




Speech By
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MEMBER FOR MAIWAR

Record of Proceedings, 12 October 2021

YOUTH JUSTICE (MONITORING DEVICE CONDITIONS) AMENDMENT REGULATION

Disallowance of Statutory Instrument

 **Mr BERKMAN** (Maiwar—Grn) (5.35 pm): I move—

That the Youth Justice (Monitoring Device Conditions) Amendment Regulation 2021, Subordinate Legislation No. 43 of 2021, tabled in the House on 25 May 2021, be disallowed.

This regulation prescribes the geographical areas where a court can order the use of a GPS tracker as a condition of bail and other conditions to facilitate the tracker on some 16- and 17-year-old kids. This was only made possible with the passage of the Youth Justice and Other Legislation Amendment Bill 2021. Not only was this trial of GPS trackers for 16- and 17-year-old kids always a baseless, politically motivated attack on some of the most vulnerable kids in Queensland, but it has been an absolute failure even by the government's own measures.

I am moving this motion to give the Labor government an opportunity to scrap its failed experiment while we have the chance. Like the rest of the youth justice reforms that accompanied this regulation-making power, these trackers were an ill-considered thought bubble from a cowardly and cornered government desperate for a favourable *Courier-Mail* headline about their cracking down on a confected youth crime epidemic. It was a bone they threw to the LNP hoping to stall their demands to lock up more children for as long as possible. Surely the fever dream has now subsided and the government can see how ridiculous and inhumane it was to suggest we slap an ankle bracelet on children still young enough to be in school. If not, perhaps a trip down memory lane will help.

Just a couple of years ago the former minister for youth justice explained why it would not be appropriate to impose electronic monitoring as a bail condition on children. The former minister said—

There are a number of practical and human rights concerns relating to imposing conditions of this type on children. For example, a child that wears a tracking device may be stigmatised and isolated by their peers or community, reducing their prospects of rehabilitation.

Indeed, the government's explanatory notes to its own bill that year said that monitors were—

... likely to be counterproductive to attempts to reintegrate a child into activities such as school, sport or employment.

...

The use of electronic tracking devices on young people is unlikely to be particularly effective at deterring them from breaching their bail conditions.

There is a risk that the use of electronic tracking would result in more breaches of bail conditions coming to the attention of police, including minor breaches, with the consequence that more young people are returned to or placed in custody.

For those who have forgotten former police commissioner Bob Atkinson's report on youth justice or the UN Convention on the Rights of the Child or the government's own youth justice strategy, I will give a quick reminder on their common theme: we are meant to avoid locking children in prison as far

as we possibly can. That is why the Atkinson report suggested the government could consider electronic monitoring as an alternative to or the equivalent of detention, not as a bail condition. We are still waiting for the minister to correct the record from when he stood up in this place to introduce the youth justice reforms this year and said that these trackers were recommended by Bob Atkinson.

In fact, there is absolutely zero credible evidence to support the use of these devices on kids. There never was. The government cited one study from New Zealand, but it was kind of like the uni student who throws together their assignment off the top of their head and then combs through Google for corroborating sources to put on the reference list. They did not really seem to care what the study actually said. If they did they would know that it actually compared reoffending rates for offenders detained at home with electronic monitoring versus those who were in prison and surprise, surprise, those who were locked up were more likely to reoffend, consistent with all the rest of the evidence.

Although the impact of incarceration on reoffending is an important point, and one I would love honourable members to acknowledge directly, it is not relevant to an argument about whether or not you should slap a GPS tracker on a 16-year-old kid. No, there was never any evidence that these GPS monitors would reduce reoffending, but there was clear evidence they would contravene our human rights obligations to children, that they would increase stigma, prompt racial violence and vigilantism and reduce young people's ability to engage with education, employment and support services.

Countless experts and service providers told us that GPS devices for children could just be another pathway into the criminal justice system instead of an avenue out. They also warned us that children would be less able to comply with conditions due to their lower levels of maturity and cognitive development. The prefrontal cortex which allows us to consider the consequences of our actions is still gradually developing from the ages of 10 to 17 and is not fully developed until children reach the age of 25. At 16 and 17 these kids' amygdala, which thrives on risky and thrillseeking behaviour, is operating at full speed. It is like having a fully functional accelerator but no brakes. Without labouring the metaphor, that is why teenagers tend to commit offences that are often episodic, unplanned and opportunistic, just like jumping in a stolen car.

The Youth Advocacy Centre said that if kids decide to brave school with one of those trackers they could face an increased likelihood of being suspended, which we know from the Atkinson report contributes to aggravated antisocial behaviour and an increased likelihood of involvement with juvenile justice systems. Similarly, the Queensland Family and Children Commission's recent report on youth justice identified disengagement from school as a huge problem, exacerbated by unusually high numbers of exclusions in Queensland.

The Bar Association pointed out that provisions of the Youth Justice Act designed to prevent the public identification of child offenders are potentially undermined by these very visible ankle bracelets. These trackers isolate the wearer by identifying them as someone who does not belong in the classroom with their peers but with other so-called criminals or in prison. It is no wonder that evidence from the UK shows some kids trying to get a monitor on their ankle as a badge of honour or a rite of passage when we are telling them that that is the only world where they truly belong.

I have no doubt that the kids being targeted by this regulation have been sent that message many times before. In Queensland's youth justice system, almost 20 per cent of kids do not have suitable housing, 52 per cent are totally disengaged from education and 58 per cent have a diagnosed or suspected mental health or behavioural disorder. The CREATE Foundation notes that young people in out-of-home care are 16 times more likely to have contact with the youth justice system. That includes kids like the former young offender who spoke at the hearing on the bill introducing these trackers. She said—

The electronic ankle monitoring device would have further criminalised me as a child. I would have had nowhere to charge it and no way to cover it and avoid the stereotyping and judgement from the general community but, most importantly, nowhere for my bail to be set to.

...

If I had some form of stability in my life, a stable place to live or even a constant person, that would have made a huge difference. If someone just cared about me—and not only between the hours of nine and five Monday to Friday—I think a lot of things that happened would not have and my criminal history would be non-existent.

Many of these kids, especially the ones eligible for GPS monitoring under this regulation, have experienced abuse, disadvantage, poverty and alienation their whole lives. Now they face it from their own government—the people who are meant to be protecting them. As PeakCare executive director and former youth justice worker Lindsay Wegener said about this punitive and dehumanising approach to some of the most vulnerable young offenders—

Kids who have experienced significant trauma or racism are suddenly transformed from people worthy of our compassion and understanding to kid criminals worthy only of our derision.

From the commencement of this regulation to 22 September, there were five attempted and one successful applications to use the new provisions for GPS trackers on 16- and 17-year-olds. We do not have details for the one successful application but all of the attempts up until that point were in relation to Indigenous children, reflecting the shocking overrepresentation of First Nations people in our so-called justice system. The government thought they could wordsmith away the racist nature of these laws by removing the word 'tracking' but they cannot sanitise the facts. As my federal Greens colleague Senator Lidia Thorpe predicted about these trackers—and I am using her words—'the colonial neck braces have now given way to ankle monitors'.

We do know that the first child to receive one of these trackers was just 16 and that their mother was also in contact with the justice system on unrelated charges. It is a familiar story of intergenerational disadvantage, fed by this government's racist punitive laws. We cannot wait for a two-year trial of these ill-considered and damaging laws. They have already failed. They have failed by the standards of the government who said that they would likely apply to around 100 kids but so far they have been able to convince the court only once. Most importantly, we have failed on the measure of countless human rights experts, criminologists, social workers, medical professionals, Indigenous advocates and more.

The kids in these areas do not deserve to be the government's guinea pigs. They are not an experiment to hold up for a *Courier-Mail* story. They are children who deserve to be treated with respect and given care, services and support, not an ankle bracelet and a media release.