STRENGTHENING COMMUNITY SAFETY BILL 2023

Submission No: 23

Submitted by: Hub Community

Publication: Legal

Attachments:

Submitter Comments:

HUB Community Legal

24 February 2023

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

By email to EGC@parliament.qld.gov.au

Dear Committee Secretary,

SUBMISSION ON STRENGTHENING COMMUNTY SAFETY BILL 2023

Lack of time for consultation/ Exceptional or emergent circumstances

As the time permitted to consider and respond to this Bill has been less than 3 days, our ability to properly consider and respond is limited. Accordingly, our comments will be brief and incomplete. The enactment of laws about children and youth justice are too important to be made in haste. The causes of youth crime are complex and require responses that are well researched, evidence based and allow for consultations from a wide variety of stakeholders.

Statistics show that crime has been decreasing and the number of individuals in the youth justice system has decreased. Whilst it is possible that there are currently some specific geographic areas that are experiencing a 'hotspot' of activity the current Youth Justice Act works fairly well for the majority of children. Rather than limiting the rights of children across the entire state with this Bill it is suggested that local initiatives and justice reinvestment should be applied and targeted to the particular areas of concern.

The real urgency is the current situation where the detention centres are full and large numbers of children are currently detained in watchhouses across the State. The Bill will only add to this crisis and more children will be held in custody for longer periods of time. It is submitted that unless this situation is addressed the community over the longer term will not be safer. We know that locking children up is

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not the solution. We know that keeping them in watchhouses is a problem for the child, the police and ultimately for the community. We also know that the financial cost of detention is very high. The community is better served by money being spend on interventions that actually work and provide long term benefits.

Expressly removing the human rights of children as is proposed in this Bill can never be an acceptable solution. Children cannot vote, and have a limited ability to protect and exercise their rights. There are no exceptional circumstances that warrant an override declaration under s44 of the Human Rights Act.

The community has a vested interest in doing everything possible to rehabilitate young offenders. We know that many offenders grow out of crime. The community's interests are best served by putting into place evidence-based programs and interventions. The tough on crime approach which locks up more and more offenders for longer and longer periods does not work. "***In the case of a young offender there can rarely be any conflict between his interests and the public's. The public have no greater interest than that he should become a good citizen"*** *(R v Smith*[1] as per Matthews J)

We need to remember that young offenders are also disproportionately the victims of serious offences.

Increasing maximum penalties

Children do not read legislation to ascertain the penalties for offences. Children tend to act impulsively and opportunistically. Increasing penalties does not reduce offending by children. Deterrence has limited utility for young offenders. Children have brains that are still immature. The ability for consequential thinking (ie the ability to consider a likely outcome of a course of action) is not present or still evolving.

There is already sufficient scope for sentencing outcomes to reflect the objective criminality involved in this type of offending. In addition, the increase in maximum penalties makes no distinction between children who are drivers and those who are merely passengers.

The effect of the increased penalties means that some of the more serious charges (involving violence, weapons or damage or threats to damage property) matters cannot be finalised by the Children's Court and must proceed on indictment to the Children's Court of Queensland. For those matters children are likely to experience longer periods on remand and a delay in the finalisation of those matters.

Breach of Bail

There is no evidence that having a breach of bail offence makes the community any safer. Breach of bail offences further criminalises and punishes children for a failure to follow conditions that do not otherwise constitute a criminal offence.

[1] *R v Smith* [1964] Crim LR 70 as quoted in R v GDP (1991) 53 A Crim R 112 at 116 per Matthews J

Children are not always in control of their circumstances. Children have brains that are still developing particularly in areas of executive functioning (eg getting to places on time, keeping copies of the bail undertaking) that can make compliance difficult. Sometimes complex and lengthy bail conditions are in place for long periods of time. Different bails can have contradictory conditions (Eg one bail says live with mum and the other bail says live with dad). Children are more likely than adults to have a greater number of specific bail conditions including curfews, to reside at a certain place, be with either mum or dad or a worker, to attend school, go to counselling, attend programs etc. Bail conditions are usually more onerous for a child than for an adult. For example a child who fails to attend a Conditional Bail Program can be charged with a breach of bail offence for every day they fail to attend. Adults are not subject to such stringent conditions. Even adults who must report to police every day are not required to attend for the entire day. Curfew conditions are challenging when children do not have stable housing or live in more that one location. Instability with housing , domestic violence in the home and a variety of other factors can make it difficult (if not impossible) for a child to comply.

If a child commits a further offence then that further offence can be dealt with. It is already an aggravating factor to be taken into account at sentencing that a child was on bail at the time of an offence.

Police are currently able to 'exercise of notice of power' to request a court to have the matter brought before a court to have bail reconsidered in circumstances where there has been a breach or continued offending. This should remain as the procedure to address a child where bail conditions are not being followed.

Having a breach of bail offence will increase the number of children held in custody. It fails to address any of the causes of crime. It particularly effects children who are the most vulnerable and do not have family to assist them in complying with bail. We are particularly concerned about children who leave their homes as a protective measure when domestic violence, substance use and other issues in the home mean it is not safe for them to be at home and this puts them in breach of residential and curfew bail conditions. We are also concerned about children, including many indigenous children who are in the child protection system but are without placements, are homeless and struggle to comply with bail conditions.

Electronic Monitoring

Electronic monitoring has only been used for a small number of children. Many children do not have the infrastructure and supports for this to be an option for them. It does not address the real causes of crime. It is acknoweledged that in a small number of cases electronic monitoring has meant that a child has been releasd from detention. In order to have more data to assess the usefulness of this option it would be better to expand the geographical areas where electronic monitoring is available. Should there be established evidence to support the use of electronic monitoring it can then be expanded to see if it is effective for children younger than 16 and 17 years of age. Fifteen year old children are still in

the compulsory schooling phase and may have different considerations that need to be taken into account.

Amendments to s59A and insertion on s59AA
It is submitted that changing police obligations from 'must consider' alternatives to arrest to 'may consider' alternatives to arrest serves no useful purpose. Having police in a situation where they must consider alternatives to arrest does not mean that they have to apply them all it means is that they must consider them.

Bail History
Taking into account a bail history at sentence and having an offence of breaching bail creates a double jeopardy situation where the child is being punished more than once for the same act. Additionally there is no definition of 'bail history' in the Bill.

Serious Repeat Offenders
The sentencing principles listed is s150 of the Youth Justice Act should continue to apply equally to all offenders. Mitigating factors should not be given a reduced weight in the balance of the sentencing discretion. Children will be subjected to a sentencing regime that is more severe than that applied to adults.
It is of concern that the declaration of a child as a serious repeat offender is stigmatising. We know that children in their adolescent years are forming their concepts of self. We know that shaming offenders does not work for this reason. We do not want children to think of themselves in this way as it is a self-fulfilling prophecy and is criminogenic for those children.

Conditional release orders
We support the use of *Conditional Release Orders* as a valuable option that provides therapeutic and other supports to a child in lieu of detention. The Orders are designed to be very intensive. We are not aware of any evidence and do not know whether extending an order to up to 6 months will increase the therapeutic benefit of the order. We consider that this is not a decision that needs to be rushed and consultations with criminologists, psychologists and the professionals who are involved in this therapeutic program should be obtained. The concern is that intensive programs are expensive and should be available for those that need them in the right dose for the maximum effect.

Breaches of Conditional Release Orders
We do not consider that a breach of a conditional release order should be revoked unless there are special circumstances. Ultimately the community will be safer if the child is able to complete the conditional release and receive the intensive supports and therapeutic inputs of the order. Some children can struggle to adjust to life in the community after having been held in detention on remand or have other circumstances as to why the order has been breached. The current requirement is for the child to satisfy the court that a further opportunity should be given to complete the order. This should

remain the case. To require special circumstances means that more children will end up serving their detention orders. The community is safer if the child is able to complete the conditional release order.

Offenders who turn 18 years whilst on remand being transferred to adult jails
Offenders who commit offences as a child should be remanded in custody in a youth detention centre. More should be done to reduce the delays in criminal proceedings so that proceedings are finalised either prior to the child turning 18 years or as soon as possible thereafter.

Detainees who have been sentenced being transferred to adult jails.
The time frames for notice of impending transfers are too short.

In regards to the chief executive facilitating a consultation with a lawyer it is unclear if there is additional funding for these lawyers or what services might even be available for this purpose. Certainly for a lawyer to be given a time frame of 5 days to make an application to the chief executive to request a stay or to apply for a Childrens Court review is not practicable. Of particular concern is should a child refuse to consult with a lawyer the 5 day period runs from the date of the refusal. There appears to be no acceptance of the child having a valid reason for a refusal, for example the child is ill. Detainees who suffer from intellectual impairments, mental health problems or other issues may refuse to see the lawyer without an understanding of the importance of doing so.

Furthermore, if the lawyer has not been the lawyer who represented the child during the criminal proceedings the lawyer will need to obtain information and documents about the offences and the sentencing proceedings. The time frames involved are not sufficient for that to occur. A lawyer cannot give proper advice without having those details at a minimum. The five day period should not commence unless the lawyer is provided with sufficient details in order to provide meaningful advice, (such as details of the sentence (VJR), a copy of any sentencing remarks, the presentence report and any other material or reports and a copy of the notice of the proposed transfer).

The MACP system
Whilst we support the development of multi-agency collaboration in order to meet the needs of children charged with offences or at risk of contact with the youth justice system the current proposal is lacking in detail and action. We are aware that these type of panels currently exist and use the existing legislation to share information. It is submitted that the existing panels should be assessed to see if they are beneficial. It is unclear why there is a need to include the existence of the panels in legislation. We also have some concerns about a child's right to privacy of information.

About us at Hub Community Legal
We are a Community Legal Centre situated in Inala, Brisbane, Queensland. Whilst we are primarily a generalist legal centre we have operated a specific youth legal service since 2006. Our youth legal service represents children and young people across a broad range of areas including criminal law and youth

justice matters. The children we see in our Community Legal Centre present with issues consistent with that found in the research. In our experience it is not uncommon or unusual for children to have multiple and persistent disadvantages. Whilst their stories are all different, many have suffered from trauma including sexual and other abuse. Almost all have been a victim of serious offences themselves. Many grieve the loss of family and most of our clients are subject to Child Protection Orders or known to Child Safety. Almost all come from impoverished backgrounds. Some are from refugee backgrounds and have spent much of their lives in refugee camps. Many have mental health conditions, substance abuse issues and self-harm behaviours. Almost all have had a poor experience with schooling and are disengaged from education. Many have one or more diagnosed impairments such as autism, intellectual disability, reactive attachment disorder, speech and language impairment, ADHD and others. We can also attest to the resilience of the children that we represent and join in their own hopes for a more positive future with the opportunity to live good lives.

We agree with, and encourage the government to re-endorse the four main pillars of the Atkinson Report that we need to :

1. Intervene early
2. Keep children out of court
3. Keep children out of custody, and
4. Reduce re-offending.

We appreciate the opportunity to provide feedback on the proposed Strengthening Community Safety Bill 2023. Please don't hesitate to contact the writer should any additional consultation be beneficial.

Yours faithfully,

[redacted]

Carolyn Juratowitch

Principal Lawyer
Hub Community Legal