

# 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. The department has a number of processes in place to assist principals to assess and manage risk for students who have been charged with or convicted of an offence.

Please note, the decision to place a student on a charge-related suspension is discretionary. When a principal becomes aware that a student has been charged with an offence, the decision whether to use a charge-related suspension is based solely on the principal's determination as to the level of risk and mitigation strategies that can be implemented to address behavioural concerns.

Principals:

- can request information from the [Queensland Police Commissioner](#) on charges or convictions for a student currently enrolled 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 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 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, then the information supplied by the QPC typically takes the following form:

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 10 May 2022.

- *Common Assault* – as a result of a report made to police on 3 May 2022. That on 3 May 2022 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.

Sometimes information supplied by the Queensland Police Commissioner to the Director-General (or delegate such as Assistant Director-General, State Schools) is redacted by the department. The information redacted is considered irrelevant or unnecessary to provide to the principal, for example detailed information of a sexual assault.

## Dealt with

It is the responsibility of the principal to ensure that they follow up with a further [request](#) for information from the QPC after the court date mentioned in the previous notice given by the QPC. This is to ensure that the principal moves forward with ending the charge-related suspension or progressing to an exclusion as soon as the matter is dealt with.

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

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- the charge is withdrawn or dismissed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



## 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**. That is, all that is required is a conviction (finding of guilt) and **not** a recorded conviction.

The [Queensland Sentencing Advisory Council](#) explains that 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.

This means that a student offender 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** that guilty finding.

## Sentencing

A sentence is the punishment imposed on the offender once they have been convicted (found guilty).

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:

Sentencing order	Meaning
Lower level orders	
Reprimand	A formal warning given by the court.
Restitution and compensation	Order requiring a child (who can afford it) to pay for property taken or damaged or compensate for loss or damage to property or any personal injury. These are not sentencing orders. They are to be given priority over any fine and can be made in addition to any sentence order.
Good behaviour order	Order that the child not commit another offence during the period of the order (up to 1 year).
Fine	Order that a child (who can afford it) pay an amount of money within a set period of time.
Community-based orders	
Restorative justice order	Child undertakes a restorative justice process. The court must consider the nature of the offence, harm suffered by anyone and the interests of the community and the child. The child is required to perform the obligations under any agreement reached.
Probation order	Order of a maximum duration of either 1, 2 or 3 years (depending on the seriousness of the offence) where the child is allowed to remain in the community with supervision. This includes taking part in offence-focused programs and reintegration activities.
Community service order	Order to do unpaid community service within 12 months (or within less time for orders of under 50 hours). The child must be at least 13-years-old. At least 20 hours must be ordered. The maximum hours are: <ul style="list-style-type: none"> <li>• 100 hours for children aged 13 or 14</li> <li>• 200 hours for children aged 15 or 16.</li> </ul>



Detention orders	
Detention	The Youth Justice Act 1992 sets different maximum detention periods depending on the level of the sentencing court and seriousness of the offence. For instance, a Children's Court magistrate can usually impose detention of no more than 1 year, and the maximum sentence available to higher courts is generally lower than for adults. A higher court can sentence a child to life imprisonment for a life offence if it involved violence and was particularly serious.
Conditional release	Option used instead of actual detention where the court suspends the detention order and immediately releases the child on conditions, including engagement in a structured program of up to 3 months. The program aims to address a child's offending behaviour through participation in counselling and programs, while enabling them to maintain their existing study and work commitments.
Release after a fixed period	The Youth Justice Act 1992 sets out the proportion of the sentence a child must serve in detention, before release on a supervised release order. The child must be released after serving 70% of the total detention period, unless the court orders release between 50 and 70% because of special circumstances.

## Diversion

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.

The [Queensland Sentencing Advisory Council](#) explains that diversionary orders may include, but are not limited to:

Diversion	Meaning
Caution	When a child admits to the offence and is willing, a police officer (or, where applicable, a respected Aboriginal or Torres Strait Islander community member) can explain to them what they have done wrong instead of bringing them before a court. This can involve an apology to a victim if the child is willing to apologise and the victim is willing to participate.
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	If a child admits to the offence and is willing, police can refer them to a voluntary meeting (a conference) or an alternative diversion program.
Conference	Run by an independent convenor, both the child and convenor must attend personally. Other participants can include the victim (or their representative) or a representative of a victim advocacy organisation, support people and other people affected by the crime. The aim is for the child and victim to agree on how the child can make up for the harm caused, in a way that benefits everyone.
Infringement notice	Where an adult could choose to pay a fine through an infringement notice instead of going to court, a child can do this too. Relevant infringement notice offences include obstructing police, unauthorised dealing with shop goods, public nuisance, trespass, and traffic offences for learner drivers, speeding and failure to comply with road rules. Courts also have the power to make certain decisions and referrals instead of sentencing the child for the offence when charges are proceeded with.



Dismissal	A court can dismiss a charge (and may also issue a caution or direct a police officer to do so) when a child pleads guilty but applies for dismissal because the child should have been cautioned, or no action should have been taken.
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## References

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

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

