



# QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

Protecting Queensland's individual rights and liberties since 1967

*Watching Them While They're Watching You*

Committee Secretary  
Legal Affairs and Community Safety Committee

**By Email** - [Lacsc@parliament.qld.gov.au](mailto:Lacsc@parliament.qld.gov.au)

## Youth Justice and Other Legislation Amendment Bill 2019

Please accept this short submission on this important and long overdue bill

The necessity for the reform of the law of bail contained in this Bill is made clear by the statistics that 80% of children in detention are on remand and only 16 percent of young people on remand go on to receive a custodial sentence and therefore the vast majority of them are spending unnecessary time in detention.

We would say the law should go further.

In our society every person has a right to liberty. Additionally, every person is presumed innocent. We would also argue that a proper principle in a society committed to liberty, is that everyone ought to be presumed to be harmless.

In our submission, bail serves two legitimate purposes. Firstly, to secure the attendance of the accused person before the court at trial. The second is to prevent any interference with the course of justice particularly, interference with witnesses. The case for these can be made on the purely pragmatic basis that these things are necessary for the functioning of the judicial system. These decisions are usually made by reference to the past conduct of the individual in either failing to appear or making threats.

By way of contrast, the decision to refuse bail for a person on the basis that they might commit further offences has no foundation what so ever. None of the statistics indicate that if bail is allowed further offending is more probable than not, even where the person has previous convictions<sup>1</sup>.

The research on the rate at which those who are on bail commit offences has been summarised as follows:

there is a recurring finding that the rate of offending increases as the age of the offender decreases, with the highest offending occurring in the younger age cohorts. Morgan and Henderson found that 29 per cent of defendants under the age of 18 committed offences whilst on bail compared to 13 per cent of those aged over 21 (Morgan & Henderson (1998))

<sup>1</sup> Ashworth and Zedner *Preventive Justice* Oxford University Press, 2014 page 69

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cited in Hucklesby & Marshall 2000:154). Similar results were found by Lash in the study of offending on bail in New Zealand in 1994. She found the age cohorts with the highest rate of offending on bail were the 17 to 19-year-olds, of whom over 27 per cent offended whilst on bail. By comparison approximately 16 per cent of offenders aged between 30 and 34 offended whilst on bail (Lash 1998: Table 4.2).<sup>2</sup>

The presumption of innocence dictates that the State has no higher duty to protect its citizens from the risk a person charged might commit an offence than it must protect them from the risk other people walking the street might commit one.

The QCCL's position in that regard reflects that of the Irish Supreme Court<sup>3</sup>. Though that position has been modified by a referendum in 1996, the law in Ireland remains that bail will only be refused on the production of sufficient evidence to enable the Court to conclude on the balance of probability that the objection to bail has been made out<sup>4</sup>

In addition, it is our submission that the government should assume a *legislative* responsibility for placing young people in suitable accommodation, when they are required to do so by bail conditions as recommended by the New South Wales Strategic Review of Juvenile Justice (2010). Money should be diverted from building more detention centres, the High Schools of crime, to providing children on bail with suitable accommodation.

We also express our concern about body cameras. We have accepted that body cameras should be used by police on the basis that they are an accountability measure. However, we also argued that strict controls need to be imposed on their use to respect privacy. No doubt a similar argument can be made in this situation.

But the privacy concerns remain. Whilst those in prisons give up some right to privacy, they do not surrender it entirely. What rules are to be imposed to respect the rights of prisoners? What rules are to be imposed in relation to the destruction of the product of these cameras? Has or will the Privacy Commissioner be consulted?

<sup>2</sup> S King, D Bamford and R Sarre, *The Remand Strategy; Assessing Outcomes*, (2008) 19(3) Current Issues in Criminal Justice 327 at 339

<sup>3</sup> *People v Callaghan* 1966 IR 501 and *Ryan v DPP* 1989 IR 399

<sup>4</sup> *Director of Public Prosecutions -v- Mulvey* [2014] IESC 18

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We trust this of assistance to you in your deliberations

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Michael Cope'.

Michael Cope  
President  
For and on behalf of the  
Queensland Council for Civil Liberties

[qccl.org.au](http://qccl.org.au)



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