Youth Justice (Monitoring Devices) Amendment Bill 2025

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SUBMISSION TO THE YOUTH JUSTICE (MONITORING DEVICES) AMENDMENT BILL 2025

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INTRODUCTION

The Justice Reform Initiative (JRI) appreciates the opportunity to make a submission to the Justice, Integrity and Community Safety Committee inquiry into the Youth Justice (Monitoring Devices) Amendment Bill 2025. From the outset, the Justice Reform Initiative reinforces its previously stated position that **increasing the imprisonment of children and expanding punitive responses for children such as electronic monitoring will not improve community safety.** The Justice Reform Initiative does not support the passing of this bill or the extension of the electronic monitoring trial period by one year "to allow time for a comprehensive review to be completed to inform government decisions about electronic monitoring for child[ren]".

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 punitive responses, including electronic monitoring, 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 highlighted in the Justice Reform Initiative Queensland Alternatives to Incarceration Report[1], the Justice Reform Initiative submission to the Youth Justice Reform Select Committee[2], and in countless other government and non-government reports, research, evaluation, and reviews[3], there are multiple proven, cost-effective reforms that can work together to make progress in Queensland, which is where the government should be prioritising resources and investment. We again 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.

EXPANSION OF ELECTRONIC MONITORING

The Justice Reform Initiative does not support the expansion of the current electronic monitoring trial for children. The Queensland Government has made several legislative amendments since 2021 to expand the use of electronic monitoring for children including in:

- **2021:** Introducing Section 52AA to the Youth Justice Act 1992 in 2021 to facilitate a trial of electronic monitoring as a bail condition and included a two-year sunset clause.
- **2023:** Extending the electronic monitoring trial to 30 April 2025 (via the *Strengthening Community Safety Act 2023)* and expanding the trial to include 15-year-olds and three new trial sites (as per the *Youth Justice (Monitoring Device Conditions) Amendment*

[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, the Youth Justice Select Committee parliamentary inquiry into youth justice reforms in Queensland 2024, the Community Safety and Legal Affairs Committee inquiry into the Queensland Community Safety Bill 2024, and the Justice, Integrity and Community Safety Committee inquiry into the Making Queensland Safer Bill 2024.

Regulation 2023). This was despite a 2022 review finding that the initial trial failed to confirm the overall effectiveness of electronic monitoring in deterring offending behaviour, among other things, due to the low numbers of children ordered on a monitoring device, and that there was a need for further research with a larger sample size.

- **2024:** Expanded the electronic monitoring trial to include a further five sites (via the *Youth Justice (Monitoring Device Conditions) Amendment Regulation 2024*) and expanding the use of electronic monitoring by expanding the list of prescribed indictable offences under section 52AA to include specified offences involving violence or threats of violence; and expanding the criteria to include children who have been charged with a prescribed indictable offence in the preceding 12 months as set out in the *Queensland Community Safety Act 2024*.

The Justice Reform Initiative has previously noted the key reasons why we do not support the use and expansion of electronic monitoring for children. As noted in our submission to the *Queensland Community Safety Bill 2024*, increasing the number of children who are subject to invasive and restrictive electronic monitoring to achieve an adequate 'sample size' or 'trial' whether it works, despite evidence noting the contrary, is both unethical and empirically unnecessary in Queensland. As is outlined below in this submission and in previous submissions, 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[4], 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.

The Justice Reform Initiative notes that the justification for this expansion is that "there was never going to be adequate time to evaluate data arising from the August 2024 amendments before the trial expired, which would have resulted in electronic monitoring of child[ren] ending without an adequate assessment of the use of electronic monitoring in the youth justice system."

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 existing 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 trial 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 to see whether it is effective, 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."[5]
- What is the timeframe for undertaking the research to determine whether electronic monitoring is effective at reducing reoffending or increasing bail compliance?
- What is the plan if an adequate sample size is not achieved? (Does the Queensland Government intend to keep expanding the scope of the 'trial').
- How will the research be undertaken? Has the Queensland Government developed a research proposal? Who will undertake the evaluation?
- 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.[6] There are some studies that have concluded that electronic monitoring can reduce the likelihood of technical violations, reoffending and absconding.[7] 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[8], "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***.[9] 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***.[10] 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.[11] Other limitations of this research include a narrow focus on the use of EM for home detention[12] and that there are not widespread findings demonstrating efficacy of across jurisdictions.[13]

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.[14]

Electronic monitoring is punitive, invasive, and not developmentally appropriate for children **or** adolescents.[15] 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.[16] 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.[17] 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.[18] **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[19], 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.[20] 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[21] and electronic monitoring has had a demonstrated net-widening effect.[22]

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.[23] 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.[24]

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[25] 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.[26] 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.'[27] The three studies identified in this review (Cassidy et al, 2005[28]; Deuchar, 2011[29]; and Pearson, 2012[30]) 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 and First Nations communities) 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 is the current investment specifically in community-led bail support programs in each location? (including bail support programs with supported housing options).
- 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.[31] 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.

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.[32] Many First Nations people have intergenerational and/or personal experience of mainstream services working against them.[33] Engaging with First Nations communities ensures programs are more effectively targeted to local priorities and needs, and are aligned with local systems and circumstances.[34] 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.[35]

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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