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YOUTH JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

Introduction

Hon. DE FARMER (Bulimba—ALP) (Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence) (10.39 am): I present a bill for an act to amend the Bail Act 1980, the Police Powers and Responsibilities Act 2000, the Public Guardian Act 2014, the Youth Justice Act 1992 and the acts mentioned in schedule 1 for particular purposes. I table the bill and the explanatory notes. I nominate the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee to consider the bill.

Tabled paper: Youth Justice and Other Legislation Amendment Bill 2019.

Tabled paper: Youth Justice and Other Legislation Amendment Bill 2019, explanatory notes.

The Palaszczuk government has committed to an historic investment of $550 million in the youth justice system since the transition of 17-year-olds from the adult system for a range of initiatives to reduce reoffending, better support our children and expand, build and staff youth detention centres. The bill supports the implementation of those initiatives and our commitment not to detain children in watch-houses other than for normal processing and to reduce reoffending and maintain community safety. The bill amends the Youth Justice Act 1992 to:

- reduce the period in which proceedings in the youth justice system are finalised;
- remove legislative barriers to encourage more grants of bail to young people appropriately; and
- ensure appropriate conditions are attached to grants of bail.

This bill supports the implementation of the *Working Together Changing the Story: Youth Justice Strategy 2019-2023* and delivers on the commitment to commence a review of the Youth Justice Act 1992 this year. I thank all of those who provided input into the development of the bill including magistrates, legal practitioners, service providers and youth justice services staff.

Importantly, these amendments do not remove judicial and police discretion and aim to balance enabling the appropriate release of children from detention and maintaining community safety. A key component in addressing demand pressure on the youth justice system is reducing the period in which proceedings are finalised. When court proceedings cannot be finalised quickly a young person may remain on remand awaiting trial or sentencing for an extended period. The bill amends the Charter of Youth Justice Principles in the Youth Justice Act 1992 to emphasise the need to finalise all youth justice matters as soon as practicable and to treat young people who are in custody as a priority.

When a child is being sentenced the court may request a presentence report from the Department of Youth Justice about the child. Stakeholders have advised that some requirements of the report process may contribute to delays in court proceedings. The bill introduces more flexibility by allowing further material to be provided to support a presentence report previously considered by a court during the last six months. Given the preparation of a presentence report takes some time, the bill also requires the court to consider, before ordering an optional presentence report, whether it is the most beneficial and efficient method of obtaining information.

If a parent is not promptly notified when a child is arrested this can contribute to delays in a bail application being made and the child remaining in custody. The bill strengthens existing requirements in the Police Powers and Responsibilities Act 2000 by requiring police to make all reasonable inquiries to promptly contact a child's parent. A record of the inquiries made must be kept when contact with a parent has not been made.

The bill also amends the Police Powers and Responsibilities Act 2000 to insert a new requirement for police to notify a Legal Aid organisation as soon as reasonably practicable. Delays in legal advice and representation may contribute to delays in an application for bail being made for a child. This will not mean that police cannot question a child so long as they have a support person present.

The bill amends the Youth Justice Act 1992 to ensure that children who are arrested and remanded in police custody are brought before the Childrens Court as soon as practicable and within 24 hours of arrest. The bill also amends the Police Powers and Responsibilities Act 2000 to provide that a notice to appear for a child must require the child to appear at the court the police officer is satisfied is most convenient for the child to access unless this would delay the ability of the child to appear before the court as soon as practicable.

The bill removes legislative barriers to support bail decision-making so children can be appropriately released. The bill amends the Youth Justice Act 1992 to clearly state that there is a presumption in favour of release for a child. This presumption can only be rebutted when there is an unacceptable risk that if released on bail the child will fail to surrender into custody as required; commit an offence; endanger the safety or welfare of a person; or interfere with witnesses or otherwise obstruct the course of justice; or where the child is required to be kept in custody under the Youth Justice Act 1992 or another act.

Stakeholders told us that the interaction between the Bail Act 1980 and the Youth Justice Act 1992 is confusing. To clarify the requirements the bill makes it clear that sections 7, 11, 16 and 16A of the Bail Act do not apply to children. The bill provides that when deciding whether there is an unacceptable risk police officers and courts may have regard to a number of matters, including: the nature and seriousness of the alleged offence; the child's criminal history; and the history of a previous grant of bail to the child.

Children and young people may be impulsive and less likely to consider the consequences of their actions. The bill provides that, when deciding if there is an unacceptable risk that a child may commit an offence while on release, the nature and seriousness of that offence and its likely impact on a victim or the community must be considered.

Children who have only been charged with minor and simple offences should not be remanded in detention, and they certainly should not be kept in watch-houses. The bill retains the provisions in the Youth Justice Act that require a court or police officer to keep a young person in custody if satisfied there is a threat to the child's safety because of the alleged offence and there is no reasonably practicable other way to ensure the child's safety. However, the bill clarifies that a court or police officer must not be satisfied of these matters only because the young person will not have accommodation or family support if released.

The bill further enables a court or police officer to release a child even when the presumption of release can be rebutted. This applies only when release is not inconsistent with community safety and is otherwise appropriate having regard to certain additional child focused factors. These factors include: the need to preserve the relationship between a child and their family; the child's health, including any need for medical assessment or treatment; and the particular desirability of releasing children under 14 from custody due to their vulnerability.

Let me make it very clear: unless there is a clear and unacceptable risk to the community, children who are under the age of 14 should not be remanded in detention and they certainly should not be held in police watch-houses. This is a significant new part of the decision-making process and enables decision-makers to take into consideration the particular circumstances of individual children.

The bill further amends the Youth Justice Act 1992 to promote appropriate grants of bail by confirming that the principle of detention as a last resort applies to decisions about whether to remand a child in detention or to release them on bail.

Ensuring that any conditions attached to grants of bail for children are appropriate is an important component of the bill. For some children, intensive and onerous bail conditions are likely to be counterproductive and increase the likelihood of a young person breaching their bail conditions and being remanded in detention for the breach. The bill amends the Youth Justice Act 1992 to ensure that bail conditions are sustainable, appropriate and targeted to manage the actual risks for an individual child while they are on bail and reduce the risk of the child breaching the conditions.

The bill requires bail decision-makers to be satisfied that a condition is relevant to mitigating an identified risk that the child in question will commit an offence, endanger anyone's safety or welfare, or interfere with witness or otherwise obstruct the course of justice. Further, a bail condition must not involve undue management or supervision of the child, including having regard to the child's ability to comply with the condition.

The bill inserts a new requirement that when a court or police officer imposes a condition they must specify its duration. This period must be no longer than is necessary to mitigate an identified risk. This is intended to enable conditions to be in place to manage a risk and not restrict a child engaging with education, training or employment or other activities. The bill requires a court or police officer to give reasons about how a condition is intended to mitigate an identified risk.

009 The bill also amends the Youth Justice Act 1992 to require police officers to consider alternatives to arrest when responding to young people who breach their bail conditions by inserting a new provision into the Youth Justice Act 1992 that provides a child focused, discretion based framework to guide

police in their responses. The bill allows a police officer to: take no action; issue a warning; or make an application to vary or revoke the child's bail, depending on the seriousness of the breach.

A contemporary information sharing framework is needed to improve outcomes for children who come into contact with the youth justice system. The bill establishes within the Youth Justice Act 1992 a contemporary information sharing framework to facilitate a coordinated response to the needs of children charged with offences. The bill provides that, whenever possible and practical, a person's consent should be obtained before personal information is shared. The information sharing framework will enable government and non-government entities to share information so that assessments and referrals can be made for young people appearing before courts and to provide coordinated advice to courts that may be used in making bail or sentencing decisions; and to deliver service responses to the young person and their family.

The bill ensures that a tracking device cannot be used on a child. It is unclear whether provisions of the Bail Act 1980 that allow the use of electronic monitoring devices as a condition of bail apply to children. It is the government's position that children should not be subject to a condition that requires them to wear a tracking device. There are a number of practical and human rights concerns relating to imposing conditions of this type on children. For example, a child that wears a tracking device may be stigmatised and isolated by their peers or community, reducing their prospects of rehabilitation. That is why this bill provides that a condition requiring the use of a tracking device cannot be imposed as a condition of a grant of bail to a child, a community based order or early release from detention.

The bill makes amendments to increase the safety and security of children and staff within youth detention centres. In response to recommendations from the Queensland Ombudsman and the Independent Review of Youth Detention, the bill authorises the use of enhanced CCTV technology and body worn cameras in youth detention centres, as well as the collection of footage.

The bill makes amendments to require a court, when sentencing a child for manslaughter of a child under the age of 12 years, to treat the defencelessness of the victim and their vulnerability as an aggravating factor, similar to recent amendments for adult offenders. The Criminal Code and Other Legislation Amendment Act 2019 implemented recommendation 1 of the Queensland Sentencing Advisory Council's *Sentencing for criminal offences arising from the death of a child: final report* by amending the Penalties and Sentences Act 1992. To align with this amendment, the bill inserts a new requirement into the Youth Justice Act 1992 that, in sentencing a child offender for the manslaughter of a child under 12 years, courts must treat the defencelessness of the victim and their vulnerability as an aggravating factor. Importantly, this amendment does not override the existing sentencing considerations in the act. For example, detention will remain a last resort and the current sentence orders that a court may make when sentencing a child for an offence with a maximum penalty of life imprisonment will continue to apply.

The Public Guardian Act 2014 is also being amended in order to maintain the Office of the Public Guardian's oversight and safeguarding function for children involved in the youth justice system. The bill enables the Public Guardian to perform child community visitor and child advocacy officer powers and functions in residential facilities provided or funded by the department of youth justice. This will include supervised community accommodation services.

This bill is an important step in continuing the significant progress that has already been made in reforming Queensland's youth justice system. I commend the bill to the House.

~~First Reading~~

~~**Hon. DE FARMER** (Bulimba—ALP) (Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence) (10.53 am): I move—~~

~~That the bill be now read a first time.~~

~~Question put—That the bill be now read a first time.~~

~~Motion agreed to.~~

~~Bill read a first time.~~

~~Referral to Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee~~