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Legal Affairs and Safety (LAS) Committee

By email: lasc@parliament.qld.gov.au

Dear LAS Committee

Youth Justice and other Legislation Amendment Bill 2021 ('the Bill')

Thank you for the opportunity to provide feedback on the Bill. Our submission responds to aspects of the proposed amendments to the *Youth Justice Act 1992 (Qld)*. We make no comment about amendments relating to knife crime and honing offences.

YFS legal is a community legal centre in Logan, representing children and young people in Court in the criminal justice system. YFS Legal delivers the Children's Court Duty Lawyer service in alternate weeks with Youth Legal Aid at the Beenleigh Children's Court.

YFS Legal does not support the amendments for the reasons identified below.

The *most vulnerable* children in Queensland are targets of this law reform

The target group for this law reform proposal are 'the most serious recidivist youth offenders' – 10% of all young people who persistently offend. This amounts to almost 400 children. Research consistently shows these children experience profound social disadvantage including extreme poverty, histories of familial offending, exposure to family violence, unstable accommodation or homelessness, alcohol and substance misuse, and disrupted education. Many are *cross-over kids* who enter the youth justice system after first having contact with the child protection system. A disproportionate number are First Nations. These are *the most vulnerable* of all Queensland children caught up in the juvenile justice system.

Presumption against bail

In the medium- and long-terms, a presumption against bail will not protect the community. A presumption against bail will mean that more children and young people are on remand and serving an indefinite amount of time. Research has shown that if a young person is exposed to other young people who commit offences, recidivism is increased.¹ In addition, there is a clear lack of evidence

¹ Amélie Petitclerc, Uberto Gatti, Frank Vitaro, and Richard E. Tremblay, 'Effects of juvenile court exposure on crime in young adulthood' (2013), 54(3) *The Journal of Child Psychology and Psychiatry* 291.

that detention is an effective deterrence tool.² Research has found the detention of youth creates 'hardened and institutionalised' young people.³

Younger children who first connect with the youth justice system are at a greater risk of reoffending.⁴ Youth offending is clearly distinguished from adult offending; children's brains are developing, which gives cause to a different sentencing approach.⁵ Rather than supporting young people's brain development, punitive measures often 'traumatise them, increase the vulnerability and likelihood of reoffending.'⁶

Creating a presumption against bail does not protect the community in the long-term. What protects the community is investment and commitment to resources that support young people on bail, and early intervention activities. Presumption against bail will overfill youth detention centres and remand children and young people in watch houses, which are inappropriate residences for children and young people.

The Bill offers no explanation of how the *prescribed offences* were chosen. There is no explanation on how identifying those offences and remanding children protects the community.

Further, YFS Legal is concerned the Bill does not require the Court to review evidence about children who commit prescribed offences. Rather, the Bill requires the Court to consider that offences were allegedly committed. During our work, we have read many QP9s provided by police that have insufficient evidence that a child or young person committed the offence, as alleged.

As reported by the ABC, in Australia on any given night, 590 children are held on remand.⁷ In Queensland, this number is 208 on average, excluding young people kept in watch houses.⁸ In 2017, statistics found 87% of youth in detention centers were being held on remand.⁹ The Children's Court of Queensland Annual Report for 2019 – 2020 found the average time a young person spends in custody on remand is 30 days.¹⁰ In 2019 – 2020, there were 4296 finalised appearances of child

² Mirko Bagaric and Theo Alexander, 'The capacity of criminal sanctions to shape the behavior of offenders: Specific deterrence doesn't work, rehabilitation might and the implications for sentencing' (2012), 36(3) *Criminal Law Journal* 159, 163; Ian Lambie and Isabel Randel, 'The impact of incarceration on juvenile offenders' (2013), 33 *Clinical Psychology Review* 448, 448; Andrew Trotter and Harry Hobbs, 'A historical perspective on juvenile justice reform in Queensland,' (2014) 38 *Criminal Law Journal* 77; Australian Bureau of Statistics, 'An Analysis of Repeat Imprisonment Trends in Australia Using Prisoner Census Data from 1994 to 2007' (2010), [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/26D48B9A4BE29D48CA25778C001F67D3/\\$File/1351055031_aug%202010.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/26D48B9A4BE29D48CA25778C001F67D3/$File/1351055031_aug%202010.pdf); David Brown, 'The Limited Benefit of Prison in Controlling Crime' (2010), 22 *Current Issues in Criminal Justice* 137 at 140-142.

³ Thomas Bernard, 'The Cycle of Juvenile Justice' (2010) 2nd ed. Oxford University Press, 3-4.

⁴ Australian Institute of Health and Welfare, 'Young people returning to sentenced youth justice supervision 2015-16' (2017), Juvenile Justice Series no. 21.

⁵ Raymond Arthur, 'Rethinking the criminal responsibility of young people in England and Wales, (2012), 20(1) *European Journal of Crime Criminal Law and Criminal Justice* 13, 13-29; Elly Farmer, 'The age of criminal responsibility: Developmental science and human rights perspectives' (2011), 6(2) *Journal of Children's Services* 86, 86-90.

⁶ Julie Edwards, 'A Just System? Punitive Youth Justice Systems Increase the Risk of Crime' (2017), 42(2) *Children Australia* 233, 233.

⁷ Lexy-Smith, Anna Hartley, Mike Carter, Di Farmer 'On any given night, more than 590 children are being held on remand across the country,' ABC Report (2019).

⁸ Department of Youth Justice, 'Children's Court of Queensland Annual Report 2019-2020,' Report (2020), 40.

⁹ Darren Coyne, 'Outcry over locked up kids: Children as young as 10 are in watch houses and 'being cruelly abused,'" (2017).

¹⁰ Department of Youth Justice, above n 8, 43.

defendants in Queensland courts. 81 were sentenced to an actual detention period.¹¹ Of 698 finalised appearances in the Children's Court, 573 were found guilty. Just 4.9% of guilty outcomes received a custodial sentence.¹² Clearly, children and young people spent a significant time in custody and did not receive a custodial order.

Aboriginal and Torres Strait Islander children are greatly overrepresented in the criminal justice system and in youth detention centres.¹³ Research shows that a First Nations person is '24 times more likely to be in detention.'¹⁴ Often, First Nations children are held in custody because they cannot meet the increasing conditions of bail.¹⁵ In 2017, 60% of children held on remand in Australia were Aboriginal or Torres Strait Islander.¹⁶ The need for additional resources to support First Nations children to have accommodation, comprehensive health screening and increased funding for substance abuse programs is fundamental. Making bail more onerous is not.¹⁷ Furthermore, offending by young people is most often connected to their environment, primarily relating to social and economic disadvantages.¹⁸ Article 2 of the Convention on the Rights of the Child provides that no child should be discriminated against.¹⁹ To allow these amendments would unjustly put more First Nations and/or socially and economically disadvantaged youth in detention.

Incarceration causes long-term health effects. A recent study in *Academic Paediatrics* found the incarceration of children has a more detrimental affect on adult physical and mental health outcomes as opposed to general incarceration.²⁰ A New South Wales study identified 87% of youth in custody have one or more psychological disorders and almost 75% have at least two.²¹ Multiple studies have found clear correlations between exposure to incarceration and a detrimental impact to physical and mental health, including depression and mental illness.²² Research has confirmed that youth suffering mental health disorders who have previously been dealt with by the justice system have a higher risk of recidivism.²³ These studies support the notion that restricting access to

¹¹ *Ib id*, 16.

¹² *Ib id*, 27.

¹³ House of Representatives, 'Time to act on youth custody shame: national disgrace says report' (2011), 42 *About the House* 15; Yannick van den Brink, 'Young, Accused and Detained; Awful, But Lawful? Pre-Trial Detention and Children's Rights Protection in Contemporary Western Societies' (2019), 19(3) *Youth Justice* 243, 248.

¹⁴ Australian Institute of Health and Welfare, 'Youth Justice in Australia 2015-16, Bulletin No. 133, (2016).

¹⁵ *Ib id*.

¹⁶ Darren Coyne, above n 9.

¹⁷ House of Representatives, above n 13.

¹⁸ Julie Edwards, above n 6, 233.

¹⁹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577.

²⁰ Elizabeth Barnert, Laura Abrams, Rebecca Dudovitz, Tumaini Coker, Eraka Bath, Lello Tesema, Bergen Nelson, Christopher Biely, Paul Chung, 'What Is the Relationship Between Incarceration of Children and Adult Health Outcomes?' (2019), 19(2) *Academic Paediatrics*, 342, 342-345.

²¹ Devon Indig, Caludia Vecchiato, Leigh Haysom, Rodney Beilby, Julie Carter, Una Champion, Claire Gaskin, Eric Heller, Shalin Kumar, Natalie Maome, Peter Muir, Paul van den Dolder and Gilbert Whitton, '2009 NSW Young people in custody health survey,' Justice Health and Juvenile Justice Report, (2011).

²² Rohan Borschmann, Emilia Janca, Annie Carter, Melissa Willoughby, Nathan Hughes, Kathryn Snow, Emily Stockings, Nicole Hill, Jane Hocking, Alexander Love, George Patton, Susan Sawyer, Seena Fazel, Cheneal Puljević, Jo Robinson and Stuart Kinner, 'The health of adolescents in detention: a global scoping review' (2020), 5(2) *The Lancet Public Health*, 114; Lauren Brinkley-Rubinstein, 'Incarceration as a catalyst for worsening health' (2013), 1(3) *Health Justice*; Lauren Brinkley-Rubinstein, Scott Allen, Josiah Rich, 'Incarceration and the health of detained children' (2020), 5(2) *The Lancet Public Health*, 76-77, [https://doi.org/10.1016/S2468-2667\(19\)30250-6](https://doi.org/10.1016/S2468-2667(19)30250-6).

²³ Larkin McReynolds, Craig Schwalbe and Gail Wasserman, 'The contribution of psychiatric disorder to juvenile recidivism' (2010), 37(2) *Criminal Justice and Behaviour* 205, 212.

bail subjects children to increased risk of mental illness, which unequivocally leads to increased risk of recidivism and ultimately, reduced community protection.

Parent, guardian or other person willing to support compliance of bail conditions

In YFS Legal's experience, children and young people lack family support and safe living conditions, which contribute to their offending. We are concerned that when no-one gives assurances, a young person will not be given bail.²⁴ Research has shown children and young people without parental support exhibit more complex needs that need to be met than children and young people with supportive families.²⁵ Requiring the Court to consider the support of a child and young person as a reason to refuse bail will likely create a further disproportionate amount of youths without parents or other supports being unjustly remanded.²⁶

Principle that the community should be protected from recidivist offenders

Creating a principle that the community should be protected from recidivist offenders will result in more young people being refused bail and sentences becoming harsher. This will be compounded when the legislation is amended to make committing an offence on bail an aggravating factor.

Tracking device

There is little evidence to support that electronic devices are effective and it is becoming an increasingly intrusive device.²⁷ There is a risk that in allowing the use of electronic monitoring devices on youth, it will be used as a punitive sanction rather than as a measure to protect the community.²⁸ It is unsuitable to use on youth as opposed to adults.²⁹

Key protected human rights have been overlooked

The Bill creates significant limitations on Queenslanders' human rights. The Statement of Compatibility does not identify all protected human rights of children engaged by the Bill. The overlooked human rights include the right:

1. to be protected from cruel, inhuman or degrading treatment or punishment
2. of children charged with a criminal offence to a procedure that takes account of their ages and the desirability of promoting their rehabilitation
3. of children in the criminal process who have been convicted of an offence to be treated in an age-appropriate way.

The Bill is not compatible with the Human Rights Act 2019 (Qld)

²⁴ Australian Institute of Criminology, 'Crossover kids': Offending by child protection-involved youth,' Trends and Issues in Crime and Criminal Justice, Report No. 582 (2019), 1.

²⁵ Dianna Kenny and Paul Nelson, 'Young offenders on community orders: Health, welfare and criminogenic needs,' (2008) Sydney, Sydney University Press.

²⁶ *Ib id*; Wendi Johnsonn, Peggy Giordano, Wendy Manning and Monica Longmore, 'Parent-Child Relations and Offending During Young Adulthood' (2012), 40(7) *Journal of Youth and Adolescence* 786; Yannick van den Brink, above n 13, 248.

²⁷ Catherine Crump, 'Tracking the Trackers: An Examination of Electronic Monitoring of Youth in Practice' (2020), 53 *University of California Davis Law Review* 795, 795.

²⁸ Molly Carney, 'Correction Through Omniscience: Electronic Monitoring and the Escalation of Crime Control' (2012), 40 *Washington University Journal of Law and Policy Introduction* 279, 293-94.

²⁹ Chaz Arnett, 'Virtual Shackles: Electronic Surveillance and the Adultification of Juvenile Courts' (2018), 108 *Journal of Criminal Law and Criminology* 399, 399-401.

To demonstrate that a limitation on human rights is justifiable, a rational connection must be made between the law or action causing the limitation and a legitimate purpose. There is insufficient evidence that putting GPS trackers on children and removing the presumption against bail will make the community safer, which is the purpose of the proposed Bill. Instead, there is evidence that investing in services to assist children when they are charged with offences and supporting families will reduce crime and result in a safer community.

Following are some examples of services and/or supports that work.

Cairns Safer Streets is a youth justice program involved in 12 projects to reduce recidivism rates of youth, prevent offending and connect communities.³⁰ To achieve these goals, Cairns Safer Streets has led and facilitated 295 activities throughout the city.³¹

The Queensland Government has found that prevention programs are most effective in addressing youth offending and are the most cost effective.³² The cost of one child in detention in Queensland each year is roughly \$547,000.³³ 82% of young people subject to Queensland detention returned to detention within 12 months of their release. Only 50% of young people who served a supervised community order returned in the same period.³⁴

Youth Advocacy's Bail and Order Support Service provides 'resources, supports and activities to young people, particularly for education and employment, housing and accommodation, connection to family and connection to culture, and social/fun things to do so that young people can keep to the conditions the court has ordered and avoid getting into further trouble with the law.'³⁵ The program has assisted many young people, with a particular case study describing the immense transition of a young man. In a matter of months, the young man went from being homeless and anti-social to completing high school, reuniting with family and beginning studies to become an engineer.³⁶

Bail-support programs are important tools in the youth justice system. They assist with addressing drug and alcohol abuse; stabilising accommodation; sparking employment, training and education opportunities; and building relationships.³⁷ Bail-support programs are most successful when they require voluntary participation; provide 'support and intervention rather than supervision and monitoring;' use a holistic approach to respond to individual needs rather than a standardised approach; are 'coordinated and interdepartmental' providing avenues to different services; and are 'adaptable and responsive to local conditions.'³⁸

The Australian Institute of Criminology (AIC) has highlighted a lack of bail-support programs beyond metropolitan areas and a need for additional support for young people with complex needs. Also, AIC has identified that young people with complex needs require the most support and are often left

³⁰ Cairns Safer Streets, Annual Report 2017–18.

³¹ *Ib id.*

³² Queensland Government, 'Working Together Changing the Story: Youth Justice Strategy 2019-2023' (2019), 8.

³³ Productivity Commission, 'Report on Government Services 2017: Chapter 17 – Youth Justice Services,' (2018).

³⁴ Queensland Government, above n 32, 8.

³⁵ Youth Advocacy Centre, 'Services,' <https://www.yac.net.au/bail-assistance/>.

³⁶ Youth Advocacy Centre, 'Annual Report 2018-2019' (2019), 16.

³⁷ Mathew Willis, Australian Institute of Criminology, 'Bail support: A review of the literature,' (2017) *AIC Reports, Research Report Series iv*, 34.

³⁸ Indigenous Justice Clearinghouse, 'Bail support in Australia,' Research Brief (2008), 1; Mathew Willis, Australian Institute of Criminology, above n 37, 26-29.

held in remand without access to these programs.³⁹ This raises the need for services that deal with complex cases. Undoubtedly, this would assist in reducing recidivism among the 10% of young people with which the Bill aims to deal.⁴⁰

The Anglicare Bail Support program works with children and young people in Logan, providing support to individuals and their families. The program provides practical support such as Court transport, ensuring Court dates are not missed. It also provides children and young people with mobile phones so they can contact their families and lawyers.

YFS provides a number of programs assisting children, young people and their families. Youthlink works with young people disengaged from school or in the criminal justice system, working with individuals and their families to achieve goals. Shift works with children and young people to achieve goals relating to drug and alcohol use.

Sticking with what works

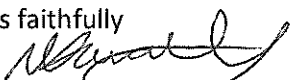
Youth justice is a complex field that requires integrated, sustained and well-funded community-based services that are based on evidence to address youth crime. The Bill does not address the root causes of youth crime in Queensland.

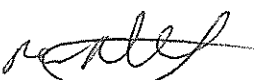
This Bill will entrench children and young people further into the criminal justice system and not make the community safer in the long term. In our experience, a child and young person's criminal offending worsens after they are remanded in custody.

To prevent criminal offending and keep the community safe, the Queensland Government needs to keep investing bail-support programs, flexible learning schools and family interventions.

We ask that the LAS Committee rejects the Bill.

Yours faithfully


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³⁹ *Ib id*, 32; Kelly Richards and Lauren Renshaw, Australian Institute of Criminology, 'Bail and remand for young people in Australia: A national research project,' Research and Public Policy Series no. 125 (2013), 99.

⁴⁰ Kelly Richards and Lauren Renshaw, Australian Institute of Criminology, above n 39, 100-101.