Youth Justice (Electronic Monitoring) Amendment Bill 2025

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Youth Justice Reform Advocate Shane Cuthbert Submission to the Education, Arts and Communities Committee

Mon 12 January

Dear Committee Secretary

Education, Arts and Communities Committee

Parliament House

George Street

BRISBANE

QLD 4000

Youth Justice Reform Advocate Shane Cuthbert

Submission to the Education, Arts and Communities Committee

Inquiry: Youth Justice (Electronic Monitoring) Amendment Bill 2025

Queensland Parliament – Inquiry ID 6559

January 12, 2025

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Shane Cuthbert

Shane Cuthbert was previously President of the Central Queensland University Law Society and advocates, with lived experience in the youth justice, prison, mental health and addiction spaces[1]. Shane Cuthbert, who has completed dual degrees in Law and Psychology is currently undertaking a Master of laws, specializing in Government and Public Sector Law in combination with a Graduate Certificate of Research.

Shane Cuthberts research focus is on Youth Crime. Specifically, the design of an evidence-informed, locally feasible Repeat Offender Diversion Hub model for Cairns/FNQ targeting (10–15-year-olds) with the aim of producing an evaluation-ready framework that supports implementation, accountability, and policy translation. In addition, Shane has spoken with various Queensland Parliamentary Committees in relation to support for victims of crime[2] and decriminalizing public offences[3].

Introduction and Summary

I support young people however, as an advocate for the youth and the greater community, I must balance the human rights of children with any proposed benefits to the community through the reduction of crime. I oppose expanding the use of electronic monitoring (ankle/GPS devices) for children as proposed in the Youth Justice (Electronic Monitoring) Amendment Bill 2025.

In my view, electronic monitoring for children is a highly stigmatising and often counterproductive intervention. The visible nature of the device can trigger shame, bias and community backlash. Many of these young people already feel alienated and oppositional; publicly marking them can entrench a 'rejected by the community' identity and push them further away from rehabilitation and pro-social connection.

Electronic monitoring can also create a false sense of security. Tracking is not the same thing as supervision. It does not prevent offending, and it can shift attention away from the practical supports that reduce risk and improve compliance.

Finally, broadening electronic monitoring can drive net-widening and technical churn. Increased alerts and alleged breaches can fill up the courts and further criminalise

[1] https://shanecuthbert.com/shane-cuthbert-who-is-shane-cuthbert/
[2] https://documents.parliament.qld.gov.au/com/LASC-C96E/ISVC-98C6/submissions/00000054.pdf
[3] https://documents.parliament.qld.gov.au/com/CSSC-0A12/IDCPOHWR-FA50/submissions/00000022.pdf

children through repeated justice-system contact without addressing the root causes of offending.

Recommendations

I recommend the Committee:

- Recommend that the Bill not be passed in its current form.
- If the Bill proceeds, retain strong statutory safeguards: a minimum age threshold; narrow eligibility; and a clear suitability test.
- Require courts to consider stigma, safety (bullying/vigilantism), education/training participation, and the child's personal circumstances before imposing electronic monitoring.
- Legislate a graduated response to alerts/contraventions to avoid arrest/remand for technical or low-risk issues.
- Prioritise 'supervised therapeutic bail'—mandatory supports and rehabilitation while on bail (without undermining the presumption of innocence).
- Fund practical service capacity statewide before expanding any technology-led model (after-hours support, transport, culturally safe services, and family partnership).
- Require transparent public reporting and independent evaluation of outcomes (remand, breaches, reoffending, schooling, and impacts on First Nations children).
- Require a graduated response to missed appointments/technical issues (outreach → troubleshooting → plan variation → court review), with arrest/remand reserved for serious risk.
- Set strict timeframes and review points: plan commencement within 72 hours; first review within 14 days; thereafter every 28 days; and end-dates for any restrictive conditions.
- Require a 'child needs assessment' and a least-restrictive sequencing rule (support-first; restrictions second; EM last-resort) before imposing intensive bail conditions.
- Legislate a 'Therapeutic Bail Program' / 'Bail Support Plan' model as the preferred compliance tool, with minimum standards covering physical health, mental health, neurodevelopment, AOD, education/training, housing and safety, cultural support, and practical compliance supports.

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1. **What the Bill does (in plain terms)**

The Bill proposes to make electronic monitoring as a youth bail condition permanent, expand its availability statewide, remove current eligibility limits, and change/streamline the matters a court must consider when ordering a monitoring device.

2. **Stigma, bias, shame and community backlash**

Electronic monitoring for children is not a neutral administrative tool. It is visible and socially meaningful. For a child, the device can function as a wearable label that invites judgment: from peers, adults, employers, school communities and the wider public.

In regional centres and smaller communities, visibility increases the likelihood that a child is identified and targeted. This can expose them to bullying, harassment and vigilantism, and can also place families under pressure. It can discourage participation in school, sport, training, employment and cultural activities, exactly the protective factors that reduce reoffending.

From a rehabilitation perspective, stigma can deepen disengagement. For children who already present as oppositional, public marking can harden a ‘why bother’ mindset and fuel hostility towards the community. In my view, these harms outweigh any perceived compliance benefit from the device.

3. **A ‘band aid’ solution that can create a false sense of security**

Electronic monitoring is frequently framed as ‘monitoring’ or ‘supervision’. But tracking data is not the same thing as active supervision. A dot on a map does not tell you what a child is doing, who they are with, whether they are escalating, or whether they are being supported.

Technology can fail or mislead dead batteries, network dropouts, device faults, delayed or duplicated alerts, and the practical realities of unstable accommodation and chaotic family environments. A community may feel reassured that a child is being ‘tracked’, but that reassurance can be misplaced if the underlying risks are not being managed with real services.

4. Net-widening, technical breach pathways and court congestion

Expanding electronic monitoring increases the number of ways a child can 'fail' bail in technical ways, late charging, signal issues, equipment faults, misunderstandings about boundaries or curfew times, and disruption caused by family circumstances. These are not necessarily new risks to public safety, but they generate alerts and alleged contraventions.

Even where some contraventions are not criminal offences, the operational reality is that alerts still lead to police attendance, bail variation applications, revocation applications, and more court events. This fills up the courts and further criminalises children through repeated system contact. It also increases the risk of remand for children who might otherwise have remained safely in the community on less intrusive conditions.

5. A more meaningful approach: 'supervised therapeutic bail'

If the policy objective is bail compliance and fewer victims, then the focus should be on what changes behavior: rehabilitation, stability and support while the child is on bail. Instead of relying on surveillance, Queensland should strengthen a model of 'supervised therapeutic bail'—rapid mental health and neurodevelopmental screening, psychology and counselling pathways, alcohol and other drug supports, GP/allied health access, education and training re-engagement, family support, and after-hours options when risk peaks.

I support judicial practice that prioritises problem-solving and rehabilitation during the bail period—such as requiring appointments and program engagement that address mental health, physical health and criminogenic needs. These are proactive investments that reduce offending and improve community safety.

In a 2023 submission to the Youth Justice Reform Select Committee[4] with former magistrate Pat O'Shane, we provided the following practical recommendations regarding bail.

a) Solutions

[4] https://documents.parliament.qld.gov.au/com/YJRSC-6004/YJRSC-54D8/submissions/00000015.pdf

Former Magistrate Pat O'Shane was well known among other things, for not incarcerating enough individuals, especially children. Although O'Shane was criticized by some, her methods and programs were later implemented by other Magistrates and Judges.

> Pat O'Shane says *"I wasn't there to please shock jocks. I wasn't there to please politicians. I was there to do justice, and I did it with it without fear or favor. I certainly didn't do it with fear, I can tell you."*[5]

b) Court Based Programs

We suggested implementing more Court based/monitored programs, often, children remanded in custody cannot access valuable programs, courses and employment. Even children who are under community-based orders may not be able to access such programs and it is important for the Courts; to be given the resources they need to better oversee and implement such programs.

Pat O'Shane was the first to establish a version of what is now, the drug Court in New South Wales, where individuals can address their substance issues prior to being sentenced and their mental health.

> O'Shane says *"I kept a lot of young people out of gaol. And in fact, I talked about alternatives to gaol, especially for example, for minor drug matters, which is what you get in the Local Court. I believe in rehabilitation and believe it or not, it was my initiative that eventually led to the Drug Court".*
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> *"The thing one of my colleagues said to me was, I'm very impressed with what you've done with this young woman, and I said, I didn't do it," as I used to say to these young people, and even older people. "You did it. I gave you the opportunity to do it."*

Pat O'Shane approached mental health in the same way, changing attitudes and providing ideas around how best to deal with those defendants at the Local Court levels experiencing mental health issues, always with an emphasis on rehabilitation. The former Magistrate was also involved in changing the Courts approach to childcare and protection.

> Pat O'Shane says *"I believe that children should stay in their communities, with their families if possible. I always recommend that they undergo training*

[5] https://www.smh.com.au/national/nsw/fearless-oshane-defender-of-justice-plans-for-life-after-the-bench-20130208-2e3yk.html

> *programs. And in fact, that's been adjusted now by the Family Court, which sends people off to do parenting courses".*
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> Mr Cuthbert reflects on being sentenced by the former Magistrate in 2009 and says *"you know Pat really gave my mum a dressing down and I don't think she liked that but Pat was saying look, these young people come into my Court all the time and I've seen where they end up and it's not nice having a son or daughter locked up in jail with adult men"*
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> *"She didn't have to take that time to do that really, she could have sentenced me and moved onto the next case, but she made sure that either my mum was going to keep me out of trouble and the threat of prison was not lost on me either".*

c) Dealing with Young People in Courts

Pat O'Shane would also approach the sentencing of all young people in a similar fashion, addressing the needs of the offenders. She would place the individual on a series of bonds, four in total whereby, satisfied with the facts and the offence proved, she would place them on their first bond.

Firstly, an individual would be placed on a bond that would require them to obtain a psychology assessment, addressing the mental health of and support required for the young person. The Psychologist would be tasked with preparing a report for the Court where O'Shane would assess the report and if satisfied, the young person would be placed on a second bond and what Pat O'Shane refers to as the 'Second Stage".

Secondly, an individual would be placed on a bond requiring a report from a health professional, often requiring the young person engage in physical health training and activities and similarly, if satisfied, O'Shane would place the individual on a third bond whereby they would need to address their drug issues, engaging in rehabilitative programs.

Finally, O'Shane would place the young person on a bond where they would need to obtain some type of employment and would seek a report from their employer. If satisfied, O'Shane would discharge the individual from their bonds and with a sense of purpose, having addressed their issues, young people were less likely to reoffend.

The program was designed to address the issues of the young person supervised by the Courts, reliant on professional reports during each stage, that would inform the next. Rather than sentencing a young person to a term of imprisonment or community program where there may be some rehabilitation, this style of program ensured that each step of

the young offender's journey required the young person be held accountable for their actions, for their offending behavior but also their behavior during the rehabilitation period.

Could they move on to the next stage? Was there a barrier that needs to be addressed? Or was the young person in need of a stricter regime?

Pat O'Shane was criticized for not locking up enough kids, especially when they committed serious offences but O'Shane was more interested in seeking Justice than applying the law.

> Pat O'Shane says *"In the world, there is Justice and there is Law, and the two don't always meet in Australia's Court rooms".*[6]

These programs have since been used by other Magistrates and Judges in New South Wales. Mr Cuthbert suggests the committee consider these programs and extending them into bail programs, if an offender is given bail, perhaps the Courts could implement some of these assessment/rehabilitative style conditions into the bail program.

Pat O'Shane suggested to the Committee, that any adult working with young people should have some psychological training, whether that be Police, youth support, Corrective Services and lawyers.

d) Dr Pat O'Shane AM

Pat O'Shane AM[7] needs no introduction, having served twenty-seven years on the Bench as a Magistrate and nine years as Chancellor of the New England University. Pat O'Shane AM is most well known as being the first female indigenous schoolteacher in Queensland, the first Indigenous person to successfully complete a law degree, the first Indigenous Barrister[8] and Magistrate but also, the first female and indigenous individual in Australia, to lead a Government Department. Pat O'Shane AM became the head of the New South Wales Ministry of Aboriginal Affairs having been invited by then Premier, Neville Wran to implement the first Land Rights Legislation in Australia. Former Prime Minister Gough Whitlam spoke very highly of O'Shane, having provided her, a remarkable and positive Character Reference.

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[6] https://www.smh.com.au/national/nsw/fearless-oshane-defender-of-justice-plans-for-life-after-the-bench-20130208-2e3yk.html
[7] https://en.wikipedia.org/wiki/Pat_O%27Shane
[8] https://www.naa.gov.au/students-and-teachers/learning-resources/learning-resource-themes/government-and-democracy/activism/aboriginal-activist-and-barrister-pat-oshane

6. Presumption of innocence: how to require supports without implying guilt

A common objection to mandatory programs whilst on bail is the presumption of innocence: that children are 'innocent until proven guilty'. That principle must be protected. But it should not be used as a reason to do nothing meaningful during the highest-risk window, when early support can prevent further harm.

Parliament can protect due process while still requiring rehabilitative supports by legislating that "*participation in programs while on bail is not an admission of guilt and must not be used to infer guilt"*. Participation can be framed as protective and risk-management support—focused on community safety and the child's wellbeing, not punishment.

Suggested legislative directions (plain language)

- Non-admission: A child's participation in any bail support or rehabilitative program is not an admission of guilt.
- No adverse inference: No court or decision-maker may draw an inference about guilt from participation (or non-participation) in such programs.
- Use of information: Information disclosed in program participation must not be used in the prosecution case, except where necessary to prevent an immediate and serious risk to safety.
- Sentencing clarity: Program participation undertaken while on bail may be considered only for demonstrated rehabilitation/risk reduction and must not be treated as evidence of guilt.

7. Therapeutic Bail Program – minimum standards

If Parliament's goal is bail compliance and fewer victims, the most meaningful option is to legislate and fund a Therapeutic Bail Program (or Bail Support Plan) tailored to the child's physical health, mental health, neurodevelopmental needs, AOD needs, education engagement, housing stability and practical barriers. Courts should be required to consider these factors and apply the least restrictive conditions necessary to manage risk.

Recommended elements and strict steps

1. Statutory Bail Support Plan

(a) Create a statutory 'Therapeutic Bail Program / Bail Support Plan' that must be considered before imposing intensive restrictions (including EM).
(b) Require preparation within 72 hours of bail being granted.

2. **Minimum contents (must be addressed)**
   (a) Physical health: GP review, medication management, sleep plan.
   (b) Mental health screening and referral pathway, including trauma and self-harm risk.
   (c) Neurodevelopment: screening where indicated (e.g., ADHD/FASD/cognitive impairment).
   (d) Alcohol and other drugs: screening and treatment pathway.
   (e) Education/training: re-engagement plan and attendance supports.
   (f) Housing and safety: stable placement and family safety risks (including domestic and family violence risks).
   (g) Cultural support: culturally safe services and supports that strengthen positive identity and connection (particularly for Aboriginal and Torres Strait Islander children).
   (h) Practical compliance supports transport plan, phone access, appointment reminders, and contingency arrangements.
3. **Mandatory Child Needs Assessment**
   Before EM or curfew-heavy conditions, require assessment of the child's capacity to understand conditions, likely compliance given their circumstances, and the availability of a support person/adult assistance.
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5. **Least restrictive sequencing rule**
   Legislate an order of preference:
   (a) supports and therapeutic bail;
   (b) targeted restrictions if necessary;
   (c) EM only as a last resort where supports and ordinary conditions are insufficient.
6. **Strict timeframes and review**
   Plan commencement within 72 hours (or sooner where practicable); first review within 14 days; then every 28 days. All restrictive conditions should have end dates and require re-justification at each review.
7. **'Not set up to fail' practicalities**
   Require conditions and appointments to be compatible with school/training; provide transport assistance or telehealth options; and

include contingency steps for missed appointments due to genuine barriers.

8. **Graduated response framework**
   Legislate an escalation ladder for non-attendance or setbacks: outreach/re-booking → troubleshooting supports → plan variation → court review. Arrest/remand should be reserved for serious, demonstrated risk or repeated deliberate non-compliance after supports have been offered.
9. **Independent Bail Support Coordinator**
   Require a nominated coordinator (not police) responsible for scheduling, reminders, transport coordination, and factual progress reporting to the court.
10. **Presumption of innocence protections**
    (a) Include 'no admission' and 'no adverse inference' provisions so program engagement cannot be used to imply guilt and protect therapeutic disclosures (except for immediate serious safety risks).
11. **Service readiness and equity**
    Before expanding intensive programs statewide, require minimum service standards in each region (including after-hours support and culturally safe services), and report outcomes separately for First Nations children and children with disability/mental health needs.

Conclusion

Electronic monitoring may appear to be a simple answer, but for children it carries high risks of stigma, disengagement and net-widening through technical breach pathways. It can create a false sense of security while diverting attention from real supervision and services.

If Queensland wants lasting reductions in youth offending, it should invest in supervised therapeutic bail and meaningful rehabilitative supports that address mental health, physical health, family stability and education. These solutions are more likely to reduce offending rates, reduce victimisation, and improve community safety than expanding ankle monitoring.

Request to Appear

In addition, I would like to request speaking directly to the Committee regarding this issue in Cairns, on the 21st of January 2025 with fellow community advocate and Division 5 Councilor for the Cairns Regional Council, Rob Pyne.