

Making Queensland Safer Bill 2024

Submission No: 141
Submitted by: Bravehearts Foundation
Publication: Making the submission and your name public
Attachments: See attachment
Submitter Comments:

3rd December 2024

Committee Secretary
Justice, Integrity and Community Safety Committee
(Online Submission)
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Submission:
Inquiry into the Making Queensland Safer Bill 2024

To whom it may concern,

Bravehearts is providing this submission on the *Making Queensland Safer Bill 2024*, which aims to amend legislation to:

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

General Statement

Bravehearts notes that this Bill was a major platform for the current government. As an organisation that stands for the best interests of children and seeks to uphold their rights in accordance with the UN Convention on the Rights of the Child, we are concerned that the *Making Queensland Safer Bill* explicitly breaches international and state-based human rights law.

We also question the premise behind the Bill, that appears to rely on media sensationalism, rather than facts around youth crime. As noted by many of our colleagues, youth crime across the country has fallen, and in Queensland has been steadily declining since 2009-10 (noting a small increase of 6% from 2021-22 to 2022-23; see figure below). This is not in any means to take away from the impact of offences committed, but just to bring some balance to the fear that has been created. We understand the impact and trauma on victims and families, but an evidence-based approach on what works and for whom, is more likely to result in positive outcomes for communities, families, and young people.

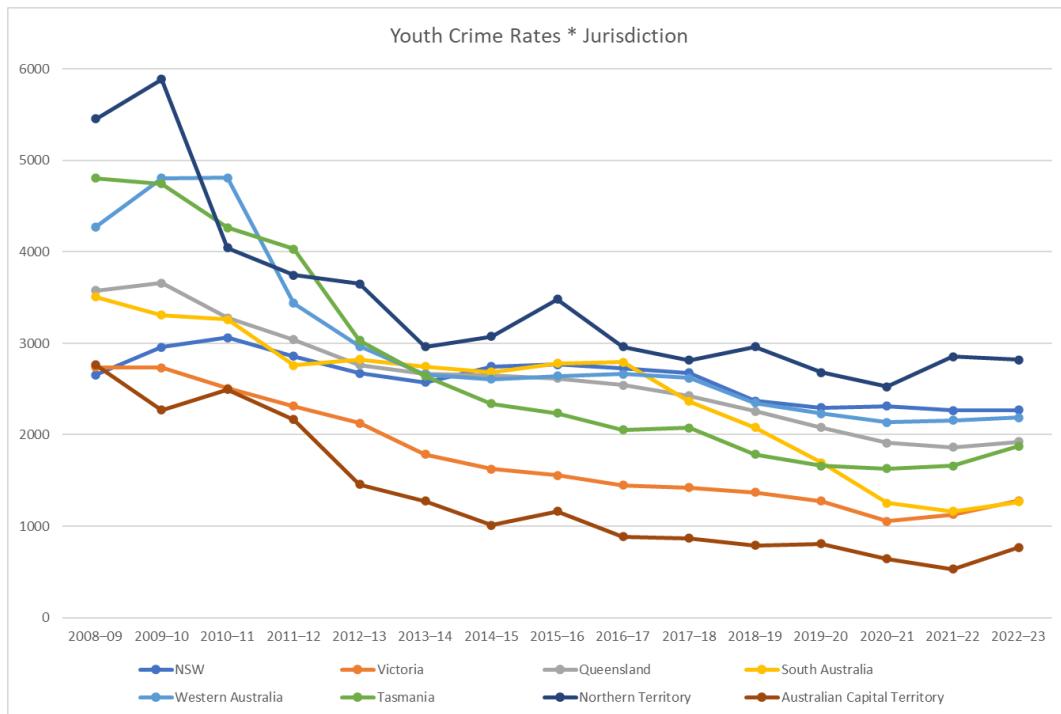


Figure 1: Youth Crime Rates by Jurisdiction
(Australian Bureau of Statistics, 2024)

We also note the intersection between youth justice and child protection systems. Youths in contact with child protection systems commonly suffer adverse effects in both juvenile and adult justice systems. A considerable portion of this population comes from backgrounds that are fraught with trauma, disruptions in attachment, and experiences of maltreatment. The interconnectedness of the youth justice and child protection systems highlights a systemic failure and the strong need to divert at-risk children from further involvement in the justice system (as well as the child protection system).

It is widely acknowledged that young individuals who are part of both the child protection system and the youth justice system exhibit a multitude of complex needs. These needs frequently include developmental trauma, problematic behaviours, and mental health issues, among other factors (Malvaso & Delfabbro, 2015; Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017). Our concern about the *Making Queensland Safer Bill* is that it does nothing to address the vulnerability of these at-risk children.

Additionally, we note our concerns around the lack of true consultation on this Bill and the incredible tight timeframes put in place to meet the government’s election promise of “by the end of the year”.

“Adult Crime, Adult Time”

While we note that the offences the Bill seeks to amend within the *Youth Justice Act* do not include rape (s349, Criminal Code) or sexual assaults (s352, Criminal Code), we are generally concerned about the mantra of ‘adult crime, adult time’. At a time when we have the

Commonwealth government arguing that young people under the age of 16 are not at an age or maturity where they should have access to social media, we have the Queensland government arguing that children as young as 10, should be held *as responsible as adults* for crimes committed.

Bravehearts strongly holds that this approach does not address the complex nature of youth crime, nor what we know works in relation to prevention (which should be the ultimate focus). We need a focus on programs for at-risk young people to steer them away from crime.

Youth crime represents a multifaceted challenge characterised by the general disconnection of juveniles from society (see section below on Prevention and Early Intervention). Young offenders frequently come from environments marked by familial dysfunction, neglect, or abuse, and lacking positive role models. As a result, many juveniles experience displacement, with numerous individuals finding themselves in residential care facilities, while others are influenced by older peers, leading to substance abuse involving drugs and alcohol. Consequently, these young individuals may initially engage in minor offenses, which can progressively escalate to more serious crimes such as burglary, vehicle theft, and violent acts.

Treating children and young people as adults, is not a logical response to the causes and correlates of youth offending. Up until the early twentieth century, children in Australia faced the same penalties as adults, until society recognised that a variety of factors contribute to the heightened risk of juveniles engaging with the criminal justice system (Richards, 2011). These factors include the immaturity commonly observed in young individuals, their inclination towards risk-taking, and their vulnerability to peer pressure. Additionally, conditions such as intellectual disabilities, mental health issues, and experiences of victimisation further exacerbate these risks. Subsequently it was recognised, both in Australia and globally, that minors ought to be governed by a criminal justice system distinct from that of adults.

Removing Detention as a Last Resort

We note that the Bill specifically seeks to remove two important principles from the Youth Justice Act.

Firstly, the removal from the Charter of Youth Justice Principles, that calls for detention as a last resort:

- Principle 18: A child should be detained in custody—
 - (a) where necessary, including to ensure community safety, and where other non-custodial measures of prevention and intervention would not be sufficient;
 - and
 - (b) for no longer than necessary to meet the purpose of detention.

Secondly, that the omission of Section 150(2)(b) of the Youth Justice Act:

- (that) a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community.

Both principles are critical to assuring the rights and protection of all children and young people and follows the evidence that tells us what works best in ensuring the best possible outcomes for children and young people who commit crimes.

In comparison to other Australian jurisdictions, Queensland exhibits the highest rate of detaining children, which has placed considerable pressure on the state's detention centres and has led to an over-reliance on watch houses (Queensland Family and Child Commission, 2023). Throughout 2021-22, the overcrowding of detention centres led to around 470 children in Queensland, including individuals as young as 10, being held in adult watchhouses for up to 14 days. A watchhouse is not a suitable environment for a child (Children's Court of Queensland Annual Report 2021-22; Inspector of Detention Services, 2024): with limited facilities for family visits and close proximity to adult offenders. In addition, many of these children are victims of abuse, violence, or neglect and require support to facilitate their healing and to prevent further criminal behaviour. The traumatic nature of a stay in a watchhouse is profoundly harmful to children and fails to address the underlying issues of criminal conduct, often worsening the situation instead.

Imprisoning children does not contribute to the reduction of crime in communities. There is significant evidence suggesting that youth detention is ineffective in deterring criminal activity, facilitating rehabilitation, or ensuring community safety. In fact, the process of being incarcerated often heightens the risk of reoffending among young individuals. In Queensland, there is an unacceptably high rate of children placed in youth detention reoffending within a year of their release (Queensland Family and Child Commission, 2024). It is evident that relying solely on imprisonment will not lead to safer communities, yet there exists a wealth of information on methods to effectively decrease crime rates (see section below Prevention and Early Intervention).

Youth Sexual Offending and the Value of Restorative Justice

The UNCRC identifies the importance of diversion measures as a strategy to keep young individuals from becoming involved in the criminal justice system. In General Comment No. 24 (2019), which addresses children's rights in the context of child justice, diversion is presented as the preferred option for the majority of cases. The General Comment encourages governments to invest in preventive measures, early interventions, and multidisciplinary approaches, as well as to broaden the scope of offenses eligible for diversion. Additionally, it highlights the necessity of making diversion a fundamental component of the child justice system, while also ensuring the protection of children's human rights and legal protections during diversion processes and programs, in accordance with Article 40 of the UNCRC.

As part of Bravehearts' holistic approach to preventing and responding to child sexual abuse, we provide a therapeutic and support program to young people, 10-18, who have engaged in harmful sexual behaviours: Turning Corners - Community (est. 2017) and Turning Corners - Restorative Justice (est. 2023).

Having witnessed the positive impact of diversions from the youth justice system, we are concerned about the impact of the 'adult crime, adult time' and the removal of detention as a last resort amendments under this Bill, and potential impacts on young people engaging in harmful sexual behaviours (HSB) and access to diversionary programs, specifically restorative justice programs.

We know that most children and young people displaying HSB age out of the behaviours and do not become sexual offenders as adults (McCann & Lussier, 2008; Nisbet, Wilson & Smallbone, 2004). Understanding the pathways to harmful sexual behaviours is critical to ensuring an appropriate response. Restorative justice practices are victim-oriented, trauma-informed and place value on voice, dignity, accountability, and safety.

There is no denying that harmful sexual behaviours amongst young people is a concern, we recognise that official statistics show that youth aged 10-17 years account for approximately 15% of all individuals with an alleged sexual offence in recorded police data (Sullivan et.al., 2024). In addition, the Australian Child Maltreatment Study (Mathews et al., 2023) found that adolescents aged under 18 inflict the highest proportion of child sexual abuse (12.9% of the total sample; parents and other caregivers in the home, are the next most common class of offender at 7.8%).

Restorative justice often meets ‘justice needs’ of both victims and the young people engaging in the sexual behaviours, that cannot be addressed by the criminal justice system. Empirical research indicates that restorative justice is effective in addressing youth sexual violence offenses. In Queensland, initial trends suggest that restorative justice conferencing has led to a decrease in recidivism among young offenders (Restorative Justice Evaluation Team, 2018). Furthermore, Sherman, Strang, and Woods (2000) identified that the rehabilitative impact of diversionary restorative justice conferences for young offenders was most pronounced in cases of violent crime, which positively suggests its potential applicability to sexual violence cases.

Risks of Detaining Children and Young People

“Many young people enter youth detention with pre-existing neurocognitive impairments (such as foetal alcohol spectrum disorder), trauma, and poor mental health. More than 80% of Aboriginal and Torres Strait Islander young people in a Queensland detention centre reported mental health problems. Data from the Australian Institute of Health and Welfare revealed that more than 30% of young people in detention were survivors of abuse or neglect. Rather than supporting the most vulnerable within our community, the Australian justice system is imprisoning traumatised and often developmentally compromised young people.” – Finlay et.al., 2022

Experts in child development emphasise that the cognitive and behavioural patterns of children continue to evolve until they reach their late teenage years. During this period, adolescents engage in exploration, learning how to interact with their environment while also testing the limits of social and cultural norms. Confining children during these formative years has detrimental effects on their development. Confinement heightens the risk of depression, suicidal tendencies, and self-harm; hampers emotional development; leads to subpar educational achievements; and further strains familial relationships.

The consequences of isolating children can be profoundly damaging to their health and overall well-being, with effects that may be severe, long-lasting, and irreversible. Notably, many children in detention have experienced abuse, which raises the risk of re-traumatisation.

Exposure to sexual violence

Research, commissioned by the Royal Commission into Institutional Responses to Child Sexual Abuse (2017), indicates that youth detention facilities are inherently high-risk environments. The risk of child sexual abuse faced by children in these settings is affected by various factors, including decisions regarding placement (such as the cohabitation of older and younger children), the prevailing institutional culture, the degree of access children have to trusted adults, and the effectiveness of operational procedures and the physical environment

in preventing abuse. Additionally, the vulnerabilities of the detained youth play a significant role, as many have previously experienced trauma, family violence, abuse, or neglect prior to their detention.

Prevention and Early Intervention

“I do know that many communities are impacted by youth crime. However, as a society we need to acknowledge and tackle the issues facing many of these children. Labelling these kids as criminals only makes a crime of their trauma, of their disability, of their suffering.” - Natalie Siegel-Brown, Queensland Public Guardian (<https://www.publicguardian.qld.gov.au>)

Youth offending has a complex interconnected set of causes. The widely asserted tougher penalties approach has proven ineffective in tackling the root causes of juvenile delinquency. The implementation of stricter penalties and punitive strategies is unlikely to significantly reduce youth offending if the fundamental risk factors or root causes remain unaddressed.

A variety of risk factors associated with youth offending are cumulative in nature, manifest across multiple domains, and can interact in ways that exacerbate the situation. These factors encompass, for example: poverty or low income, ineffective parenting practices, instances of family violence and abuse, the influence of criminal attitudes and peers, lack of stable or appropriate housing, substance abuse, and mental health challenges. In addition, we also know that some cohorts are more at risk to coming into contact with the youth justice system (Department of Youth Justice, 2024):

- 55 per cent of young people under youth justice supervision and 70 per cent of young people in youth detention centres are First Nations.
- 81 per cent have used at least one substance.
- 53 per cent are impacted by domestic and family violence.
- 48 per cent are not enrolled in education, training or employment.
- 30 per cent are in unstable and/or unsuitable accommodation.
- 38 per cent of youth in custody have used ice/methamphetamine in the past.
- 25 per cent have a parent who has been in custody.
- 44 per cent have one or more mental health disorders and/or behavioural disorders (diagnosed or suspected).
- 44 per cent have one or more disabilities.
- 16 per cent have one or more psychological behavioural issues.

There is no evidence to suggest that the amendments under the *Making Queensland Safer Bill* will impact on these rates of over-representation and vulnerability.

Facilitating the development of positive behaviours in children serves as the cornerstone of numerous initiatives aimed at preventing youth crime and violence. For almost thirty years, educators, policymakers, and professionals in the criminal justice field have been in pursuit of effective strategies for crime prevention.

Identifying the developmental pathways and the relevant events and experiences from early childhood that contribute to criminal behaviour is of paramount importance. The priority should be on implementing supportive and non-punitive measures that expand the life opportunities for children. By improving children's life prospects, we not only decrease the chances of

engaging in criminal activities but also support better educational and employment results, as well as foster mental and physical well-being.

Concluding Comments

In the 'Report on Youth Justice' (Atkinson, 2018), conducted by the Youth Justice Taskforce, 'Four Pillars' were recommended for ensuring both public safety and community confidence:

1. Intervene Early,
2. Keep children out of court,
3. Keep children out of custody, and
4. Reduce reoffending.

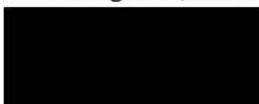
Our view is that these recommended 'pillars' should form the basis of a carefully considered approach to youth crime in Queensland. Adopting policies that are not based on evidence and careful scrutiny of their impact on our children and young people, would be a grave error.

In addition, solutions need to be trauma-informed. A notably elevated incidence of trauma exposure and traumatic stress is observed among children within youth justice systems, with a significant majority having a background of trauma. As outlined in the 'Report on Youth Justice', it is only a small cohort of children who commit the larger proportion of crime. Prevention and early intervention should be our focus, not locking up more children and young people.

Our recommendation would be that government consider the comprehensive evidence already gathered and engage with researchers, program and community leaders, youth and First Nations representatives to consider alternatives to the approach put forward in the Bill.

Please contact us on research@bravehearts.org.au should you have any questions relating to our submission.

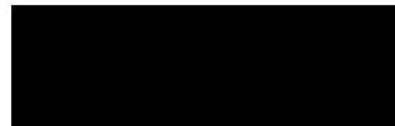
Kind Regards,



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