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Fitness for Trial Among Juvenile Offenders in Queensland

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“Many adults ... have considerable difficulties in dealing with legal processes. However, these difficulties are significantly magnified for children.”

Australian Law Reform Commission
(1997)



Project Hypothesis

Queensland laws and/or processes do not adequately protect juveniles who may be unfit to stand trial due to mental illness, cognitive impairment or immaturity.

Background

To be fit to stand trial the accused must be able to instruct counsel. This requires the ability to understand the charge, follow the proceedings, understand the substantial effect of the evidence against them, and answer the charge. (*R v Presser* [1958] VR 45; see also *Mental Health Act 2000* (Qld) Schedule).

QLD law regarding unfitness is the same for adults and children. But are juvenile offenders further disadvantaged in their ability to understand proceedings because of their youth?

Aims

This project focuses on current law and practice in Queensland to examine whether enough is being done to ensure that juveniles who may lack fitness are identified, assessed and diverted (where appropriate) from the criminal justice system.

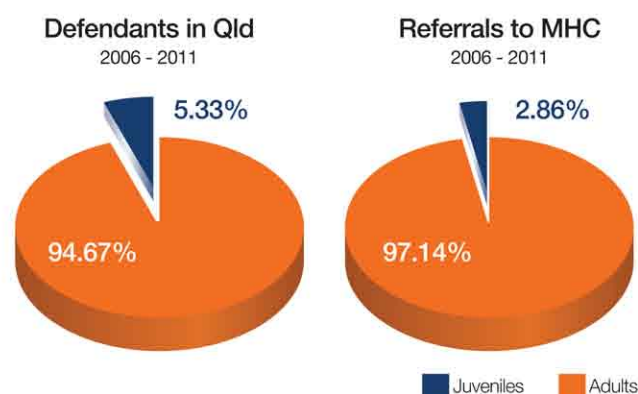


Methodology

- Obtain and analyse Mental Health Court (Qld) data
- Survey legal practitioners, youth justice workers, psychiatrists and psychologists
- Obtain and analyse data from Legal Aid Queensland

Preliminary Findings

Juveniles are only half as likely to be referred to the MHC and to be found unfit to stand trial in QLD



Defendants found unfit in Qld 2006-2011

Juveniles **0.0073%** Adults **0.0152%**

Potential Reasons For Low Rate of Juvenile Referrals to MHC

- Problems related to identification (by lawyers)
- Problems related to determination (by psychologists)
- Confusion related to the legal test
- Other procedural barriers