

Impact of custody and detention on young people

Case Summaries

[DPP v Swain \(a pseudonym\) \(No 2\) \[2025\] ACTSC 209](#) (Taylor J)

Youth detention as a source of institutionalisation - child/young offender, 17y – aggravated robbery; aggravated dangerous driving – profound childhood disadvantage; Bugmy applied: at [198]

- As observed by Ms Edwige, the impact of youth detention as a source of institutionalisation is at an “accelerated” rate compared to adults “as the biological, psychological and social development of detained children are still in progress”. Further, “children are less able to tolerate highly constrained environments without distorting their developmental trajectory” (see *Institutionalisation*, Dr Robyn Shields AM and Dr Andrew Ellis, 2024): **at [219]**.
- The risk of institutionalisation has capacity to drastically impede rehabilitative potential. The offender has capacity to be guided toward positive change notwithstanding some negative patterns: see *Azzopardi v R* [\[2011\] VSCA 372](#); 35 VR 43; *R v Forster-Jones (No 2)* [\[2019\] ACTSC 286](#). The effect of incarceration in an adult prison at this stage of life would undoubtedly hinder capacity for rehabilitation. This includes the risk that the environment, as well as the anti-social attitudes it fuels, will become normalised: **at [222]**.

[Buckley v The Queen \[2022\] VSCA 138](#); 71 VR 218 (Maxwell P and T Forrest JA)

Adverse impacts of imprisonment - mandatory sentencing – young offender, 18y - aggravated carjacking

- As pointed out repeatedly, sending young people to adult gaol is almost inevitably counterproductive: **at [6]**; See, eg, *DPP v Tokava* [\[2006\] VSCA 156](#) [22]–[24]; *Azzopardi v The Queen* [\[2011\] VSCA 372](#); [\(2011\) 35 VR 43](#), 46–7 [4] (Redlich JA); C Cunneen, B Goldson and S Russell, ‘Juvenile Justice, Young People and Human Rights in Australia’ [\(2016\) 28 Current Issues in Criminal Justice 173](#), 176–7.
- Harms of adult imprisonment: loss of personal autonomy, privacy, and control over choice of activities and associates; strict discipline, restriction of movement; forced association, and risks of violence, bullying, and intimidation; very limited opportunities for rehabilitation; institutional setting induces habits of dependency leading to institutionalisation; criminal activity upon release: **at [11]**; [Boulton v The Queen \(2014\) 46 VR 248](#); [2014] VSCA 342.

[Azzopardi v The Queen \[2011\] VSCA 372](#); 35 VR 43 (Redlich JA, Coghlan and Macaulay AJJA)

Armed robberies - young offenders, 19y - youth – appeals allowed

- The effect of incarceration in an adult prison on a young offender will more likely impair, rather than improve, prospects of successful rehabilitation. Imprisonment for any substantial

period carries the recognised risk that anti-social tendencies may be exacerbated. The likely detrimental effect of adult prison on a youthful offender has adverse flow-on consequences for the community: **at [36]**; *R v Mills* (1998) 4 VR 235.