

Parliamentary Committee briefing note

Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026

Overview and policy intent

The Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (the Bill) seeks to implement the Government's 'Breach Bail, Go to Jail' policy by introducing a new offence of committing particular offences while on bail, unlawfully at large or having failed to appear, carrying a mandatory minimum sentence of one year detention or imprisonment, to be wholly served in a detention centre or corrective services facility.

The Bill also introduces a new bail threshold for a defendant who is charged with committing particular offences while on bail, unlawfully at large or failing to appear, making it more difficult for those defendants to be granted bail.

Both the new offence and new bail threshold test apply where a person is already on bail, or is unlawfully at large in relation to that bail, or has failed to appear in relation to a notice to appear or a summons, and that person commits a further offence, being either a 'significant offence' (youth) or a 'prescribed offence' (adults).

Significant offences and prescribed offences

For youths, the new offence and bail threshold will apply where the youth is charged with or commits a 'significant offence' listed at section 175A of the *Youth Justice Act 1992* (Youth Justice Act), which is also known as an 'Adult Crime, Adult Time' offence.

For adults, the new framework will apply in circumstances where they are charged with or commit a 'prescribed offence'. Clause 15 of the Bill inserts new schedule 1 of the *Bail Act 1980* (Bail Act), which includes all significant offences, as well as additional offences including coercive control (section 334C of the Criminal Code) and child sex offences in Chapter 22 of the Criminal Code.

Meaning of being on bail, unlawfully at large, and failing to appear

The new offence and new bail threshold apply to a person who is on bail, or who is unlawfully at large in relation to that bail, or who has failed to appear in relation to a notice to appear or a summons.

The person will be treated as being on bail even if they have not formally entered into the required bail undertaking, or if the court has declared that undertaking forfeited.

For a person who has failed to appear following a summons or notice to appear, the relevant period begins when they were required to appear and ends when they surrender or are taken into custody, or when all charges to which the summons or notice relates are finalised. Similarly, a person is unlawfully at large following revocation of bail until they surrender or are taken into custody, or the relevant charge is finalised.

Other Australian jurisdictions

Across Australia, jurisdictions have different approaches to offending whilst on bail. In some circumstances this can result in the person having a higher bail threshold applied to them. Many jurisdictions, including Queensland, make it an offence to breach a condition of bail. In Victoria, there is a specific offence of committing an indictable offence whilst on bail.

Further information on the approaches taken in other Australian jurisdictions is outlined on page 9 of the Explanatory Notes to the Bill.

Implementation

Clause 2 of the Bill provides that the amendments will commence on 30 November 2026. Government agencies are undertaking implementation activities to prepare for commencement of the Bill.

Amendments contained in the Bill

Key amendments contained in the Bill are outlined below.

Show cause and new high degree of confidence test

Background and context

Under Queensland's bail laws there is a general presumption in favour of granting bail.

Before granting bail, police and courts assess whether a defendant should be released having regard to the risks associated with release. For adults, the Bail Act requires bail to be refused where there is an unacceptable risk that the defendant will fail to appear, commit an offence, endanger the safety or welfare of a person, or interfere with witnesses or otherwise obstruct the course of justice. The court or police officer must consider relevant circumstances, including the nature and seriousness of the alleged offence, the defendant's history and previous bail compliance, and the strength of the prosecution case.

For youth, the Youth Justice Act provides the primary framework for release and bail, with the Bail Act applying subject to the Youth Justice Act. The court or police must refuse release where there is an unacceptable risk that the youth will commit an offence endangering community safety or the safety or welfare of a person and that risk cannot be adequately mitigated by conditions. The court or police officer may also refuse release where the youth is an unacceptable risk of failing to appear, committing another offence, interfering with a witness or otherwise obstructing the course of justice.

In both frameworks, the assessment is directed to the risks posed by release and the extent to which those risks can be managed. Bail conditions can be used to mitigate relevant risks. For example, reporting conditions may assist in managing a risk that a defendant will fail to appear, while other conditions may address risks of further offending or interference with the administration of justice. For youth, conditions must also be appropriate having regard to matters including the youth's age, maturity and developmental needs.

Presumption against bail

Both adults and youth in certain circumstances may be required to show cause why their detention is not justified, which reverses the ordinary presumption in favour of bail. The circumstances in which this occurs differ between adults and youth and depend on the offence charged and the circumstances in which it is alleged to have been committed.

For youth, section 48AF of the Youth Justice Act creates a show cause position for certain offences ('prescribed indictable offences' defined in schedule 4 of the Youth Justice Act) committed while the youth was already on release in specified circumstances. Where this provision applies, the youth must show cause why their detention is not justified.

Accordingly, a youth who commits an 'Adult Crime, Adult Time' offence while on bail will not necessarily be in a show cause position under the current law. Whether show cause applies depends on the particular offence and the circumstances in which it was allegedly committed. For example, a youth charged with robbery committed while on bail for a summary offence is not necessarily subject to the

existing show cause provision, whereas the position may be different if the youth was on bail for an indictable offence.

For adults, section 16(3) of the Bail Act similarly creates a show cause position for certain offences or offending in specified circumstances, including where the adult is charged with committing an indictable offence while on bail for another indictable offence, or where the adult is charged with certain domestic violence offences.

This means that, similar to youth, an adult charged with robbery committed while on bail for a summary offence is not necessarily subject to the existing show cause provision.

Amendments in the Bill (clauses 8, 9, 26, 27, 28)

The Bill will reverse the presumption in favour of bail for both adults (clause 8) and youths (clause 27) who are charged with either a prescribed offence or a significant offence, respectively, where that offence was allegedly committed at any time the defendant was on bail for another offence, unlawfully at large with respect to that bail, or failed to appear in relation to a summons or notice to appear for another offence. These defendants will be required to show cause why their detention in custody is not justified.

Where an adult or youth does show cause, the Bill introduces a further new bail threshold at new section 16AA of the Bail Act (clause 9) and new section 48AG of the Youth Justice Act (clause 28). The Bill provides that the court or police officer must refuse bail unless the defendant satisfies the decision-maker to a high degree of confidence they will not commit a further prescribed offence (for adults) or significant offence (for youths) if granted bail.

The new high degree of confidence test is focussed on the defendant's risk of reoffending.

The new test is intended to operate in addition to the existing bail requirements and to ensure that an adult who commits a prescribed offence, or a youth who commits a significant offence, while on bail, unlawfully at large or having failed to appear before a court is subject to a more stringent assessment before being released on bail.

The Bill requires the court or police officer to consider the defendant's release from custody in a prescribed sequence. The first step is consideration of the existing show cause requirement under section 16(3) of the Bail Act or section 48AF of the Youth Justice Act. Prescribing the sequence in which the bail tests are to be considered is intended to provide clarity and reduce complexity.

New sections 16AA of the Bail Act and 48AG of the Youth Justice Act are not intended to alter the existing case law or approach courts may take in determining whether a defendant has 'shown cause'. The sequential structure ensures that the existing show cause requirements continue to operate as they do under the Bail Act and Youth Justice Act, while introducing an additional and more stringent requirement for defendants who fall within the new category.

Implementation

The new bail framework will apply to defendants who commit a prescribed or significant offence after commencement while on bail, unlawfully at large, or having failed to appear, regardless of when the initial bail was granted or the summons or notice to appear was served.

New offence of committing particular offences while on bail, unlawfully at large or failing to appear (section 29AA offence)

Background and context

Queensland does not currently have a standalone offence of committing an offence while on bail. Section 29 of the Bail Act makes it an offence for an adult or youth to contravene a bail condition. Although a bail condition may prohibit a person from committing an offence, this is not a mandatory condition of bail and therefore does not necessarily apply. The fact that an offence was committed while the offender was on bail is, however, an aggravating factor relevant to sentencing for the subsequent offence for both adults and youths.

Queensland previously had an offence of a similar nature under former section 59A of the Youth Justice Act. That provision made it an offence for a youth to be found guilty of an offence committed while on bail. The offence was procedurally complex because, although liability depended on a court finding the youth guilty of the subsequent offence, the youth still had to be charged with the separate bail offence after conviction for the underlying offence. The provision also had limited practical effect because section 16 of the Criminal Code, which prevents a person being punished twice for the same act or omission, was not displaced.

Section 16 of the Criminal Code (Person not to be twice punished for same offence)

Section 16 of the Criminal Code prevents a person being punished twice for the same act or omission. The former section 59A of the Youth Justice Act was considered in *R v S* [2015] QChC 3, where the Childrens Court held that a youth could be convicted of the offence but could not be punished for it. The Court considered that liability for the section 59A offence crystallised at the same time and place as the subsequent offence and that there was therefore a sufficient unity between the two offences to engage section 16 of the Criminal Code.

Section 17 of the Criminal Code (Former conviction or acquittal)

Section 17 of the Criminal Code provides a defence where a person has already been tried and convicted or acquitted of the same offence, or of an offence that encompasses the essential elements of the later charge.

Amendments in the Bill (clause 12) – section 29AA offence

Section 29AA offence

New section 29AA of the Bail Act creates an offence where a person commits a prescribed offence as an adult, or a significant offence as a youth, while on bail or unlawfully at large in relation to bail. It also applies where the person commits the prescribed offence or significant offence while they have failed to appear in court as required by a summons or notice to appear. The offence carries a mandatory minimum penalty of one year's detention or imprisonment, to be served wholly in a detention centre or corrective services facility, and a maximum penalty of three years imprisonment.

For the new offence to be established, the person must be convicted of the underlying prescribed or significant offence. A person is treated as convicted where a court finds them guilty, whether on a plea of guilty or otherwise, and whether or not a conviction is recorded. If the underlying conviction is later set aside or quashed, the person is no longer treated as convicted for these purposes.

The provisions also ensure that multiple instances of offending arising from the same circumstances cannot result in multiple section 29AA offence convictions. Where a person commits two or more relevant offences arising from the same circumstances, only one section 29AA offence can be charged.

This would mean, for example, if a person is released on bail and commits a burglary and a robbery that are factually connected on the first night and then a subsequent burglary on another night that is factually unrelated, they can be charged with two offences (not three) of ‘commit particular offence while on bail, unlawfully at large or failing to appear’. That is in addition to the substantive burglary and robbery offences. Ultimately, the offences a person are charged with and prosecuted for (including whether the person is charged with two charges for the section 29AA offences in the above scenario) are a matter for police at the first instance and the prosecuting agency.

Double punishment and double jeopardy

The Bill expressly displaces section 16 of the Criminal Code so that a person can be convicted of and punished for the section 29AA offence, even though they have already been convicted and punished for the underlying offence. This is necessary to ensure the mandatory penalty is imposed in addition to the sentence for the underlying offending.

The Bill also expressly displaces section 17 of the Criminal Code to the extent necessary to allow a person to be tried for the section 29AA offence after having already been convicted of the underlying offence. This addresses the interaction between the section 29AA offence and the rule against double jeopardy, given that conviction for the underlying offence is a prerequisite to liability for the new offence.

Charging and prosecution of the new offence

The section 29AA offence can be charged before the person has been convicted of the underlying offence. However, the section 29AA offence cannot be charged or prosecuted after the person has been sentenced or otherwise dealt with for the underlying offence if it was not charged before that point. This provides a clear limit on when the new offence can be prosecuted and prevents a new prosecution being commenced after the underlying matter has been finalised.

Where the section 29AA offence and underlying offence are charged together, the person cannot be required to plead to the section 29AA offence until they have first been convicted of the underlying offence (new section 29AC(4) to (7) of the Bail Act). Once there is a conviction for the underlying offence, the court determines the section 29AA offence. This allows the charges to be dealt with together while ensuring that a person cannot be convicted of the section 29AA offence unless they are first found guilty of the underlying offence. The sequencing also prevents the court or jury from hearing evidence of the person’s bail status (unless that evidence was otherwise admissible) when determining whether the underlying offence was committed, avoiding potential prejudice to the defendant.

New section 29AD of the Bail Act gives a court jurisdiction to deal with the section 29AA offence where it has jurisdiction in relation to the underlying offence, including where the two charges are not joined. This is intended to ensure that the new offence can be dealt with by the appropriate court without requiring the charges to form part of the same complaint or indictment.

Amendments in the Bill (clauses 34-38) – youth only

The Bill amends the Youth Justice Act to capture the new section 29AA offence within the adult sentencing regime for significant offences committed by youths under section 175A of the Youth Justice Act (also known as ‘Adult Crime, Adult Time’). Accordingly, a youth convicted of the section 29AA offence will be sentenced under the ‘Adult Crime, Adult Time’ framework, including the requirement that the mandatory minimum period of custody required under the Bail Act be served wholly in a detention centre.

The amendments ensure that the mandatory minimum penalty operates consistently for adults and youths. Where the Bail Act requires the mandatory minimum term to be served wholly in a corrective services facility, the Bill makes clear that the corresponding period of detention for a youth offender must be served wholly in a detention centre.

The Bill also prevents a court from dealing with a youth for the section 29AA offence by way of a court diversion referral to a restorative justice conference under section 163 of the Youth Justice Act. This ensures that the mandatory minimum penalty for the section 29AA offence cannot be avoided by court diversion to a restorative justice process.

Implementation

The section 29AA offence will only apply to defendants who are granted bail, or who are served with a summons or notice to appear, after commencement and go on to commit a prescribed offence or a significant offence while on that bail, unlawfully at large with respect to that grant of bail or having failed to appear before a court with respect to that summons or notice to appear. This means that both the grant of bail or summons or notice to appear, and the relevant underlying offence must occur after commencement for the section 29AA offence to apply.

Offence Warning

Amendments in the Bill (clause 12)

New section 29AB of the Bail Act requires a court or police officer granting bail to warn the person that committing particular offences while on bail or unlawfully at large is an offence carrying a mandatory minimum penalty of one year's imprisonment.

The warning is intended to be a simple and proportionate measure to put a defendant on notice of the potential consequences of offending on bail.

A court is not required to give the warning if the defendant does not appear before the court when bail is granted.

Where the warning is given to a youth, the court or police officer must explain the section 29AA offence and consequences of offending to the youth in a way they can understand.

Failure to give the warning does not affect liability for the new offence or provide a ground of appeal.

Implementation

The offence warning will be given to every person granted bail after commencement.

Changing consideration of diversionary options for youths from mandatory to discretionary

Background and context

Currently, under section 11 of the Youth Justice Act, a police officer must consider certain diversionary options before commencing a criminal proceeding against a child for an offence unless the offence is a 'serious offence' (as defined in section 8).

Under section 59A of the Youth Justice Act, a police officer must consider alternatives to arrest for contraventions of bail conditions.

Other Australian jurisdictions

Every Australian jurisdiction gives police the power to consider diversionary options for youth offenders, however the framework is different across jurisdictions. In New South Wales, Western Australia and the Northern Territory, for example, police officers must consider certain diversionary options for youth offenders who commit certain offences. By contrast, in Tasmania and South Australia, police have a discretion to consider diversionary options.

Amendments in the Bill (clauses 18, 24, 31, 32)

The Bill amends section 11 of the Youth Justice Act by replacing the mandatory obligation ('must consider') with a discretionary power ('may consider'). However, the Bill does not impact a police officer's discretion to utilise diversionary options where appropriate; it will simply not be a requirement for police officers to consider a diversionary pathway for any offence.

The Bill makes amendments to section 59A and removes section 59AA of the Youth Justice Act to remove mandatory requirements for police to consider alternatives to arrest for alleged bail condition breaches.

These amendments will streamline police responses and simplify operational provisions regarding diversionary options. While frontline police retain discretion to utilise diversion where appropriate, it is intended that removing the mandatory prerequisite to consider these options will provide greater certainty when initiating formal proceedings against repeat youth offenders.

Implementation

Amendments to section 11 apply in relation to any consideration of alternatives by a police officer under that section, whether the offence relevant to the consideration was committed before or after commencement.

Human rights overrides and exemptions relating to management and detention in watch-houses and detention centres

Background and context

In 2023, amendments moved during consideration in detail of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 (the 2023 amendments) introduced a framework of human rights overrides (an 'override') into the Youth Justice Act. The overrides, provided for under section 43 of the *Human Rights Act 2019* (Human Rights Act), were necessary as the practical effect of the amendments made to the relevant provisions of the Youth Justice Act (sections 56, 210 and 262) was to allow for the continued detention of youths in police watch-houses where capacity considerations in youth detention centres may require it. Section 262 of the Youth Justice Act allowed for the establishment of youth detention centres which were incompatible with human rights, and also required an override.

Section 262A as inserted by the 2023 amendments provided that section 58 of the Human Rights Act does not apply to acts and decisions reasonably necessary for the administration of the Act that relate to a youth in, or the placement of a youth in, a relevant detention centre (an 'exemption'). This exemption, which did not include an override, disapplied the obligations in section 58 of the Human Rights Act on the basis that any act or decision about a youth in detention in a watch-house would necessarily breach their human rights, and was therefore a necessary inclusion so as not to undermine the effect of the overrides.

The 2023 amendments also introduced an override into section 640 of the *Police Powers and Responsibilities Act 2000* (PPRA), which dealt with the transfer of persons in watch-houses, to allow

for watch-house managers to safely manage capacity and safety in watch-houses by transferring youths between watch-houses if necessary. Again, as detention in a watch-house was conceded to be incompatible with human rights for youths, this override was necessary to ensure the Human Rights Act did not frustrate the ability to safely manage watch-houses.

As set out in the Statement of Compatibility for the 2023 amendments, the overrides and exemption were included as significant demand on youth detention capacity, and lack of alternative accommodation in the short term, was an ‘exceptional circumstance’ that justified the use of the overrides.

The overrides and exemption are currently due to expire on 31 December 2026.

Amendments in the Bill (clauses 19, 20, 30, 37, 39, 40)

The amendments in the Bill largely re-make the existing 2023 overrides and exemption in the Youth Justice Act, extending the operation of those provisions for a further five years.

However, with respect to the PPRA, a new exemption and override is introduced in new section 639AA of the PPRA (which replaces the current override in section 640, which will be omitted). This will provide an exemption for acts and decisions which are reasonably necessary for the administration of the PPRA, and which relate to a person in custody in a watch-house, or the transfer of a person in a watch-house. This provides for a similar, tailored exemption as section 262A of the Youth Justice Act, however, applies more broadly to adults and youths in watch-houses.

The inadequacy of the current override in the PPRA was recently demonstrated in the matter of *BA & Ors v State of Queensland* [2026] QCAT 298, in which the Tribunal found that aspects of the detention and management of youths in the Cairns watch-house limited a number of human rights protected by the Human Rights Act. The decision highlights the extent to which operational decisions necessary in a watch-house setting may nevertheless be exposed to human rights complaints and litigation where capacity constraints affect the detention, accommodation and management of detainees.

The amendments are intended to provide a consistent legal framework for the management of detained persons across detention centres and watch-houses, and ensure priority can be given to the safety and good-order of those environments.

Minor and technical amendments

Background and context

Currently, the definition of young offender in the *Young Offenders (Interstate Transfer) Act 1987* does not capture youth offenders who are sentenced under section 175A(2) of the Youth Justice Act. These are the ‘Adult Crime, Adult Time’ provisions.

Further, there is drafting error in section 136 of the Youth Justice Act. This section refers to another subsection of the Youth Justice Act (135(7)(b)) which does not exist.

Amendments in the Bill (clauses 22 and 33)

The Bill makes a minor technical amendment to the *Young Offenders (Interstate Transfer) Act 1987* to ensure that youth in Queensland who are subject to a sentence order under section 175A(2) of the Youth Justice Act are considered ‘young offenders’ for the purposes of that Act. This will enable the facilitation of transfer to, from and through Queensland for this cohort.

The Bill also corrects an erroneous cross-reference in section 136(2)(c)(i) of the Youth Justice Act. The amendment is technical and corrective only. It is not intended to change the substantive operation of section 136.

Consultation

Government committed to consulting with the community on the mandatory penalty for the new section 29AA offence. The Department of Justice has undertaken consultation with relevant government departments. Government is leading consultation with the community.

Fundamental legislative principles

Potential breaches of the fundamental legislative principles (FLPs) raised by the amendments are considered justified. The FLP issues and justifications for the potential breaches are outlined in detail on pages 7 to 9 of the Explanatory Notes to the Bill.

Human rights impacts

The impact of the reforms on human rights under the *Human Rights Act 2019* (Human Rights Act) is detailed in the Statement of Compatibility (SoC). The SoC provides that the section 29AA offence, the new high degree of confidence test and the human rights overrides and exemptions relating to management and detention in watch-houses and detention centres are incompatible with human rights. The SoC concludes that the other amendments in the Bill are compatible with human rights.

The SoC notes that an override declaration has been included in respect of those amendments that are incompatible with the Human Rights Act. A Statement about Exceptional Circumstances required to accompany the override declaration under section 44 of the Human Rights Act was tabled alongside the Bill and SoC.