




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 22 April 2021

YOUTH JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

 **Hon. SM FENTIMAN** (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (12.08 pm): I rise to speak in support of the Youth Justice and Other Legislation Amendment Bill 2021. These amendments send a clear signal to all Queenslanders about what is important to this government, which is keeping our community safe. The amendments proposed by the bill respond to a small cohort of youth offenders who continue to offend and endanger the safety of the community. Again, our amendments demonstrate our commitment to community safety.

I want to start my contribution to the debate by talking about the families that are doing it tough. Of course, youth crime is often connected to families that are experiencing domestic and family violence, addiction to drugs and alcohol and mental health problems.

Early intervention has to be paramount in trying to reduce youth crime in our communities. It is referenced in Bob Atkinson AO's 2018 *Report on youth justice* as one of the four pillars: early intervention, keeping children out of court, keeping children out of custody and reducing reoffending. The Palaszczuk government knows how crucial early intervention is in keeping our communities safe, which is why we continue to invest in the prevention of domestic and family violence, with over \$152 million invested in 2020-21, supporting families through programs like PPP and continuing to tackle the significant and harmful impact of drugs on families and communities.

The bill seeks to amend a number of pieces of legislation including the Youth Justice Act 1992, which is to be amended to strengthen bail and sentencing laws. The bill strikes a sensible balance between the special protections afforded to children in the youth justice system because of their adolescence as well as the expectation that the law will strive to protect the community and keep it safe.

Clause 24 of the bill proposes the creation of a presumption against bail for youth offenders. The presumption will operate as it does for adults. A child who finds themselves subject to the presumption against bail must show cause as to why their continued detention is not justified. If the test cannot be met, the court or police officer considering bail for the child must refuse to release the child onto bail. A child will find themselves subject to this reverse presumption if they are arrested for committing a prescribed indictable offence while on bail for another indictable offence.

The definition of 'prescribed indictable offence' includes all indictable offences where the maximum penalty is 14 years or more imprisonment, except where the charge is simpliciter drug possession, and it includes certain other indictable offences carrying a maximum penalty of less than 14 years imprisonment for an adult including choking, suffocation or strangulation in a domestic setting, wounding, dangerous operation of a vehicle, assault occasioning bodily harm, attempted robbery and certain instances of unlawful use or possession of a motor vehicle. The designation of these additional offences as prescribed indictable offences ensures this measure will apply to those offenders who have a tendency to repeatedly commit offences of considerable seriousness and ones that threaten community safety.

Clause 26 of the bill proposes to further amend the Youth Justice Act to provide a legislative basis for a location based trial of electronic monitoring. The amendment follows the recommendation from the 2018 *Report on youth justice* from Bob Atkinson that the government examine the use of electronic monitoring, together with community or home detention, as an alternative to detention in a youth detention centre. A court will only be permitted to make a bail condition requiring electronic monitoring where the accused person is aged 16 or 17 years and has been accused of committing a prescribed indictable offence and has previously been convicted of an indictable offence. The bill relies upon the same definition of prescribed indictable offence as applies to the presumption against bail. The bill requires a court to order that a suitability report be prepared and then considered by the court to ensure the courts do not set up the child to fail.

Clause 21 of the bill seeks to make changes to section 48AA of the Youth Justice Act. This section sets out matters to be considered by courts and police officers when making decisions in relation to bail. The bill proposes to allow a police officer or a court to have regard to indications of willingness of parents or other people to support an accused child to comply with bail, or notify the authorities of changes in circumstances which may affect the child's compliance with bail, or notify the authorities where bail is breached.

In the context of bail, there is an often quoted line from the Queensland Court of Appeal decision of *Williamson v the Director of Public Prosecutions* in which Justice of Appeal Thomas stated, 'No grant of bail is risk-free.' The risk referred to in that quote is the risk that an accused person will not appear in court as required or that they will commit a further offence. The decision goes on to recognise that the risk that one of those things will occur is always present. That is why conditions are imposed upon bail, to address the risk that something will occur. The amendments to the bail provisions of the Youth Justice Act proposed by the bill, in my view, will go some distance to reduce these risks further. These amendments are appropriately targeted to the cohort of youth offenders who have a proven capacity to reoffend while subject to bail, and they are a measured response to recidivist youth offending.

The bill provides the courts with additional powers to impose conditions to further mitigate risk. Balanced against the grant of those powers is the requirement to consider the appropriateness of using them, having regard to a child's human rights and their personal circumstances. Importantly, these amendments do not affect the exercise of judicial discretion. Collectively, the amendments proposed in the bill reinforce the importance of community protection and demonstrate the Palaszczuk government's absolute commitment to achieving it. I commend the bill to the House.