

Information sheet: Student charges and convictions

Principals are responsible for the good order and management of the school, including the safety and wellbeing of students, staff and visitors. This Information Sheet outlines the process for Principal to request a confidential report on student charges or convictions from the [Queensland Police Commissioner](#) (QPC), explains meaning of common terms in these reports and limitations on the use of the information supplied in the report.

The decision to place a student on a charge-related suspension is discretionary. The decision to use a charge-related suspension is based on the principal's determination of the level of risk, the effect of risk mitigation strategies and a human rights assessment.

Principals:

- can request information, via the Director-General, from the QPC about any charges or convictions for a student currently enrolled at their school
- **cannot** request information about any suspected charges or convictions for students not currently enrolled at the school or prospective students seeking enrolment at their school
- are strongly advised to use a [risk assessment](#) to determine the level of risk of a student's continued attendance at school
- may decide to place a student on a [charge-related suspension](#) if they are reasonably satisfied that the student has been charged with a serious offence, or charged with an offence other than a serious offence and the principal considers the student's attendance at the school would not be in the best interests of other students or staff.

Information from the Queensland Police Commissioner

Under the *Education (General Provisions) Act 2006* (EGPA), the information disclosed by the QPC may only be used for the purposes of making a decision about a School Disciplinary Absence.

If a student has been charged with an offence, the QPC will supply a report in the format below:

A search of records held at the Police Information Centre has been conducted. The student has been charged with the following offences which have been listed for mention at LOCATION Children's Court on DATE.

- *Common Assault* – as a result of a report made to police on DATE. That on DATE at LOCATION in the State of Queensland one FIRST NAME SECOND NAME allegedly unlawfully assaulted victim child. The defendant child allegedly followed the victim child from a park and hit her on the head before pushing her to the ground.

Information supplied by the QPC to the Director-General (or delegate such as Assistant Director-General, Disability, Inclusion and Student Services) may be redacted by the Department prior to being made available to the principal. Information is only redacted when the information is considered irrelevant or unnecessary to provide to the principal, for example graphic description of an alleged sexual assault.

If a student is facing current charges, the QPC will advise the name of the court and date the charges are expected to be heard. It is the responsibility of the principal to make a further [request](#) for information from the QPC after the stated court date so they can use the most up to date information to make a decision about the student's attendance at school and any relevant risk assessment or School Disciplinary Absence decision.

Charges that have been finalised (dealt with)

Under the EGPA 'dealt with', in relation to a charge against a student for an offence, means any of the following:

- a) the student is acquitted or convicted of the charge;
- b) the student is convicted of another offence arising out of substantially the same acts or omissions as those constituting the charge;
- c) the charge is withdrawn or dismissed; or
- d) a *nolle prosequi* or no true bill is presented in relation to the charge.

Once the court matters are finalised the principal must either:

- a) formally end the suspension and allow the student to return to school; or
- b) formally end the suspension and progress to a proposed exclusion in accordance with the Student discipline procedure.

Recording a conviction gives the young person a criminal record for the offence. **The starting point for a child is that a conviction is not to be recorded.**

A conviction cannot be recorded on a reprimand or good behaviour order (or any diversion option), but a court can choose to record a conviction for all other orders.

A young person will often have 'no conviction recorded'. Not recording a conviction does not affect whether the matter has been dealt with. If the court has determined not to record a conviction, it means that the student has been convicted (found guilty) **and then** the court has determined not to **record** the conviction.

Common terms

Sentence

A sentence is the punishment imposed on a person found guilty of an offence. The Queensland Sentencing Advisory Council explains that under the *Youth Justice Act 1992*, special considerations and principles apply to the sentencing of children.

The sentence imposed (or whether a sentence has been imposed) is not relevant to whether or not the matter has been 'dealt with' pursuant to the EGPA. However, if any of the following terms appear within the information provided by the QPC, it means that the student has been convicted (found guilty) for the purposes of the EGPA and the matter has been dealt with'.

This below list from the [Queensland Sentencing Advisory Council](#) is not exhaustive but reflects the most common options used:

DETENTION ORDERS	MEANING
Detention	<p>If a child pleads guilty to, or is found guilty of offences when they go to court, they can be sentenced to a detention order. This means they must spend a set amount of time in a youth detention centre.</p> <p>There are two parts of a detention order:</p> <ul style="list-style-type: none"> time in a youth detention centre; and time in the community on a supervised release order. <p>The court will decide how long each of these parts goes for. The court can order your child to spend 50 to 70% of their order in detention and the rest of their time on a supervised release order.</p>
Conditional release	<p>If a child pleads guilty to, or is found guilty of offences when they go to court, they can be sentenced to detention. The court may decide not to send a child immediately to detention and instead make a conditional release order.</p> <p>This means a child will be released into the community straight away, to take part in a structured program with strict conditions. A conditional release order means a child must take part in a specially designed program that the court has agreed to. This program may take up to three months.</p>

Conviction

Paragraphs (a) and (b) in the EGPA's definition of 'dealt with' refer to the student being 'convicted'.

The EGPA defines 'convicted' as being found guilty of an offence, on a plea of guilty or otherwise, **whether or not a conviction is recorded**. This means that all that is required is a conviction (finding of guilt) and **not** a recorded conviction.

The [Queensland Sentencing Advisory Council](#) defines a conviction as a determination of guilt made by a court. A person is convicted if they plead guilty or are found guilty after a trial. When imposing a sentence, a court will decide whether to record a conviction.

SENTENCING ORDER	MEANING
Unsupervised orders	
Reprimand	The court formally warns the child.
Good behaviour order	The court orders the child not to commit another offence during a set amount of time (usually up to a year).
Fine	The court orders that a child (who can afford it) pay an amount of money.
Community-based orders: A child serves these orders in the community, supervised by youth justice officers	
Restorative justice order	<p>A restorative justice conference is a meeting between a child who has committed a crime and the people most affected by that crime to discuss:</p> <ul style="list-style-type: none"> what happened;

	<ul style="list-style-type: none"> the effects of the offence; and repairing the harm caused to the victim. <p>If the conference has reached an agreement, the child must then do the agreed tasks. If the child fails to comply, further action may be taken against them.</p>
Community-based orders: A court can only make the following three orders if the child is found guilty of an offence that an adult could go to prison for. The child must agree to the court making these orders	
Probation order	<p>If a child pleads guilty or is found guilty of an offence, they may get a probation order. A probation order will help the child to find ways to stop offending while they continue to live in the community.</p> <p>Generally, a child can be sentenced to a probation order for up to 2 years. In serious cases, this can be extended up to 3 years.</p>
Community service order	<p>If a child pleads guilty to or is found guilty of an offence, a court can order that they do unpaid work in the community for a certain number of hours. For the court to make this type of order, a child has to be 13 or older and agree to do community service.</p> <p>The court can only make this order if a child is found guilty of an offence that an adult could go to jail for.</p> <p>The maximum Community Service hours are:</p> <ul style="list-style-type: none"> 100 hours for children under 15 200 hours for children aged 15 or over. <p>The court will also set a time frame for a child to complete the work. This can be 12 months or less.</p>
Intensive supervision orders	<p>If a court finds a child under the age of 13 years guilty of an offence, it may make an intensive supervision order. Usually, this order is only made if a child has already been on other orders and they are now at risk of going to detention.</p> <p>A court may sentence a child to an intensive supervision order for up to 6 months.</p>

Recording a conviction gives the offender a criminal record for the offence. **The starting point for a child is that a conviction is not to be recorded.**

A conviction cannot be recorded on a reprimand or good behaviour order (or any diversion option), but a court can choose to record a conviction for all other orders.

A young person will often have 'no conviction recorded'. Not recording a conviction does not affect whether the matter has been dealt with. If the court has determined not to record a conviction, it means that the student has been convicted (found guilty) **and then** the court has determined not to **record** the conviction.

Diversion

The [Guide to the sentencing of children in Queensland](#) explains that there are two stages at which a child may be diverted from the criminal justice system:

1. before proceedings in court are commenced against the child (police diversion); and
2. after proceedings in court have commenced and the child has pleaded guilty to the offence (court diversion).

Before starting proceedings against a child for an offence (that is not a 'serious offence'), police must consider if, in all the circumstances, it would be better to do one of the following things listed in the table below.

The *Youth Justice Act 1992* has a principle of diverting children from the court process where appropriate. If any of the following measures have been taken, it usually means that the student has admitted to the offence and the matter has been dealt with.

<u>POLICE AND COURT DIVERSION</u>	MEANING
Administer a caution	Where a police officer (or, where appropriate, a respected Aboriginal or Torres Strait Islander community member) explains to the child what they have done wrong. This can involve the child giving an apology to a victim. Before a caution can be given, the child must admit to having committed the offence and agree to being cautioned.
Police drug diversion assessment program	Police can refer a child found in possession of a small amount of cannabis (not more than 50 grams) or a thing used for smoking cannabis, to an assessment, education and counselling session. At this session, participants are provided with information about the health impacts of illicit drug use and consequences of continued use, and assistance to stop using drugs.
Restorative justice process/conferencing	Involves the child attending a conference with a convenor. Other participants can include the victim, the child's parent, a police representative and if the child is an Aboriginal or Torres Strait Islander person, a respected person of the community. The aim of the conference is for the child to admit to the offence and reach an agreement on how they can make up for the harm caused (a restorative justice agreement). The child must then perform the tasks required in the agreement for the process to be successful.
Court referred drug assessment and education session	A court can refer a child who pleads guilty to certain drug offences and is willing to participate, to a one-on-one session involving an assessment of their drug use, drug education and treatment options.
Dismissal	A court can dismiss a charge (and may also issue a caution or direct a police officer to do so) instead of accepting a child's plea of guilty if the court decides the police should have cautioned the child, referred them to a restorative justice process or taken no action.

References

Education (General Provisions) Act 2006 (Qld). Retrieved from <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2006-039>

Queensland Government website: Youth court orders. <https://www.qld.gov.au/law/sentencing-prisons-and-probation/young-offenders-and-the-justice-system/sentencing-young-offenders/youth-court-orders>

Queensland Sentencing Advisory Council:

- Sentencing Children. <https://www.sentencingcouncil.qld.gov.au/about-sentencing/sentencing-children>
- *Guide to the sentencing of children in Queensland (2021)*. <https://www.sentencingcouncil.qld.gov.au/education-and-resources/guide-to-the-sentencing-of-children-in-queensland>