Queensland Community Safety Bill 2024

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JAILING IS FAILING

JUSTICE REFORM INITIATIVE

SUBMISSION TO THE QUEENSLAND COMMUNITY SAFETY BILL 2024

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INTRODUCTION

The Justice Reform Initiative (JRI) appreciates the opportunity to make a submission to the Community Safety and Legal Affairs Committee's inquiry into the Queensland Community Safety Bill 2024 (Bill). From the outset, the Justice Reform Initiative reinforces its previously stated position that **increasing the imprisonment of children and introducing harsher penalties for children will not improve community safety.** Prior to this bill being introduced, community sector experts including JRI have provided a wealth of evidence to the Queensland Government through various inquiries and consultation processes.[1] The evidence provided to date has outlined the failure of imprisonment and harsher penalties when it comes to building safer communities and has also outlined the substantial body of research outlining 'what works' when it comes to controlling crime and protecting the community. Despite this, the Queensland Government has continued to implement 'tough on crime' reforms that are not grounded in evidence and that fail to 'get tough' on what really matters – addressing the root causes of crime to both prevent and reduce its occurrence in the community.

As pointed out in the first Bob Atkinson youth justice review, there are multiple factors that contribute to repeat offending and entrenched youth justice system involvement including non-attendance, truancy, suspension or expulsion from school; exposure to domestic violence, or physical, sexual, and emotional abuse; Foetal Alcohol Spectrum Disorder (FASD) and other neurological impairments; behavioural and mental health conditions; problematic substance use (alcohol, drugs and volatile substances); inadequate sleep and nutrition; homelessness; and negative family and peer relationships.[1] The Bill does not set out an evidence-base that shows how the proposed measures will improve community safety or address the root causes of crime. Government rhetoric that suggests punitive responses keep the community safe perpetuates a false narrative; that prison works to prevent and reduce crime. The Queensland Government's own data shows 9 in 10 children who are released from sentenced imprisonment in Queensland return to prison within 12 months.[2]

As highlighted in the Justice Reform Initiative Queensland Alternatives to Incarceration Report[3], the Justice Reform Initiative submission to the Youth Justice Reform Select Committee[4], and in countless other government and non-government reports, research, evaluation, and reviews[5], there are multiple proven, cost-effective reforms that can work together to make progress in Queensland. The Bob Atkinson 2022 youth justice reform review recommended 'engaging with the Queensland community to build balanced public awareness of the drivers behind youth offending and evidence-based prevention and response actions.'[6] We urge the Queensland Government to stay focused on **evidence-based youth justice policies**, and best-practice in youth justice policy development – there are ways to hold children accountable for their offending that work to maintain public safety and support children and families.

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[1] This evidence includes but is not limited to countless submissions made by experts to the Legal Affairs and Community Safety Committee inquiry into the Youth Justice and other Legislation Amendment Bill 2019, the Community Support and Services Committee inquiry into the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021, the Legal Affairs and Safety Committee inquiry into the Youth Justice and Other Legislation Amendment Bill 2021, the Stronger Laws inquiry launched by then Premier Palaszczuk in 2023, the Economics and Governance Committee inquiry into the Strengthening Community Safety Bill 2023, and the Youth Justice Select Committee parliamentary inquiry into youth justice reforms in Queensland 2024.

WHY IMPRISONMENT AND THE THREAT OF HARSHER PENALTIES DOES NOT WORK: THE FAILURE OF DETERRENCE

The Justice Reform Initiative does not support amendments that seek to introduce new offences and increase the maximum penalty for certain existing offences. Although it is tempting to invoke the threat of harsher penalties when tragic events occur, we need to be very realistic about the likely impacts of these policies. Prison is ineffective when it comes to controlling crime or protecting the community.[7] Sending people to prison does not reduce the likelihood of future offending. Increasing the length of sentences and expanding the reach of sentencing legislation does not work to deter people from committing crime, and also doesn't reduce the likelihood of offending. In summary, **imprisonment often leads to more crime – not less, and the threat of harsher penalties doesn't work to deter.**

The current policy approach to keep more children in detention for longer will not result in therapeutic or community safety outcomes. Studies have shown recidivism and re-incarceration rates are higher when children spend longer-periods incarcerated.[8] Pre-sentence detention has also been associated with a 33% increase in recidivism for children.[9] It is also very clear that 'toughening' laws often has unintended consequences. For example, when the Victorian Government restricted access to bail, following the Bourke St rampage that killed six people,[10] lawmakers presumably didn't intend to lock away more women, especially First Nations women, many of whom are domestic and family violence victims, homeless, and otherwise vulnerable, in relation to offences for which they have not yet been convicted. Yet, this is precisely what has happened.[11] Acknowledging this, the Victorian Government has since brought in new bail reforms to reduce the disproportionate impact felt by women, children and Aboriginal and/or Torres Strait Islander peoples.[12]

We need to be very clear that the threat of harsher penalties (including longer prison sentences and mandatory sentencing) does not reduce crime.[13] Even in the United States, which is the only Western democracy to retain the use of Capital Punishment, there is absolutely no evidence that the threat of the death penalty has any impact on homicide rates.[14]

There are a number of reasons why 'deterrence' in the form of the threat of harsher penalties is unsuccessful when it comes to improving community safety. Research has consistently shown that individuals who commit crime are rarely thinking of the consequences of their actions. This is because the context in which most crime is committed often does not lend itself to someone rationally weighing up the consequences of their actions. This is further exacerbated for children and adolescents given the pre-frontal cortex, which controls the brains executive functions, is still developing.[15] This means that children and adolescents are still developing the cognitive processes required in planning, controlling impulses, and weighing up the consequences of decisions before acting. Much crime is conducted in chaotic or desperate circumstances and is impacted by drug and alcohol use. The threat of harsher penalties or longer sentences is not something that most people who engage in offending are considering at the moment they are committing crime.[16]

Although threatening harsher penalties has populist appeal and making promises about 'getting tough on crime', tightening bail laws and bringing in harsher penalties has too often become a hallmark of Queensland politics, all of the evidence shows us that this doesn't work to build community safety. There is a need to address the social drivers of criminal justice system contact including the entrenched and intersecting disadvantage experienced by over-imprisoned populations.[17] This means properly resourcing the community to deliver supports that genuinely allow and support people to build their lives in the community

instead of being held in ineffective and expensive prison environments that cause more harm.

While of course the fact of disadvantage[18] cannot be used to discount the consequences of crime, it is crucial to understand the context in which most crime is committed[19] to build and implement effective policy to reduce the numbers of children in custody and strengthen genuine evidence-based early intervention, prevention, diversion, and sentencing options that work (instead of relying on prison).

EXPANSION OF ELECTRONIC MONITORING

The Justice Reform Initiative does not support the expansion of the current EM trial based on the view that "the current sample size for the Queensland trial is too small to support reliable conclusions".

Increasing the number of children who are subject to invasive and restrictive electronic monitoring to achieve an adequate 'sample size' is both unethical and empirically unnecessary in Queensland. As is outlined below in this submission, there already exists clear evidence about the harms, risks, and stigmatising and net-widening impact of electronic monitoring for children. As the Queensland Government has also outlined in its own literature review of the Electronic Monitoring Trial[20], there is very limited evidence that electronic monitoring is effective as a form of crime control for children. However, the absence of robust research literature when it comes to the success (or otherwise) of electronic monitoring of children, is not a sufficient justification for the expansion of the scheme in Queensland.

Given the known harms, and the known (limited) research available, it is proposed here that at this time, the Queensland Government adopt alternative research methodologies that are better suited to small sample sizes and are much less harmful than what is currently proposed.

If the key concern of the Queensland Government is the ability of the current pilot to reach reliable conclusions because of the sample size, then alternative research methodologies should be interrogated. Based on the information available, it would appear that in order to evaluate the effectiveness of electronic monitoring of children on bail in Queensland a mixed methods approach would be much more effective than relying on a large sample size, and cause far less harm to the children involved.

Findings based on the current sample size of children could easily be supplemented with rich qualitative data (which is often much more useful in terms of unpacking 'why' a particular intervention is or isn't successful). Consideration should also be given to utilising linked administrative data to create a matched comparison group to deepen understandings of the difference between children who are 'participating' on the pilot, and those who are not.

It is unethical to increase the number of children who will be subject to a government-implemented restrictive intervention on the basis of 'research'.

If the Queensland Government (despite the clear harm that electronic monitoring causes to children) commits to expanding the numbers of children subjected to electronic monitoring for the purposes of increasing a sample size, transparency around the Governments' decision making should be made available to stakeholders. This includes:

- Outlining clearly how the proposal for an increased sample size adheres to the National Statement on Ethical Conduct in Human Research 1.6 'The likely benefit of the research must justify any risks of harm or discomfort to participants."[21]

- What does the Queensland Government consider to be an adequate or sufficient sample size?
- What is the timeframe for achieving the sample size and undertaking the research to determine whether electronic monitoring is effective at reducing reoffending?
- What is the plan if an adequate sample size is not achieved? (Does the Queensland Government intend to keep expanding the scope of the 'pilot').
- How will the research be undertaken? Has the Queensland Government developed a research proposal?
- Will these amendments and the trial for electronic monitoring cease if findings from the research show electronic monitoring is not effective at reducing reoffending or if findings from the study are inconclusive/mixed?

ELECTRONIC MONITORING FOR ADULTS: WHAT DOES THE EVIDENCE SAY?

The research exploring the efficacy of Electronic Monitoring for adults is mixed.[22] There are some studies that have concluded that electronic monitoring can reduce the likelihood of technical violations, reoffending and absconding.[23] However, as is highlighted below, there are multiple limitations to these findings, including limitations in research methodology, and limitations in terms of; the exclusion of many types of offending; it's applicability to children; and considerations as to whether or not the 'benefits' outweigh the known harms (outlined further below).

As highlighted by the Queensland Human Rights Commission in 2021[24], "a meta-analysis of 18 studies from around the world about electronic monitoring published in May 2020-21 found that GPS trackers ***do not have a statistically significant effect on crime, except when used for sex offenders placed on electronic monitoring post-trial***.[25] The study found that there were 'sobering results'." Similarly, an earlier meta-analysis of 9 studies examining the use of electronic monitoring between1986 and 2002 found there was ***no overall impact on recidivism***.[26] It is important to note that the mandatory treatment requirement for serious sex offences in the US has contributed to the deterrent, compliance and reoffending outcomes of electronic monitoring for this cohort.[27] Other limitations of this research include a narrow focus on the use of EM for home detention[28] and that there are not widespread findings demonstrating efficacy of across jurisdictions.[29]

ELECTRONIC MONITORING FOR CHILDREN: WHAT DOES THE EVIDENCE SAY?

Importantly, t**here is very little empirical evidence suggesting electronic monitoring is effective for children**, and in fact, most of the evidence suggests it causes more harm than good.[30]

Electronic monitoring is punitive, invasive, and not developmentally appropriate for children **or** adolescents.[31] Evidence shows children and adolescents are still developing their ability to control impulses and weigh-up consequences of decisions before acting. Punitive and 'harsher' penalties do not deter crime, especially for children, and there is no evidence to suggest that electronic monitoring will have a deterrent effect for children.[32] Electronic monitoring and other forms of compliance and control do not take away from the fact that children and adolescents are yet to develop the developmental capacity for impulse control, emotional regulation, and complex reasoning (including assessing long-term consequences of decisions).

Creating a condition for a child or adolescent to wear an electronic monitoring device does not address the reasons why they might be offending or breaching bail in the first place. Instead, electronic monitoring can lead to further criminalisation of trauma and disadvantage.

A recent Queensland Family and Child Commission report found many children who were remanded into Queensland watch houses for lengthy periods did not have stable accommodation or family support that assisted them to comply with their bail conditions. Police cited denying bail for reasons such as a child's parent being intoxicated, family or community fighting, family criminal history, and lack of parental supervision.[33] Electronic monitoring does not address these factors. Instead, increased surveillance through electronic monitoring may lead to children being further criminalised and remanded into custody for breaching bail conditions – particularly conditions that compel children to remain at a prescribed address. Furthermore, increased use of electronic monitoring in these circumstances may further compound trauma for children if they are restricted to environments where there is lack of connection, structured pro-social activities, and relational support.[34] **Instead of looking for quick fix responses to bail compliance like electronic monitoring, we must instead consider how services and supports can be expanded to assist children to comply with their bail conditions.**

As the government notes in its own research review[35], electronic monitoring is highly stigmatising and marginalising, especially for children. Covering a device is not always possible, particularly in warmer climates like Queensland where people regularly wear shorter clothes with their ankles visible. Further, it can be stigmatising and isolating for children to participate in pro-social activities like sport or social and emotional wellbeing programs if they have a visible electronic monitoring device.[36] It is well established in the literature that labelling children (and adults) as delinquent or criminal is not effective when it comes to changing behaviour and trajectories[37] and electronic monitoring has had a demonstrated net-widening effect.[38]

Furthermore, there have been reports in other jurisdictions of police charging children for breaching their bail conditions in circumstances where the device has a flat battery, which was a limitation identified in the government's own literature review.[39] As is clearly shown in the literature, any period of incarceration (resulting from arrest for breach of bail conditions or otherwise) – no matter how long or short - increases the likelihood of reoffending and negative collateral consequences.[40]

Increased use of surveillance and compliance methods by the government can also change the relationship that children, especially First Nations children, have with Youth Justice Officers[41] and Youth Co-Responders. This is especially the case if increased surveillance results in children being charged for breaching their bail conditions, without any efforts on government's part to actually support children to address the reasons why they are breaching their bail in the first place. The use of electronic monitoring has been shown to increase focus on technical compliance instead of intensive case management.[42] Children experience their environments through the relationships that surround them, and control-oriented relationships are not conducive to addressing trauma or the root causes of offending. Anecdotally, we have already heard reports of children decreasing their engagement with Youth Co-Responders since the breach of bail legislation was enacted.

The Justice Reform Initiative acknowledges the Queensland Government literature review that points to the 'inconsistent findings regarding the efficacy and impact of EM on children and young people.'[43] The three studies identified in this review (Cassidy et al, 2005[44];

Deuchar, 2011[45]; and Pearson, 2012[46]) that looked specifically at children and electronic monitoring had mixed results in terms of the success of electronic monitoring, and two had specifically identified limitations in terms of the results being unable to be generalised.

EXPANDING OPTIONS THAT SUPPORT BAIL COMPLIANCE

Given the absence of evidence that electronic monitoring works for children, and the extensive literature around the efficacy of community-led diversionary, bail support and sentencing options (many of which were outlined in the recent Justice Reform Initiative Submission to the Youth Justice Inquiry linked here), the Justice Reform Initiative suggests that **tax-payers money is far better spent investing in developmentally-appropriate responses that are proven to work**.

Instead of expanding the use of EM, the Justice Reform Initiative recommends that the Department of Youth Justice undertakes extensive analysis and consultation (particularly with bail support service providers) to understand how children can be better supported to comply with their bail conditions. This analysis could consider the following questions:

- What is the current capacity of community-led services in each location?
- What is the current demand of community-led services in each location?
- Where are current gaps and opportunities in community-led service delivery in each location?
- What investment is needed to increase the availability, scope and capacity or community-led services in each region?

As noted above, a recent Queensland Family and Child Commission report found many children who were remanded into watch houses for lengthy periods did not have stable accommodation or family support that assisted them to comply with their bail conditions.[47] Police cited denying bail for reasons such as a child's parent being intoxicated, family or community fighting, family criminal history, and lack of parental supervision. The proposed reforms around expanding EM do not address any of these determinants that impact upon a child's ability to comply with their bail conditions, while expanding evidence-based bail support services would have this effect.

ADDING NEW PRESCRIBED OFFENCES AND UNINTENDED CONSEQUENCES

As noted above, we have seen in other jurisdictions how 'toughening laws' can have unintended consequences. Adding new prescribed indictable offences may have unintended consequences including net widening. The *Strengthening Community Safety Act 2023* (SCS Act) introduced changes to police obligations around considering alternatives to arrest for contraventions of bail conditions. The new s59AA specifies that police **do not** have to consider alternatives (such as no action, a warning or making an application to the court to vary or revoke bail) prior to arrest if the condition is attached to bail for a prescribed indictable offence.[48] Adding new prescribed indicatable offences for the purposes of electronic monitoring may inadvertently impact police discretion under this section of the Act, which may result in more children being arrested and remanded for breaches of bail conditions. Further, expanding the criteria for EM to include children who have been charged with a prescribed indicatable offence (but not yet found guilty of that offence) increases the likelihood of labelling and entrenchment of children in the criminal legal system who could instead be diverted into community-led supports that work to address the drivers of offending.

Labelling and further entrenchment in the criminal justice system (which is known to increase not decrease offending) is also more likely due to the changes that were introduced through the *Strengthening Community Safety Act 2023* (SCS Act) relating to 'serious repeat offender

declaration'. The new sections 150A and 150B of the Youth Justice Act provide a separate sentencing regime for children deemed by the Government to be 'serious repeat offenders'. These changes gave courts the power to declare a child a 'serious repeat offender' if they meet certain criteria, which includes that the court is sentencing the child in relation to a prescribed indictable offence; that the child has previously been sentenced on at least one occasion to a detention order for a prescribed indictable offence; and that the court is satisfied that there is a high probability that the child would commit a further prescribed indictable offence (among other criteria). Further, if a child is declared a 'serious repeat offender', the court must have primary regard to the following sentencing considerations:

- the need to protect members of the community;
- the nature and extent of violence, if any, used in the commission of an offence;
- the extent of any disregard by the child in the commission of the offence for the interests of public safety; the impact of the offence on public safety;
- the child's previous offending history and bail history.

Adding new prescribed indictable offences would likely expand the number of children who would fit the criteria to be labelled as a 'serious repeat offender' under the YJ Act. The introduction of these changes were incompatible with the Human Rights Act and required an override declaration that the Human Rights Act does not apply to new sections 150a and 150b of the YJ Act. This is a serious breach of human rights adding new prescribed offences for the purpose of 'trialling' whether electronic monitoring works in Queensland, when all of the evidence suggests there are far more pragmatic and evidence-based responses that could be implemented instead of electronic monitoring.

Introducing a new offence for merely spectating a racing, burn out, or hooning offence further risks net-widening and entrenching children in the criminal legal system, rather than addressing the reasons why children are in these circumstances and providing options for diversion.

TRAUMA-INFORMED CARE AND PRACTICE

The Queensland youth justice system proports that it is based on the principles of trauma-informed practice.[49] The now outdated Youth Justice Strategy set out to ensure "every child who commits an offence will be treated in a way that reflects their age and abilities…and…helped to recover from trauma."[50] When a person experiences a stressor, the body produces stress hormones that trigger a "fight or flight response", and for children with a background of trauma, regulation of this response is impaired.[51] Furthermore, the pre-frontal cortex (the part of the brain that controls executive functioning) is still developing for children. This means that children are still developing the cognitive processes required to plan, control impulses and weigh-up the consequences of decisions before acting.[52] Trauma can further disrupt development of the connections to, and within the pre-frontal cortex of the brain, meaning decision-making abilities may be further impaired for children with backgrounds of trauma.[53] Expanding the number of prescribed offences has unintended consequences that will further criminalise trauma and disadvantage children, especially for First Nations children. This includes for offences that are not serious or violent, such as threats and threatening violence. As set out in the Penalties and Sentencing Act, threats are considered a prescribed offence for adults "only if the office is committed in circumstances where the [person] is liable to imprisonment for 10 years". Harsher penalties fail to recognise the impact of trauma, child and adolescent development, and the evidence around what works to reduce offending by children.

TRANSFERRING 18 YEAR OLDS TO THE ADULT PRISON SYSTEM

The stated intention of this reform is to ensure 'children in detention [are] not…detained with adults'. While '18-year-olds are considered adults in the criminal justice system', neuroscientists have recognised that adolescence spans to 24 years old.[54] The pre-frontal cortex (the part of the brain that controls executive functioning) does not fully develop and mature until the age of 25 years old.[55] Brains are still developing between the ages of 18 to 25 years old, meaning developmentally appropriate interventions will differ for this cohort in comparison to people in adult prisons over the age of 25 years old.

Furthermore, neuroscience shows development and maturation of the adolescent brain can be impacted by a range of factors including physical, mental, economical and psychological stress and trauma; problematic alcohol and drug use, and hormones. Adolescent brain development and maturation may also have been influenced in early childhood experiences by nurture, pre-natal and post-natal exposure, nutrition, and sleep (among other factors).[56]

The majority of children (and adults) incarcerated in Queensland have experienced multiple and intersecting forms of trauma and disadvantage. The 2023 Youth Justice Census shows that 81% if young people in the justice system had used at least one substance, 53% have experienced or been impacted by domestic and family violence, 44% had a mental health and/or 'behavioural' disorder, 25% had at least one parent who spent time in custody, 30% were in unstable and/or unsuitable accommodation, and 44% have a disability (assessed or suspected).[57]

A 2018 study by the Telethon Kids Institute and the University of Western Australia showed that 9 out of 10 (90%) of incarcerated young people in WA had some form of neuro-disability, ranging from dyslexia or similar learning disability, language disorder, attention deficit hyperactivity disorder, intellectual disability, executive function disorder, foetal alcohol spectrum disorder, memory impairment or motor coordination disorder.[58] Given the robustness of this study in comparison to Queensland data, there is no reason that this finding would not also be generalised to children who are incarcerated in Queensland. This means that many adolescents aged 18 may have the developmental capacity younger than their actual age.

The focus should instead be on removing young children from the prison system. Evidence is clear that the younger a child is when they enter the criminal justice system, the more likely they are to be cycling in and out of it for years to come. As of the June Quarter in 2022, there were 20.5 children aged 10-13 years in detention on average night in Queensland (7.9% of all children in detention).[59] The government could instead prioritise responses to divert children aged 10 to 13 from the prison system in line with evidence that suggests 14 years old is the minimum age developmentally and neurologically that children could or should be held criminally responsible.[60] There are in fact compelling developmental arguments to suggest this age should be higher.[61]

REDUCING THE NUMBER OF FIRST NATIONS CHILDREN IN CUSTODY

For First Nations children, the most effective early intervention, prevention, and diversion responses are those that are culturally responsive, designed and delivered by local First Nations communities and organisations, and which foster a genuine sense of community ownership and accountability.[62] Many First Nations people have intergenerational and/or personal experience of mainstream services working against them.[63] Engaging with First Nations communities ensures programs are more effectively targeted to local priorities and needs, and are aligned with local systems and circumstances.[64] Community involvement and

local decision making should occur at each stage of the process, including at the feedback stage to ensure that the feedback methods used align with First Nations communication and knowledge.

First Nations communities across Queensland continue to advocate for true self-determination and for decision making authority to be handed back to communities to better resolve structural disadvantage, systemic racism, and the ongoing impacts of colonisation (especially when it comes to child and adult justice). **A whole-of-government funding approach that provides First Nations communities with sustainable, long-term, and flexible funding is needed in Queensland to improve both social and justice outcomes for First Nations peoples.** Breaking down complicated, restrictive, and siloed funding mechanisms that currently exist will enable First Nations communities to better provide holistic community-controlled and placed-based responses that meet the needs of their community. Elders and First Nations Communities across Queensland have put forward several polices that could instead be implemented to support children to comply with bail conditions and including: 24/7 First Nations led therapeutic and culturally-modelled assessment centres; First Nations designed and run healing centres, and well-resourced kinship caring models as part of a response in the youth justice system. Similar First Nations-led models have been implemented overseas with demonstrated success.[65]

LEAVE OF ABSENCES FOR CHILDREN IN CUSTODY

The policy focus of the Queensland Government should be on reducing the number of children in all forms of custody and addressing the systemic drivers behind children being held in adult watch houses. However, in the interim, as a short-term measure, the Justice Reform Initiative supports reforms that will enable children held in police watchhouses to be taken to a nearby youth detention centre during the day for the purpose of accessing programs and other activities, such as exercise. We suggest that these reforms are further expanded to facilitate children being able to access other supervised activities and events in the community (including for instance, attending funerals) as is available to children who are incarcerated in youth detention). It is noted that the proposed reforms outline that 'this would happen when operationally practicable, by agreement between the watchhouse and the detention centre.' Given current staffing pressures within the youth detention centres and police, it is unclear how this policy proposal will be operationalised. As part of these reforms, it is recommended that the Queensland Government commits to regularly publishing data online about the impact of this policy in practice.

It is also recommended that the Queensland Government expand leave of absences for children in custody within prison to pursue opportunities to be involved in work, study, recreational and social activities in the community. As highlighted in Kate Bjur's Winston Churchill Fellowship Report[66], leave of absences are standard practice within the Diagrama custody model (which has been proven to reduce reoffending):

'In Spain, approximately 30 to 50 percent of young people go off centre daily, and in the lower- risk open centres, every young person is in the community every day, with or without a staff member. In one centre in the Murcia region, 4000 instances of young people leaving the centre occurred in 2022. From those, four young people came back to the centre after curfew and none re-offended while on leave.'

Children in these centres are held accountable for their behaviour through guidance and support that enables them to earn increasing autonomy and responsibility both within and outside of the centre.

REWORDING OF YOUTH JUSTICE PRINCIPLE 18

Australia ratified the United Nations Convention on the Rights of the Child (CRC) in 1990. This means all states and territories in Australia have a duty to ensure that the human rights of all children in Australia are upheld to the standard set out in this treaty.[67] Article 37(b) of the CRC states that:

> *"No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."*

The proposed changes stray away from this absolute principle. Both major parties in Queensland have put forward policy positions that do not prioritise the notion that the arrest, detention and imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. Not only is going against this article a breach of human rights, it also a poor policy decision that does nothing to improve community safety or prevent crime.

Furthermore, Article 37(c) states that "every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances." Queensland is further breaching this human right by incarcerating numerous children in adult police watch houses (including for extended periods), which is not in the best interest of the child. The Justice Reform Initiative urges the Queensland Government to cease the practice of holding children in police adult watch houses. Other jurisdictions, like Hawaii, have developmentally and age appropriate Indigenous-led assessment centres where children can be taken following contact with Police to have comprehensive assessment and screening completed, which informs decision-making around community-based programming that will support children (and their families) to address challenges in their life and the drivers of behaviours deemed problematic.[68]

RECORDING OF PHONE CALLS

The Justice Reform Initiative notes that the current provisions under the Youth Justice Act allow staff to listen to a phone call if it is reasonably believed the call will disclose information that is 'likely to be detrimental to the good order and management of the centre', and may terminate the call on reasonable grounds. We also acknowledge that the child and the other party to the conversation must be informed prior to the conversation that a staff member will be listening (Youth Justice Regulation 2016 (YJ Regulation) s.29(4)). It is our view that this power is sufficient and expanding the ability for staff to record phone calls made by children who are incarcerated may be a breach of human rights.

As highlighted previously, children who participate in evidence-based residential youth justice models within other jurisdictions are given space and supported to fail while residing at these centres. Such trauma-informed models of care recognise that children need time to practice new skills and heal with the support of trusted adults. Rather than pressing further charges or punishing children when they make mistakes (like what happens in custodial settings in Australia), children are guided in ways that help them learn and keep working at getting better.[69] Further, criminalising the behaviours of children in detention fails to recognise the impact of trauma and disadvantage, and has no benefit in terms of reducing reoffending or keeping the community safe.[70]

ABOUT THE JUSTICE REFORM INITIATIVE

The Justice Reform Initiative is an alliance of people who share long-standing professional experience, lived experience and/or expert knowledge of the justice system, further supported by a movement of Australians of goodwill from across the country who believe jailing is failing and that there is an urgent need to reduce the number of people in Australian prisons.

The Justice Reform Initiative is committed to reducing Australia's harmful and costly reliance on incarceration. Our patrons include more than 120 eminent Australians, including two former Governors-General, former Members of Parliament from all sides of politics, academics, respected Aboriginal and Torres Strait Islander leaders, senior former judges including High Court judges, and many other community leaders who have added their voices to end the cycle of incarceration in Australia.

We seek to shift the public conversation and public policy away from building more prisons as the primary response of the criminal justice system and move instead to proven evidence-based approaches that break the cycle of incarceration. We are committed to elevating approaches that seek to address the causes and drivers of contact with the criminal justice system. We are also committed to elevating approaches that see Aboriginal and Torres Strait Islander-led organisations being resourced and supported to provide appropriate support to Aboriginal and Torres Strait Islander people who are impacted by the justice system.

The Queensland Patrons of the Justice Reform Initiative include:

- **Sallyanne Atkinson AO.** Co-Chair of the Queensland Interim Body for Treaty and a member of the Queensland University Senate.
- **Adjunct Professor Kerry Carrington.** School of Law and Society, University of the Sunshine Coast, and Director of her own Research Consultancy.
- **Mick Gooda.** Former Aboriginal and Torres Strait Islander Social Justice Commissioner and former Royal Commissioner into the Detention of Children in the Northern Territory.
- **Keith Hamburger AM.** Former Director-General, Queensland Corrective Services Commission.
- **Professor Emeritus Ross Homel, AO.** Foundation Professor of Criminology and Criminal Justice, Griffith University.
- **Gail Mabo.** Gail is of the Meriam language group and clan of Mer (Murray Island) in the Torres Strait. She is an Australian visual artist who has had her work exhibited across Australia and is represented in most major Australian art galleries and internationally. She was formerly a dancer and choreographer. Gail is also deeply engaged with young people in her community as a mentor and is the daughter of land rights campaigner Eddie Mabo and educator and activist Bonita Mabo AO.
- **Professor Elena Marchetti.** Griffith Law School, Griffith University.
- **The Honourable Margaret McMurdo AC.** Former President Court of Appeal, Supreme Court of Queensland and Commissioner of the Victorian Royal Commission into the Management of Police Informants.
- **Dr Mark Rallings.** Former Commissioner, Queensland Corrective Services.
- **Greg Vickery AO.** Former President, Queensland Law Society and former Chair of the Standing Commission of the International Red Cross and Red Crescent Movement.
- **The Honourable Dean Wells.** Former Attorney General of Queensland.
- **The Honourable Margaret White AO.** Former Judge of the Queensland Supreme Court and Queensland Court of Appeal, former Royal Commissioner into the

Detention of Children in the Northern Territory, and Adjunct Professor TC Berne School of Law UQ.

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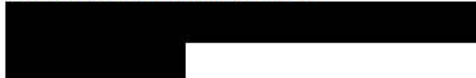
Queensland Advocacy and Campaign Coordinator
Justice Reform Initiative


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