



**GUIDE:**

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# Human rights in youth detention

This is a guide that explains some of the human rights issues that might arise in youth detention and what protections there are under the *Human Rights Act 2019*. It may be helpful for young people, parents, carers or other supporters of young people who are in, or have been in, detention.

## What are human rights?

Human rights is about saying that every person has **dignity** and should be treated fairly.

**Dignity** means being treated with value and respect.

Human rights belong to all people at any age.

Young people in detention have human rights.

In detention there are many rules to keep people safe. But the rules need to be applied in a way that is **reasonable, necessary** and **proportionate**.

**Reasonable** means fair and sensible.

**Necessary** means it needs to happen for a good reason.

**Proportionate** means it has to be right for the situation and not go 'too far'.

## What do human rights mean for young people in detention?

There are some basic things that young people can expect when in detention. Young people should be able to:

- Be safe
- Be treated with respect and dignity
- Keep in touch with family
- Get an education or work skills
- Get medical help
- Get help with thoughts and feelings ('mental health')
- Get help to return to their community and build their lives after leaving detention
- Stay connected with their culture or religion
- Have a say in what happens to them

The youth detention centre must act in the **best interests** of the young people in their care.

**Best interests** means that a young person is listened to, cared for and protected and that their health needs are met.

These are things that should **not** happen to young people:

- **Not** be held with adults
- **Not** be kept in the watchhouse for longer than is necessary (usually no more than a couple of days)
- **Not** be separated from other young people unless there is a good reason
- **Not** be abused or unfairly punished

The experience of detention should **not** make a young person's health worse.

Here is a real life example about a young person who took his case to the United Nations Human Rights Committee:

*A 16-year-old Aboriginal young person with a disability was put in his own in a 'safe cell'. The lights were always on and his blankets and clothes were removed. This was supposed to reduce stress and mean that the young person could be supervised better, but it made his mental health worse. The Human Rights Committee said it was not okay to treat him this way and that it was a breach of his human rights.*

## How should young people be treated?

Young people need to be treated well in detention and in a way that is **appropriate**.

**Appropriate** means right for their age group, and different from how adult prisoners are treated.

Here is an example of how young people should **not** be treated from a real life case in Victoria:

*The government set up a youth detention facility inside an adult prison, and the young people were locked down for long periods. They:*

- *were let out for less than 1 hour a day*
- *were handcuffed when moving to outdoor areas*
- *did not have access to education programs*
- *did not get family visits, access to lawyers or religious services, and*
- *staff threatened the young people and used control dogs (German Shepherds) to keep them under control.*

*This was bad for the mental health of the young people and breached their human rights.*

If a young person breaks the rules they might lose **privileges** but should not be punished by being hurt or humiliated.

**Privileges** means things like extra TV time.

These things should **not** happen as a punishment:

- Keeping young people away from others (unless it is needed to keep the young person or others safe)
- **Not** letting a young person attend programs (unless there is a good safety reason)
- **Not** letting a young person practice their culture or religion
- Hurting them
- **Not** letting the young person sleep
- **Not** giving the young person food and water
- Cutting the young person off from visits and phone calls
- Restraining the young person with handcuffs or using **force** unless it is absolutely necessary.

**Force** means physical control of the body like holding the young person down on the floor.

A young person should be treated as an individual and not punished because of what other young people do.

There are some rules for searching a young person's body. The young person will be partly clothed (which means either their top or bottom will be clothed while the other half is checked).

The search should only happen if there is a genuine threat to safety in the detention centre. The search should be done only in response to a specific threat to security and not just the general 'good order and security' of the detention centre. The need to maintain security does not override the need to consider the dignity, privacy, and trauma history of the young person when deciding on whether to do the search and how it is done.

The search should happen out of sight of other people. It should be done as quickly as possible. If the young person is trans or intersex they have the right to request that male or female officers search them.

Young people have a right not to be **discriminated** against.

**Discrimination** means being treated worse than other people because of things like:

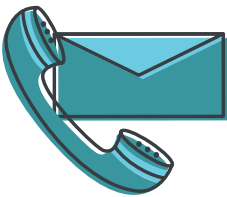
- Race
- Age
- Sex
- Disability
- Sexuality
- Gender identity
- Religion

Young people have the same right to be free from **sexual harassment** in youth detention as they do everywhere else in Queensland.

**Sexual harassment** means:

- Unwanted touching
- Saying sexual things about the young person
- Asking or demanding sex or
- Asking questions about the young person's private sexual life or body.

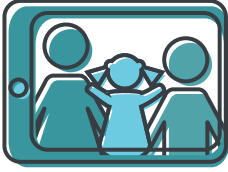
## How can young people communicate with people on the outside?



Young people can send letters or get letters in the mail. Letters should only be read by staff if they believe there is something in there that might create a safety risk at the detention centre. Some mail cannot be read by staff at all, if it's from their lawyer, a case worker, the Office of the Public Guardian (community visitors) or the Ombudsman.

A young person won't be able to have their own phone but can make calls to family or friends on the detention centre phones. Staff shouldn't listen to their calls unless there is a good reason like keeping everyone safe. If a staff member decides to listen to a young person's call they have to tell them and the other person on the call before it starts.

## Does a young person have a right to see their family?



A young person has a right to stay connected to their family while in detention. They can do this by:

- Having visits
- Sending letters
- Making phone calls
- Having video calls

The centre will need to approve visitors and phone contact but it should not take too long. If a young person's family lives far away they can ask for video calls. If the young person's family cannot afford to come they might be able to get paid for the travel to see the young person – they can apply for this help through Youth Justice.

If a young person becomes sick or has to go to hospital their family should be told about this right away. If someone in the young person's close family becomes sick or dies they should also be told right away.

A young person can ask for a **leave of absence** to attend important family events like funerals. A young person might be given special rules to follow when on leave.

A **leave of absence** means the young person can leave detention for a short time. This time counts towards their sentence.

## How can a young person practise their culture?



A young person has the right to enjoy their culture, practise their religion and beliefs and use their own language while in detention.

For Aboriginal and Torres Strait Islander young people, cultural rights include:

- Connecting with cultural and spiritual practices
- Maintaining kinship ties (staying connected with their mob)
- Speaking their own language
- Making cultural art
- Participating in yarning circles.

Here is a real example of where a young person could not practice her culture in detention in the ACT:

*An Aboriginal girl was kept separate from others for two months. The girl used traditional art as a kind of therapy. Indigenous artwork and an Indigenous newsletter the Koori Mail were removed from her room. The girl complained to the government. The government said sorry to the girl. The government agreed to change how they treat other young Indigenous people in future.*

## How can a young person practise their religion?

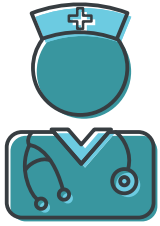


If a young person has a religion they should be free to practice it. This can include:

- Going to religious services or meetings with other people of the same faith
- Seeing religious or spiritual advisors
- Getting access to religious books

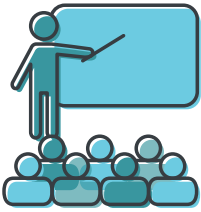
Young people also have the right to not take part in religious activities if they don't want to.

## Do young people have a right to health?



Young people have a right to receive health services. When a young person needs medical help they should be able to see doctors, nurses, psychologists or specialists. Young people should have the same access and standard of health service available in detention as that available through the public health system.

## Do young people have a right to education?



While in detention young people have a right to access school. If the young person has already finished school they have the right to access vocational education (like TAFE courses). Education is important to prepare young people to return to the community and re-build their lives when they leave detention.

If a young person is finding it hard to learn at school or TAFE because of their disability, the teachers should make **reasonable adjustments** to help them learn.

**Reasonable adjustments** means changing how things are done to help a young person learn. For young people who are deaf it might mean getting Auslan interpreters. For young people with learning disability it might mean changing the way the lesson is taught or doing tests and exams in a different way.

## How can young people express themselves?



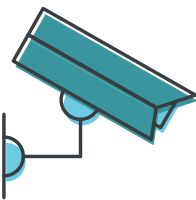
Young people have the right to their own opinions and to say them to other people.

Young people have the right to receive information. For example, a young person can ask about what is on their file at the detention centre.

Having a say is important. Young people should be able to have their say on things like:

- What programs they are participating in
- Who they want to visit them and contact them
- Health needs
- Education
- What they want to do when they get out
- What support they need

## Can young people expect privacy in detention?



Young people have the right to privacy.

Bedroom cameras (CCTV) can record young people and staff can view the recordings, but only where it is necessary. For example, where a young person has been at risk of hurting themselves or other people.

Staff might wear body cameras. The cameras should not record private conversations young people have with lawyers or community visitors.

Cameras should be turned off if they are pointing at where a young person is showering or using the toilet.

There should be privacy screens and shower curtains in the toilet or shower to protect a young person's privacy.

# How can a young person complain about human rights?

A young person could start by talking to a trusted adult who can help them complain, or they can make a complaint by themselves.

## Step 1: Internal complaint

The young person, or someone acting on their behalf, must first make an **internal complaint** before lodging a complaint with the Queensland Human Rights Commission.

An **internal complaint** is where a complaint is made to the detention centre to give them a chance to resolve it. The internal complaint can be in writing or a verbal complaint. It is important to note down the date that the internal complaint was made, and if it was done in writing to keep a copy of the complaint.

The young person can make this complaint themselves by speaking with staff in the detention centre or through the community visitor who comes to the detention centre regularly.

A person can [complain on behalf of a young person](#) from outside the centre. They can complain on the phone, use the [COM2 Complaint made by an external person to a youth detention centre](#), or email the centre.

## Step 2: Complain to the Queensland Human Rights Commission

The person who made the complaint then needs to wait 9 weeks to see if the detention centre resolves the complaint to their satisfaction. If the problem is not fixed then they can then complain to the Queensland Human Rights Commission.

The complaint can be sent to this address:

Queensland Human Rights Commission  
PO Box 15565  
City East Q 4002

Sent by email:

[enquiries@qhrc.qld.gov.au](mailto:enquiries@qhrc.qld.gov.au)

Or lodged online:

<https://www.qhrc.qld.gov.au/complaints/make-a-complaint>

A young person is able to make their own complaint to the Queensland Human Rights Commission, or appoint an agent (such as a parent or carer) to make a complaint on their behalf. The Queensland Human Rights Commission can also authorise a person to act on the young person's behalf, such as if they are too young to make their own complaint or to appoint an agent.

Young people can call us at the Queensland Human Rights Commission from the detention centre phones for more information, or someone acting on behalf of a young person can call the Commission on 1300 130 670.

We may be able to help a young person straight away if what is happening is **urgent**.

**Urgent** means it needs immediate action. For example, if someone is at risk of immediate or significant harm.

The young person or someone acting on their behalf must still make the internal complaint and then lodge their complaint to the Commission on the same day or soon after. The person making the complaint should say why they think it is urgent.

The Commission will look at the complaint to see if it is something we can help with. We might ask for more information. Unfortunately it can take some time and we can't solve everything. But we will listen to the young person and their supporters and do our best to help find a solution.