

Youth Justice (Monitoring Devices) Amendment Bill 2025

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Queensland
Human Rights
Commission

Youth Justice (Monitoring Devices) Amendment Bill 2025

Submission to Justice, Integrity and Community Safety
Committee

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Introduction

1. Thank you for the opportunity to provide a submission on the Youth Justice (Monitoring Devices) Amendment Bill 2025 (**the Bill**) which extends the trial of electronic monitoring as a condition of bail for children by one year to allow for a further review to inform government decisions about continued use of electronic monitoring.
2. The Queensland Human Rights Commission (**the Commission**) is an independent statutory body established under the *Anti-Discrimination Act 1991*, with functions under that Act and the *Human Rights Act 2019* (**Human Rights Act**) to promote an understanding, acceptance, and public discussion of human rights in Queensland. This submission has been approved by the Queensland Human Rights Commissioner.
3. In summary, this submission contends that:
 - a. Electronic monitoring of children on bail places substantial limits on the rights of children and families. This is acknowledged by the *Youth Justice Act 1992* (**Youth Justice Act**) which indicates that certain human rights are relevant to the court's decision to impose an electronic monitoring condition.¹
 - b. For legislation to be compatible with human rights, any limitation on rights must be for a legitimate purpose and there must be a rational connection between the limitation on rights and the legitimate purpose. In other words, the limitation must help to achieve the purpose.²
 - c. The legitimate purpose put forward for the limitation on the rights of children and families imposed by an electronic monitoring condition is:
 - i. to enable a substantive review to be completed to determine whether electronic monitoring is an effective measure to reduce offending by children on bail;
 - ii. to examine the contribution of electronic monitoring to community safety including reducing victim numbers and the seriousness of victimisation.³
 - d. Seeking to identify effective means of reducing crime and enhancing community safety is a legitimate purpose. However, the Commission does not agree that the extension of the trial of electronic monitoring by the Bill will achieve this purpose. This is because, after almost four years, the electronic monitoring trial has not produced any evidence that it is effective in preventing further offending. Additionally, the Commission has

¹ *Youth Justice Act 1992* (Qld) s52AA (1) ('YJ Act')

² *Human Rights Act 2019* (Qld) s13 ('HR Act').

³ Statement of Compatibility, Youth Justice (Monitoring Devices) Amendment Bill 2025 (Qld) 3, 4.

been unable to identify any domestic or international evidence demonstrating that electronic monitoring of children on bail is effective in reducing further offending. Conversely, there is evidence that electronic monitoring does not have a statistically significant effect on crime. This means the limitations placed on children's and families' rights by the Bill are not justified.

- e. Additionally, the Commission is concerned that:
 - i. electronic monitoring for children on bail has a net widening effect because children subjected to electronic monitoring are exposed to greater penalties than those who are not, possibly leading to further contact with the criminal justice system and increased risks of further offending; and
 - ii. frequent technological and physical device issues place further limits on children's human rights.
 - f. The Commission also reiterates the following concerns previously raised in relation to electronic monitoring of children on bail:
 - i. the impacts of stigma on a child required to wear an electronic monitor could lead to further offending and should be considered when imposing the condition;
 - ii. there remains a risk that children could be targeted while wearing visible monitoring devices, particularly noting recent vigilantism in response to youth crime;
 - iii. clarification is needed to ensure data obtained from electronic monitors can only be used for the purpose of monitoring the child; and
 - iv. electronic monitors limit the rights of people associated with the child such as other residents in their home.⁴
4. The Statement of Compatibility for the Bill states '[i]n some appropriate circumstances, electronic monitoring keeps a child out of custody'.⁵ However, the Explanatory Notes for the Bill do not indicate that a purpose of the extension of the trial is to allow electronic monitoring to be used (or to be considered for use) as an alternative to remand.⁶

⁴ Queensland Human Rights Commission, Submission No 48 to Legal Affairs and Community Safety Committee, Parliament of Queensland, Inquiry into the Youth Justice and Other Legislation Amendment Bill 2021 (12 March 2021).

⁵ Statement of Compatibility, Youth Justice (Monitoring Devices) Amendment Bill 2025, 5.

⁶ Explanatory Notes, Youth Justice (Monitoring Devices) Amendment Bill 2025.

5. If the Government intends that electronic monitoring should be used as an alternative to remand, this should be made clear. It should also be included in the explanatory notes and should be fully explored in the statement of compatibility. This would allow the community to make an informed assessment of the appropriateness of this Bill and the extension of the electronic monitoring trial as well as any future use of electronic monitoring for children on bail.

Recommendations

The Commission recommends that children should not be electronically monitored on bail, and the trial should not be extended, or at a minimum:

1. **The Bill should amend the Youth Justice Act to provide that an electronic monitoring condition may only be imposed on a child who:**
 - A. **is not attending school, vocational education or training, or a place of employment; and**
 - B. **does not have any caring responsibilities for other children including siblings.**
2. **The government should incorporate safeguards modelled on those contained in the *Bail Act 2000* (NZ) into an amended Bill, including:**
 - A. **section 30O limiting use of information obtained from electronic monitoring;**
 - B. **section 30G requiring all occupants at a residence to consent to electronic monitoring on bail; and**
 - C. **section 30F(3)(d) consideration of consent of other occupants in report about suitability.**

Background

6. In 2021, the *Youth Justice and Other Legislation Amendment Act 2021* amended the Youth Justice Act to facilitate a trial of electronic monitoring as a condition of bail for children. The reason cited for the amendment was to 'provide an appropriate level of monitoring while the young person is on bail, deterring them from committing further alleged offences.'⁷
7. The amendments allowed a court to impose electronic monitoring as a condition of bail for a child where:

⁷ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2021, 9.

- a. the child is over 16 years;
 - b. the child has committed a prescribed offence (e.g., a life offence);
 - c. the child has been found guilty of at least one indictable offence;
 - d. the court and child are in a discrete geographical area;
 - e. the court is satisfied imposing electronic monitoring is appropriate having regard to of a number of factors, including:
 - i. the matters mentioned in section 52A of the Youth Justice Act (e.g., the bail condition does not involve undue management of the child taking into account their age, health, any disability, home environment);
 - ii. the child's capacity to understand the monitoring condition;
 - iii. whether the child is likely to comply with the condition having regard to child's circumstances (e.g., whether the child has stable accommodation; the support of a parent or other person; has access to a mobile phone; and has access to an electricity supply);
 - iv. a parent or another person has indicated willingness to support the child's compliance; and
 - v. any other matter the court considers relevant.
 - f. the court has considered a suitability assessment report provided by the chief executive (Queensland Corrective Services) containing their opinion about the child's suitability for a monitoring device.
8. In 2022, the *Electronic Monitoring Trial* report (**the Trial Report**) found the initial trial, due to a small sample size, had failed to confirm the effectiveness of electronic monitoring in deterring offending behaviour.⁸
 9. In 2023, the electronic monitoring trial was extended for a further two years to 30 April 2025.⁹ Additionally, the trial was expanded to include 15-year-olds,¹⁰ and to include three additional sites.¹¹
 10. Further expansions were completed in 2023 and 2024 to increase the number of participants in the trial, including:

⁸ Department of Youth Justice, *Electronic Monitoring Trial*, (Final Report, November 2022) 28.

⁹ *Strengthening Community Safety Act 2023* (Qld) s 14.

¹⁰ *Ibid.*

¹¹ *Youth Justice (Monitoring Device Conditions) Amendment Regulation 2023* (Qld).

- a. in August 2023, addition of a further five sites;¹²
 - b. in August 2024, expansion of the circumstances in which electronic monitoring could be ordered to include where a child has committed an offence involving violence or threats of violence;¹³ and
 - c. in August 2024, expansion of the criteria to include children *charged* with a prescribed indictable offence in the preceding 12 months.¹⁴
11. In 2024, the Youth Justice Act was also amended to require that a court consider a child's caring responsibilities or pregnancy status when imposing a bail condition.¹⁵
12. The Bill extends the electronic monitoring trial period for an additional year. The policy objective is to allow time for a further review to be completed (including based on the data obtained following the 2024 expansions) to inform government decision-making about the longer-term use of electronic monitoring for child offenders.¹⁶ The Explanatory Notes indicate the Government is of the view there is not enough time between the August 2024 expansions and the current end date for the trial (30 April 2025) to inform this further review.

Human rights impacts

13. As noted in the Statement of Compatibility, this Bill will impact on a number of rights protected under the Human Rights Act including:
- a. Right to liberty and security of the person [section 29(1)]
 - b. Right to protection of families [section 26(1)]
 - c. Right to treatment in best interests of a child [section 26(2)]
 - d. Right to privacy [section 25(a)]
 - e. Right of Indigenous peoples to maintain kinship ties [section 28(2)(c)]
 - f. Right to freedom of movement (section 19)
 - g. Right to freedom of association (section 22)

¹² *Youth Justice (Monitoring Device Conditions) Amendment Regulation 2024* (Qld).

¹³ *Queensland Community Safety Act 2024* (Qld) s 119.

¹⁴ *Ibid.*

¹⁵ *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Qld) s 97.

¹⁶ Explanatory Notes, Youth Justice (Monitoring Devices) Amendment Bill 2025, 1, 2.

14. The expansion of the trial may also limit the right to education in section 36(1) of the Human Rights Act noting there is 'at least one example of child subject to an electronic monitoring condition of bail who refused an education enrolment due to concerns about bullying and stigmatisation'.¹⁷

Insufficient evidence of the effectiveness of electronic monitoring

Electronic Monitoring Trial evaluation

15. In 2022, the Department of Youth Justice reviewed the implementation and effectiveness of the electronic monitoring trial.¹⁸
16. At the time of the review only 8 children had been subject to electronic monitoring while on bail. Due to the small sample size, the Trial Report was unable to make conclusions about the efficacy of electronic monitoring in achieving its stated purpose to deter further offending.¹⁹
17. However, the Trial Report raised the following issues:
- a. Parents of young people involved in the trial reported the imposition of electronic monitoring placed strain on familial relationships.
 - b. Stakeholders who took part in the review expressed concerns that electronic monitoring exposes the child to greater penalties than others not subject to monitoring.
 - c. Children involved in the trial and observations made by stakeholders involved in the review indicated some children felt embarrassed and ashamed when wearing the device, whereas some children considered the device to be a 'badge of honour'.
 - d. Stakeholders involved in the review indicated there were some issues relating to the monitoring equipment including alerts associated with poor fit, technical alerts due to drift, and instances where the device had to be replaced.²⁰
18. The Trial Report also noted two circumstances in which bail was granted in which it would otherwise not have been, highlighting the possibility that electronic monitoring could be used as an alternative to remand.²¹

¹⁷ YFS Community Legal Centre, Submission No 71 to Economics and Governance Committee, Parliament of Queensland, Strengthening Community Safety Bill 2023 (12 March 2021) 2.

¹⁸ Department of Youth Justice, *Electronic Monitoring Trial*, (Final Report, November 2022).

¹⁹ Ibid 28.

²⁰ Ibid 26, 27.

²¹ Ibid 26, 27.

Domestic and international evidence

19. The Commission has been unable to identify any evidence that electronic monitoring as a condition of bail for children is effective in deterring or reducing further offending and improving community safety.
20. However, in May 2020, a meta-analysis of 18 studies from around the world, found GPS trackers do not have a statistically significant effect on crime, except when used for sex offenders placed on electronic monitoring post-trial.²²
21. The continued lack of evidence indicates that continuation of the trial is unlikely to achieve the purpose of deterring further offending and/or identifying mechanisms capable of deterring offending and therefore places unjustifiable limits on children's and families' rights.

Electronic monitoring has a net widening effect as children are exposed to additional penalties

22. Research indicates subjecting children to monitoring and surveillance 'might actually entrap them within the system we are wanting them to exit'.²³
23. The Trial Report similarly acknowledges that children subject to electronic monitoring are exposed to 'greater criminal justice control for a longer period of time' and therefore potentially to additional charges for breaching the terms of their electronic monitoring order, which may result in an additional sentence of imprisonment.²⁴
24. Stakeholders who participated in the Trial Report review highlighted the potential for greater penalties for young people who are electronically monitored than others on bail. For example, '*any breaches of the electronic monitoring condition (location alerts, cutting strap) will impact on future court decisions, and limit chances of bail being granted.*'²⁵
25. It is well known that contact with the criminal justice system has a 'criminogenic effect'. Children who have frequent or multiple contacts with the justice system are at a higher risk of reoffending and of committing more serious offences.²⁶ As

²² T Walsh, Submission No 21 to Justice, Integrity and Community Safety Committee, Parliament of Queensland, Making Queensland Safer Bill (2 December 2024) 21; J Belur et al, 'A Systematic Review of the Effectiveness of the Electronic Monitoring of Offenders', *Journal of Criminal Justice*, vol. 68, May-June 2020.

²³ K Richards and L Renshaw, 'Bail and remand for young people in Australia: A national research project' *Australian Institute of Criminology*, vol. 125, 2014, 63; L Sherman, D Gottfredson, D MacKenzie, et al. *Preventing crime: What works, what doesn't, what's promising* (Report to the United States Congress, 1997).

²⁴ Department of Youth Justice, *Electronic Monitoring Trial*, (Final Report, November 2022) 26, 27.

²⁵ Ibid.

²⁶ See for example: S J Prins, 'Criminogenic or Criminalized? Testing an Assumption for Expanding Criminogenic Risk Assessment' *Law and Human Behaviour*, vol. 43, 2019, 484.

such, by exposing children to additional criminal justice system contact, the continuation of the trial may in fact increase offending and reduce community safety.

Children subject to electronic monitoring are likely to be subject to stigma

26. Children required to wear ankle monitors may be subject to stigma,²⁷ which could lead to social isolation, disengagement with employment or education, and can impact on mental health – all factors which can increase the likelihood of offending. Children in the care of young people subject to electronic monitoring may also be subject to stigma.
27. In 2018, Bob Atkinson's Report on Youth Justice indicated a view that electronic monitoring would only be suitable for 'older children who are no longer attending school' due to the visibility of the device and associated stigma.²⁸
28. In line with the views expounded by the Atkinson report, there is 'at least one example of child subject to an electronic monitoring condition of bail who refused an education enrolment due to concerns about bullying and stigmatisation'.²⁹
29. Additionally, since 2023, courts have been permitted to impose electronic monitoring on children as young as 15 years old who are more likely to be attending school.
30. While the criteria included in the Youth Justice Act for imposition of electronic monitoring permits consideration of caring responsibilities and other 'relevant matters',³⁰ there is no requirement to consider the stigma that could be experienced by the child.
31. The Commission considers that the use of visible electronic monitors is extremely inappropriate for any children engaged in school, vocational education, training or work or who have caring responsibilities.
32. At a minimum, the court should not be permitted to impose a tracking device condition for a child who:
 - is attending school, vocational education or training or a place of employment **(RECOMMENDATION 1A)**; or

²⁷ M Kotlaja and L Wylie, 'Electronically Monitored Youth: Stigma and Negative Social Functioning' *Crime and Delinquency*, vol. 70, 2023.

²⁸ B Atkinson, *Report on Youth Justice from Bob Atkinson AO, APM, Special Advisor to Di Farmer MP, Minister for Child Safety, Youth and Women and Minister for Prevention of Domestic and Family Violence*, 2018, 66.

²⁹ YFS Community Legal Centre, Submission No 71 to Economics and Governance Committee, Parliament of Queensland, Strengthening Community Safety Bill 2023 (12 March 2021) 2.

²⁹ Department of Youth Justice, *Electronic Monitoring Trial*, (Final Report, November 2022) 2.

³⁰ *YJ Act* (n 1) s52AA(1)(iv).

- has caring responsibilities for other children including siblings
(RECCOMENDATION 1B).

Children subject to electronic monitoring may be targeted

33. As a result of the increased focus on youth justice, including by the Queensland Government, there has been increasing acts (or threatened acts) of vigilantism against young offenders.
34. For example, in February 2023, Guardian Australia reported observing Queensland Facebook pages containing calls for vigilante responses, 'including multiple calls to "run over" Indigenous teenagers.'³¹ Additionally, in 2024, two adult men allegedly 'chased and handcuffed three Indigenous boys aged between 12 and 14' because they believed the young people were trespassing in Mareeba, Cairns.³²
35. These incidents indicate electronic monitors, which are highly visible, risk significant harm to children and may reduce community safety by making children with electronic monitors more obvious and visible targets for vigilantes.

Technological and physical issues with devices place further limits on rights

36. The Trial Report noted children subject to electronic monitoring reported technological failures including 'strap alerts associated with poor fitment, technical alerts due to drift, and instances where a device required replacing on several occasions'.³³
37. Technological failures, which take time to resolve, place further limits on children's human rights, particularly their rights to liberty and to freedom of movement.
38. Additionally, technological failures lead to additional criminal justice control and oversight. As noted above, additional criminal justice oversight can increase the chances of additional charges for minor offences related to the electronic

³¹ Ben Smee, 'Queensland human rights commissioner says police must watch for vigilante activity', *Guardian Australia* (online 27 February 2023) <<https://www.theguardian.com/australia-news/2023/feb/27/queensland-human-rights-commissioner-says-police-must-watch-for-vigilante-activity>>.

³² Declan Brennan, 'Human rights and legal groups warn Queensland's proposed 'castle law' law will encourage vigilantism', *National Indigenous Times* (online 12 June 2024) <<https://nit.com.au/12-06-2024/11947/proposed-castle-law-law-in-queensland-will-allow-vigilantism-human-rights-legal-groups-say>>.

³³ Department of Youth Justice, *Electronic Monitoring Trial*, (Final Report, November 2022) 27.

monitoring order. Additional contact with the criminal justice system creates increased risks of further offending.

Use of information obtained from electronic monitoring

39. The Youth Justice Act does not impose any explicit limits on how the data captured during electronic monitoring can be used.
40. For the avoidance of doubt, the Bill should amend the Youth Justice Act to include a section similar to section 30O of the *Bail Act 2000* (NZ) which states information obtained during the course of monitoring can only be used to verify compliance with bail conditions, detecting an offence and providing evidence of that offence, and verifying that the person has not tampered with or otherwise interfered with the equipment (**RECOMMENDATION 2A**).
41. This would clarify how authorities can use the information and prevent uses which might constitute an unreasonable limitation on rights – for example, if the data can be used as evidence against third parties.

Rights of other occupants in child's home

42. A further concern is that monitoring equipment will need to be installed and maintained in the child's residence, which will impact on the rights of other occupants, including the right to family and to not have one's privacy and home arbitrarily interfered with.³⁴
43. In New Zealand, an occupant has the right to refuse to consent to the defendant remaining at their address while under electronic monitoring.³⁵ The court must also consider, under section 30F of the *Bail Act 2000* (NZ):
whether every relevant occupant of the premises at the proposed EM address has consented, in accordance with section 30G(2), to the defendant remaining at the address while on bail with an EM condition.
44. At a minimum, the Commission urges the government to amend the Bill to incorporate safeguards into the Youth Justice Act, modelled on those contained in the *Bail Act 2000* (NZ), including:
 - a. section 30G requiring all occupants at a residence to consent to electronic monitoring on bail (**RECOMMENDATION 2B**); and
 - b. section 30F(3)(d) consideration of consent of other occupants in report about suitability (**RECOMMENDATION 2C**).

³⁴ *HR Act* (n 2) s25, 26.

³⁵ *Bail Act 2000* (NZ) s30G.

Use of electronic monitoring as an alternative to remand

45. The Statement of Compatibility for the Bill states '[i]n some appropriate circumstances, electronic monitoring keeps a child out of custody'.³⁶
46. The Explanatory Notes for the Bill do not indicate that a purpose of the extension of the trial is to allow electronic monitoring to be used (or to be considered for use) as an alternative to remand.³⁷ Similarly, the use of electronic monitoring as an alternative to remand was not contemplated by the *Youth Justice and Other Legislation Amendment Act 2021* which commenced the electronic monitoring trial.³⁸
47. If the purpose of the Bill is to facilitate electronic monitoring to be used as an alternative to remand, this would serve the legitimate purpose of minimising the harms associated with keeping a child in custody.
48. It is possible that electronic monitoring, while placing significant limits on children's and families' rights (as discussed above), may achieve the legitimate purpose of minimising the harms caused to children in custody.
49. If the Government intends that electronic monitoring should be used as an alternative to remand, this should be made clear. It should also be included in the explanatory notes and should be fully explored in the statement of compatibility. This would allow the community to make an informed assessment of the appropriateness of this Bill and the extension of the electronic monitoring trial as well as any future use of electronic monitoring for children on bail.
50. Thank you for the opportunity to comment on the Bill.

³⁶ Statement of Compatibility, Youth Justice (Monitoring Devices) Amendment Bill 2025, 5.

³⁷ Explanatory Notes, Youth Justice (Monitoring Devices) Amendment Bill 2025.

³⁸ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2021.