families and communities. Indeed, in the First Annual Report I made repeated reference to family breakdown and the abdication of parental responsibility as being the prime causes of juvenile crime.

As the *Courier-Mail* editorial of 27 December 1996 aptly pointed out:

> "Like much of the rest of Australia, Aboriginal communities are struggling to deal with a lack of positive, masculine role models, the breakdown of parental responsibility and a fragmentation of traditional communities. Indigenous Australians have to contend with much higher rates of unemployment, poor health and limited community facilities. None of these problems will be solved without the combined efforts of government and indigenous leaders."

It is suggested that the courts should make fewer detention orders and more community-based orders such as probation and community service. It is only in exceptional circumstances, such as cases of extreme violence, that a Childrens Court would make a detention order against a youthful first offender. In the First Annual Report (pp. 16–7) I lay down the following policy guidelines for the imposition of detention sentences, and as far as I am aware, these guidelines have generally been adhered to:

> "So far as juvenile offenders are concerned, a sentence of detention will be reserved for those guilty of serious crimes, and for those repeat, incorrigible and intractable offenders who have proved to be impervious to community-based orders and who treat the courts with defiance and contempt.
>
> If a young offender has been given the benefit and assistance of probation, has been conditionally discharged, has been given a community service order, what, I ask you, is the court to do if he comes back again, again, and again! Short of repeating the same

threats and wagging the same finger once more, there must surely be a custodial sanction available."

My own, I hope, benevolent attitude towards the Aboriginal people is sufficiently chronicled in two sections of the first report entitled 'Aurukun' and 'Aboriginal Customary Law–Recognition?' In the report I recommended the appointment of an Aboriginal Assistant to the court. The report at page 159 stated:

> "I would like to see respected Aborigines empowered by law to supervise community-based court orders. And I would go further. There should be created a position, designated 'Aboriginal Assistant to the Court', to act in an advisory capacity to the Magistrate or Judge sitting on a community court. The visible presence in court of an Aboriginal Assistant with advisory powers will, I think, be tangible evidence to the Aboriginal people of their own kin participating in the juridical processes of the law. Such visible participation should inspire greater respect for, and confidence in, the criminal justice system as it impinges upon Aborigines.
>
> The proposal for the appointment of an Aboriginal Assistant to the Court is not put forward as a panacea. Indeed, there is no panacea. However, it should, among other things, have the incidental and therefore good effect of reducing the painful hostility of the Aboriginal people to the established system."

The report also recommended (pp. 194, 196):

> "That statutory recognition be afforded to Aboriginal elders and respected persons to administer cautions to children of their communities in appropriate cases in their own right; and
>
> That responsible and respected leaders of Aboriginal communities be empowered to participate actively in the juridical process and, in particular, be afforded statutory recognition as approved supervisors of probation and community service orders."

These recommendations have so far not been adopted. I again recommend their adoption.

In June 1994 I visited Aurukun, an Aboriginal community in the Peninsula and in the capacity of head of the Childrens Court conducted a court there. Procedurally, I actively involved family and elders in the sentencing process. The consensus of opinion–coming as it did from family and elders–was that it would be a fair and proper disposition of each case if the offending child was placed on probation with a special condition that he live on an outstation under the supervision of an elder of the family. The recent increased use of outstations in remote Aboriginal communities as a means of correcting offending juveniles is, I think, a hopeful sign that the more responsible people of these

communities can be entrusted with important aspects of law enforcement.

But the position is substantially different with urban youths. For them the outstation concept is not realistically capable of being implemented. There is, however, an analogous concept which is capable of implementation and which was in fact implemented in the recent case–which reached *cause celebre* proportions–of the two Ipswich boys with extensive criminal histories who as a condition of bail were required to reside at Piabun, a rural training centre managed by Aboriginal elders and funded by the Department of Families, Youth and Community Care. Because of family breakdown and the apparent inability of the mothers of the boys to properly care for and control them, this emerged as the best possible solution. Similarly, a residential requirement of this sort can be made a condition of probation.

That said, it has to be stressed that rural training schemes will not work if their management is inefficient or their funding inadequate. Moreover, and importantly, it should not be thought that an order of this type will in every case be a suitable substitute for detention. Each case must be judged on its own particular facts, and the facts vary infinitely from case to case.

Even assuming that appropriate court-approved facilities exist, I would think that, for the time being, sending seriously offending children to rural training centres as an alternative to detention will only occur in carefully selected cases. But I see no difficulty in managers of detention centres availing themselves of such facilities as part of the detention regime.

Although I have concentrated these remarks on indigenous children, the same principles should, of course, apply to non-indigenous children.

7. STATISTICAL TABLES

CONTENTS

Introduction

For a proper understanding of this section, reference should be made to 'A Case Restated for the Third Time' (p. 9) where the court structure and the classification of offences are explained. It may also be helpful to refer back to the first annual report under the rubric 'Statistical Tables' (pp. 128–46) for some of the underlying assumptions and general principles which govern the compilation of the statistical data. It should be borne in mind that an unknown number of crimes committed by children are not reflected in this report. This is because these crimes are either not reported or not detected.

Explanatory Notes

Period

The statistics in this report focus on the financial year 1 July 1995 to 30 June 1996. Where possible, data from the previous financial year is provided for comparison.

Data collection

The data were collected from all criminal courts in Queensland either by extraction from the computerised Case Register System for the magistrates courts (CRS) and Criminal Register System for the district and supreme courts (CRS) or by manual returns provided by those courts without access to a CRS system.

Symbols used in tables

– nil.

. . not applicable.

Definitions

caution — an official admonishment and warning given at police discretion to juveniles as an alternative to being charged.

charge — a formal accusation of an offence.

child — a juvenile.

Childrens Court of Queensland — a court constituted by a Childrens Court Judge (see section on 'Right of Election' p. 9).

committal — referral of a case from a Magistrates Court to a higher court for trial or sentence.

defendant — juvenile in court accused of one or more offences. Juveniles are counted once for each case in which they appear.

disposal — the ultimate finalisation of a case.

District Court of Queensland — a court constituted by a District Court Judge (see section on 'Right of Election' p. 9).

ex officio indictment — an indictment filed by the Attorney-General committing a person for trial without the need for committal by a Magistrate.

juvenile	a person who has not turned 17 years.
Magistrates Court	a court constituted by a Stipendiary Magistrate or, in some circumstances, by two justices of the peace.
offence	an act or omission which renders the person doing the act or making the omission liable to punishment.
offence type	a category within a classification describing the nature of the offence; the Queensland Classification of Offences is used in this report.
penalty	a term of imprisonment or detention, fine or other payment, community service or supervision, surrender of licence or other imposition ordered by the court as part of the punishment of an offender after conviction.
	detention the placement of a person in a youth detention centre (the placement of a person in a prison is 'imprisonment').
	immediate release order a period of detention wholly suspended on the condition that an offender undertakes to complete a program of up to three months.
	community service a supervision penalty requiring an offender to perform a specified number of hours of unpaid community work.
	probation order a penalty allowing freedom under supervision, conditional upon compliance with the terms of the order.
	fine a pecuniary penalty requiring an offender to make a payment to the court.
	compensation a pecuniary penalty requiring an offender to make a payment by way of redress for loss or injury to person or property (includes restitution).
	good behaviour order a penalty where an offender agrees to be of good behaviour for a specified period and where breach thereof may be taken into account if the child reoffends during the period of the order.
	disqualification of licence a penalty revoking an offender's driver's licence for a specified time.
	other penalty a penalty not included in other categories (payment of costs or fees, forfeiture, or participation in a drink driving program).
	no penalty where an offender on conviction has been reprimanded but not otherwise punished.
sentence	the determination by a court of the punishment to be imposed on a convicted person.
serious offence	an offence that, if committed by an adult, would make the adult liable to imprisonment for life or of 14 years or more (*Juvenile Justice Act 1992*).

Supreme Court of Queensland — a court constituted by a Supreme Court Judge (see section on 'Right of Election' p. 9).

trial — a hearing (in a District or Supreme Court) before a judge sitting with a jury or (in the Childrens Court of Queensland) by a judge alone to determine the guilt of a defendant charged with an offence.

Data Issues

Recording of ages — Where possible, age has been calculated from the date of birth of the defendant to the date the offence occurred.

Most serious penalty — Offenders charged with multiple offences may receive more than one type of penalty. Tables in this report show the number of offenders by their most serious penalty. For example, a person ordered to be detained and also placed on probation is placed in the detention row only, because it is the more serious penalty.

Percentage totals — Some tables in this report show the constituent parts as a percentage of the total. These percentages will occasionally not add to 100 per cent due to rounding to one decimal place.

Classification of offences — This report gives numbers of charges by offence type. The offence classification used is based on the Queensland Classification of Offences and is only partially compatible with the Australian National Classification of Offences (ANCO). Offences are first classified into one of eight categories given broadly in order of seriousness. Most of these categories are further broken down into offence types.

The tables at the end of the report give figures for all offence types. The summary tables in the body of the text give figures for all categories at the higher level, but only those at the lower level that are of most interest.

The last category of offence types, *other offences*, contains those which do not fit into other categories. The most common offence types in this category are the various drug offences, the good order offences, *drunkenness* and *offensive behaviour*, and *enforcement of orders*.

Burglary and other breaking and entering — Counts of defendants and charges for these two offences have been aggregated in the summary tables as there is uncertainty about the accuracy of recording offences into these two categories. The numbers obtained for *burglary and housebreaking* are smaller in relation to *other breaking and entering* offences than expected. The likely explanation is that, in some instances, the compilers of the source information have confused *burglary* and *housebreaking* offences with *other breaking and entering* offences when transcribing court results to statistical returns.

Serious offences disposed at Magistrates Court — Methods of disposal at magistrates courts include dismissal and withdrawal of charges. Therefore, the data will show serious offences disposed at magistrates court level where dismissal or withdrawal has occurred.

Cautions data

The cautions data count only one offence for each different offence type charged. For example, a person cautioned for three *burglary* offences will only be counted once for that offence type, and a person cautioned for one *burglary* offence and one *other property damage* will be counted twice, once for each offence type.

The total number of cautions recorded is therefore less than the total number of offences for which offenders were cautioned.

Court delays

Court delays in Magistrates Courts have been calculated by examining returns from the following places: Brisbane, Beenleigh, Ipswich, Southport, Maroochydore, Toowoomba, Rockhampton, Mackay and Townsville. These places accounted for about 50 per cent of all defendants Statewide.

Delays in District and Supreme Courts have been assessed over nine months for the courts at Brisbane only, which deal with 55 per cent of all cases in these courts Statewide.

Delays in the Childrens Court of Queensland have been calculated over 12 months for the court at Brisbane, which deals with 45 per cent of all cases in the Childrens Court of Queensland Statewide.

The delay in each case was calculated as the time from presentation of the initiating document (bench charge sheet or indictment) to finalisation. A longer measure of the delay in the Childrens Court of Queensland, the District Court or the Supreme Court would result if calculated from the date of committal.

Imprisonment

As a general rule, there is no power of imprisonment as opposed to detention under the *Juvenile Justice Act 1992*. In rare cases, however, the power of imprisonment exists. For example, if a person commits a crime as a child, absconds and is arrested pursuant to warrant after attaining the age of 18, the court is empowered in an appropriate case to impose imprisonment by way of penalty (see *Juvenile Justice Act 1992*, s.105).

In the tables, a small number of penalties reported as imprisonment have been shown as detention, as in most of these instances the compilers of the source information have mistakenly recorded imprisonment for detention when transcribing court results to statistical returns.

Summary

Defendants by court level

The number of juveniles whose cases were disposed of in all Queensland courts increased by 7.0 per cent, from 6,255 in 1994–95 to 6,694 in 1995–96. The greatest part of this increase was an additional 312 defendants before the District Court.

In 1995–96 Magistrates Courts disposed 82.8 per cent of cases, the Childrens Court of Queensland 4.6 per cent, the District Court 12.5 per cent and the Supreme Court 0.1 per cent.

Juvenile defendants by court level of final disposal[a], Queensland, 1994–95 and 1995–96

	1994–95		1995–96		Increase
Court level	No.	%	No.	%	%
Magistrates	5,473	87.5	5,541	82.8	1.2
Childrens Court of Queensland	249	4.0	305	4.6	22.5
District	528	8.4	840	12.5	59.1
Supreme	5	0.1	8	0.1	60.0
Total	**6,255**	**100.0**	**6,694**	**100.0**	**7.0**

(a) Juveniles committed from a Magistrates Court are disposed at a higher court and are counted here only at that level.

Males represented 83.7 per cent of all defendants. Some 34.5 per cent of defendants were aged 16 years, 22.9 per cent were aged 15, and 20.0 per cent were 17 years or over.

Charges against juveniles by court level

Charges against juveniles have increased by 16.6 per cent from 14,076 in 1994–95 to 16,413 in 1995–96. The largest percentage increases were in the District and Supreme Courts (46.1%) and the Childrens Court of Queensland (63.3%).

Charges against juveniles by court level of final disposal[a], Queensland, 1994–95 and 1995–96

	1994–95		1995–96		Increase
Court level	No.	%	No.	%	%
Magistrates	10,739	76.1	11,375	69.3	5.9
Childrens Court of Queensland	949	6.7	1,550	9.4	63.3
District	2,371	16.8	3,455	21.1	45.7
Supreme	17	0.1	33	0.2	94.1
Total[b]	**14,076**	**100.0**	**16,413**	**100.0**	**16.6**

(a) Juveniles committed from a Magistrates Court are disposed at a higher court and are counted here only at that level.
(b) Percentages may not add to 100% due to rounding.

The offence with the largest number of charges was *theft, breaking and entering* with 8,499 charges in 1995–96, up 19.8 per cent from 7,093 in 1994–95. Within *theft, breaking and entering, stealing* had the largest number of charges with 3,389, up 14.9 per cent from 2,949 in 1994–95.

Penalties received by juveniles

Of the 6,694 defendants in 1995–96, 5,425 (81.0%) were found guilty. This is 8.9 per cent more than in 1994–95.

Of those convicted, 1,236 juveniles (or 22.8%) received probation as their most serious penalty. The next largest group of 1,210 (22.3%) received no penalty and 1,029 (19.0%) received community service as their most serious penalty.

The percentage receiving detention dropped from 8.9 per cent in 1994–95 to 7.8 per cent in 1995–96.

Juvenile offenders by most serious penalty, Queensland, 1994–95 and 1995–96

	1994–95		1995–96		Increase
Penalty[a]	No.	%	No.	%	%
Detention	441	8.9	427	7.9	–3.2
Immediate release	57	1.1	57	1.1	0.0
Community service	771	15.5	1,029	19.0	33.4
Probation	1,114	22.4	1,236	22.8	11.0
Fine	464	9.3	433	8.0	–6.7
Compensation	202	4.1	182	3.4	–10.0
Good behaviour order	743	14.9	810	14.9	9.0
Disqualification of licence	19	0.4	24	0.4	26.3
Other penalty	15	0.3	17	0.3	13.3
No penalty	1,155	23.2	1,210	22.3	4.8
Total[b]	**4,981**	**100.0**	**5,425**	**100.0**	**8.9**

(a) In decreasing order of seriousness.

(b) Percentages may not add to 100% due to rounding.

Cautions

Data provided by the Queensland Police Service showed 16,230 offences for which cautions were administered in 1994–95 and 15,681 in 1995–96, a decrease of 3.4 per cent.

Cautions represented 48.9 per cent of all charges against juveniles in 1995–96, compared with 53.6 per cent in 1994–95.

Juvenile offenders proceeded against by caution, by offence type, Queensland, 1994–95 and 1995–96

Offence type[a]	1994–95	1995–96	Increase %
Homicide	—	—	..
Assault	822	823	0.1
Robbery (incl. extortion)	70	95	35.7
Fraud & misappropriation	296	251	–15.2
Theft, breaking & entering	10,529	9,651	–8.3
[Unlawful use of motor vehicle]	380	465	22.4
[Other stealing]	7,712	6,740	–12.6
[Receiving, unlawful possession]	325	308	–5.2
[Breaking & entering] [b]	2,112	2,138	1.2
Property damage	1,732	1,671	–3.5
Driving, traffic & related offences	38	43	13.2
Other offences	2,743	3,147	14.7
[Drug offences] [c]	1,735	2,082	20.0
Total offenders	**16,230**	**15,681**	**–3.4**

(a) Only selected offence types are shown [in brackets] at the more detailed level.

(b) Breaking and entering = *burglary and housebreaking + other breaking and entering*

(c) Drug offences = *possession or use of drugs + dealing and trafficking in drugs + manufacturing and growing drugs + other drug offences*

Source: Queensland Police Service

The greatest increases occurred in the number of juveniles cautioned for *drug offences* (347) and *unlawful use of motor vehicle* (85).

The *theft, breaking and entering* category comprises the majority of cautions administered, though it decreased from 64.9 per cent in 1994–95 to 61.5 per cent in 1995–96.

Within the *theft, breaking and entering* category in 1995–96, *other stealing* accounted for 43 per cent (or 69.8% of all juvenile cautions).

The other offences for which a large number of juveniles were cautioned included *drug offences* (13.3%) and *property damage* (10.7%).

Offences Before the Courts

Magistrates Courts

Juvenile Defendants in Magistrates Courts

In 1995–96, 6,633 juvenile defendants appeared before Magistrates Courts in Queensland, an increase of 381 (or 6.1%) on 1994–95. The difference between the 6,694 cases disposed by all courts and the 6,633 cases appearing in Magistrates Courts in 1995–96 is accounted for by ex officio indictments, by committals in 1994–95 being finalised in 1995–96, and by committals in 1995–96 being finalised in 1996–97.

Of the 6,633 defendants appearing in 1995–96, 5,541 were disposed at that level, either by conviction (4,430 or 66.8%) or by discharge (1,111 or 16.7%) and 1,092 were committed to a higher court for trial or sentence.

The number of juveniles committed to a higher court rose by 313 or 40.2 per cent from 1994–95 to 1995–96.

Magistrates Courts: Juvenile defendants, by method of finalisation, Queensland, 1994–95 and 1995–96

Method of finalisation	1994–95	1995–96	Increase %
Committal	779	1,092	40.2
Conviction	4,337	4,430	1.2
Discharge[a]	1,136	1,111	–2.2
Total	**6,252**	**6,633**	**6.1**

(a) Where all charges for the defendant were dismissed or withdrawn

Charges Against Juveniles in Magistrates Courts

The number of charges against juveniles in Magistrates Courts has increased by 1,439 from 12,640 in 1994–95 to 14,079 in 1995–96, an increase of 11.4 per cent. Of these charges, 11,375 (80.8%) were finalised in the Magistrates Courts and the remaining 2,704 (19.2%) were committed to a higher court for trial or sentence. The number of charges committed increased by 803 (42.2%).

The percentage of each offence type which was committed to a higher court varies. Almost all charges of homicide are committed to higher courts, those finalised in Magistrates Courts being by dismissal or withdrawal.

Most robbery and extortion offences (77.0%) are committed to higher courts. See the note on serious offences disposed in Magistrates Courts in the section on 'Data issues'.

Magistrates Courts: Charges against juveniles, by method of finalisation, Queensland, 1994–95 and 1995–96

Method of finalisation	1994–95	1995–96	Increase %
Committal	1,901	2,704	42.2
Conviction, dismissal, withdrawal[a]	10,739	11,375	5.9
Total	12,640	14,079	11.4

(a) Outcomes are recorded for defendants and not for each charge. It is therefore not possible to tell whether a particular charge was disposed by conviction or by dismissal or by withdrawal.

For all other offence types, the majority of charges brought before the Magistrates Courts are finalised in the Magistrates Courts, including 80.6 per cent of *assaults*, 73.7 per cent of *theft, breaking and entering*, 74.8 per cent of *property damage*, 98.2 per cent of *driving offences* and 96.5 per cent of *other offences*.

Magistrates Courts: Charges against juveniles by offence type, Queensland, 1995–96

Offence type[a]	Committed	Disposed[b]	Total
Homicide	6	2	8
Assault	274	1,139	1,413
[Major assault]	124	278	402
[Minor assault]	75	792	867
Robbery (incl. extortion)	178	53	231
Fraud & misappropriation	32	201	233
Theft, breaking & entering	1,762	4,966	6,728
[Unlawful use of motor vehicle]	267	863	1,130
[Other stealing]	601	2,216	2,817
[Receiving, unlawful possession]	121	394	515
[Breaking & entering] [c]	773	1,493	2,266
Property damage	328	984	1,312
Driving, traffic & related offences	22	1,187	1,209
Other offences	102	2,843	2,945
[Drug offences] [d]	21	758	779
Total	**2,704**	**11,375**	**14,079**

(a) Only selected offence types are shown [in brackets] at the more detailed level. For more details refer to Tables 4 and 7.

(b) A Magistrates Court can dispose a charge by conviction, dismissal or withdrawal.

(c) Breaking and entering = *burglary and housebreaking + other breaking and entering*

(d) Drug offences = *possession or use of drugs + dealing and trafficking in drugs + manufacturing and growing drugs + other drug offences*

Charges Against Juveniles Convicted, Dismissed or Withdrawn in Magistrates Courts

In 1995–96 the largest number of charges finalised in the Magistrates Courts were in the *theft, breaking and entering* offence type, with 4,966 charges or 43.7 per cent of the total. This proportion was similar to that for the previous year (44.0%).

Other offences with 2,843 charges or 25.0 per cent of the total was the category with the next highest number of charges. Just over one-quarter of these (758 or 26.7%) were *drug offences.*

Magistrates Courts: Charges against juveniles disposed, by offence type, Queensland, 1994–95 and 1995–96

Offence type[a]	1994–95	1995–96	Increase %
Homicide	1	2	100.0
Assault	1,216	1,139	–6.3
[Major assault]	266	278	4.5
[Minor assault]	853	792	–7.2
Robbery (incl. extortion)	62	53	–14.5
Fraud and misappropriation	151	201	33.1
Theft, breaking & entering	4,726	4,966	5.1
[Unlawful use of motor vehicle]	677	863	27.5
[Other stealing]	2,105	2,216	5.3
[Receiving, unlawful possession]	350	394	12.6
[Breaking & entering] [b]	1,593	1,493	–6.3
Property damage	875	984	12.5
Driving, traffic & related offences	1,156	1,187	2.7
Other offences	2,552	2,843	11.4
[Drug offences] [c]	662	758	14.5
Total	10,739	11,375	5.9

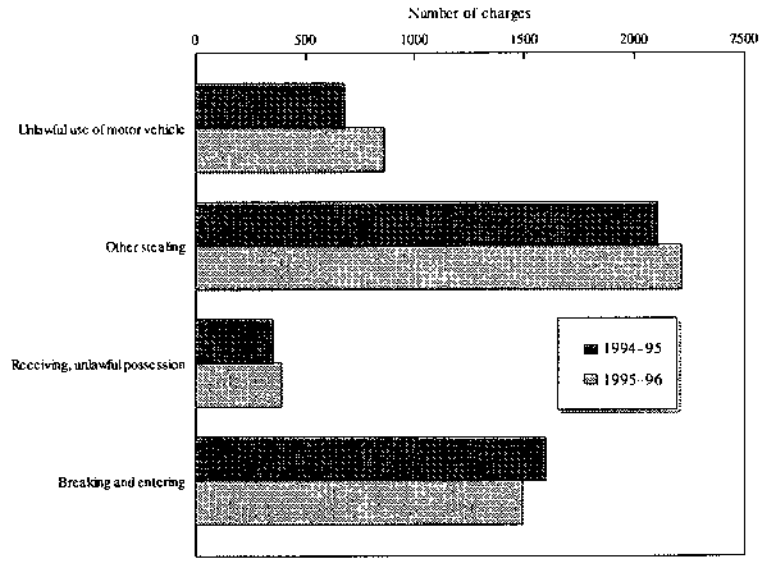
(a) Only selected offence types are shown [in brackets] at the more detailed level. For more details refer to Table 7.

(b) Breaking and entering = *burglary and housebreaking + other breaking and entering*

(c) Drug offences = *possession or use of drugs + dealing and trafficking in drugs + manufacturing and growing drugs + other drug offences*

Of charges disposed in Magistrates Courts, offence types with large increases from 1994–95 to 1995–96 were *unlawful use of motor vehicle*, 186 (up 27.5%), *property damage*, 109 (up 12.5%), and *drug offences*, 96 (up 14.5%). There was a decrease in the number of charges in *assaults* of 77 (–6.3%), where the decrease in *minor assault* was partly offset by an increase in *major assault.*

Magistrates Courts: Theft, breaking and entering charges disposed, Queensland. 1994–95 and 1995–96



Charges Committed to Higher Courts for Trial or Sentence

The number of charges committed to higher courts by Magistrates Courts in 1995–96 was 2,704, compared with 1,901 in the previous year, an increase of 42.2 per cent.

Magistrates Courts: Charges committed, by offence type, Queensland, 1994–95 and 1995–96

Offence type[a]	1994–95	1995–96	Increase %
Homicide	11	6	–45.5
Assault	201	274	36.3
[Major assault]	98	124	26.5
[Minor assault]	54	75	38.9
Robbery (incl. extortion)	116	178	53.4
Fraud & misappropriation	21	32	52.4
Theft, breaking & entering	1,259	1,762	40.0
[Unlawful use of motor vehicle]	171	267	56.1
[Other stealing]	425	601	41.4
[Receiving, unlawful possession]	74	121	63.5
[Breaking & entering] [b]	589	773	31.2
Property damage	166	328	97.6
Driving, traffic & related offences	14	22	57.1
Other offences	113	102	–9.7
[Drug offences] [c]	20	21	5.0
Total	**1,901**	**2,704**	**42.2**

(a) Only selected offence types are shown at the more detailed level. For more details refer to Table 4.

(b) Breaking and entering = *burglary and housebreaking + other breaking and entering*

(c) Drug offences = *possession or use of drugs + dealing and trafficking in drugs + manufacturing and growing drugs + other drug offences*

Theft, breaking and entering offences contained the largest number of charges committed in 1995–96, with 1,762 charges representing almost two-thirds (65.2%) of total charges. This proportion was about the same as the 1994–95 figure of 66.2 per cent (1,259 charges).

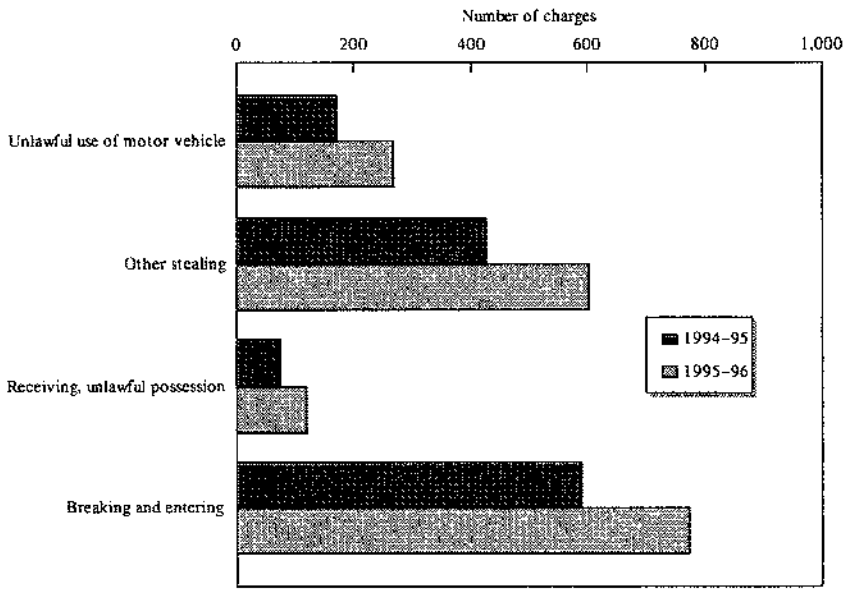
A further dissection of *theft, breaking and entering* offences in 1995–96 indicates that the offence type with the most charges committed was *breaking and entering* (773) followed by *stealing* (601).

Property damage offences contained the second largest number of charges committed in 1995–96 with 328 or 12.1 per cent of total charges committed.

The number of charges committed increased from 1994–95 to 1995–96 in most offence categories, the largest increase being for *theft, breaking and entering* with an additional 503 charges, an increase of 40.0 per cent. The 328 charges of property damage committed is almost double the previous year's figure of 166.

Committals to the Supreme Court for trial or sentence for homicide over the last two years decreased from 11 to 6. The 1995–96 figure accounted for 0.2 per cent of all charges committed in Queensland in 1995–96.

Magistrates Courts: Theft, breaking and entering charges committed, Queensland, 1994–95 and 1995–96



Charges Against Juveniles Committed to a Higher Court for Sentence or Trial

In 1995–96, 2,211 charges were committed by Magistrates Courts to the District, Supreme or Childrens Court of Queensland for trial and 493 were committed for sentence.

Magistrates Courts: Charges against juveniles committed for sentence or trial, by offence type, Queensland, 1995–96

Offence type[a]	Committal for sentence	Committal for trial	Total
Homicide	—	6	6
Assault	31	243	274
[Major assault]	7	117	124
[Minor assault]	16	59	75
Robbery (incl. extortion)	27	151	178
Fraud & misappropriation	6	26	32
Theft, breaking & entering	320	1,442	1,762
[Unlawful use of motor vehicle]	90	177	267
[Other stealing]	84	517	601
[Receiving, unlawful possession]	18	103	121
[Breaking & entering] [b]	128	645	773
Property damage	58	270	328
Driving, traffic & related offences	7	15	22
Other offences	44	58	102
[Drug offences] [c]	3	18	21
Total	**493**	**2,211**	**2,704**

(a) Only selected offence types are shown [in brackets] at the more detailed level. For more details of offences refer to Table 4.

(b) Breaking and entering = *burglary and housebreaking + other breaking and entering*

(c) Drug offences = *possession or use of drugs + dealing and trafficking in drugs + manufacturing and growing drugs + other drug offences*

Penalties Received by Juvenile Offenders Before Magistrates Courts

Of the 4,430 offenders convicted in Magistrates Courts in 1995–96, 1,170 (26.4%) had no penalty imposed. Another 894 received probation as their most serious penalty. Other large categories for most serious penalty included good behaviour order (755) and community service (736). A total of 206 offenders received detention.

The number of offenders receiving community service grew from 589 in 1994–95 to 736 in 1995–96, a 25.0 per cent increase. Smaller increases occurred in the number of offenders receiving as their most serious penalty probation (2.1%) or a good behaviour order (4.1%).

Decreases in numbers occurred for detention (75 or 26.7%) and compensation (27 or 13.4%).

Magistrates Courts: Juvenile offenders by most serious penalty, Queensland, 1994–95 and 1995–96

Penalty	1994–95	1995–96	Increase %
Detention	281	206	–26.7
Immediate release	30	26	–13.3
Community service	589	736	25.0
Probation	877	895	2.1
Fine	461	426	–7.6
Compensation	202	175	–13.4
Good behaviour order	725	755	4.1
Disqualification of licence	19	24	26.3
Other penalty	13	17	30.8
No penalty	1,140	1,170	2.6
Total	**4,337**	**4,430**	**2.1**

Childrens Court of Queensland

The Childrens Court of Queensland, comprising courts at Brisbane, Cairns, Rockhampton, Southport and Townsville, dealt with 1,550 charges against 305 defendants in 1995–96. There was an increase (22.5%) from 249 defendants in 1994–95 to 305 in 1995–96.

Defendants by Age

While there were increases in most age groups, the number of defendants aged 17 and over has decreased substantially. This could be, in part, a result of improved recording practices.

Childrens Court of Queensland: Juvenile defendants by age, Queensland, 1994–95 and 1995–96

Age	1994–95	1995–96	Increase %
10	—	—	. .
11	2	2	0.0
12	5	12	140.0
13	7	25	257.1
14	21	40	90.5
15	44	84	90.9
16	70	113	61.4
17 and over	98	29	–70.4
Unknown	2	—	. .
Total	**249**	**305**	**22.5**

Charges Dealt With in the Childrens Court of Queensland

The Childrens Court of Queensland dealt with 949 charges in 1994–95 and 1,550 in 1995–96, an increase of 63.3 per cent. There were large increases in charges for *theft, breaking and entering* (up 66.8%), *unlawful use of motor vehicle* (up 117.6%) and *breaking and entering* (up 74.3%).

Theft, breaking and entering contained the largest number of charges in 1994–95 and 1995–96 (657 and 1,096 respectively), representing about 70 per cent of total Childrens Court of Queensland charges in each year.

A further dissection of *theft, breaking and entering* in 1995–96 indicated that the offence type with most charges was *breaking and entering* with 469 (30.3% of all charges) followed by *other stealing* with 347 (22.4%).

Childrens Court of Queensland: Charges against juveniles, by offence type, Queensland, 1994–95 and 1995–96

Offence type[a]	1994–95	1995–96	Increase %
Homicide	—	—	..
Assault	81	83	2.5
[Major assault]	26	32	23.1
[Minor assault]	24	22	–8.3
Robbery (incl. extortion)	41	45	9.8
Fraud & misappropriation	9	42	366.7
Theft, breaking & entering	657	1,096	66.8
[Unlawful use of motor vehicle]	108	235	117.6
[Other stealing]	247	347	40.5
[Breaking & entering] [b]	269	469	74.3
[Receiving, unlawful possession]	33	45	36.4
Property damage	120	195	62.5
Driving, traffic & related offences	10	37	270.0
Other offences	31	52	67.7
[Drug offences] [c]	6	16	166.7
Total	**949**	**1,550**	**63.3**

(a) Only selected offence types are shown [in brackets] at the more detailed level. For more detail refer to Table 11.

(b) Breaking and entering = *burglary and housebreaking + other breaking and entering*

(c) Drug offences = *possession or use of drugs + dealing and trafficking in drugs + manufacturing and growing drugs + other drug offences*

Penalties for Juvenile Defendants

Of the 305 juveniles before the Childrens Court of Queensland, 288 were found guilty. Of these, 21 received no penalty, and the most serious penalties received for others were probation (87), community service (79) and detention (63).

The number of juveniles receiving a good behaviour order has increased from 4 in 1994–95 to 23 in 1995–96. The numbers of offenders receiving other penalties remained relatively constant. See Table 13 for more details.

District and Supreme Courts

In 1995–96, District and Supreme Courts dealt with 3,488 charges against 848 juveniles. This was a substantial increase on 1994–95 when they dealt with 2,388 charges against 533 juveniles.

Defendants

In 1995–96, 275 defendants before the District and Supreme Courts were aged 16, 197 were aged 17 or over and 188 were aged 15.

District and Supreme Courts: Juvenile defendants by age, Queensland, 1994–95 and 1995–96

Age	1994–95	1995–96	Increase %
10	1	1	—
11	—	9	. .
12	7	9	28.6
13	19	36	89.5
14	67	112	67.2
15	121	188	55.4
16	174	275	58.0
17 and over	144	197	36.8
Unknown	—	21	. .
Total	**533**	**848**	**59.1**

Charges Dealt With in District and Supreme Courts

Of the 3,488 charges before District and Supreme Courts, *theft, breaking and entering* offences contained the largest number with 2,437 charges or 69.9 per cent. A further dissection of *theft, breaking and entering* indicated that the largest number of charges was in *breaking and entering* (1,010) followed by *other stealing* (826).

Assaults constituted the second largest number of charges (337) and *property damage* offences (291) the third largest.

District and Supreme Courts: Charges against juveniles, by offence type, Queensland, 1994–95 and 1995–96

Offence type[a]	1994–95	1995–96	Increase %
Homicide	3	2	–33.3
Assault	201	337	67.7
[Major assault]	84	137	63.1
[Minor assault]	65	107	64.6
Robbery (incl. extortion)	119	148	24.4
Fraud & misappropriation	54	153	183.3
Theft, breaking & entering	1,710	2,437	42.5
[Unlawful use of motor vehicle]	203	462	127.6
[Other stealing]	597	826	38.4
[Receiving, unlawful possession]	76	139	82.9
[Breaking & entering] [b]	834	1,010	21.1
Property damage	209	291	39.2
Driving, traffic & related offences	9	19	111.1
Other offences	83	101	21.7
[Drug offences] [c]	19	43	126.3
Total	**2,388**	**3,488**	**46.1**

(a) Only selected offence types are shown [in brackets] at the more detailed level. For more detail refer to Table 15.

(b) Breaking and entering = *burglary and housebreaking + other breaking and entering*

(c) Drug offences = *possession or use of drugs + dealing and trafficking in drugs + manufacturing and growing drugs + other drug offences*

Penalties Received from District and Supreme Courts

Of the 848 juveniles before the District and Supreme Courts, 707 (83.4%) were convicted. Of those convicted, 254 (35.9%) received probation as their most serious penalty, 214 (30.3%) received community service and 158 (22.3%) received detention. For more details see Table 17.

Court delays

A survey of court files showed that the majority of cases against juveniles were finalised within three months from the presentation of the bench charge sheet or indictment. In 1995–96, 76.1 per cent of cases in all jurisdictions were finalised within three months.

Court delay by jurisdiction 1995–96

Court type	<=3 months	3–6 months	6–9 months	9–12 months	>12 months	Total[a]
	%	%	%	%	%	%
Magistrates Courts	76.3	12.3	4.7	3.1	3.7	100.0
Childrens Court of Queensland	95.7	4.3	—	—	—	100.0
District and Supreme Courts	68.6	15.3	6.0	3.4	6.7	100.0
All Courts	76.1	12.3	4.6	3.0	3.9	100.0

(a) Percentages may not add to 100% due to rounding.

Sources: Lower Courts CRS (Brisbane, Beenleigh, Ipswich, Southport, Maroochydore, Toowoomba, Rockhampton, Mackay and Townsville courts); indictments for Childrens Court of Queensland (Brisbane court); *Higher Courts CRS* (Brisbane court).

Offences placed on schedules

In cases of multiple offending by juveniles, the Director of Public Prosecution's Office may charge juveniles with some offences on indictment and list the remainder on a schedule of offences. These schedule offences are taken into account when a juvenile is sentenced on the indictment offences.

For example, where a juvenile is facing 30 charges of house breaking, the Director of Public Prosecution's Office may include only ten offences on the indictment and place the balance on a schedule of offences to be taken into account in imposing sentence.

Data available from the Childrens Court of Queensland, Brisbane showed that five juveniles had a total of 52 charges listed on schedules of offences in 1995–96 compared with eight juveniles with 166 offences in 1994–95.

Unreported crimes

In April 1995 the Australian Bureau of Statistics undertook a Crime and Safety Survey, in which Queensland households and individuals were asked about the extent of crime they had experienced over the previous 12 months. Questions were asked only about selected offence types and excluded victimless crimes, crimes against businesses and homicides.

Respondents were asked whether they had reported the crimes to the police. The estimated percentage of incidents reported to police was different for different offence types:

- 54.8 per cent for breaking and entering of a dwelling (made up of breaking and entering 77.6% and attempted breaking and entering 28.6%);
- 94.1 per cent for motor vehicle theft;
- 55.0 per cent for robbery; and
- 34.8 per cent for assaults.

The most common reasons given for not reporting crimes to the police were:

- that the incident was trivial (ranged from 28.6% for robbery to 32.8% for assault);
- that the police would be unwilling to do anything (ranged from 10.6% for sexual assault to 31.9% for robbery);
- that there was nothing the police could do (ranged from 5.2% for sexual assault to 13.7% for attempted break and enter; and
- that it was a private matter and they would take care of it themselves (ranged from 5.8% for attempted break and enter to 35.2% for sexual assault).

The reporting rates relate to all crimes and cannot be separated into crimes committed by juveniles and those committed by adults.

Applying the reporting rates to the numbers of charges for which juveniles were cautioned or appeared in court provides a rough estimate of the number of offences by juveniles which were not reported to police and, hence, an estimate of the total number of offences by juveniles. The estimation process is not sufficiently refined to accommodate the number of crimes reported to police and not brought before the courts (those not cleared or where a prosecution is not possible), so at best it provides an idea of the order of magnitude of the total number of offences committed by juveniles.

For example, the total number of assault offences either cautioned or before the courts in 1995–96 was 2,382. If we assume that this represents the 34.8 per cent of incidents reported to police, then the total number of incidents may have been of the order of 6,850.

Applying this methodology to the number of charges disposed by police caution or through the courts as shown in Table 1, estimates of the total number of offences in 1995–96 for the following offence types, where the offender was a juvenile, would be:

- the 5,110 charges for breaking and entering would be 54.8 per cent of a total of 9,300 offences;
- the 2,025 charges for motor vehicle theft would be 94.1 per cent of a total of 2,150 offences;

- the 341 charges for robbery would be 55.0 per cent of a total of 620 offences; and
- the 2,382 charges of assault or sexual assault would be 34.8 per cent of a total of 6,850 offences.

It is not possible to estimate the amount of crime which goes unreported or undetected for other offence types.

Victims of juvenile offenders

Data about the victims of crimes have been obtained from the Queensland Police Service statistical system for incidents where at least one of the offenders was under the age of 17 years. The incidents are restricted to those involving an offence against the person.

Of the 2,645 victims of these incidents, 1,667 (63.0%) were aged under 20 years. There were 1,028 (38.9%) aged 14 years and under, and 639 (24.2%) aged 15 to 19 years. Only 2.5 per cent of victims were aged 55 years and over. The percentage of victims aged under 20 years ranged from 41.4 per cent for *armed robbery* to 76.1 per cent for *kidnapping and abduction.*

Over half of the victims (58.5%) were males. The percentage of victims who were males ranged from 34.2 per cent for *sexual offences* to 68.9 per cent for *serious assault*, 69.2 per cent for *armed robbery* and 74.9 per cent for *unarmed robbery.*

Detailed tables

Summary Queensland, 1994–95 and 1995–96

Magistrates Courts (committals) Queensland, 1994–95 and 1995–96

Magistrates Courts (disposals) Queensland, 1994–95 and 1995–96

Childrens Court of Queensland, Queensland 1994–95 and 1995–96

Table 1 **Offence for which juveniles were cautioned or prosecuted, by offence type, Queensland, 1994–95 and 1995–96**

Offence type[a]	1994–95					1995–96				
	Cautions[b]	Magistrates Courts[c]	Childrens Court of Qld	District & Supreme Courts	Total	Cautions[b]	Magistrates Courts[c]	Childrens Court of Qld	District & Supreme Courts	Total
Homicide	—	1	—	3	4	—	2	—	2	4
Murder	—	—	—	2	2	—	—	—	—	—
Attempted murder	—	1	—	—	1	—	2	—	—	2
Dangerous driving causing death	—	—	—	1	1	—	—	—	2	2
Assaults (incl. sexual offences)	822	1,216	81	201	2,320	823	1,139	83	337	2,382
Major assault	382	266	26	84	758	359	278	32	137	806
Minor assault	277	853	24	65	1,219	311	792	22	107	1,232
Rape	1	9	3	9	22	1	5	—	13	19
Other sexual offences	120	42	15	31	208	119	38	26	52	235
Other violation of persons	42	46	13	12	113	33	26	3	28	90
Robbery & extortion	70	62	41	119	292	95	53	45	148	341
Robbery & extortion	70	62	41	119	292	95	53	45	148	341
Fraud & misappropriation	296	151	9	54	510	251	201	42	153	647
Fraud & misappropriation	296	151	9	54	510	251	201	42	153	647
Theft, breaking & entering	10,529	4,726	657	1,710	17,622	9,651	4,966	1,096	2,437	18,150
Unlawful use of motor vehicle	380	677	108	203	1,368	465	863	235	462	2,025
Other stealing	7,712	2,105	247	597	10,661	6,740	2,216	347	826	10,129
Receiving, unlawful possession	325	350	33	76	784	308	394	45	139	886
Burglary & housebreaking[d]	682	151	151	407	1,391	564	130	150	466	1,310
Other breaking & entering[d]	1,430	1,443	118	427	3,418	1,574	1,363	319	544	3,800
Property damage	1,732	875	120	209	2,936	1,671	984	195	291	3,141
Arson	46	12	13	15	86	35	11	19	33	98
Other property damage	1,686	863	107	194	2,850	1,636	973	176	258	3,043
Driving, traffic & related offences	38	1,156	10	9	1,213	43	1,187	37	19	1,286
Driving, traffic & related offences	38	1,156	10	9	1,213	43	1,187	37	19	1,286
Other offences	2,743	2,552	31	83	5,409	3,147	2,843	52	101	6,143
Drug offences	1,735	662	6	19	2,422	2,082	758	16	43	2,899
Other	1,008	1,890	25	64	2,987	1,065	2,085	36	58	3,244
Total	16,230	10,739	949	2,388	30,306	15,681	11,375	1,550	3,488	32,094

(a) Cautions data and courts data use different systems for classifying offences. Because of this, some offence types listed in Tables 4, 7, 11 and 15 (fraud and misappropriation, driving offences, drug offences and other offences) have been combined in this table.

(b) Data provided by the Queensland Police Service.

(c) Charges are disposed at magistrates court level by conviction, dismissal or withdrawal, but not by committal.

(d) See the note in 'Data issues' at the beginning of the statistics section.

Figure 1 **Charges against juveniles disposed by police caution or through the courts, by offence type, Queensland, 1994–95 and 1995–96**

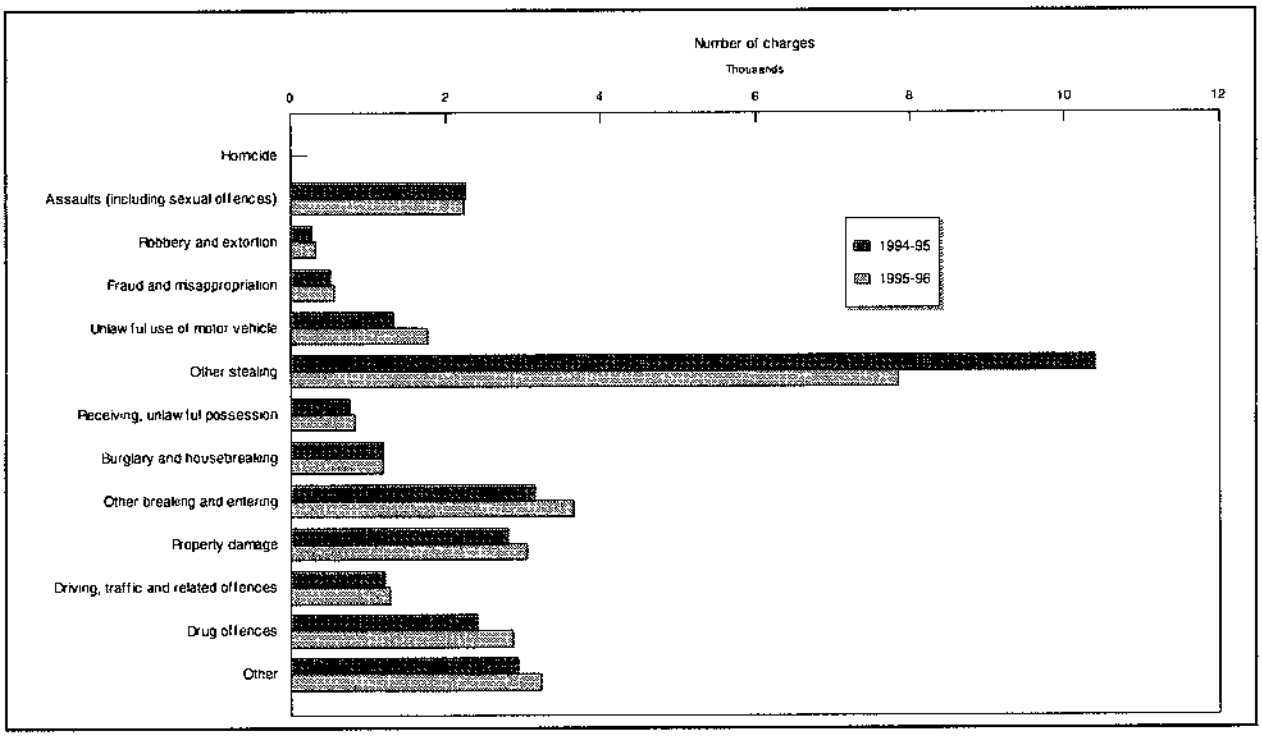
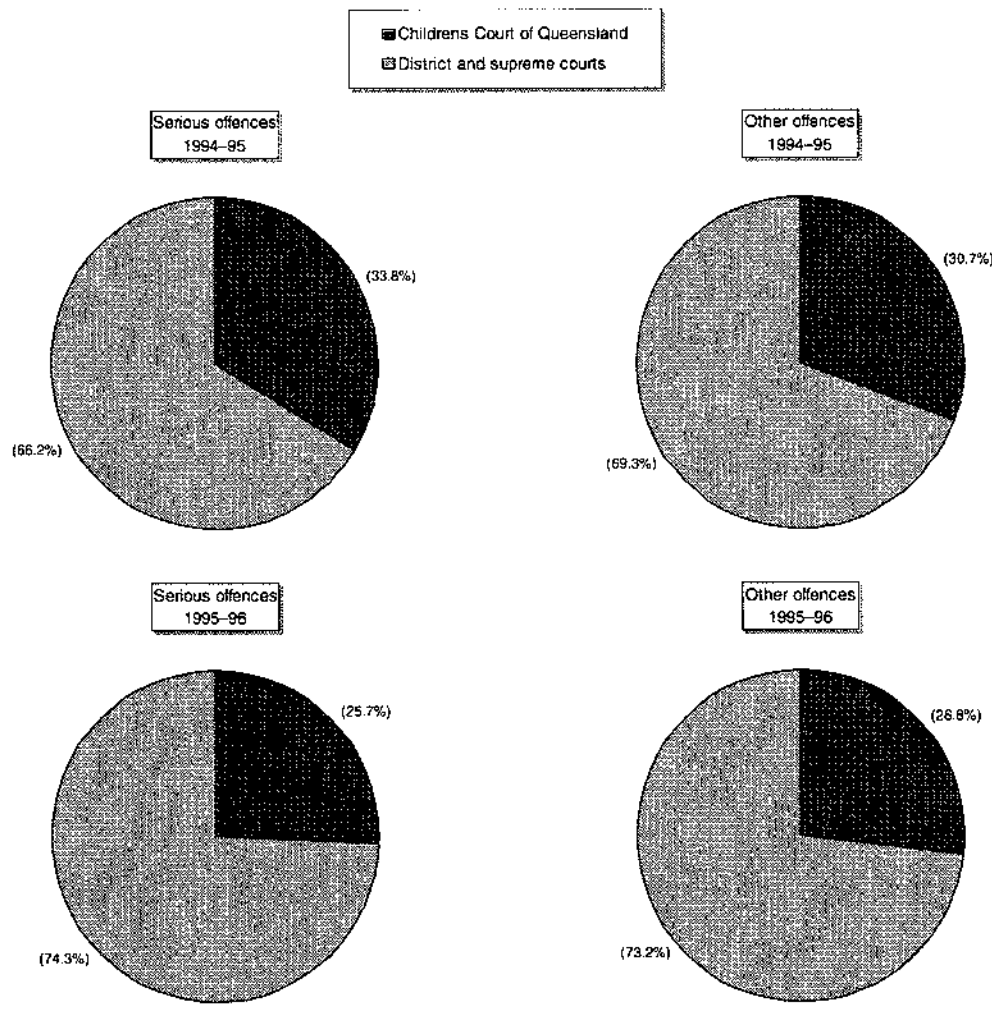


Table 2 **Childrens Court of Queensland, District and Supreme Courts: Juvenile defendants, by court, by level of seriousness of most serious offence charged, Queensland, 1994–95 and 1995–96**

Court	1994–95			1995–96			Percentage increase		
	Serious offences[a]	Other offences	Total	Serious offences[a]	Other offences	Total	Serious offences[a]	Other offences	Total
Childrens Court of Queensland	104	141	245	108	197	305	3.8	39.7	24.5
District and Supreme Courts	204	319	523	312	537	849	52.9	68.3	62.3
Total	**308**	**460**	**768**	**420**	**734**	**1,154**	**36.4**	**59.6**	**50.3**

(a) Serious offences are those which would make an adult liable to imprisonment of 14 years or more.

Figure 2 **Distribution of juvenile defendants with serious offences, Queensland, 1994–95 and 1995–96**



Magistrates Courts (committals) Queensland, 1994–95 and 1995–96

Table 3 **Magistrates Courts: Juvenile defendants committed for sentence or trial, by age, by sex, Queensland, 1994–95 and 1995–96**

Age	1994–95			1995–96			Percentage increase		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
10	1	—	1	3	—	3	200.0	. .	200.0
11	3	—	3	10	—	10	233.3	. .	233.3
12	9	—	9	15	3	18	66.7	. .	100.0
13	27	2	29	55	13	68	103.7	550.0	134.5
14	68	8	76	131	24	155	92.6	200.0	103.9
15	164	19	183	221	23	244	34.8	21.1	33.3
16	262	15	277	296	42	338	13.0	180.0	22.0
17+	186	15	201	211	28	239	13.4	86.7	18.9
Unknown	—	—	—	16	1	17	. .	. .	. .
Total	**720**	**59**	**779**	**958**	**134**	**1,092**	**33.1**	**127.1**	**40.2**

Figure 3 **Magistrates Courts: Juvenile defendants committed for sentence or trial, by age, Queensland, 1994–95 and 1995–96**

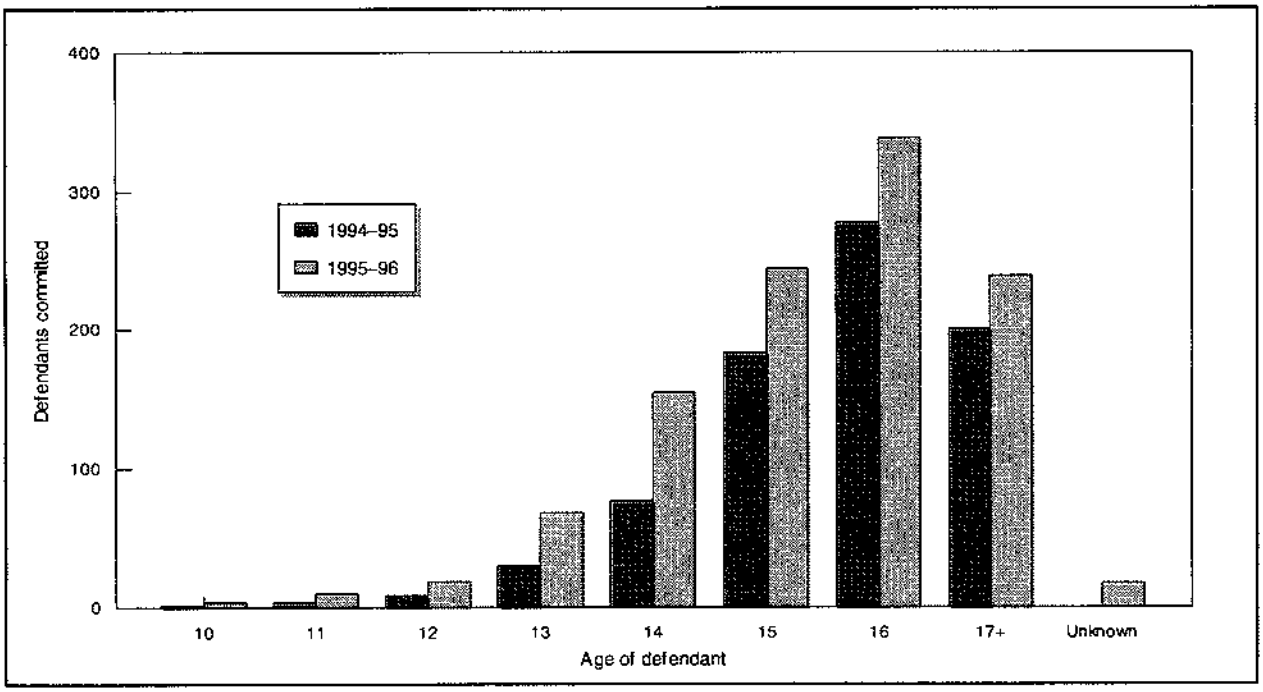


Table 4 **Magistrates Courts: Charges against juveniles committed for sentence or trial, by offence type, by sex of defendant, Queensland, 1994–95 and 1995–96**

Offence type	1994–95			1995–96			Percentage increase		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Homicide	**9**	**2**	**11**	**3**	**3**	**6**	**–66.7**	**50.0**	**–45.5**
Murder	7	2	9	1	—	1	–85.7	–100.0	–88.9
Attempted murder	2	—	2	2	2	4	—	. .	100.0
Manslaughter (excl. driving)	—	—	—	—	—	—	. .	. .	. .
Manslaughter (driving)	—	—	—	—	—	—	. .	. .	. .
Dangerous driving causing death	—	—	—	—	1	1	. .	. .	. .
Conspiracy to murder	—	—	—	—	—	—	. .	. .	. .
Assaults (incl. sexual offences)	**189**	**12**	**201**	**234**	**40**	**274**	**23.8**	**233.3**	**36.3**
Major assault	87	11	98	100	24	124	14.9	118.2	26.5
Minor assault	53	1	54	61	14	75	15.1	1300.0	38.9
Rape	6	—	6	21	—	21	250.0	. .	250.0
Other sexual offences	27	—	27	29	—	29	7.4	. .	7.4
Other violation of persons	16	—	16	23	2	25	43.8	. .	56.3
Robbery & extortion	**106**	**10**	**116**	**145**	**33**	**178**	**36.8**	**230.0**	**53.4**
Robbery	106	10	116	143	32	175	34.9	220.0	50.9
Extortion	—	—	—	2	1	3	. .	. .	. .
Fraud & misappropriation	**21**	**—**	**21**	**22**	**10**	**32**	**4.8**	**. .**	**52.4**
Embezzlement	1	—	1	1	1	2	—	. .	100.0
False pretences	14	—	14	12	7	19	–14.3	. .	35.7
Fraud and forgery	6	—	6	9	2	11	50.0	. .	83.3
Theft, breaking & entering	**1,180**	**79**	**1,259**	**1,632**	**130**	**1,762**	**38.3**	**64.6**	**40.0**
Unlawful use of motor vehicle	166	5	171	251	16	267	51.2	220.0	56.1
Other stealing	394	31	425	542	59	601	37.6	90.3	41.4
Receiving, unlawful possession	68	6	74	108	13	121	58.8	116.7	63.5
Burglary & housebreaking[a]	41	2	43	92	4	96	124.4	100.0	123.3
Other breaking & entering[a]	511	35	546	639	38	677	25.0	8.6	24.0
Property damage	**152**	**14**	**166**	**301**	**27**	**328**	**98.0**	**92.9**	**97.6**
Arson	16	1	17	45	1	46	181.3	—	170.6
Other property damage	136	13	149	256	26	282	88.2	100.0	89.3
Driving, traffic & related offences	**13**	**1**	**14**	**21**	**1**	**22**	**61.5**	**—**	**57.1**
Drink driving	—	—	—	—	—	—	. .	. .	. .
Dangerous/negligent driving	10	—	10	17	1	18	70.0	. .	80.0
Licence offences	3	—	3	4	—	4	33.3	. .	33.3
State Transport, Main Rds Act	—	1	1	—	—	—	. .	–100.0	–100.0
Other traffic offences	—	—	—	—	—	—	. .	. .	. .
Other driving offences	—	—	—	—	—	—	. .	. .	. .
Other offences	**104**	**9**	**113**	**95**	**7**	**102**	**–8.7**	**–22.2**	**–9.7**
Possession or use of drugs	8	2	10	7	—	7	–12.5	–100.0	–30.0
Dealing & trafficking in drugs	3	2	5	3	1	4	—	–50.0	–20.0
Manufacturing & growing drugs	1	—	1	5	—	5	400.0	. .	400.0
Other drug offences	4	—	4	5	—	5	25.0	. .	25.0
Drunkenness	—	—	—	—	—	—	. .	. .	. .
Offensive behaviour	2	—	2	5	2	7	150.0	. .	250.0
Trespassing & vagrancy	2	—	2	—	—	—	–100.0	. .	–100.0
Weapons offences	3	—	3	3	—	3	—	. .	—
Environmental offences	1	—	1	—	—	—	–100.0	. .	–100.0
Liquor offences	—	—	—	—	—	—	. .	. .	. .
Enforcement of orders	77	5	82	60	4	64	–22.1	–20.0	–22.0
Other	3	—	3	7	—	7	133.3	. .	133.3
Total	**1,774**	**127**	**1,901**	**2,453**	**251**	**2,704**	**38.3**	**97.6**	**42.2**

(a) See the note in 'Data issues' at the beginning of the statistics section.

Figure 4 **Magistrates Courts: Charges against juveniles committed for sentence or trial, by offence type, Queensland, 1994–95 and 1995–96**

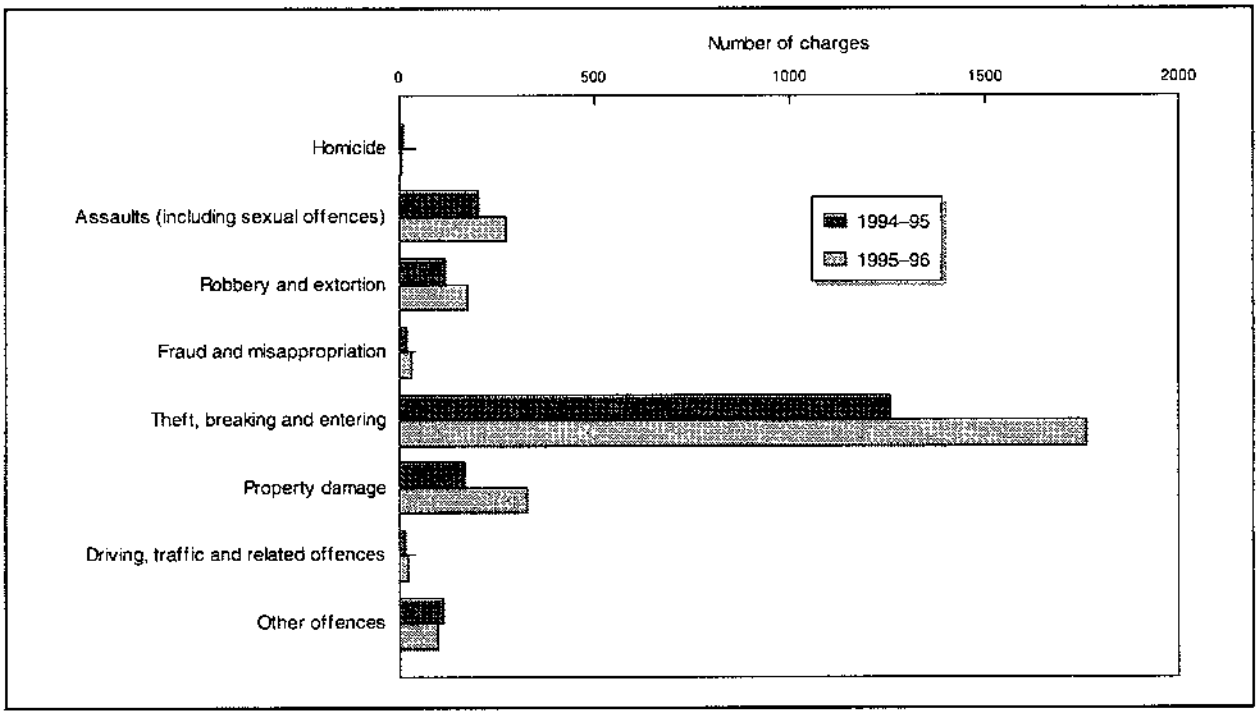


Table 5 **Magistrates Courts: Juvenile defendants and charges committed for trial or sentence, by court location, Queensland, 1994–95 and 1995–96**

Statistical division and court location[a]	1994–95			1995–96			Percentage increase	
	Defendants	Charges	Charges per defendant	Defendants	Charges	Charges per defendant	Defendants	Charges
Brisbane								
Brisbane City								
Brisbane Childrens Court	281	552	1.96	277	506	1.83	–1.4	–8.3
Holland Park	2	3	1.50	23	67	2.91	1050.0	2133.3
Inala	33	109	3.30	73	311	4.26	121.2	185.3
Sandgate	3	72	24.00	8	19	2.38	166.7	–73.6
Wynnum	4	8	2.00	8	25	3.13	100.0	212.5
Remainder of Brisbane								
Beenleigh	53	110	2.08	60	117	1.95	13.2	6.4
Caboolture	5	10	2.00	12	33	2.75	140.0	230.0
Cleveland	12	42	3.50	19	148	7.79	58.3	252.4
Ipswich	49	82	1.67	111	226	2.04	126.5	175.6
Petrie	2	10	5.00	8	27	3.38	300.0	170.0
Redcliffe	23	107	4.65	40	150	3.75	73.9	40.2
Moreton								
Beaudesert	—	—	—	3	6	2.00	..	..
Gatton	3	11	3.67	1	1	1.00	–66.7	–90.9
Maroochydore	19	47	2.47	27	70	2.59	42.1	48.9
Noosa	6	19	3.17	4	5	1.25	–33.3	–73.7
Southport	41	88	2.15	61	117	1.92	48.8	33.0
Toogoolawah	—	—	—	1	2	2.00	..	..
Wide Bay – Burnett								
Bundaberg	12	37	3.08	6	25	4.17	–50.0	–32.4
Gayndah	3	12	4.00	1	1	1.00	–66.7	–91.7
Gympie	3	5	1.67	5	12	2.40	66.7	140.0
Hervey Bay	6	60	10.00	8	23	2.88	33.3	–61.7
Kingaroy	8	28	3.50	1	1	1.00	–87.5	–96.4
Maryborough	5	31	6.20	19	85	4.47	280.0	174.2
Murgon	22	67	3.05	16	37	2.31	–27.3	–44.8
Darling Downs								
Dalby	—	—	—	8	22	2.75	..	..
Goondiwindi	3	4	1.33	5	18	3.60	66.7	350.0
Stanthorpe	1	1	1.00	3	10	3.33	200.0	900.0
Toowoomba	45	74	1.64	33	59	1.79	–26.7	–20.3
Warwick	4	6	1.50	1	2	2.00	–75.0	–66.7
South West								
Charleville	—	—	—	6	8	1.33	..	..
Cunnamulla	1	1	1.00	3	7	2.33	200.0	600.0
Quilpie	—	—	—	2	2	1.00	..	..
Roma	—	—	—	7	14	2.00	..	..
St George	3	5	1.67	3	8	2.67	—	60.0
Fitzroy								
Gladstone	1	1	1.00	19	69	3.63	1800.0	6800.0
Rockhampton	8	15	1.88	11	26	2.36	37.5	73.3
Yeppoon	—	—	—	1	1	1.00	..	..
Central West								
Longreach	4	42	10.50	—	—	—	–100.0	–100.0
Mackay								
Mackay	6	11	1.83	25	49	1.96	316.7	345.5
Proserpine	—	—	—	1	3	3.00	..	..
Northern								
Ayr	—	—	—	1	1	1.00	..	..
Bowen	5	9	1.80	4	16	4.00	–20.0	77.8
Charters Towers	2	2	1.00	2	3	1.50	—	50.0
Ingham	2	2	1.00	—	—	—	–100.0	–100.0
Townsville	47	97	2.06	58	125	2.16	23.4	28.9
Far North								
Atherton	2	6	3.00	1	1	1.00	–50.0	–83.3
Aurukun	—	—	—	10	19	1.90	..	..
Cairns	27	53	1.96	61	112	1.84	125.9	111.3
Innisfail	5	14	2.80	2	5	2.50	–60.0	–64.3
Mareeba	1	1	1.00	6	19	3.17	500.0	1800.0
Mossman	—	—	—	1	6	6.00	..	..
Thursday Island	8	26	3.25	10	46	4.60	25.0	76.9
Tully	—	—	—	1	3	3.00	..	..
Weipa	2	5	2.50	—	—	—	–100.0	–100.0
Yarrabah	—	—	—	1	1	1.00	..	..
North West								
Hughenden	1	2	2.00	—	—	—	–100.0	–100.0
Kowanyama	—	—	—	4	10	2.50	..	..
Mornington Island	—	—	—	3	5	1.67	..	..
Mount Isa	6	14	2.33	5	18	3.60	–16.7	28.6
Normanton	—	—	—	2	2	1.00	..	..
Total	**779**	**1,901**	**2.44**	**1,092**	**2,704**	**2.48**	**40.2**	**42.2**

(a) Magistrates Courts not shown did not commit any juveniles during the relevant years.

Table 6 **Magistrates Courts: Juvenile defendants disposed, by age, by sex, Queensland, 1994–95 and 1995–96**

Age	1994–95			1995–96			Percentage increase		
	Male	Female	Total[(a)]	Male	Female	Total[(a)]	Male	Female	Total[(a)]
10	8	—	8	16	2	18	100.0	..	125.0
11	39	1	41	52	1	53	33.3	—	29.3
12	104	8	112	112	13	125	7.7	62.5	11.6
13	248	46	298	281	51	333	13.3	10.9	11.7
14	552	115	671	547	121	668	–0.9	5.2	–0.4
15	1,067	209	1,290	1,015	235	1,259	–4.9	12.4	–2.4
16	1,628	296	1,934	1,595	325	1,924	–2.0	9.8	–0.5
17+	950	152	1,105	932	187	1,124	–1.9	23.0	1.7
Unknown	13	1	14	30	6	37	..	..	..
Total	**4,609**	**828**	**5,473**	**4,580**	**941**	**5,541**	**–0.6**	**13.6**	**1.2**

(a) Includes defendants whose sex was not recorded.

Figure 5 **Magistrates Courts: Juvenile defendants disposed, by age, Queensland, 1994–95 and 1995–96**

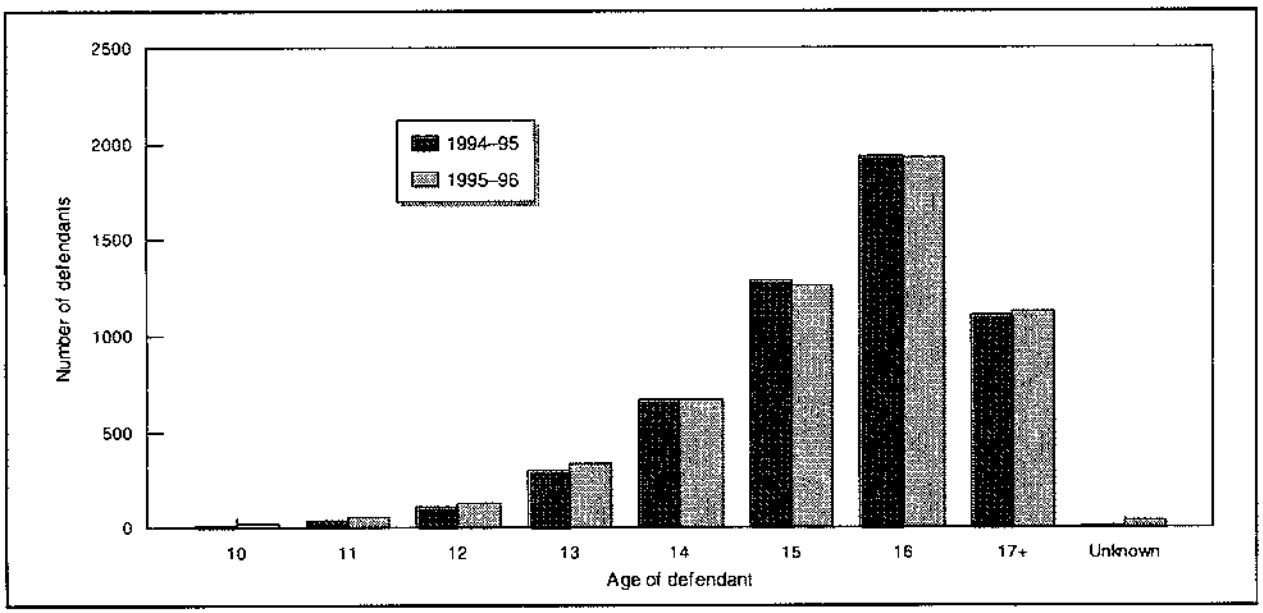


Table 7 **Magistrates Courts: Charges against juveniles disposed, by offence type, by sex of defendant, Queensland, 1994–95 and 1995–96**

Offence type	1994–95			1995–96			Percentage increase		
	Male	Female	Total[a]	Male	Female	Total[a]	Male	Female	Total[a]
Homicide	1	—	1	1	1	2	—	..	100.0
Murder	—	—	—	—	—	—	..	..	..
Attempted murder	1	—	1	1	1	2	—	..	100.0
Manslaughter (excl. driving)	—	—	—	—	—	—	..	..	..
Manslaughter (driving)	—	—	—	—	—	—	..	..	..
Dangerous driving causing death	—	—	—	—	—	—	..	..	..
Conspiracy to murder	—	—	—	—	—	—	..	..	..
Assaults (incl. sexual offences)	952	255	1,216	862	276	1,139	–9.5	8.2	–6.3
Major assault	202	62	266	207	70	278	2.5	12.9	4.5
Minor assault	659	188	853	590	202	792	–10.5	7.4	–7.2
Rape	9	—	9	5	—	5	–44.4	..	–44.4
Other sexual offences	40	2	42	35	3	38	–12.5	50.0	–9.5
Other violation of persons	42	3	46	25	1	26	–40.5	–66.7	–43.5
Robbery and extortion	51	11	62	41	12	53	–19.6	9.1	–14.5
Robbery	51	11	62	38	12	50	–25.5	9.1	–19.4
Extortion	—	—	—	3	—	3	..	..	..
Fraud and misappropriation	125	23	151	125	74	201	—	221.7	33.1
Embezzlement	15	3	18	10	10	20	–33.3	233.3	11.1
False pretences	50	13	64	59	46	105	18.0	253.8	64.1
Fraud and forgery	60	7	69	56	18	76	–6.7	157.1	10.1
Theft, breaking and entering	4,222	475	4,726	4,296	663	4,966	1.8	39.6	5.1
Unlawful use of motor vehicle	614	62	677	795	68	863	29.5	9.7	27.5
Other stealing	1,801	288	2,105	1,811	398	2,216	0.6	38.2	5.3
Receiving, unlawful possession	306	43	350	319	75	394	4.2	74.4	12.6
Burglary and housebreaking[b]	142	9	151	116	14	130	–18.3	55.6	–13.9
Other breaking and entering[b]	1,359	73	1,443	1,255	108	1,363	–7.7	47.9	–5.5
Property damage	775	97	875	882	102	984	13.8	5.2	12.5
Arson	12	—	12	11	—	11	–8.3	..	–8.3
Other property damage	763	97	863	871	102	973	14.2	5.2	12.7
Driving, traffic & related offences	1,071	78	1,156	1,071	110	1,187	—	41.0	2.7
Drink driving etc.	124	15	140	120	23	144	–3.2	53.3	2.9
Dangerous/negligent driving	71	1	72	79	5	84	11.3	400.0	16.7
Licence offences	357	29	389	408	47	455	14.3	62.1	17.0
State Transport, Main Rds Act	64	1	65	87	3	90	35.9	200.0	38.5
Other driving offences	—	—	—	—	—	—	..	..	..
Other traffic offences	455	32	490	377	32	414	–17.1	—	–15.5
Other offences	2,122	410	2,552	2,341	497	2,843	10.3	21.2	11.4
Possession or use of drugs	292	41	335	310	34	345	6.2	–17.1	3.0
Dealing & trafficking in drugs	21	—	21	25	7	34	19.0	..	61.9
Manufacturing & growing drugs	33	4	37	53	5	58	60.6	25.0	56.8
Other drug offences	226	40	269	280	40	321	23.9	—	19.3
Drunkenness	139	25	164	157	34	191	12.9	36.0	16.5
Offensive behaviour	486	172	663	444	164	609	–8.6	–4.7	–8.1
Trespassing and vagrancy	121	18	141	93	19	112	–23.1	5.6	–20.6
Weapons offences	58	2	63	94	1	95	62.1	–50.0	50.8
Environmental offences	5	1	6	8	—	8	60.0	–100.0	33.3
Liquor offences	23	6	29	48	23	71	108.7	283.3	144.8
Enforcement of orders	591	80	675	624	126	750	5.6	57.5	11.1
Other	127	21	149	205	44	249	61.4	109.5	67.1
Total	9,319	1,349	10,739	9,619	1,735	11,375	3.2	28.6	5.9

(a) Includes defendants whose sex was not recorded.

(b) See the note in 'Data issues' at the beginning of the statistics section.

Figure 6 **Magistrates Courts: Charges against juveniles disposed, by offence type, Queensland, 1994–95 and 1995–96**

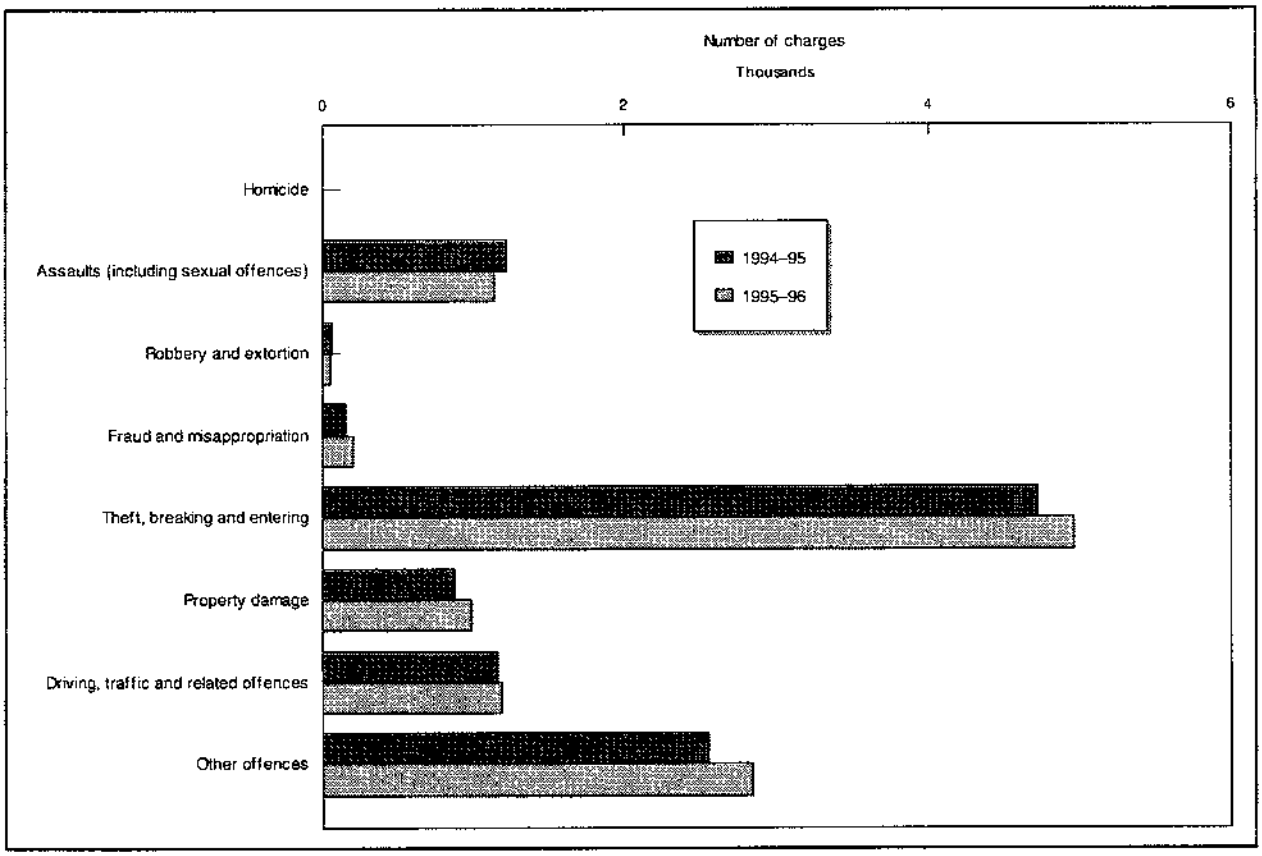


Table 8 **Magistrates Courts: Juvenile defendants and charges disposed, by court location, Queensland, 1994–95 and 1995–96**

Statistical division and court location[a]	1994–95			1995–96			Percentage increase	
	Defendants	Charges	Charges per defendant	Defendants	Charges	Charges per defendant	Defendants	Charges
Brisbane								
Brisbane City								
Brisbane Childrens Court	1,202	2,021	1.68	817	1,445	1.77	–32.0	–28.5
Holland Park	67	122	1.82	109	336	3.08	62.7	175.4
Inala	182	411	2.26	173	392	2.27	–4.9	–4.6
Sandgate	35	116	3.31	73	125	1.71	108.6	7.8
Wynnum	57	144	2.53	96	229	2.39	68.4	59.0
Remainder of Brisbane								
Beenleigh	203	394	1.94	149	274	1.84	–26.6	–30.5
Caboolture	138	263	1.91	95	182	1.92	–31.2	–30.8
Cleveland	112	274	2.45	81	344	4.25	–27.7	25.5
Ipswich	381	691	1.81	318	547	1.72	–16.5	–20.8
Petrie	83	186	2.24	83	143	1.72	—	–23.1
Redcliffe	110	327	2.97	171	406	2.37	55.5	24.2
Moreton								
Beaudesert	14	52	3.71	16	39	2.44	14.3	–25.0
Coolangatta	5	7	1.40	1	1	1.00	–80.0	–85.7
Gatton	46	119	2.59	38	97	2.55	–17.4	–18.5
Maroochydore	128	241	1.88	135	258	1.91	5.5	7.1
Noosa	4	7	1.75	13	34	2.62	225.0	385.7
Southport	384	621	1.62	559	959	1.72	45.6	54.4
Toogoolawah	6	6	1.00	2	3	1.50	–66.7	–50.0
Wide Bay – Burnett								
Bundaberg	59	126	2.14	65	133	2.05	10.2	5.6
Childers	1	1	1.00	7	34	4.86	600.0	3300.0
Gayndah	2	2	1.00	1	2	2.00	–50.0	—
Gympie	35	70	2.00	42	72	1.71	20.0	2.9
Hervey Bay	59	91	1.54	53	125	2.36	–10.2	37.4
Kingaroy	17	30	1.76	12	28	2.33	–29.4	–6.7
Maryborough	51	66	1.29	65	128	1.97	27.5	93.9
Murgon	139	311	2.24	68	266	3.91	–51.1	–14.5
Nanango	11	22	2.00	8	12	1.50	–27.3	–45.5
Darling Downs								
Chinchilla	7	13	1.86	10	18	1.80	42.9	38.5
Dalby	14	32	2.29	21	57	2.71	50.0	78.1
Goondiwindi	7	10	1.43	19	32	1.68	171.4	220.0
Oakey	—	—	—	1	2	2.00	—	—
Pittsworth	5	10	2.00	4	6	1.50	–20.0	–40.0
Stanthorpe	2	2	1.00	3	11	3.67	50.0	450.0
Toowoomba	167	262	1.57	239	396	1.66	43.1	51.1
Warwick	22	73	3.32	29	80	2.76	31.8	9.6
South West								
Charleville	12	22	1.83	13	22	1.69	8.3	—
Cunnamulla	14	25	1.79	16	31	1.94	14.3	24.0
Quilpie	—	—	—	1	2	2.00	—	—
Roma	5	7	1.40	13	27	2.08	160.0	285.7
St George	17	23	1.35	17	50	2.94	—	117.4
Fitzroy								
Biloela	22	55	2.50	14	68	4.86	–36.4	23.6
Blackwater	7	15	2.14	8	18	2.25	14.3	20.0
Duaringa	—	—	—	1	2	2.00	—	—
Emerald	11	20	1.82	10	22	2.20	–9.1	10.0
Gladstone	92	271	2.95	99	308	3.11	7.6	13.7
Rockhampton	282	520	1.84	328	586	1.79	16.3	12.7

continued ...

Table 8 **continued**

Statistical division and court location[a]	1994–95			1995–96			Percentage increase	
	Defendants	Charges	Charges per defendant	Defendants	Charges	Charges per defendant	Defendants	Charges
Fitzroy continued								
Woorabinda	—	—	—	11	30	2.73	—	—
Yeppoon	9	126	14.00	22	35	1.59	144.4	–72.2
Central West								
Barcaldine	1	1	1.00	4	6	1.50	300.0	500.0
Blackall	—	—	—	1	1	1.00	—	—
Longreach	5	9	1.80	1	4	4.00	–80.0	–55.6
Winton	—	—	—	1	1	1.00	—	—
Mackay								
Clermont	15	57	3.80	5	18	3.60	–66.7	–68.4
Mackay	237	423	1.78	242	424	1.75	2.1	0.2
Moranbah	16	41	2.56	7	16	2.29	–56.3	–61.0
Proserpine	16	31	1.94	10	30	3.00	–37.5	–3.2
Sarina	2	3	1.50	1	1	1.00	–50.0	–66.7
Northern								
Ayr	24	79	3.29	19	74	3.89	–20.8	–6.3
Bowen	26	39	1.50	17	29	1.71	–34.6	–25.6
Charters Towers	13	29	2.23	13	29	2.23	—	—
Ingham	11	31	2.82	17	37	2.18	54.5	19.4
Townsville	333	564	1.69	370	671	1.81	11.1	19.0
Far North								
Atherton	15	40	2.67	8	18	2.25	–46.7	–55.0
Aurukun	—	—	—	63	211	3.35	—	—
Cairns	278	486	1.75	295	551	1.87	6.1	13.4
Coen	—	—	—	1	2	2.00	—	—
Cooktown	11	25	2.27	14	31	2.21	27.3	24.0
Innisfail	54	94	1.74	61	208	3.41	13.0	121.3
Lockhart River	—	—	—	24	39	1.63	—	—
Mareeba	34	114	3.35	29	60	2.07	–14.7	–47.4
Mossman	8	33	4.13	6	11	1.83	–25.0	–66.7
Thursday Island	9	33	3.67	18	43	2.39	100.0	30.3
Tully	5	29	5.80	9	14	1.56	80.0	–51.7
Weipa	27	99	3.67	19	45	2.37	–29.6	–54.5
Yarrabah	5	8	1.60	15	36	2.40	200.0	350.0
North West								
Cloncurry	19	53	2.79	20	53	2.65	5.3	—
Hughenden	2	2	1.00	—	—	—	–100.0	–100.0
Kowanyama	—	—	—	12	21	1.75	—	—
Mornington Island	—	—	—	16	38	2.38	—	—
Mount Isa	75	190	2.53	76	191	2.51	1.3	0.5
Normanton	6	19	3.17	16	39	2.44	166.7	105.3
Pormpuraaw	—	—	—	1	4	4.00	—	—
Richmond	—	—	—	1	2	2.00	—	—
Total	**5,473**	**10,739**	**1.96**	**5,541**	**11,375**	**2.05**	**1.2**	**5.9**

(a) Magistrates Courts not shown did not dispose any cases against juveniles during the relevant years.

Table 9 **Magistrates Courts: Juvenile offenders, by most serious penalty, by sex, Queensland, 1994–95 and 1995–96**

Penalty[a]	1994–95			1995–96			Percentage increase		
	Male	Female	Total[b]	Male	Female	Total[b]	Male	Female	Total[b]
Detention	260	17	281	184	22	206	–29.2	29.4	–26.7
Immediate release	27	3	30	22	4	26	–18.5	33.3	–13.3
Community service	521	63	589	656	77	736	25.9	22.2	25.0
Probation	744	126	877	737	157	895	–0.9	24.6	2.1
Fine	410	48	461	385	37	426	–6.1	–22.9	–7.6
Compensation	171	28	202	136	37	175	–20.5	32.1	–13.4
Good behaviour order	602	120	725	603	151	755	0.2	25.8	4.1
Disqualification of licence	16	3	19	20	4	24	25.0	33.3	26.3
Other penalty	12	1	13	14	3	17	16.7	200.0	30.8
No penalty	889	242	1,140	901	264	1,170	1.3	9.1	2.6
Total	**3,652**	**651**	**4,337**	**3,658**	**756**	**4,430**	**0.2**	**16.1**	**2.1**

(a) In decreasing order of seriousness.

(b) Includes offenders whose sex was not recorded.

Figure 7 **Magistrates Courts: Juvenile offenders, by most serious penalty, Queensland, 1994–95 and 1995–96**

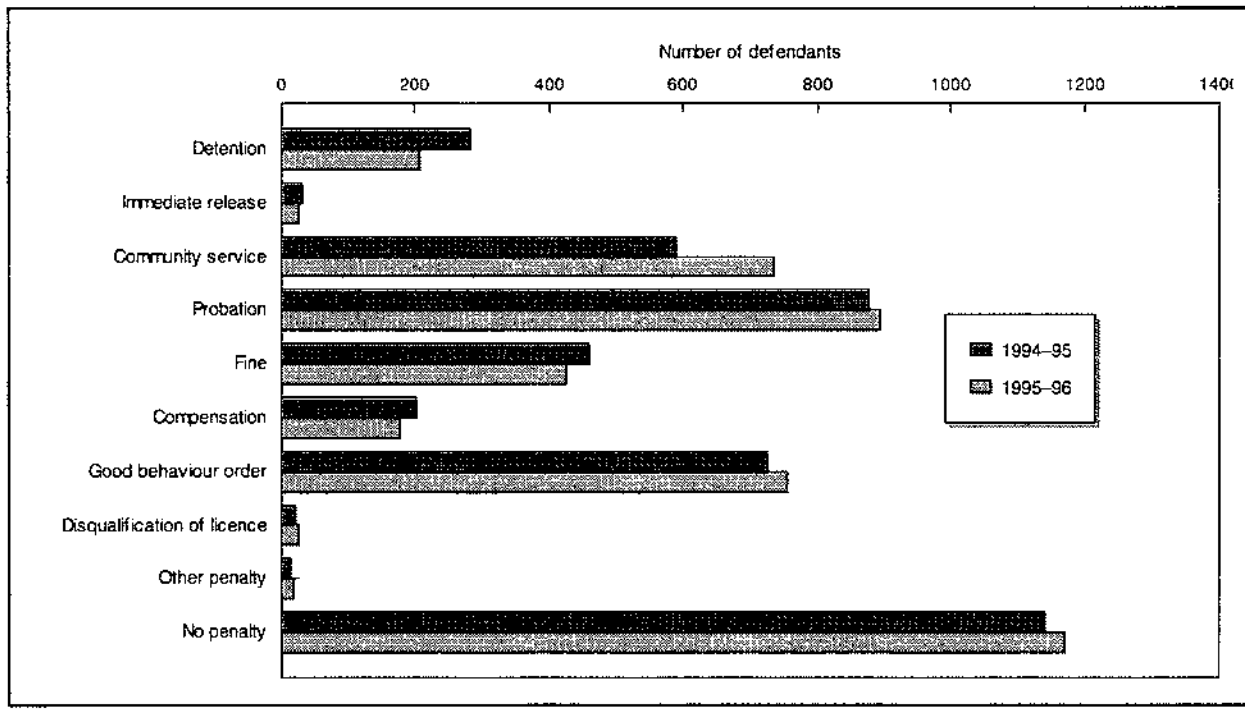


Table 10 **Childrens Court of Queensland: Juvenile defendants, by age, by sex, Queensland, 1994–95 and 1995–96**

Age	1994–95			1995–96			Percentage increase		
	Male	Female	Total[a]	Male	Female	Total[a]	Male	Female	Total[a]
10	—	—	—	—	—	—	. .	. .	. .
11	2	—	2	2	—	2	—	. .	—
12	5	—	5	9	3	12	80.0	. .	140.0
13	7	—	7	19	6	25	171.4	. .	257.1
14	21	—	21	39	—	40	85.7	. .	90.5
15	40	4	44	78	6	84	95.0	50.0	90.9
16	59	3	70	102	9	113	72.9	200.0	61.4
17+	89	9	98	25	4	29	–71.9	–55.6	–70.4
Unknown	1	1	2	—	—	—	. .	. .	. .
Total	**224**	**17**	**249**	**274**	**28**	**305**	**22.3**	**64.7**	**22.5**

(a) Includes defendants whose sex was not recorded.

Figure 8 **Childrens Court of Queensland: Juvenile defendants, by age, Queensland, 1994–95 amd 1995–96**

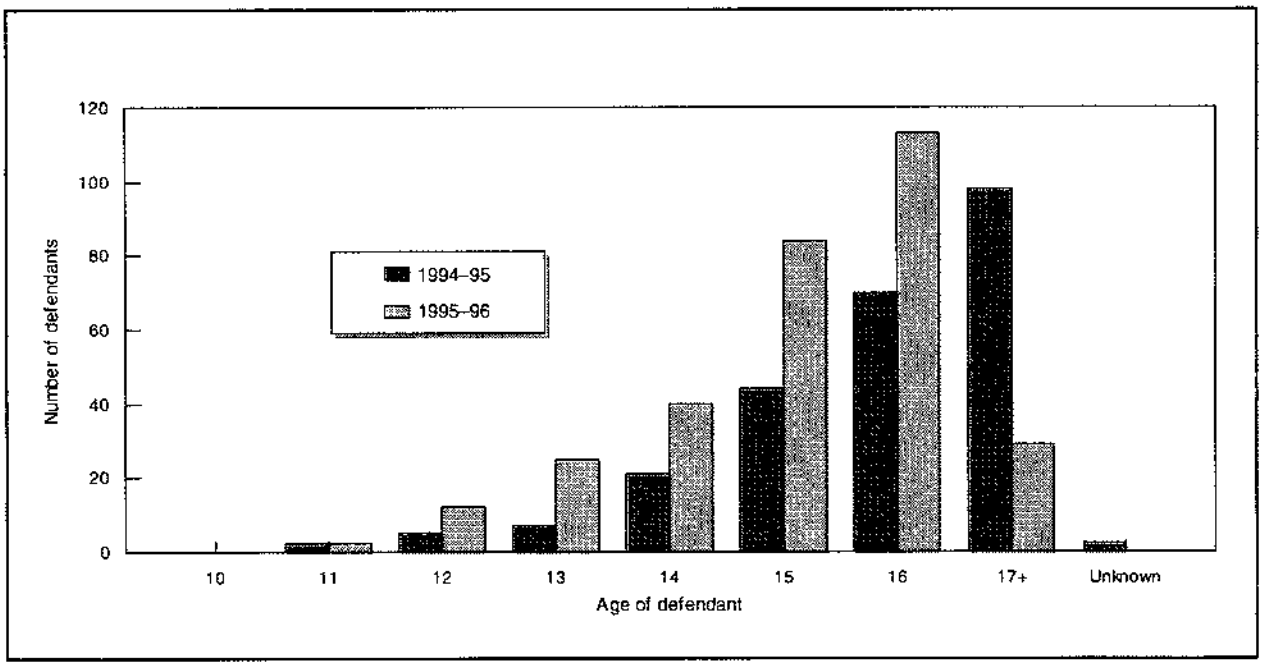


Table 11 **Childrens Court of Queensland: Charges against juveniles, by offence type, by sex of defendant, Queensland, 1994–95 and 1995–96**

Offence type	1994–95			1995–96			Percentage increase		
	Male	Female	Total[a]	Male	Female	Total[a]	Male	Female	Total[a]
Homicide	—	—	—	—	—	—	..	..	..
Murder	—	—	—	—	—	—	..	..	..
Attempted murder	—	—	—	—	—	—	..	..	..
Manslaughter (excl. driving)	—	—	—	—	—	—	..	..	..
Manslaughter (driving)	—	—	—	—	—	—	..	..	..
Dangerous driving causing death	—	—	—	—	—	—	..	..	..
Conspiracy to murder	—	—	—	—	—	—	..	..	..
Assaults (incl. sexual offences)	**68**	**8**	**81**	**70**	**11**	**83**	**2.9**	**37.5**	**2.5**
Major assault	18	8	26	26	6	32	44.4	–25.0	23.1
Minor assault	19	—	24	15	5	22	–21.1	..	–8.3
Rape	3	—	3	—	—	—	–100.0	..	–100.0
Other sexual offences	15	—	15	26	—	26	73.3	..	73.3
Other violation of persons	13	—	13	3	—	3	–76.9	..	–76.9
Robbery & extortion	**32**	**7**	**41**	**35**	**6**	**45**	**9.4**	**–14.3**	**9.8**
Robbery	32	7	41	34	6	44	6.3	–14.3	7.3
Extortion	—	—	—	1	—	1	..	..	..
Fraud & misappropriation	**7**	**2**	**9**	**42**	**—**	**42**	**500.0**	**–100.0**	**366.7**
Embezzlement	—	—	—	1	—	1	..	..	..
False pretences	7	2	9	10	—	10	42.9	–100.0	11.1
Fraud and forgery	—	—	—	31	—	31	..	..	..
Theft, breaking & entering	**596**	**57**	**657**	**1,016**	**66**	**1,096**	**70.5**	**15.8**	**66.8**
Unlawful use of motor vehicle	103	4	108	221	11	235	114.6	175.0	117.6
Other stealing	219	27	247	316	29	347	44.3	7.4	40.5
Receiving, unlawful possession	30	2	33	40	5	45	33.3	150.0	36.4
Burglary and housebreaking[b]	126	24	151	134	16	150	6.3	–33.3	–0.7
Other breaking and entering[b]	118	—	118	305	5	319	158.5	..	170.3
Property damage	**118**	**1**	**120**	**185**	**7**	**195**	**56.8**	**600.0**	**62.5**
Arson	13	—	13	19	—	19	46.2	..	46.2
Other property damage	105	1	107	166	7	176	58.1	600.0	64.5
Driving, traffic & related offences	**8**	**2**	**10**	**36**	**1**	**37**	**350.0**	**–50.0**	**270.0**
Drink driving etc.	—	1	1	3	—	3	..	–100.0	200.0
Dangerous/negligent driving	8	—	8	5	—	5	–37.5	..	–37.5
Licence offences	—	1	1	4	—	4	..	–100.0	300.0
State Transport, Main Rds Act	—	—	—	2	—	2	..	..	..
Other driving offences	—	—	—	22	1	23	..	..	..
Other traffic offences	—	—	—	—	—	—	..	..	..
Other offences	**30**	**—**	**31**	**33**	**19**	**52**	**10.0**	**..**	**67.7**
Possession or use of drugs	5	—	5	5	1	6	—	..	20.0
Dealing & trafficking in drugs	—	—	—	6	—	6	..	..	..
Manufacturing & growing drugs	1	—	1	3	—	3	200.0	..	200.0
Other drug offences	—	—	—	1	—	1	..	..	..
Drunkenness	—	—	—	—	—	—	..	..	..
Offensive behaviour	—	—	—	2	5	7	..	..	..
Trespassing & vagrancy	—	—	—	1	—	1	..	..	..
Weapons offences	—	—	—	—	—	—	..	..	..
Environmental offences	—	—	—	—	—	—	..	..	..
Liquor offences	—	—	—	—	—	—	..	..	..
Enforcement of orders	21	—	22	14	2	16	–33.3	..	–27.3
Other	3	—	3	1	11	12	–66.7	..	300.0
Total	**859**	**77**	**949**	**1,417**	**110**	**1,550**	**65.0**	**42.9**	**63.3**

(a) Includes defendants whose sex was not recorded.

(b) See the note in 'Data issues' at the beginning of the statistics section.

Figure 9 **Childrens Court of Queensland: Charges against juveniles, by offence type, Queensland, 1994–95 and 1995–96**

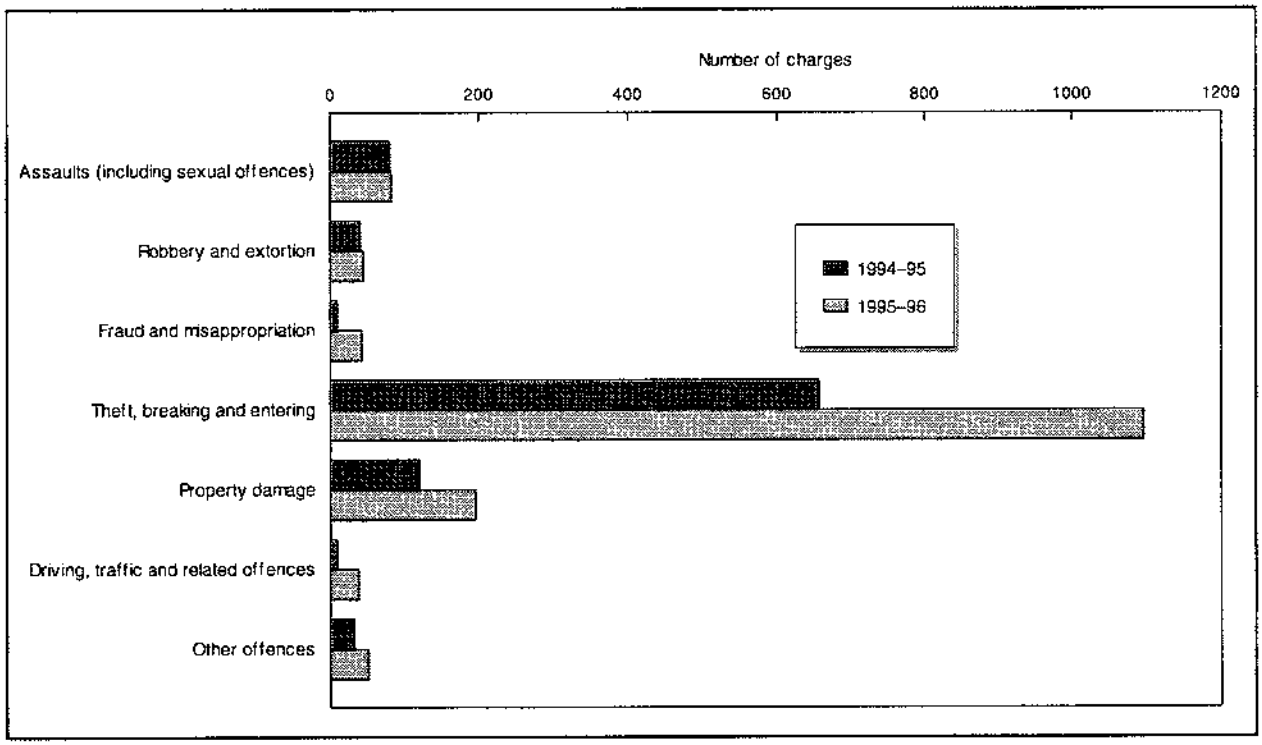


Table 12 **Childrens Court of Queensland: Juvenile defendants and charges, by court location, Queensland, 1994–95 and 1995–96**

Court location	1994–95			1995–96			Percentage increase	
	Defendants	Charges	Charges per defendant	Defendants	Charges	Charges per defendant	Defendants	Charges
Brisbane	161	634	3.94	143	730	5.10	–11.2	15.1
Cairns[a]	17	55	3.24	8	58	7.25	–52.9	5.5
Rockhampton[b]	4	8	2.00	63	160	2.54	1,475.0	1,900.0
Southport	17	39	2.29	41	305	7.44	141.2	682.1
Townsville	50	213	4.26	50	297	5.94	—	39.4
Total	**249**	**949**	**3.81**	**305**	**1,550**	**5.08**	**22.5**	**63.3**

(a) The first Childrens Court Judge was appointed in Cairns in May 1995. The 1994–95 figures include cases dealt with by the President of the Childrens Court of Queensland on circuit.

(b) The first Childrens Court Judge was appointed in Rockhampton in May 1995.

Table 13 **Childrens Court of Queensland: Juvenile offenders, by most serious penalty, by sex, Queensland, 1994–95 and 1995–96**

Penalty[a]	1994–95			1995–96			Percentage increase		
	Male	Female	Total[b]	Male	Female	Total[b]	Male	Female	Total[b]
Detention	51	2	55	59	3	63	15.7	50.0	14.5
Immediate release	8	—	8	7	—	7	-12.5	..	-12.5
Community service	62	8	71	74	3	79	19.4	-62.5	11.3
Probation	78	4	85	76	11	87	-2.6	175.0	2.4
Fine	—	—	—	5	—	5	..	..	..
Compensation	—	—	—	3	—	3	..	..	..
Good behaviour order	4	—	4	18	5	23	350.0	..	475.0
Disqualification of licence	—	—	—	—	—	—	..	..	..
Other penalty	—	—	—	—	—	—	..	..	..
No penalty	2	1	3	16	5	21	700.0	400.0	600.0
Total	**205**	**15**	**226**	**258**	**27**	**288**	**25.9**	**80.0**	**27.4**

(a) In decreasing order of seriousness.

(b) Includes offenders whose sex was not recorded.

Figure 10 **Childrens Court of Queensland: Juvenile offenders, by most serious penalty, Queensland, 1994–95 and 1995–96**

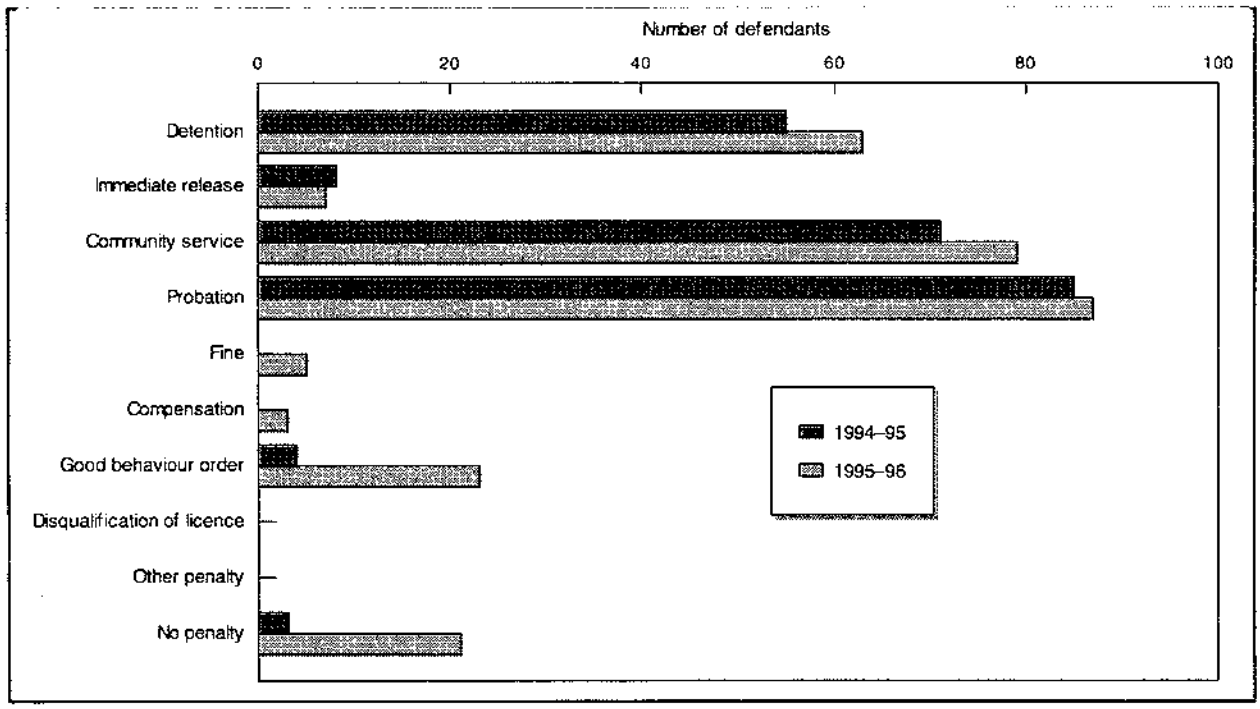


Table 14 **District and Supreme Courts: Juvenile defendants, by age, by sex, Queensland, 1994–95 and 1995–96**

Age	1994–95			1995–96			Percentage increase		
	Male	Female	Total[a]	Male	Female	Total[a]	Male	Female	Total[a]
10	1	—	1	1	—	1	—	. .	—
11	—	—	—	9	—	9	. .	. .	. .
12	7	—	7	9	—	9	28.6	. .	28.6
13	17	2	19	27	9	36	58.8	350.0	89.5
14	62	5	67	94	17	112	51.6	240.0	67.2
15	104	16	121	161	27	188	54.8	68.8	55.4
16	161	12	174	250	25	275	55.3	108.3	58.0
17+	138	4	144	182	15	197	31.9	275.0	36.8
Unknown	—	—	—	18	3	21	. .	. .	. .
Total	**490**	**39**	**533**	**751**	**96**	**848**	**53.3**	**146.2**	**59.1**

(a) Includes defendants whose sex was not recorded.

Figure 11 **District and Supreme Courts: Juvenile defendants, by age, Queensland, 1994–95 and 1995–96**

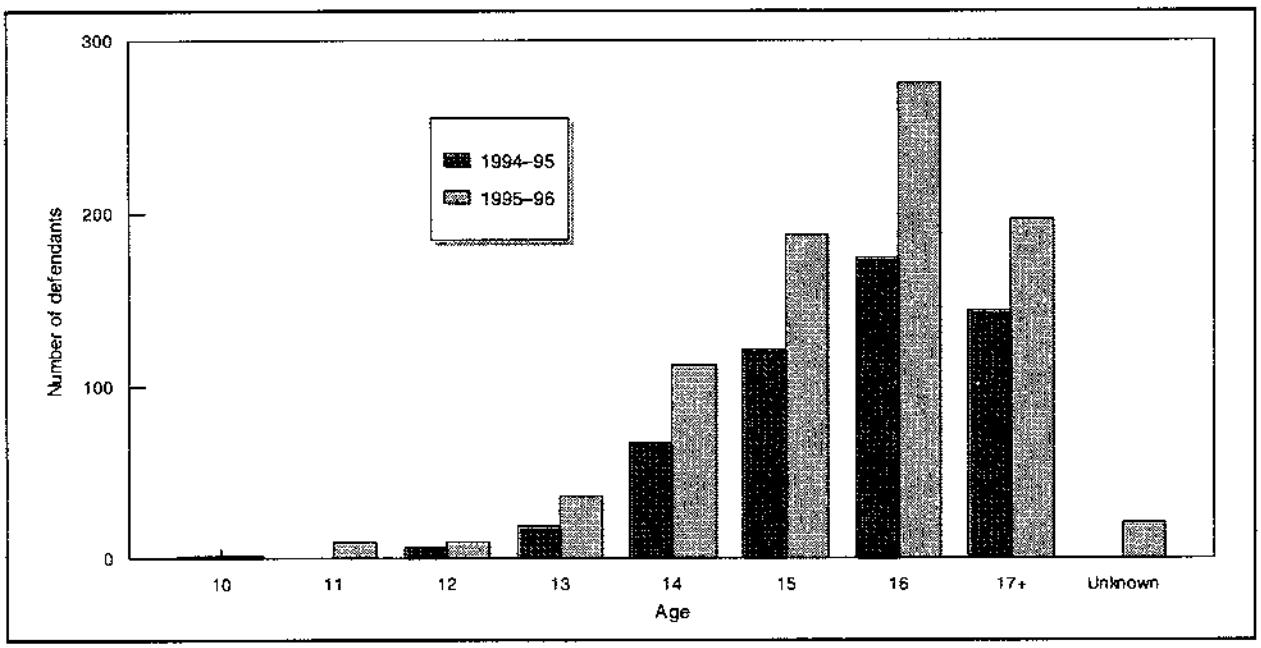


Table 15 **District and Supreme Courts: Charges against juveniles, by offence type, by sex of defendant, Queensland, 1994–95 and 1995–96**

Offence type	1994–95			1995–96			Percentage increase		
	Male	Female	Total[a]	Male	Female	Total[a]	Male	Female	Total[a]
Homicide	**3**	**—**	**3**	**1**	**1**	**2**	**–66.7**	**..**	**–33.3**
Murder	2	—	2	—	—	—	–100.0	..	–100.0
Attempted murder	—	—	—	—	—	—	..	..	..
Manslaughter (excl. driving)	—	—	—	—	—	—	..	..	..
Manslaughter (driving)	—	—	—	—	—	—	..	..	..
Dangerous driving causing death	1	—	1	1	1	2	—	..	100.0
Conspiracy to murder	—	—	—	—	—	—	..	..	..
Assaults (incl. sexual offences)	**173**	**25**	**201**	**286**	**51**	**337**	**65.3**	**104.0**	**67.7**
Major assault	61	21	84	117	20	137	91.8	–4.8	63.1
Minor assault	61	3	65	83	24	107	36.1	700.0	64.6
Rape	9	—	9	12	1	13	33.3	..	44.4
Other sexual offences	31	—	31	49	3	52	58.1	..	67.7
Other violation of persons	11	1	12	25	3	28	127.3	200.0	133.3
Robbery and extortion	**106**	**13**	**119**	**128**	**20**	**148**	**20.8**	**53.8**	**24.4**
Robbery	106	13	119	126	20	146	18.9	53.8	22.7
Extortion	—	—	—	2	—	2	..	..	..
Fraud and misappropriation	**54**	**—**	**54**	**147**	**6**	**153**	**172.2**	**..**	**183.3**
Embezzlement	7	—	7	8	1	9	14.3	..	28.6
False pretences	36	—	36	95	5	100	163.9	..	177.8
Fraud and forgery	11	—	11	44	—	44	300.0	..	300.0
Theft, breaking and entering	**1,624**	**78**	**1,710**	**2,222**	**215**	**2,437**	**36.8**	**175.6**	**42.5**
Unlawful use of motor vehicle	200	3	203	448	14	462	124.0	366.7	127.6
Other stealing	549	46	597	747	79	826	36.1	71.7	38.4
Receiving, unlawful possession	71	5	76	87	52	139	22.5	940.0	82.9
Burglary & housebreaking[b]	393	13	407	422	44	466	7.4	238.5	14.5
Other breaking & entering[b]	411	11	427	518	26	544	26.0	136.4	27.4
Property damage	**202**	**7**	**209**	**261**	**28**	**291**	**29.2**	**300.0**	**39.2**
Arson	14	1	15	30	2	33	114.3	100.0	120.0
Other property damage	188	6	194	231	26	258	22.9	333.3	33.0
Driving, traffic & related offences	**9**	**—**	**9**	**19**	**—**	**19**	**111.1**	**..**	**111.1**
Drink driving etc.	—	—	—	—	—	—	..	..	..
Dangerous/negligent driving	9	—	9	19	—	19	111.1	..	111.1
Licence offences	—	—	—	—	—	—	..	..	..
State Transport, Main Rds Act	—	—	—	—	—	—	..	..	..
Other driving offences	—	—	—	—	—	—	..	..	..
Other traffic offences	—	—	—	—	—	—	..	..	..
Other offences	**76**	**6**	**83**	**79**	**22**	**101**	**3.9**	**266.7**	**21.7**
Possession or use of drugs	12	—	12	7	1	8	–41.7	..	–33.3
Dealing & trafficking in drugs	7	—	7	10	17	27	42.9	..	285.7
Manufacturing & growing drugs	—	—	—	4	—	4	..	..	..
Other drug offences	—	—	—	3	1	4	..	..	..
Drunkenness	—	—	—	—	—	—	..	..	..
Offensive behaviour	1	2	3	2	—	2	100.0	–100.0	–33.3
Trespassing and vagrancy	—	—	—	7	—	7	..	..	..
Weapons offences	1	—	1	—	—	—	–100.0	..	–100.0
Environmental offences	—	—	—	—	—	—	..	..	..
Liquor offences	—	1	1	—	—	—	..	–100.0	–100.0
Enforcement of orders	55	3	59	44	2	46	–20.0	–33.3	–22.0
Other	—	—	—	2	1	3	..	..	..
Total	**2,247**	**129**	**2,388**	**3,143**	**343**	**3,488**	**39.9**	**165.9**	**46.1**

(a) Includes defendants whose sex was not recorded.

(b) See the note in 'Data issues' at the beginning of the statistics section.

Figure 12 **District and Supreme Courts: Charges against juveniles, by offence type, Queensland, 1994–95 and 1995–96**

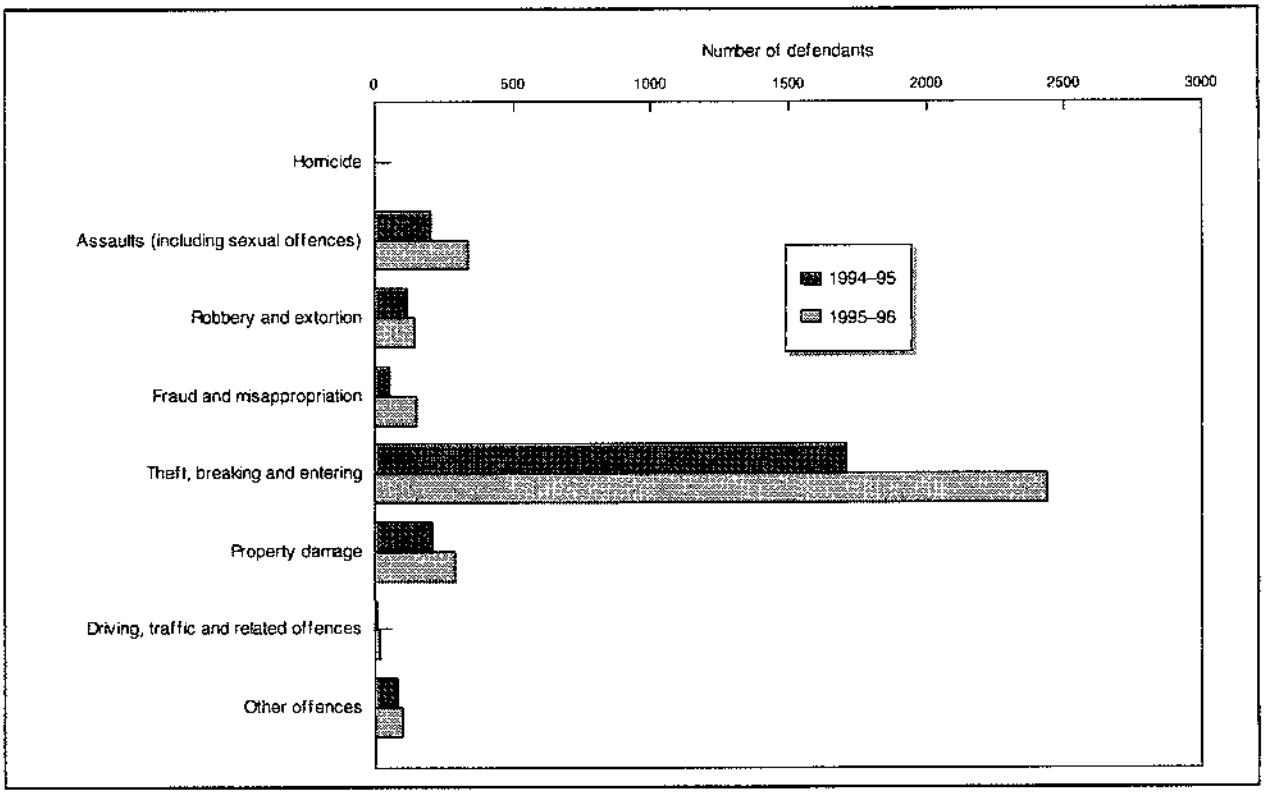


Table 16 **District and Supreme Courts: Juvenile defendants and charges, by court location, Queensland, 1994–95 and 1995–96**

Statistical division and court location[a]	1994–95			1995–96			Percentage increase	
	Defendants	Charges	Charges per defendant	Defendants	Charges	Charges per defendant	Defendants	Charges
Brisbane								
Brisbane Supreme	5	17	3.40	4	29	7.25	–20.0	70.6
Brisbane	283	1,298	4.59	426	1,858	4.36	50.5	43.1
Ipswich	62	187	3.02	76	355	4.67	22.6	89.8
Moreton								
Southport	6	23	3.83	49	232	4.73	716.7	908.7
Maroochydore	6	80	13.33	25	98	3.92	316.7	22.5
Wide Bay – Burnett								
Bundaberg	11	76	6.91	10	45	4.50	–9.1	–40.8
Gympie	5	20	4.00	5	15	3.00	—	–25.0
Kingaroy	10	25	2.50	12	30	2.50	20.0	20.0
Maryborough Supreme	—	—	—	1	1	1.00	..	..
Maryborough	3	18	6.00	20	81	4.05	566.7	350.0
Darling Downs								
Dalby	—	—	—	4	8	2.00	..	..
Goondiwindi	2	2	1.00	11	29	2.64	450.0	1,350.0
Stanthorpe	—	—	—	1	3	3.00	..	..
Toowoomba	40	186	4.65	48	132	2.75	20.0	–29.0
Warwick	1	2	2.00	2	3	1.50	100.0	50.0
South West								
Charleville	—	—	—	7	16	2.29	..	..
Cunnamulla	5	11	2.20	3	9	3.00	–40.0	–18.2
Roma	—	—	—	4	10	2.50	..	..
Fitzroy								
Gladstone	1	1	1.00	16	34	2.13	1,500.0	3,300.0
Rockhampton Supreme	—	—	—	1	1	1.00	..	..
Rockhampton	36	203	5.64	3	5	1.67	–91.7	–97.5
Mackay								
Mackay Supreme	—	—	—	1	1	1.00	..	..
Mackay	4	15	3.75	19	101	5.32	375.0	573.3
Northern								
Bowen	2	2	1.00	3	3	1.00	50.0	50.0
Charters Towers	—	—	—	1	2	2.00	..	..
Townsville	23	131	5.70	29	157	5.41	26.1	19.8
Far North								
Cairns Supreme	—	—	—	1	1	1.00	..	..
Cairns	21	78	3.71	60	215	3.58	185.7	175.6
Innisfail	3	6	2.00	—	—	—	–100.0	–100.0
North West								
Mount Isa	4	7	1.75	6	14	2.33	50.0	100.0
Total	**533**	**2,388**	**4.48**	**848**	**3,488**	**4.11**	**59.1**	**46.1**

(a) District Courts unless otherwise indicated. Courts not shown did not try or sentence any juveniles in the relevant years.

Table 17 **District and Supreme Courts: Juvenile offenders, by most serious penalty, by sex, Queensland, 1994–95 and 1995–96**

Penalty[a]	1994–95			1995–96			Percentage increase		
	Male	Female	Total[b]	Male	Female	Total[b]	Male	Female	Total[b]
Detention	104	1	105	148	10	158	42.3	900.0	50.5
Immediate release	19	—	19	23	13	24	21.1	. .	26.3
Community service	99	11	111	190	31	214	91.9	181.8	92.8
Probation	137	12	152	214	20	254	56.2	66.7	67.1
Fine	3	—	3	2	1	2	–33.3	. .	–33.3
Compensation	—	—	—	2	2	4	. .	. .	. .
Good behaviour order	11	3	14	23	8	32	109.1	166.7	128.6
Disqualification of licence	—	—	—	—	—	—	. .	. .	. .
Other penalty	2	—	2	—	—	—	–100.0	. .	–100.0
No penalty	9	3	12	16	3	19	77.8	—	58.3
Total	**384**	**30**	**418**	**618**	**88**	**707**	**60.9**	**193.3**	**69.1**

(a) In decreasing order of seriousness.

(b) Includes offenders whose sex was not recorded.

Figure 13 **District and Supreme Courts: Juvenile offenders, by most serious penalty, Queensland, 1994–95 and 1995–96**

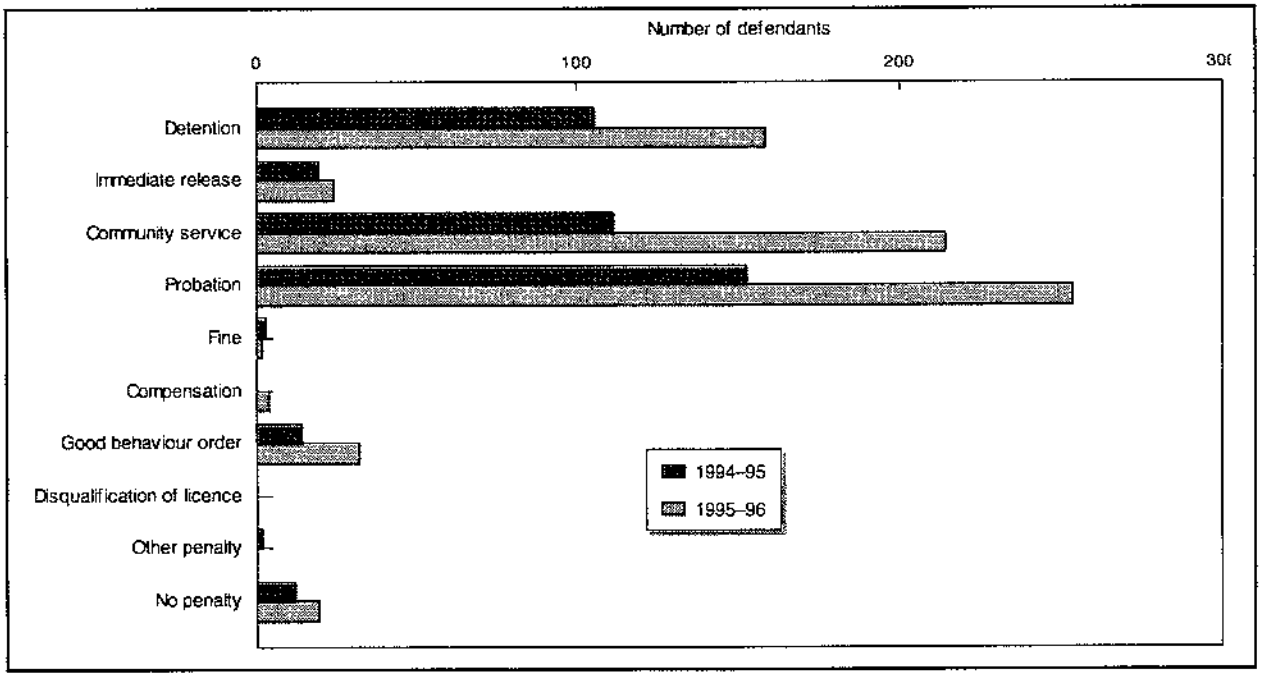


Table 18 **All Courts: Juvenile defendants, by age, by sex, Queensland, 1994–95 and 1995–96**

Age	1994–95			1995–96			Percentage increase		
	Male	Female	Total[a]	Male	Female	Total[a]	Male	Female	Total[a]
10	9	—	9	17	2	19	88.9	. .	111.1
11	41	1	43	63	1	64	53.7	—	48.8
12	116	8	124	130	16	146	12.1	100.0	17.7
13	272	48	324	327	66	394	20.2	37.5	21.6
14	635	120	759	680	138	820	7.1	15.0	8.0
15	1,211	229	1,455	1,254	268	1,531	3.6	17.0	5.2
16	1,848	311	2,178	1,947	359	2,312	5.4	15.4	6.2
17+	1,177	165	1,347	1,139	206	1,350	–3.2	24.8	0.2
Unknown	14	2	16	48	9	58	. .	. .	. .
Total	**5,323**	**884**	**6,255**	**5,605**	**1,065**	**6,694**	**5.3**	**20.5**	**7.0**

(a) Includes defendants whose sex was not recorded.

Figure 14 **All Courts: Juvenile defendants, by age, Queensland, 1994–95 and 1995–96**

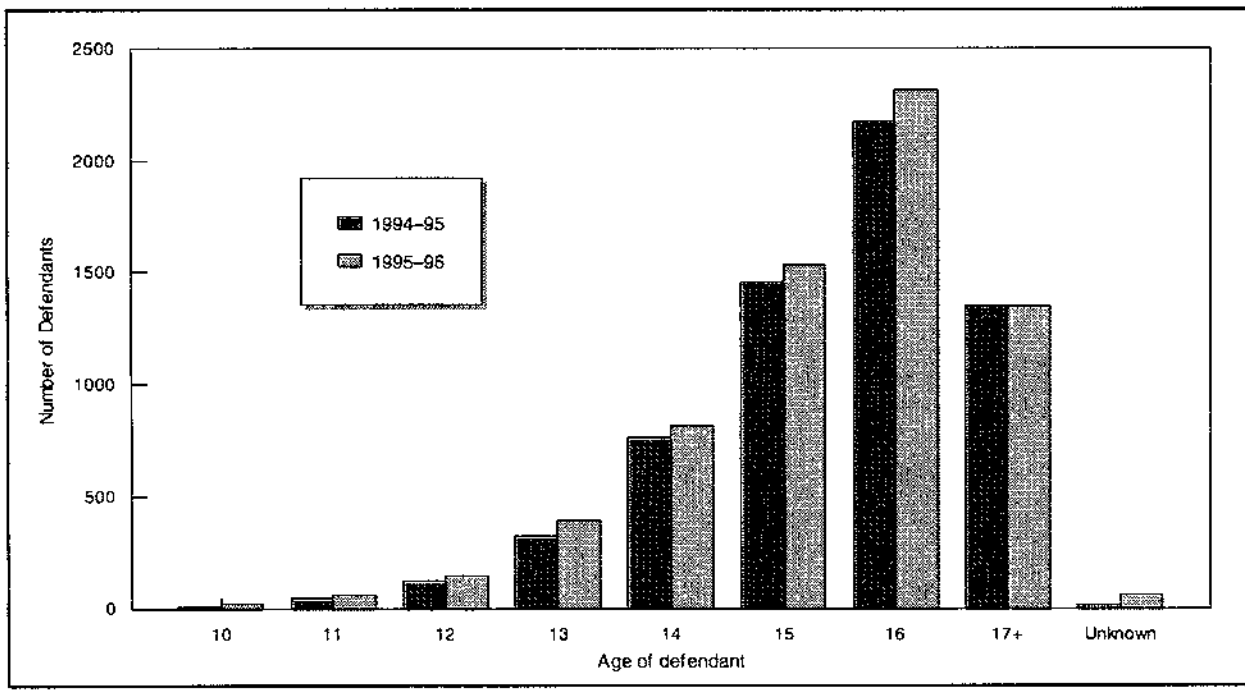


Table 19 **All Courts: Charges against juveniles, by offence type, by sex of defendant, Queensland, 1994–95 and 1995–96**

Offence type	1994–95			1995–96			Percentage increase		
	Male	Female	Total[a]	Male	Female	Total[a]	Male	Female	Total[a]
Homicide	4	—	4	2	2	4	-50.0	..	—
Murder	2	—	2	—	—	—	-100.0	..	-100.0
Attempted murder	1	—	1	1	1	2	—	..	100.0
Manslaughter (excl. driving)	—	—	—	—	—	—	..	..	..
Manslaughter (driving)	—	—	—	—	—	—	..	..	..
Dangerous driving causing death	1	—	1	1	1	2	—	..	100.0
Conspiracy to murder	—	—	—	—	—	—	..	..	..
Assaults (incl. sexual offences)	1,193	288	1,498	1,218	338	1,559	2.1	17.4	4.1
Major assault	281	91	376	350	96	447	24.6	5.5	18.9
Minor assault	739	191	942	688	231	921	-6.9	20.9	-2.2
Rape	21	—	21	17	1	18	-19.0	..	-14.3
Other sexual offences	86	2	88	110	6	116	27.9	200.0	31.8
Other violation of persons	66	4	71	53	4	57	-19.7	—	-19.7
Robbery & extortion	189	31	222	204	38	246	7.9	22.6	10.8
Robbery	189	31	222	198	38	240	4.8	22.6	8.1
Extortion	—	—	—	6	—	6	..	..	..
Fraud & misappropriation	186	25	214	314	80	396	68.8	220.0	85.0
Embezzlement	22	3	25	19	11	30	-13.6	266.7	20.0
False pretences	93	15	109	164	51	215	76.3	240.0	97.2
Fraud and forgery	71	7	80	131	18	151	84.5	157.1	88.8
Theft, breaking & entering	6,442	610	7,093	7,534	944	8,499	17.0	54.8	19.8
Unlawful use of motor vehicle	917	69	988	1,464	93	1,560	59.7	34.8	57.9
Other stealing	2,569	361	2,949	2,874	506	3,389	11.9	40.2	14.9
Receiving, unlawful possession	407	50	459	446	132	578	9.6	164.0	25.9
Burglary & housebreaking[b]	661	46	709	672	74	746	1.7	60.9	5.2
Other breaking & entering[b]	1,888	84	1,988	2,078	139	2,226	10.1	65.5	12.0
Property damage	1,095	105	1,204	1,328	137	1,470	21.3	30.5	22.1
Arson	39	1	40	60	2	63	53.8	100.0	57.5
Other property damage	1,056	104	1,164	1,268	135	1,407	20.1	29.8	20.9
Driving, traffic & related offences	1,088	80	1,175	1,126	111	1,243	3.5	38.8	5.8
Drink driving etc.	124	16	141	123	23	147	-0.8	43.8	4.3
Dangerous/negligent driving	88	1	89	103	5	108	17.0	400.0	21.3
Licence offences	357	30	390	412	47	459	15.4	56.7	17.7
State Transport, Main Rds Act	64	1	65	89	3	92	39.1	200.0	41.5
Other driving offences	—	—	—	22	1	23	..	..	..
Other traffic offences	455	32	490	377	32	414	-17.1	—	-15.5
Other offences	2,228	416	2,666	2,453	538	2,996	10.1	29.3	12.4
Possession or use of drugs	309	41	352	322	36	359	4.2	-12.2	2.0
Dealing & trafficking in drugs	28	—	28	41	24	67	46.4	..	139.3
Manufacturing & growing drugs	34	4	38	60	5	65	76.5	25.0	71.1
Other drug offences	226	40	269	284	41	326	25.7	2.5	21.2
Drunkenness	139	25	164	157	34	191	12.9	36.0	16.5
Offensive behaviour	487	174	666	448	169	618	-8.0	-2.9	-7.2
Trespassing & vagrancy	121	18	141	101	19	120	-16.5	5.6	-14.9
Weapons offences	59	2	64	94	1	95	59.3	-50.0	48.4
Environmental offences	5	1	6	8	—	8	60.0	-100.0	33.3
Liquor offences	23	7	30	48	23	71	108.7	228.6	136.7
Enforcement of orders	667	83	756	682	130	812	2.2	56.6	7.4
Other	130	21	152	208	56	264	60.0	166.7	73.7
Total	12,425	1,555	14,076	14,179	2,188	16,413	14.1	40.7	16.6

(a) Includes defendants whose sex was not recorded.

(b) See the note in 'Data issues' at the beginning of the statistics section.

Figure 15 **All Courts: Charges against juveniles, by offence type, Queensland, 1994–95 and 1995–96**

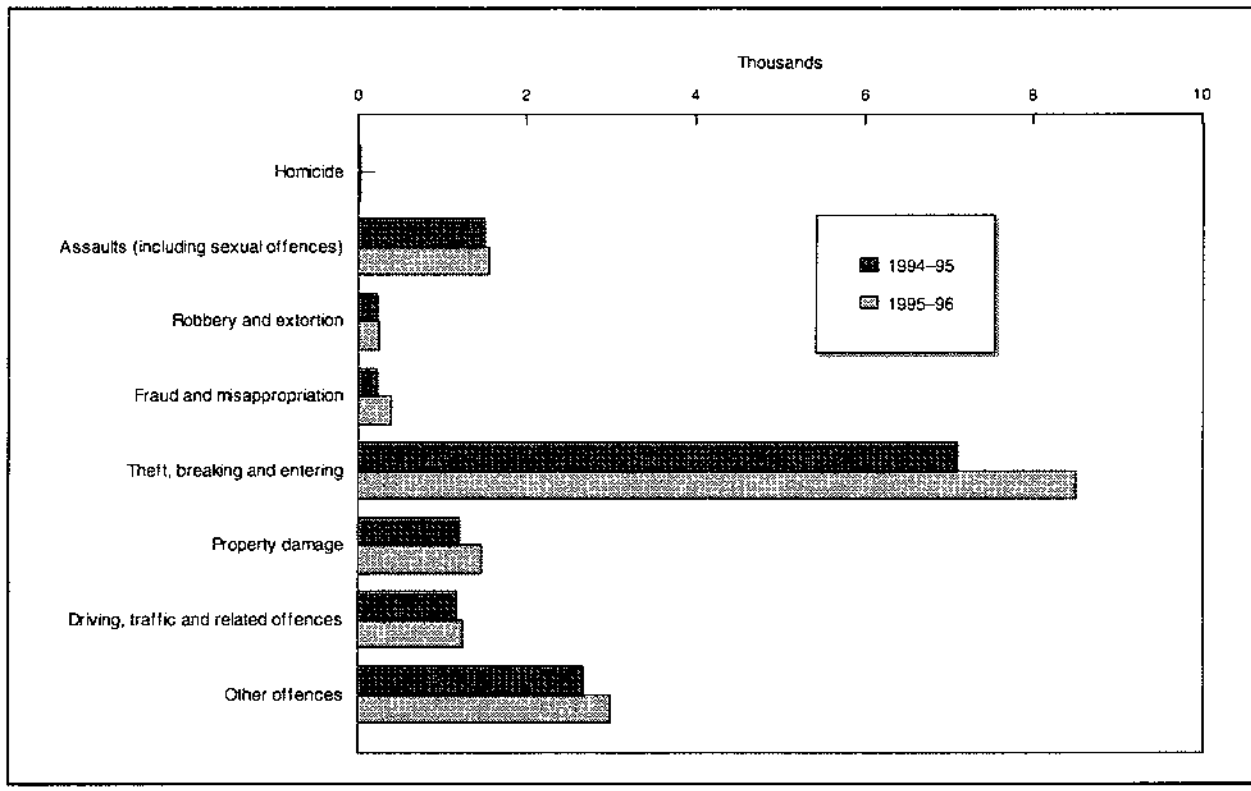


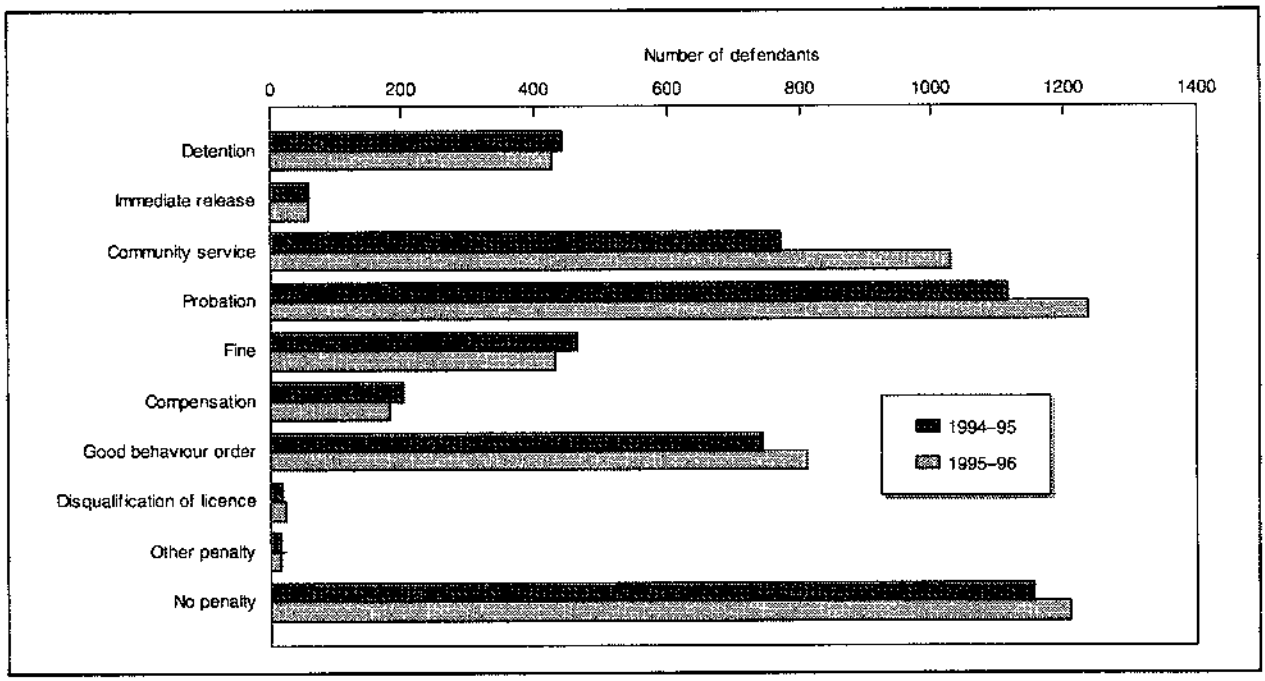
Table 20 **All Courts: Juvenile offenders, by most serious penalty, by sex, Queensland, 1994–95 and 1995–96**

Penalty[a]	1994–95			1995–96			Percentage increase		
	Male	Female	Total[b]	Male	Female	Total[b]	Male	Female	Total[b]
Detention	415	20	441	391	35	427	–5.8	75.0	–3.2
Immediate release	54	3	57	52	17	57	–3.7	466.7	—
Community service	682	82	771	920	111	1,029	34.9	35.4	33.5
Probation	959	142	1,114	1,027	188	1,236	7.1	32.4	11.0
Fine	413	48	464	392	38	433	–5.1	–20.8	–6.7
Compensation	171	28	202	141	39	182	–17.5	39.3	–9.9
Good behaviour order	617	123	743	644	164	810	4.4	33.3	9.0
Disqualification of licence	16	3	19	20	4	24	25.0	33.3	26.3
Other penalty	14	1	15	14	3	17	—	200.0	13.3
No penalty	900	246	1,155	933	272	1,210	3.7	10.6	4.8
Total	**4,241**	**696**	**4,981**	**4,534**	**871**	**5,425**	**6.9**	**25.1**	**8.9**

(a) In decreasing order of seriousness.

(b) Includes offenders whose sex was not recorded.

Figure 16 **All Courts: Juvenile offenders, by most serious penalty, Queensland, 1994–95 and 1995–96**



8. THE MORAL DIMENSION III

I can do no better than preface this section of the report by reiterating what I have stated in the two previous reports.

In the first and second annual reports I devoted a significant section to 'The Moral Dimension', because it seemed to me then, as it seems to me now, that any discussion on the cause and effect of juvenile crime would be fundamentally flawed if it failed to address the moral issues involved. The response to this aspect of the reports has been overwhelmingly favourable. There is at last, I think, a widespread recognition in the community that children from an early age should be taught the virtues and what it is to be moral, and that the best teachers are the parents themselves.

Unfortunately, family breakdown has undermined the traditional school for the teaching of morality, namely the home and the family. During the last three years of the operation of the Court it has been shown that in no less than seven cases out of ten family breakdown has been the major contributing cause of the child's criminal conduct.

By far the best antidote against juvenile delinquency is a strong, secure and unified home where parents exert good influences on their children.

I strongly subscribe to the view that in addition to its judicial role the Childrens Court of Queensland has an important educative role to play. The educative role has for too long been neglected. Understandably, a high level of public interest has been shown in juvenile crime and in the attempts by governments and the courts to curb it and bring it under reasonable control, if not eliminate it altogether. The reason for this public interest is not hard to discover. It is generally recognised that prevalent juvenile crime is symptomatic of a decadent society, a society cracking at its foundations.

During the year I have received quite a number of invitations to address educational, church and other civically minded organisations on juvenile crime and the moral issues implicit in it. Regrettably, I have not been able to respond to all invitations.

Listed hereunder are the addresses I have given for the period September 1995 to October 1996:

1. IN TROUBLOUS TIMES
   Juvenile Crime: cause and effect.
   An address to the Rotary Club of Noosa, 16 November 1995.

2. RECLAIMING SOCIETY
   A community interest address to the congregation and friends of St John's Anglican Church, Hendra, 25 November 1995.

3. MORAL EDUCATION
An address to the School of Distance Education on the occasion of prizegiving, Ithaca Room, City Hall, 9 December 1995.

4. MORAL RESPONSIBILITY
An address to the John Oxley Scout Association in memory of Lord Baden-Powell, the founder of the Scouting Movement, Corinda High School, 16 February 1996.

5. MORAL LEADERSHIP: a still, small voice
An address to the Queensland Institute for Educational Administration, John Paul College, 27 April 1996

6. A TIME TO SPEAK
An address to the Queensland Alcohol and Drug Foundation's Ninth Winter School in the Sun, Travelodge, Brisbane, 3 July 1996.

7. CHILDREN, THE LAW AND SCHOOLS
An address to the Australian and New Zealand Education Law Association, Novotel Hotel, Brisbane, 3 October 1996.

8. THE MORAL ORDER
An address to the Probus Club of Brisbane, United Service Club, 17 October 1996.

9. PARENTS AND CHILDREN
An address to the Federation of P&F Associations Qld, Australian Catholic University, McAuley Campus, Mitchelton, 26 October 1996.

I publish edited versions of several of these addresses:

EXCERPTS FROM: CHILDREN, THE LAW AND SCHOOLS

Introduction

I am deeply conscious of the honour you have done me by inviting me to address this learned Society. I hope that I may in some small measure justify your choice of speaker.

An address to a great professional body has a number of functions to fulfil: it must at least make some pretence at scholarship; it must have some slight relevance to the body to which it is addressed; and it must make some attempt to provide material for contemplation and discussion.

An Overview

When I took up the position of President of the Childrens Court of Queensland I really did not know what I was letting myself in for. Three years in the job have opened my eyes to the real condition of our society: it is not in good shape. I have, as it were, suffered a conversion–like Paul

on the road to Damascus. I have, quite undesignedly, become something of a moral philosopher, or worse, a moral crusader.

The Story of the Prophet Elijah

You will all recall the biblical hero Elijah. Under the reign of Ahab and Jezebel, Baal worship had become the official cult. God's prophets were killed or in hiding. Elijah nevertheless did not lack the courage to risk a direct confrontation with King Ahab which resulted in a great public challenge. He faced 400 of Baal's representatives. Elijah set about settling the issue of religious truth once and for all. He posed the critical question, 'How long halt ye between two opinions?'–the worship of God or the worship of Baal.

Truth was about to be decided by a test. If it lay with Baal, fire would consume an offering prepared by his priests. If it lay with God, fire would descend on Elijah's offering. Elijah won the confrontation. The priests of Baal were routed.

But the story does not end there. Jezebel sends a message to Elijah: a warrant is out for his death. Elijah escapes to Mount Horab and takes refuge in a cave. The rest of the story is best told by reference to biblical text (1 Kings 19:9–12):

> 'And, behold, the word of the Lord came to him, and said unto him, ... Go forth, and stand upon the mount before the Lord. And, behold, the Lord passed by, and a great and strong wind rent the mountains, and broke in pieces the rocks before the Lord; but the Lord was not in the wind. And after the wind an earthquake; but the Lord was not in the earthquake.
>
> And after the earthquake, a fire; but the Lord was not in the fire. And after a fire–a still, small voice.'

It is then that God speaks to Elijah and instructs him as to the future course of events, including the appointment of Elisha as his successor.

What is the moral to be drawn from the story of Elijah? I believe it is this. Elijah is shown that God is not disclosed in dramatic confrontation: not in the whirlwind or the earthquake or the fire; but in the still, small voice.

And so it is in the world in which we live. Moral leadership is not to be found in the trappings of secular authority; not in military might; nor the strident vociferations of political dictators: but in the still, small voice.

Moral leadership calls for a special kind of virtue, the way of the still, small voice.

One is prompted to ask, 'By whom may the still, small voice be heard?' The answer is simple: 'By all who turn their ears to it'.

I am standing here today speaking to the leaders of the honourable profession of teaching. Very few professional people are better placed to respond to the still, small voice in the exercise of their vocation than teachers. Indeed, Dr James Darling, a distinguished former headmaster of Geelong Grammar School and a noted educationalist, has described teaching as a 'holy calling'. He said: 'There is no job that does not involve a certain amount of repetitive work; but teaching, if you happen to be enthusiastic about it, is much less repetitive than most jobs because, even if the subject remains the same, the pupils change, and it is them you are teaching, not the subject. But it is, more than most jobs, a holy calling, and a man should not take it up unless he is prepared to take responsibility before God to those committed to his charge—and that is a sobering thought.'

Dr Darling expressed these sentiments at a time when teaching was a respected profession, when the headmaster and headmistress, the schoolmaster and schoolmistress enjoyed status and respect in the eyes not only of their pupils and parents but also in the eyes of the general community. Alas, times have changed.

The morale of today's school teachers is not high. Neither is their pay. The status and respect afforded them by society has been severely eroded, and until those negative trends are reversed teachers' formative influence on the children they teach will not be as powerful as it once was.

The reasons for this loss of respect for the teacher's authority is not easy to discover. However, may I respectfully suggest that the teaching profession should look inwardly at itself to see if it can reclaim the respect it so rightly deserves. Respect, after all, is not a purchasable commodity. It cannot be traded in the market place. It cannot be commanded. It has to be earned. Authority in any form—whether it be judicial or teaching authority—is not the mailed fist any more than it is the language of sweet reasonableness. It is compounded of intangibles such as trust and confidence, impartiality and integrity, and, of course, a sound knowledge of the discipline of judging or teaching, as the case may be.

Lord Elton, who chaired the English Discipline in Schools inquiry, in the recent historic House of Lords debate on 'Society's Moral and Spiritual Well-being' (5 July 1996) made this significant statement on the role of teachers:

> 'In addition to equipping children for adult life and adult earning, teachers are collectively the trustees of the nation's entire stock of useable knowledge. But school teachers in particular are also entrusted with one of the most precious tasks performed in any society. It is not just the lessons they teach; it is the people they are that matters. What they do and what they do not do will have a

> profound influence on the lives of every one of their pupils in whatever kind of schools they teach and however big or small the classes.'

He went on to say:

> 'Teaching is an exacting profession ... It is not just a question of believing what one teaches; it is a question of living it. To do that requires more than training; it requires dedication. Some of the most valuable things teachers can impart to their pupils are transmitted unconsciously, simply because of the sort of people they are.'

In the same debate Viscount Tonypandy, you will be pleased to know, put in a good word for teachers:

> 'This country will never be able to measure its debt to dedicated teachers. If society has gone wrong, do not put the blame on the schools. If society has lost its way, it is because it has lost its faith. How society lost its faith is another question. Undoubtedly, our faith decides our conduct and our faith decides our moral standards.'

We need more and better leadership at all levels of society. We need more persons of experience and authority to act boldly and sincerely without deference to the imputed susceptibilities of egalitarian opinion. We need men and women who are ready to act heroically if occasion thrusts the role upon them.

But is all this lofty sentiment devoid of practical meaning? Is it pie in the sky? Is it too far removed from the real world to attract merit?

You may judge that it is, but I beg to differ.

There is a belief commonly held, I think, that it is only those in positions of authority with power over others, whether political, religious or professional, who can exert moral leadership.

Not so. There is still, I believe, a residual wisdom in our community which needs to be harnessed: it is reposed in the so-called silent majority–in you and in me. For therein lies the still, small voice of moral leadership. It is time that its voice was heard above the madding crowd.

More and Martyrdom

It is in hard times that moral principle is best discovered.

Sir Thomas More, Chancellor of England under Henry VIII, was brought to trial and executed because he would not accept the King's new claim to leadership of the church. He was, he said, the 'King's servant, but God's first'. His trial records a question put by him to an informer Robert Rich: 'I will put you this case: suppose the Parliament should make a law that God should not be God, would you then, Master Rich, say that God were

not God?' It is the bleak question that has echoed down to our day, but only so few of us are ever called upon to face the trial of giving an answer. Those who were would have found consolation in More's own words: 'We may not look at our pleasure to go to heaven in feather beds, it is not the way. For our Lord went thither with great pain and by many tribulations, which is the path wherein He walked thither, and the servant may not look to be in better case than his master.'

You may wonder for what purpose I am taking up your time today by recounting this fragment of history.

I am trying to say something about the ultimate purpose by which the law is to be directed. What lesson do we learn from the martyrdom of More?

I believe it is this. The ends of the law are not to be learnt from legal texts alone. There are other sources. And there is no source more compelling than the judgment of those who in their own lives have confounded man's law by a higher test. I hope you will not mistake my meaning or think that I depreciate one of the great humane studies if I say that we cannot learn the law by learning law. To make claim to be more than a technique, the law must comprehend history and sociology and, above all, the ethics and philosophy of life.

And I would make so bold as to suggest that the same can be said of teaching. Divorced of the moral dimension, teaching can make no higher claim for itself than being a mere technique to be learnt and taught. Teaching, properly understood, comprehends more than equipping a child to obtain a job and earn a living: it must essentially teach the child decent conduct and how to take his or her place as a moral, responsible citizen of the world.

You will recall it was Edmund Burke who so prophetically stated two centuries ago, 'Manners are more important than laws. Upon them, in great measure, the laws depend.'

No civilisation can survive unless it is permeated by a unifying philosophy: call it religion, if you like. Western civilisation was built on the Judeo-Christian ethos. Other civilisations were built on a different ethos. But all have one thing in common: a unifying philosophy.

The Aims of Education

Mindful of the wealth of educational savvy assembled here today, it is not without some diffidence and a sense of trepidation that I venture a desultory thought or two of my own on the aims of education.

It has been said that the aim of education is to create the civilised man or woman. Its objective is the development of the whole person, sensitive all round the circumference.

'The civilised man, sensitive, wide in his interests, tolerant and yet courageous, intellectual and strong in principle, is our ideal, and it is by our education that we must pursue it?' They are the words of James Darling of Geelong Grammar School.

It is not hard in practice to distinguish between the civilised man and the barbarian. The one writes books: the other burns them. The one creates: the other destroys. The one loves his fellow man: the other kills and tortures him. The civilised man makes law: the barbarian breaks it. The civilised man enjoys the world of nature: the barbarian exploits it, or burns it, or befouls it. The civilised man savours his wine: the barbarian gets drunk.

It is our purpose to produce by education civilised men and women, but we are not notably achieving our objective. And the reason is that there is too strong a concentration on commercial values and high academic achievement at the expense of a rounded education spiked with a strong moral essence.

We delude ourselves if we consider that the only education we all need at every age is simply about acquiring techniques and information. It is also, and most importantly, about learning wisdom and the values that our lives express.

Influence of School

The school is second only to parents in influencing a child's character and personality and in preparing him for useful and gainful employment in adulthood. A child's early formative years are most times determinative of what sort of adolescent he will become. There must be relevance between what a child is taught and how he lives, and his character and personality development.

While there is a general expectation that parents should be imparting moral education to their children, it is becoming increasingly clear that schools have been called upon to reinforce teaching from home or to act as a surrogate for parents who have abrogated their responsibilities.

There are, however, hopeful indications that the old-fashioned concept of moral education both at home and in the school might be on the verge of a much needed resurgence.

The School and Crime Prevention

The role of the school has become more and more critical with the progressive fragmentation of society as seen in the decline in respect for authority, the rejection of moral standards, the break-up of families, unemployment, selfish materialism and the emphasis on violence for entertainment in the media.

Education during most of a person's formative years has increasingly become the responsibility of the school.

Although undoubtedly the primary responsibility for the moral education of children rests with parents, regrettably there has been of late a fairly widespread abdication of that responsibility. Significantly, the English Elton Report on Discipline in Schools stated that schools have an important part to play in preparing pupils for the responsibilities of parenthood. The Report recommended that education for parenthood should be fully covered in school personal and social education programs and that the government should develop a post-school education strategy aimed at promoting socially responsible parenthood.

For almost a dozen years during the formative years of their development children spend as much of their time at school as at home. It has been estimated that from age 5 to age 17 a child spends some 15,000 hours at school. It is, therefore, reasonable to suppose that the school and the teachers will have a profound impact on the intellectual and moral development of the children in their care.

Because of this extensive and protracted contact with children, schools are seen to be strategically placed for early identification of, and intervention in, juvenile delinquency. Most of the predictors of delinquency or criminality are evident in the school context: truancy, impertinence, gross indiscipline, aggression, poor academic performance, and so on. Theoretically therefore our schools are one of our best weapons in the fight against juvenile delinquency, and there is, rightly or wrongly, an expectation placed on schools to contribute to crime prevention. I can, however, well understand some teachers regarding their involvement in crime prevention as an unwarranted imposition on their already onerous duties. Nevertheless, with proper training, adequate resources and effective communication between school and home and school and government agencies I believe that teachers can make a significant contribution to crime prevention. If I may say so, this important aspect of crime prevention needs to be looked at at government level with a sense of urgency. In my capacity as President of the Childrens Court of Queensland I will in the near future be making proposals to the government about school participation in crime prevention.

Home and School Discipline

Closely related, in the public perception, to family breakdown and child neglect, is the decline in home and school discipline. The questions of child neglect and the decline in school and home discipline loom large in any discussion on the possible causes of juvenile delinquency.

The common law always recognised the right of a parent or a teacher to inflict reasonable punishment on a child. In 1860 the Lord Chief Justice of England, Lord Cockburn, expounded the law thus:

> 'By the law of England, a parent or schoolmaster (who for this purpose represents the parent, and has parental authority delegated to him) may, for the purpose of correcting what is evil in the child, inflict moderate and reasonable corporal punishment–always, however, with this condition: that it is moderate and reasonable.'

Section 280 of the Queensland Criminal Code embodies the common law. It provides:

> 'It is lawful for a parent or a person in the place of a parent or for a schoolmaster or master to use, by way of correction, towards a child, pupil or apprentice under his care, such force as is reasonable under the circumstances.'

It is of interest to note that clause 43 of the Criminal Law Amendment Bill 1996 presently before the Parliament amends s.280 by inserting after the word 'correction' the words 'discipline, management or control' and omits the reference to an apprentice.

Today's educational authorities seem to be limiting the use of corporal punishment in schools. Those not banning it completely are imposing severe restrictions on its use. As from the end of 1994 corporal punishment was abolished in Queensland schools. I am not advocating corporal punishment as such as a means of discipline. However, there must be some disciplinary process whereby schoolchildren, especially boys, who are guilty of insolence, wilful and persistent disobedience and gross misconduct can effectively be dealt with.

The prevailing official view seems to be that suspension or expulsion should replace corporal punishment in incorrigible cases. Although there are no ideal solutions to the growing problem of lack of discipline in the classroom, there is a respectable body of opinion which holds that suspension or expulsion is often not the appropriate response to grossly undisciplined and disruptive students. Experience shows that suspended, expelled or truanting children invariably turn to crime out of boredom, rejection or resentment, or because of genetic predisposition or environmental influences.

It is my belief that in the homes and schools of today the authoritarian figure of the parent and the schoolmaster has all but disappeared. In the school context, the possible consequences of this shift of attitude is that teachers may become more vulnerable to false, malicious or vexatious complaints of assault, with or without sexual connotations, by disaffected or mischievous pupils–or worse, perverse pupils.

I myself do not want to get embroiled in the debate over whether, in general, corporal punishment is a good or a bad thing. I would simply say the greatest advantage of punishment–if there is to be any–is that it should follow quickly on the offence. It is obvious that the desired impression is best brought about by a summary and immediate

punishment. As the great Francis Bacon, sometime Lord Chancellor of England, said long ago: 'Fresh justice is the sweetest'.

I say no more on this perplexing subject today except to suggest that replacing corporal punishment with expulsion or suspension may have unexpected undesirable consequences.

The uncompromisingly robust language of Ackner J in a 1972 English case is, I fear, a far cry from the present-day attitude about school discipline.

The facts of the case were as follows. A 15-year-old pupil smoked during the morning break, made rude gestures at the teacher, swore at him, kicked him in the stomach, and then ran away. The master gave him a light blow, which broke his jaw. The master was charged with grievous bodily harm, later reduced to assault occasioning bodily harm.

In this corker of a summing up to the jury Ackner J said:

> 'Have we really reached the stage in this country when an insolent and bolshie pupil has to be treated with all the courtesies of visiting royalty? You may think we live in strange times. Whatever may be the view of our advanced, way-out theoreticians, the law does not require a teacher to have the patience of a saint. You may think that is a good thing. You may think that a superabundance of tolerance fails to produce a degree of self discipline in any pupil. Nothing has happened to the boy concerned, although he could be brought before a Juvenile Court and receive a wide range of penalties. Yet a schoolmaster, a man of exemplary character and an able, efficient and conscientious teacher has been brought before the court. This is why I say we live in strange times. The issue is not whether nowadays we suffer from an excess of sentimentality or sloppy thinking with regard to criminal responsibility of the young. It is whether the prosecution has proved the master guilty.'

Needless to say, the schoolmaster was acquitted.

Morals Matter

We live in turbulent times. We live in a time of frustrated expectations, of protest against almost everything. Mindless violence is rampant. In recent times there has been a strong and insistent challenge to the authority of law. As Sir Zelman Cowen said in 'Individual Liberty':

> 'Whereas at an earlier time those who asserted the right to disobey at the same time accepted the penalty, seeing in both disobedience and acceptance of punishment a public demonstration of the case for re-examining the law, there is a contemporary doctrine which asserts the right to disobey free of any penalty. The binding force of the law in such cases is altogether repudiated: people lay claim to a right to act free of penalty and authoritative constraint.'

In his contribution to the House of Lords debate on 'Society's Moral and Spiritual Well-being', to which I made earlier reference, Lord Jakobovits had this to say:

> 'We live in an age of rebellion against all authority. We are told all too often, particularly as professionals, to be non-judgmental, as though morality can be neutral. In relation to children's education we encounter much opposition to what is called "indoctrination". We are told, "Let children grow up to decide for themselves on the moral choices before them. Let them discover on their own what is right and what is wrong". That is pernicious advice. Imagine if we were to adopt a similar attitude to, say, teaching science. Can we really leave it to our children to discover for themselves the laws of nature as revealed by Archimedes, Newton or Einstein?
>
> We are urged, *Leave it to everyone's conscience,* but there are as many consciences as there are people. Biblical morality condemns that attitude as, *everyone doing what is right in his own eyes.*
>
> It spells moral anarchy.'

Despite the admonishment from certain quarters that on matters of morals we must be careful not to be judgmental, if we believe that morals matter then we should have the courage to make judgments, to commend some ways of life and point to the shortcomings of others, however much this offends against the cannons of our own non-judgmental culture.

Hope, not Despair

We should not become obsessed with dwelling on the down side of things. There is an up side. As *The Times* columnist Bernard Levin stated in 'If You Want My Opinion': 'However horrible the world gets, it still retains its lodes of beauty and happiness and art and love and unselfishness and honesty and goodness. It is true that those things make no noise and do not strut about to be seen, unlike the rest, but they do provide peace and solace in a troubled world.'

We must not despair. We must proceed with patience and perseverance, with pertinacity of purpose, and above all with hope and vision. There should be a principled rejection of despair. The long lesson of history has been that beyond every warning of catastrophe there is a distant horizon of hope. In those who undertake to guide us through the wilderness, pessimism is an abdication of responsibility, and we must reject it.

Conclusion

We live in troublous times. The expression is taken from Daniel 9:25: 'The street shall be built again, and the wall, even in troublous times.' We can yet rebuild our fractured society. Time is running out, but it is not too late

if we each in our own way play a part in the restoration of proper standards of morality. We owe it to ourselves, to our children and to future generations to rebuild the broken street and the broken wall, a fitting Biblical metaphor for our fractured society.

The theme running through this address is that hope will triumph over despair. The spirit in man is unquenchable. In mankind's journey through history the human spirit has conquered worse crises than confront us today.

We must have faith in the future.

In God's mercy, goodness shall prevail. Like Christian in John Bunyan's memorable masterpiece, *The Pilgrim's Progress*, when asked by Evangelist 'Do you see yonder shining light?', I believe I can answer, 'I think I can'.

EXCERPTS FROM: MORAL LEADERSHIP: A STILL, SMALL VOICE

Media Abuse

Child abuse comes in four guises: sexual abuse, physical abuse, abuse by neglect and media abuse.

Time does not permit my dealing with each form of abuse in turn. I wish today to concentrate on what I have labelled, for want of a better term, media abuse.

The media has a profound effect on our society. Children are in a stage of emotional and intellectual development that makes them very susceptible to its influence. This vulnerability can be put to good advantage, however, if the public media uses its influence to develop positive role models for emulation.

Despite the negative effects which the media can have on children in unrestrainedly portraying acts of gratuitous violence, horror, lust and degradation, the same media can be a positive and powerful tool in preventing child delinquency. Television, radio and the print media which portray positive messages can be an effective education tool.

The Elton Report on Discipline in Schools expressed strong concerns about the effect that violent television programs may be having on children's attitudes and behaviour and recommended that it be carefully regulated.

You would have heard of the recent death at 92 of Greer Garson, the highly acclaimed film actress of *Mrs Miniver* fame.

According to a report in the *Courier-Mail* on 8 April 1996, in a 1990 Associated Press interview Miss Garson said she deplored the violence in many modern movies.

'I think the mirror should be tilted slightly upward when it's reflecting life, toward the cheerful, the tender, the compassionate, the brave, the funny, the encouraging, all those things, and not tilted down to the gutter part of the time, into the troubled vistas of conflict,' she said.

The Greer Garsons of this world along with our political, religious and professional leaders should exert whatever influence they have by virtue of their positions to warn against and, if possible, prevent the cynical exploitation of violence, horror, lust and degradation.

EXCERPTS FROM:

A TIME TO SPEAK

Ecclesiastes 3:7 informs us that there is 'a time to keep silence, and a time to speak'.

I have chosen as the title of this address 'A Time to Speak'. Why?

The harmful effects drugs are having on our civilisation have reached a point where to remain silent is an abdication of responsibility. I can think of no more important subject on which to speak than the Conference theme—Drugs: Policies, Programs and People.

Mindful of the wealth of professional savvy from around the country and overseas assembled at the Alcohol and Drug Foundation's Ninth Winter School in the Sun, it was with some diffidence and a sense of trepidation that I accepted the Organising Committee's invitation to be your after-dinner speaker. I am honoured by your invitation. I hope that in some small measure I can contribute to the all-important drug debate.

I congratulate the Foundation on its prodigious hammer-strokes of effort in its fight against drugs and in the rehabilitation of those who have fallen victim to its allurements.

The apparent prevalence of drugs and the impact it is having on society have exercised the mind of the parliament, the church, the courts and health and education authorities around the world. There seems to be a general recognition that hard drugs, such as heroin, should be subject to legal proscription. Opinions differ, however, on the question of personal marijuana use.

Governments the world over have commissioned inquiries into the desirability of decriminalising possession of marijuana for personal use. Some have reported for and some against decriminalisation. In our own country there have been a number of such reports. The most recent is the report of the Victorian Drug Advisory Council, better known as the Penington report. Inter alia, the report recommended that possession of up to 25 grams or the growing of 5 plants of marijuana for personal use should no longer attract penal sanctions. This recommendation is based substantially on the South Australian model. There is, however, an

important difference. The Penington recommendation makes the possession and growing of prescribed quantities of marijuana lawful. The South Australia model, on the other hand, substitutes civil out-of-court fines for the criminal process.

Arguments pro and contra the legalisation of the possession of prescribed quantities of marijuana for personal use are well publicised and I shall not take up your time by reiterating what you already know. Suffice to say that a reasonable rejoinder to the Penington report (summarised in Professor Penington's address to the Victorian Parliament on 31 May 1996) is to be found in the Newsletter of the Australian Family Association (Vol. 12, No. 3, May-June 1996).

One hears conflicting reports as to how the South Australian and the Netherlands' experiments are faring. B.A. Santamaria, for example, in an article in the *Weekend Australian* (June 8–9, 1996) commented: 'The Netherlands, which, in fact if not in principle, follows the "open slather" policy, is regarded as a cesspool. Its neighbours in the European union have indicated that if it does not tighten its rules, they will close their frontiers.' For myself, I am sceptical of the claims made by the protagonists of these experiments. Although it is generally believed to be widespread, in the nature of things the incidence of drug usage defies reliable statistical survey or analysis.

As to the Penington report recommendation, I would make these observations, for what they are worth:

First, the use of the drug will be lawful, yet it will be criminal to supply it. There is a patent contradiction in making lawful its use whilst imposing heavy penalties on suppliers of it.

Secondly, by making lawful a hitherto proscribed drug the impression will inevitably be created that as its use in prescribed quantities is not unlawful there can be no harm in dabbling in it. The likelihood is that many young people will become accustomed to the drug with the real risk that they will graduate to heavy drugs.

Thirdly, once the bans on the use of marijuana are lifted, so that it becomes socially acceptable, it will be virtually impossible to reverse the process.

Lastly, policing of the 'lawful' use of marijuana, if assiduously carried out, would in all probability impose a greater strain on law enforcement than under the existing regime.

In short, I harbour serious reservations about the efficacy of the 'grow your own' or 'home grower's' proposal. With respect to those of the opposite persuasion, I think it is doomed to failure. If it is thought to be socially expedient to make lawful the use of marijuana, the only way it can

sensibly be done, in my opinion, is to go the whole hog and permit the manufacture of marijuana cigarettes of prescribed strength under strict government control; but even the Penington report backed away from so radical a step. One only has to pause to reflect how fraught with danger the lawful marketing of marijuana would be.

At this juncture I should confess that my credentials to speak of this subject are severely circumscribed. I have no training in medicine, education, psychology, religion or social work. My opinion on the matter is based primarily on my work and experience as a practising barrister (21 years) and then as a Judge (also 21 years).

I have been head of the Childrens Court of Queensland since its inception almost three years ago. During that time I have dealt with about 1,000 serious juvenile offenders. In my considered opinion, in about 7 out of 10 cases the offending can be directly related to drug abuse. It should be here noted that Childrens Court Magistrates deal with about 90 per cent of all juvenile offences.

In the Second Annual Report to Parliament on the Court's operations, under the rubric 'A Drug-Addicted Generation', I made the following observations:

> 'Of increasing concern is the clear correlation between serious youthful offending and drug addiction. It is no longer uncommon in cases of serious repeat offenders to be told that they are addicted to heavy drugs (e.g. heroin) and that the crimes they have committed are drug-driven. It is no exaggeration to say, based on my own experience over two years, that most of the worst cases involve children from 14 to 16 years whose compulsive urge for drugs impels them to crime. It is no secret that hard drugs are expensive. One hears from time to time of children spending hundreds of dollars a week to satisfy their drug habit. The money to purchase drugs is derived from criminal enterprise–generally house-breaking, shop-breaking and car stealing.
>
> There are sufficient children today in the drug-addicted category with criminal tendencies who, unless they are adequately treated, will form the hard core of professional criminals of tomorrow. It should be borne in mind that adult professional criminals persistently causing the greatest damage to society started their careers as juveniles. If their criminal tendencies could have been curbed or controlled through a judicious management of the juvenile justice system, society would have benefited beyond measure and would have been spared untold anguish and expense.
>
> It has to be faced that the insidious infiltration of drugs into our society is affecting the health and well-being of our young. It is a

> pernicious evil. There is now an urgent and desperate need to provide adequate resources in both physical facilities and trained personnel to help the casualties of the destructive forces at work in society. I hope something will be done about it soon.'

On the whole, I am surprised at the impoverishment of our thinking (not excluding my own) on the vexed drug issue and other critical issues which confront the present and future generations.

We have entered an age of discussion, a critical period, as Mill defined it, in which 'loud disputes are accompanied by equally weak convictions'. We must take stock of ourselves before it is too late and we have joined 'the march of this retreating world into the vain citadels that are not walled'. I would not be taking up your time in this address, which you have been good enough to invite me to deliver, if I were not disturbed by the consciousness of the thinness of the walls of the citadel into which we have withdrawn.

Our present malaise bespeaks a faintness, a low temperature of the spirit, accompanied by an inertia in discovering and trying to solve its root causes. I am of the view that the present social disorder can be held satisfactorily in check by a re-assertion of restraining social forces–religion, custom and tradition, and a clear articulation of a philosophy of who we are, what we stand for and where we are going.

In his remarkable book *Faith in the Future* Dr Jonathan Sacks asserts: 'There is such a thing as the ecology of hope. Hope is born and has its being in the context of family, community and religious faith. These values never die though occasionally–as now–they suffer an eclipse.'

We should not run up the white flag: a symbol of defeat and despair. Rather, we should hoist the flag of 'No Surrender': a symbol of resoluteness and hope.

'If thou faint in the day of adversity, thy strength is small' (Proverbs 24:10).

I do not counsel despair. I counsel hope. I do not subscribe to the theory that the drug war is unwinnable: that nothing can be done about it. Something can be done about it. But what and how?

You will, I hope, pardon me if I return to the theme I have been propounding (some would say, 'pounding'!) in my work on the 'Childrens Court: The Moral Dimension'.

In my First Annual Report on the Childrens Court of Queensland presented in Parliament in January 1995, I devoted a whole chapter to 'The Moral Dimension'. I there said:

> 'We search for answers to the present child crime problem. I have randomly collected under the rubric "The Moral Dimension" the

distilled views of some contemporary thinkers, opinion formulators and legislators.'

I then quote edited versions of what they say, and conclude:

> 'There is a remarkable conformity of view among these thinkers, opinion formulators and legislators as to the answer to the moral dilemma: the moral dilemma can only be resolved by an acceptance of the moral imperative. What is needed is a moral renaissance, a moral reawakening, a return to the good and the right way—in short, a restoration of ordinary goodness.'

EXCERPTS FROM: PARENTS AND CHILDREN

Childhood Innocence?

A striking example of crimes committed by children against other children is the tragic and horrific murder of James Bulger, a little boy aged but two. He was killed by two other boys aged only 10. This case shattered the image of the innocence of childhood.

Scores of children may die tragically in a school omnibus outing, hundreds in senseless wars—the most recent Bosnia—thousands from famine in Ethopia, but the killing of James Bulger has induced a mood of self-questioning far in excess of these other horrors. As Dr Habgood, Archbishop of York, so pertinently stated:

> 'The lessons to be drawn from this tragic case are about the influences the adult world brings to bear on its children. It is therefore a proper focus for national self-questioning ... If the adult world corrupts its imagination, the children will not be far behind ... The importance of the crime lies in what it says about the potential for evil in children of an age at which innocence was once taken for granted. That potential has been fed by the adult environment in which many children grow up. If the whole sad story can lead to a greater awareness of the extent to which the so-called "adult" world has entertained evil, played with it, lusted over it, and indulged in it, then James Bulger may not have died in vain.'

Why do these horrendous crimes involving children happen? What is the ecology of evil? The scope of this subject is too large to embark upon at length today. One may, however, venture a short answer: It is that society has failed to maintain proper standards of morality.

The Ecology of Evil

There is a natural tendency to search for some causal explanation as to why a child has fallen into the way of crime. Common explanations are family conflict, unsatisfactory social circumstances, peer pressures, boredom brought about by unemployment, and so on.

These are negative forces which can make crime happen. But recent experiences have made me think that perhaps some juvenile crime analysts and theoreticians have assumed that children are not born with evil impulses and that therefore if they turn to crime it must be that they have been driven to it by misfortune or disadvantage. No doubt there is much truth in this, but I believe it is a lopsided view. It pays little regard to the fact that children who cannot in any real sense be said to have a deprived background also seriously offend. Why? There are, I think, two predominant reasons. One is that the assumption that children have no natural malicious impulses is wrong. The other is an absence of positive forces which, if properly applied in time, could prevent criminal tendencies developing. What is absent is the persistent exercise by parents of moral control over their children. Without constant surveillance and moral control over children, there is always the possibility that they will slide into crime.

There is Biblical authority for parental discipline of children: 'The rod and reproof give wisdom, but a child left to himself bringeth his mother to shame' (Proverbs 29:15).

It is unlikely that the tide will turn unless parents regain confidence in the conviction their grandparents had: that it is the business of grown-ups to teach children to be good and to prevent them from being bad.

9. ACKNOWLEDGMENTS

I gratefully acknowledge the courtesies extended to me by the Attorney-General and Minister for Justice, the Honourable Denver Beanland. He has at all times been accessible and been willing to lend a receptive ear to my plaintive bleatings on behalf of the juvenile justice system. So too has the Director-General of the Department, Mr K. Martin. Two senior officers of the Attorney-General's Department deserve special mention: Mr Steve Coates and Ms Bronwyn Jolly. They have afforded me valuable assistance in the discharge of my duties. For that I sincerely thank them.

I also wish to thank the Minister for Families, Youth and Community Care, the Honourable K.R. Lingard, and the Director-General of the Department Mr A.C. Male, for their cordial co-operation. Requests for assistance were readily accommodated. And I must not fail to acknowledge the very capable assistance afforded to the Court by Miss Barbara Flynn and Miss Robyn Wills, the Department's court representatives. I congratulate Mr Norman Alford on his appointment as Commissioner for Children and wish him well in his responsible role. I was pleased to learn of the very recent appointment of Mr Neville Bonner, a respected Aboriginal elder and man of affairs, as Chairman of the Indigenous Advisory Council. I hope to work in cooperation with him on indigenous issues.

My thanks also go to the Commissioner of Police, Mr J.P. O'Sullivan, who once again has provided me with such information as I have requested, including the caution statistics.

I gratefully record my deep appreciation of the co-operative effort of the duly appointed Childrens Court Judges: Senior Judge Hanger (Southport), Senior Judge Trafford-Walker (formally of Townsville, recently transferred to Brisbane), Judge McMurdo (Brisbane), Judge White (Cairns), Judge Nase (Rockhampton), Judge O'Brien and Judge Wall (Townsville), and Judge Robertson (Ipswich).

I again express my admiration of the unremitting efforts of the Queensland Magistracy, who continue to bear the brunt of Childrens Court work. I note the retirement of Mr Pat Smith as Brisbane Childrens Court Magistrate and his replacement by Mr T. Pascoe. It would be remiss of me not to pay a tribute to Mr Smith for his dedicated service to the Court over many years. I congratulate Mr Pascoe on his appointment and look forward to working constructively with him.

I sincerely thank my associate Mr Malcolm Heather for his dedication and loyal assistance throughout the year.

To Mr Aladin Rahemtula, the redoubtable Supreme Court Librarian, I once more offer my unstinted praise for his invaluable research assistance, which, as I have now come to expect, is of the highest order.

Mr Mark Green and his colleagues of Youth Legal Aid have, through their genuine interest in promoting juvenile justice, made a significant contribution to the Court's work. I hope I can continue to rely on their inestimable assistance in the year ahead.

I have left till last three people whose contribution to the preparation of the report has been such that any acknowledgment I make will prove inadequate.

Mrs Elizabeth Plummer, my secretary, has plowed through three drafts of the report under severe time constraints with a diligence, fortitude and patience which evoke admiration.

I regard the Statistics section of the report as vitally important. It merits close examination. The Crime Statistics Unit, managed by Mr Walter Robb, has put in a prodigious effort to produce the statistics under my general supervision in a detailed, meaningful and intelligible form. Without his able assistance the report would have been seriously deficient. The Crime Statistics Unit has been in existence only two years. It serves a most useful purpose. I wish it success in its endeavours.

Ms Linda Skopp of the Communications Section, Department of Justice, has given her undivided expert attention to the layout and design of the report; for the final result, my grateful thanks.

Finally, I am indebted to Chief Judge Shanahan for supporting the Court in its endeavours, and especially for his support on the issue of the abolition of the 'Right of Election'.