

When childhood offenders can be treated as adults (under the *Youth Justice Act 1992*)

Starting point is always section 134: subject to this division, offenders who commit child offences (committed while under the age of 18), must be treated as a child (both for trials and sentences). *Therefore, the starting point is that any childhood offence will be dealt with in the Childrens Court jurisdiction, unless an exception arises.*

PROCEEDINGS COMMENCED WHILE AGED UP TO 18

Must commence in Childrens Court (*as no exceptions to 134 arise*)

Has either a guilty plea been entered or a finding of guilt made before turning 19?

YES

NO

Sentenced before turning 19?

Has the offender, since turning 18, been charged or sentenced as an adult?

YES

NO

YES

NO

Must be tried and/or sentenced as a child (as no exceptions to 134 arise)

Was the court unable to sentence the offender prior to turning 19 because they failed to appear without cause or escaped from detention? (140(3))

YES

NO

Offender **must** be sentenced as an adult (140(3)) **unless** the court is satisfied that there was an undue delay on the part of the prosecution in starting or completing the proceeding (140(4))

Must be tried and/or sentenced as a child (as no exceptions to 134 arise)

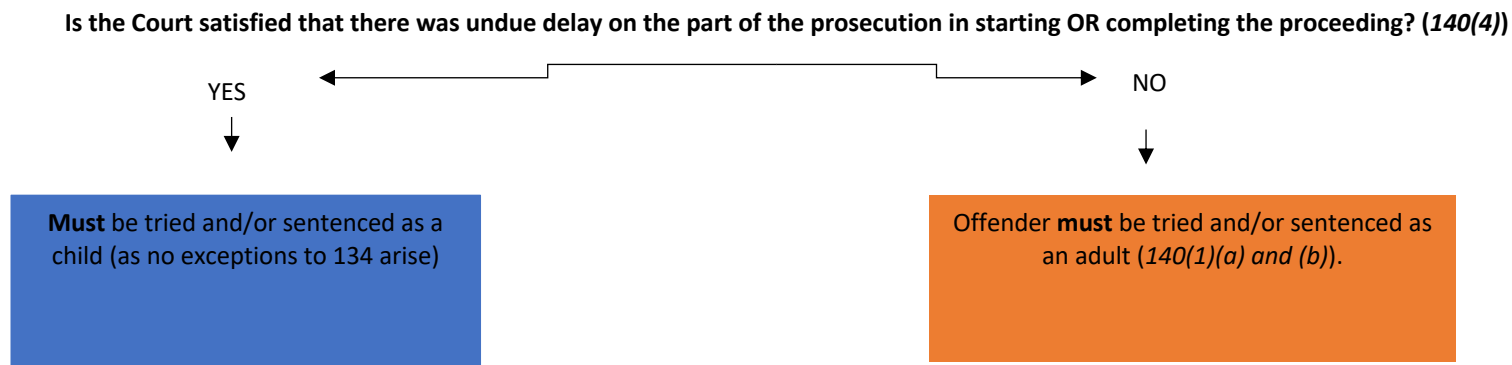
- The Court **may** conduct proceedings in adult jurisdiction, including the trial (141(2))
however
- The Court **must** sentence the offender as an adult (141(4)) (no exceptions arise)

Offender **must** be:

- Tried as a child (e.g. option for a trial without jury on indictment will still be available) (140(2)(b) and (c))
- Sentenced as an adult (140(2)(d)) **unless** the court is satisfied that there was an undue delay on the part of the prosecution in starting or completing the proceeding (140(4))

PROCEEDINGS COMMENCED WHILE AGED 19 OR OLDER
Must commence in Childrens Court (*as no exceptions to 134 arise*)

Note: s 141 has no application, as that section only deals with matters commenced before an offender turns 19¹. Aspects of s 140 do, however, apply.



Note: there is very little common law guidance on the meaning of 'undue delay on the part of the prosecution'. It is interesting that delay in either commencement or continuation of proceedings appear to provide separate avenues to engaging subsection (4). On a literal approach, it would seem an undue delay in commencing proceedings would still engage subsection (4), even if the offender delayed completion of the matter; and vice versa.

¹ *R v WBR* [2022] QCA 62 at [10] per McMurdo JA.