



# The criminal offence of leaving your child unattended

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Parents and guardians often wonder at what age they can responsibly leave their children alone. While the criminal law in Queensland doesn't assist with what might be regarded as *responsible* parenting, it does set some limits about when a child can be *legally* left alone.

In 2008, the Queensland Government passed amendments to the Queensland Criminal Code to address concerns about parents leaving young children unattended. This article explores the criminal offence of 'leaving a child under 12 unattended' and the legal ramifications for both parents and guardians.

## Section 364A of the Criminal Code - what the law says

Section 364A of the Criminal Code provides that a person who, having the lawful care of a child under 12 years, leaves the child for an unreasonable time without making reasonable provision for the supervision and care of the child during that time, commits a misdemeanour.

The maximum penalty for this offence is three years' imprisonment.

In order to prove an offence under this section, the prosecution must prove, beyond reasonable doubt that:

1. the person had lawful care of the child;
2. the child was under 12 years of age;

3. the person left the child unattended;
4. the time in which the person left the child alone was unreasonable; and
5. the person did not make reasonable provisions for the supervision or care of the child.

## The concepts of “reasonable time” and “reasonable provisions for the supervision and care of a child”

The concepts of “reasonable time” and “reasonable provisions for the supervision and care of a child” are not defined in the Criminal Code and have not received much judicial consideration, although the Criminal Code does provide that whether time is unreasonable depends on all of the relevant circumstances of the individual case.

When this new law was introduced, the explanatory notes for this offence provided that whether an offence is committed is dependent on determining the issue of ‘reasonableness’ based on the circumstances of the case, including the age, physical condition and intellectual capacity of the child. Whilst this provides some assistance, what constitutes a reasonable amount of time and reasonable supervision and care is an objective test that must be determined on a case-by-case basis.

The explanatory notes and subsequent cases on this subject suggest there are several factors which may influence the assessment of these issues, including:

1. **The age, health and maturity of the child.** Depending on the situation, leaving a 10 or 11-year-old child unattended is likely to be assessed very differently to leaving a toddler unattended;
2. **The reason the child was left alone.** Leaving a child alone for an important or urgent reason is likely to be more leniently assessed than someone’s absence for personal selfish reasons, such as playing the pokies at the local pub;
3. **The period of time the child was left alone.** This is self-explanatory. The longer the child is alone, the harder it will be to suggest it was reasonable;
4. **The conditions the child was left alone in.** Questions will be asked about where the child was left, were they in extreme heat, indoors or outdoors, air conditioning, etc;
5. **Whether the child had access to food and water;**
6. **Whether the child had access to help if they required it.** This will obviously depend on the age of the child, but if they are old enough, were they given access to a phone, keys to leave the property if needed to, etc;
7. **The surrounding environment.** Was the child relatively safe, or in great danger, if they were to wander? For example, could they only access their neighbour’s enclosed backyard or wander onto a busy street? and
8. **Any harm caused to the child.** The court would consider all kinds of harm suffered by the child - physical, emotional and mental.

## Examples of this law in application

## Four-year-old left unattended in vehicle while parent was shopping

In the matter of [AJM v Commissioner of Police \[2019\] QDC 25](#), AJM pleaded guilty to one offence of leaving a child under 12 unattended. The facts can be summarised as follows:

- AJM drove and parked his vehicle in an underground carpark attached to the Merthyr Village Shopping Centre in New Farm, Queensland;
- The recorded temperature on the day was 38 degrees;
- AJM's son was restrained in a car seat in the front passenger seat of the vehicle, and sleepy;
- AJM asked his son if he wanted to come into the shops, but the son indicated no;
- AJM turned the vehicle off, left the front passenger window down and left the vehicle unlocked;
- A witness observed AJM's son in the vehicle alone and attempted to wake the child but was unable to do so;
- Police attended the scene and also attempted to wake the child but were unable to do so. It was thought that the child was unconscious. It was later learned the child suffered from sleep apnoea;
- The child was transported to hospital as a precautionary measure and was released a short time later with no injuries or adverse effects to the child's health;
- AJM made admissions to police that his son did not have any food or water with him, but that his son knew how to get out of the car seat and could have made his way up to the shops if he had so desired; and
- The approximate time AJM's son was left unsupervised in the car was 20 minutes.

The court noted that each case turns upon its own particular facts, and fined AJM \$1,000.00 on appeal, [without recording a conviction](#).

## Five-year-old left home alone while parent attended work

In the matter of [Kim v Commissioner of Police \[2016\] QDC 44](#), Kim pleaded guilty to one offence of leaving a child under 12 unattended. The facts can be summarised as follows:

- The complainant was Kim's five-year-old niece;
- Police attended a residential address in relation to reports a young child could be heard calling out at the address and sounding to be in distress;
- Police forced entry into the address as the child could not open the door for police;
- The child was located wearing winter clothing;
- The unit was hot and observed to be locked up with no fans or windows open;
- There was food and drink left out for the child;

- The child was in good health but appeared to be very thirsty;
- Kim returned to the address at 12:15 pm and advised police that she had been at work since 9:00 am;
- Kim returned home on her lunch break to check in on the child and intended to return to work afterwards; and
- There was no supervision or provision for care for the child arranged.

The sentencing Magistrate remarked at the time of sentence:

*“... quite frankly ... to leave the child locked in a house with no means of supervision, comfort, support, such that the little girl was so distressed that it caused a police attendance, you should, really, be thoroughly ashamed that you acted in this totally selfish manner”.*

Kim was fined \$500. Although the Magistrate initially recorded a conviction, on appeal, that was reversed and no conviction was recorded, given Kim’s personal circumstances.

## Practical implications for parents and guardians

Parents and guardians have a strict legal obligation to ensure the safety and well-being of children in their care.

In deciding to leave a child unattended for any length of time, parents and guardians should think carefully about:

1. the need to leave the child alone, and whether there are alternatives to doing so;
2. the child’s age and maturity, and their ability to handle an emergency should one arise while they are unsupervised;
3. whether the child will be safe and secure while left alone; and
4. the surrounding environment - does the child have access to food and water, might strangers have access to the child, might the temperature be a problem, etc?

## Get help from a criminal lawyer

If you or a loved one is charged with leaving a child under 12 unattended, you should obtain urgent legal advice about your options.

Gilshenan &Luton are experts in defending criminal charges and regularly assist our clients in dealing with offences of this nature.

## Contacting Gilshenan &Luton Lawyers

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