

Youth Justice and Other Legislation Amendment Bill 2021

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Mark Ryan MP

Short title

The short title of the Bill is the Youth Justice and Other Legislation Amendment Bill 2021.

Policy objectives and the reasons for them

The amendments to be moved during consideration in detail aim to better achieve the overarching policy objectives of the Bill, namely, to respond to serious recidivist youth offenders, by ensuring the electronic monitoring provisions can operate effectively and efficiently.

The amendments also reflect stakeholder feedback raising concerns of the potential of the term ‘tracking’ device to cause offence to some members of the community.

Achievement of policy objectives

The objectives are achieved by making the following amendments:

- amending new section 52AA of the *Youth Justice Act 1992* (which is being inserted by clause 26 of the Bill) to:
 - insert a new subsection (2)(a) to provide the court must consider making an order that the child be detained in custody until the monitoring device is fitted to the child;
 - insert a new subsection (2)(b) to provide the court may impose any other conditions the court considers necessary to facilitate the operation of the monitoring device; and
 - insert a new subsection (2A) to provide that, for new section 52AA(2)(a), the child may be detained in custody only for the purpose of fitting the monitoring device and for the least time that is justified in the circumstances.
- amending new section 52AA(3) of the *Youth Justice Act 1992* (to be inserted by clause 26 of the Bill) to replace the word ‘opinion’ with the word ‘assessment’; and

- replacing the terminology of ‘tracking’ device throughout the Bill, within the *Bail Act 1980* and the *Youth Justice Act 1992* with ‘monitoring’ device. There is no change to the elements of the definition of the device.

Alternative ways of achieving policy objectives

There are no reasonable alternative ways of achieving the policy objectives.

Estimated cost for government implementation

Any costs associated with the amendments will be absorbed through existing resources.

Consistency with fundamental legislative principles

The technical amendments concerning terminology do not raise any issues with the fundamental legislative principles (FLPs) outlined in the *Legislative Standards Act 1992*.

The amendment requiring courts to consider whether to exercise their discretion to order a young person be detained until a monitoring device is fitted has been drafted with appropriate regard to FLPs. The amendment potentially impacts upon the rights and liberties of individuals as it may result in a young person being detained for a short duration for the purposes of having a monitoring device fitted. However, the potential breach of FLPs is justified in circumstances where courts already hold a discretion under the Bill to impose associated conditions necessary to facilitate the operation of the monitoring device, which could include an order the young person be detained until the device is fitted. The amendment also contains an additional safeguard requiring the detention to be for the shortest possible period.

Consultation

The amendments requiring courts to consider whether to exercise their discretion to order a young person be detained until a monitoring device is fitted has not been the subject of community consultation. The amendment was based on operational advice received as part of cross-agency implementation work with respect to the Bill. Key government agencies were consulted in the development of this amendment.

The amendment concerning the use of the word ‘assessment’ is a technical amendment and community consultation was not undertaken.

The amendment replacing the use of the word ‘tracking device’ arose from internal departmental advice and commentary in submissions to the Legal Affairs and Safety Committee inquiry into the Bill. No further community consultation was undertaken.

Consistency with legislation of other jurisdictions

Removing the use of the term ‘tracking device’ will improve consistency with legislation in other jurisdictions (e.g. the *Bail Act 1982* (WA) uses the term ‘approved electronic monitoring device’ and the *Bail Act 1982* (NT) refers to an ‘approved monitoring device’).

Notes on provisions

Amendment 1 inserts a new Part 1A into the Bill.

Clause 1A states that Part 1A amends the *Bail Act 1980* (Qld) ('Bail Act').

Clause 1B amends section 11 of the Bail Act by replacing the word 'tracking' with 'monitoring' in sections 11(9B), (9C) and (10).

Amendment 2 amends clause 25 of the Bill by replacing the word 'tracking' with the word 'monitoring' in section 52A(5) of the *Youth Justice Act 1992*.

Amendments 3, 4, 5, 6, 7 and 8 amend clause 26 of the Bill by replacing references to the word 'tracking' with the word 'monitoring' in new section 52AA to be inserted into the *Youth Justice Act 1992*.

Amendment 9 amends clause 26 of the Bill by amending new section 52AA(2) to insert new section 52AA(2)(a) and (b). The effect of the amendment is to provide the court, if bail for a child is subject to a monitoring device condition: (a) must consider making an order that the child be detained in custody until the monitoring device is fitted to the child; and (b) may impose any other condition the court considers necessary to facilitate the operation of the monitoring device.

This amendment does not limit a court's discretion as to what associated orders may be appropriate in the circumstances. A court will still be able to determine on a case-by-case basis the most appropriate orders for a child.

Amendments 10, 11, 12, 13, 14, 15, 16 and 17 amend clause 26 of the Bill by replacing references to the word 'tracking' with the word 'monitoring' in new section 52AA to be inserted into the *Youth Justice Act 1992*.

Amendment 18 amends clause 26 of the Bill by inserting a new subsection (2A) into new section 52AA to be inserted into the *Youth Justice Act 1992*, which provides a child may be detained in custody only for the purpose of fitting the monitoring device and for the least time that is justified in the circumstances.

Amendment 19 amends clause 26 of the Bill by replacing references to the word 'tracking' with the word 'monitoring' in new section 52AA to be inserted into the *Youth Justice Act 1992*.

Amendment 20 amends clause 26 of the Bill by replacing the terminology 'opinion about' with 'assessment of' in new section 52AA(3). This is intended to provide consistency of terminology, as the report referred to in the new section 52AA is termed a 'suitability assessment report'.

Amendment 21 and 22 amends clause 26 of the Bill by replacing references to the word 'tracking' with the word 'monitoring' in new section 52AA to be inserted into the *Youth Justice Act 1992*.

Amendment 23 amends clause 26 of the Bill by replacing a reference to ‘subsection (2)’ with a reference to ‘subsection (2)(b).’ This is a consequential amendment necessary due to the changes to the Bill from amendment 9.

Amendments 24, 25, 26, 27 and 28 amend clause 26 of the Bill by replacing references to the word ‘tracking’ with the word ‘monitoring’ in new section 52AA to be inserted into the *Youth Justice Act 1992*.

Amendment 29 inserts a new clause 29A ‘Amendment of ss 151, 193, 204, 221, 228 and 269’ into the Bill. This clause amends sections 151(9), 193(4)(c), 204(4)(c), 221(4)(c), 228(6) and 269(4) of the *Youth Justice Act 1992* by replacing references to the word ‘tracking’ with the word ‘monitoring.’

Amendments 30, 31 and 32 amend clause 32 of the Bill by replacing reference to the word ‘tracking’ with the word ‘monitoring.’

Amendments 33 and 34 amend clause 34 of the Bill to remove the definition of ‘tracking device’ and replace it with a definition of ‘monitoring device.’ The amendment only replaces the terminology of ‘tracking device’ with the terminology ‘monitoring device’ and does not otherwise change the elements of the definition.

Amendment 35 amends the long title of the Bill.