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Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026

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Introduction

I recognise the harm caused to victims, families and communities when individuals commit serious offences, including while on bail.

Individuals who repeatedly commit serious offences need interventions to change their behaviour and keep the community safe. There will be cases where the risk cannot be safely managed in the community and a court will determine that detention is necessary. The issue is therefore not whether detention should ever be used. It is whether the system, and this Bill, will identify those individuals and children accurately, and therefore make the community safer over time, and ensure that the additional use of custody produces a better outcome.

The temporary incarceration of a person that re-enters society as a angrier and more harmful individual is not productive for community safety.

This Bill seeks to address a real and longstanding problem: individuals charged with one offence who commit further serious offences while on bail. The community is entitled to expect the justice system to respond effectively to that risk, particularly where further offending causes serious harm. The central question, however, is not simply how we punish further offending, but how we prevent it.

Working out how to stop reoffending is ultimately more important to community safety than imposing additional transactional punishment.

A justice system focused only on the offence asks: *What penalty does this crime deserve?* A system focused on safety must also ask: *What must change in this person's behaviour and circumstances so that the offending does not happen again?*

This Bill is directed at children and adults accused of further serious offending while on bail. The Bill introduces major changes, including:

- creating a standalone offence for committing a serious offence while released on bail. The offence carries a mandatory minimum custodial sentence of 12 months imprisonment, to be wholly served in custody.
- strengthening the bail threshold for serious offenders by introducing a new "high degree of confidence" test. Under the test, police or a court must refuse bail unless satisfied to a high degree of confidence that the offender will not commit another serious offence while on bail.

Every behaviour change program or intervention must necessarily centre on accountability, particularly where serious harm has been caused - but punishment is an event; behaviour change is a process.

If a person completes a sentence without developing greater self-regulation, changing harmful relationships, addressing substance use, reconnecting with education or employment, or establishing stable accommodation and positive adult support, the circumstances contributing to their offending may remain substantially unchanged. This distinction is particularly important when considering children and young people who repeatedly come into contact with the justice system.

Continued offending should not simply trigger the question of whether the consequences are sufficiently severe. It should also cause us to ask why previous interventions have not changed the behaviour, what needs or risks remain unaddressed, and what intervention is most likely to reduce the prospect of another offence. The measure of an effective response should ultimately be whether it makes the community safer by reducing future offending.

Where offending continues, our challenge is not simply to impose another penalty. It is to understand why the previous intervention did not work. Was it delivered too late? Was it suited to the person's age, development, disability and circumstances? Did it address the drivers of the offending? Was there a responsible adult to reinforce change? Did support continue after release?

The most meaningful measure of justice-system performance is therefore not how severely it responds to each offence, but whether its interventions work to change behaviour, reduce reoffending and prevent harm to the next victim.

1. The proper role of bail

Bail should be a relatively small and time-limited part of the criminal process.

A person is on bail because an allegation has been made but guilt has not yet been determined. The purpose of bail law is to decide whether, and on what conditions, the accused person may remain in the community while the matter proceeds to judgment. It is the literal embodiment of the principle “innocent until proven guilty”.

While bail decisions give practical effect to the presumption of innocence, they also enable the police and the courts to manage risks of non-appearance, further offending, interference with witnesses and harm to the community.

A good bail decision recognises that incarceration commences the most significant form of punishment before a finding of guilt. International children’s-rights standards state that pre-trial detention must not be used as punishment and that deprivation of liberty should be used only as a last resort and for the shortest appropriate period. Queensland’s Human Rights Act separately protects liberty, humane treatment, fair hearing, the presumption of innocence and the rights of children in the criminal process. An override does not remove the operational consequences of departing from those principles; it increases the need for safeguards, monitoring and a time-limited review.

The Bill would materially increase the consequences attached to this interim legal stage. It introduces a more demanding “high degree of confidence” threshold for specified accused persons, creates a standalone offence for committing a significant offence while on bail, and imposes a mandatory minimum custodial sentence of 12 months to be served wholly in custody. The accompanying materials acknowledge that the changes are likely to increase remand, detention and watch-house pressure and rely on an override of the *Human Rights Act 2019*.

The mechanisms designed in this Bill combine at three different stages: the prediction of risk before guilt is determined; the criminalisation of conduct associated with the bail period; and mandatory punishment after conviction. Their cumulative effect matters. A child may spend longer on remand, face reduced access to diversion, and then receive a sentence from which the court cannot depart despite developmental, disability or contextual factors.

Furthermore, the proposed offence creates an unusual dependency between two criminal proceedings that may progress on entirely different timelines. There is a legal policy oddity in that the first allegation does not need to be proved, but it creates the legal status that aggravates the second incident and triggers a mandatory custodial sentence. A child must be proved to have committed the second significant offence before the mandatory penalty applies, however, the aggravating circumstance is the child’s bail status arising from the first charge, which may remain unresolved and may never result in conviction. This produces an unusual sequence:

- an unproven allegation leads to bail;
- the bail period becomes an element of a new criminal offence;
- the second offence may be determined before the first;
- the child may receive a mandatory sentence because of a bail status arising from the first allegation; and
- the child may later be acquitted of that first allegation without this affecting the mandatory sentence.

In this way the law would transform a procedural status arising from an unproven allegation into an element attracting mandatory punishment. This warrants careful consideration of fairness, proportionality and how the two proceedings are to be sequenced. Furthermore, mandatory minimum sentencing creates a separate proportionality problem. A fixed minimum prevents the court from matching the sentence to the seriousness of the further offending, the child’s culpability, the circumstances of the breach, steps toward rehabilitation and time already spent in custody.

2. Judicial delay converts an interim measure into a major intervention

Bail occupies the period between charge and final determination. Yet, because Queensland matters can remain unresolved for lengthy periods, bail and remand have become a substantial part of the youth justice system, and a significant topic in the public discourse.

We could substantially reduce the number of children that breach bail by reducing the amount of time they are on bail.

The duration of bail or remand is determined not only by a child's conduct but by the efficiency of the justice process. The longer a matter remains unresolved, the longer a child must sustain compliance and the greater the opportunity for the accumulation of stressors that can lead to reoffending. Delay increases the opportunity for breach, particularly where the child's living arrangements, school engagement or family support are unstable.

Queensland does not appear to routinely publish the duration of bail for children. However, court finalisation data indicates that youth matters can remain unresolved for significant periods. In 2023–24, convicted charges took an average of 85 days to finalise in the Magistrates (Children's) Court and 307 days in the Children's Court of Queensland.¹ For a child released on bail early in proceedings, this gives an indication of the potentially lengthy period during which bail conditions may operate.

Children's matters should be resolved as quickly as fairness permits. Courts should use their existing case-management and bail powers decisively, ensure matters progress without avoidable delay, and regularly review whether bail conditions remain necessary and workable. Where a child proposes to plead guilty, the system should move promptly to sentence (once the child has received proper advice and the prosecution material is available). Where a matter is contested, timely disclosure, focused case management and priority hearing dates are essential. Efficiency must not compromise fairness, but avoidable administrative delay serves neither victims, accused children nor community safety. Children's matters should be subject to enforceable case-management benchmarks, early disclosure, priority listing and regular review of bail conditions and remand.

3. Quality of police and judicial decisions – and support services

Every bail decision must include a risk assessment of future or further offending and community safety. The present *Bail Act 1980* already directs decision-makers to refuse bail where there is an unacceptable risk that a defendant will fail to appear, commit an offence, endanger another person or obstruct the course of justice. For children, the *Youth Justice Act 1992* requires attention to child-specific considerations. The law therefore already permits detention where a properly identified risk cannot be acceptably managed.

A further offence committed on bail should suggest that the earlier risk assessment was incorrect. Serious questions about the performance of the family, community, and judicial service system should be asked if a young person re-offends while on bail. The accountability for reoffending should not be held by the child alone.

The appropriate policy response is to learn from each event: Was the risk information complete? Were conditions targeted and comprehensible? Was the promised support delivered? Did the matter progress promptly? Was emerging risk not only detected but mitigated?

It is the role of adults to help children learn how to behave. None of us automatically enter the world understanding the criminal law, the consequences of our actions or how to regulate impulses and emotions. These capacities are learned over time, through consistent guidance, boundaries, modelling and course correction from responsible adults.

¹ <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5824t0283/5824t283.pdf>

For children who have grown up without quality adult guidance - whose adults have been absent, unsafe or unable to provide it - repeated harmful behaviour should not surprise us. This does not excuse offending or diminish the harm experienced by victims. It does mean that accountability must include structured opportunities to learn, change and repair harm.

The community does not protect itself by expecting children to develop these capacities alone. If a child lacks a responsible adult, the youth justice system (or child protection system; or some other system) must provide the supervision, boundaries and intervention that are missing.

A system that punishes behaviour without teaching different behaviour may temporarily remove the risk, but it should not expect the child to return to the community knowing how to act differently.

The *Youth Justice Census (2020–2025)*² provides a detailed profile of children and young people under supervision and in custody, highlighting the complexity and intensity of need within this cohort. The survey responses are provided by case managers/workers and reflect the case manager's knowledge at the time of entry. Indicators of social disadvantage are evident across both supervised and custodial cohorts. In 2025, 26 per cent of young people under supervision were living in unstable or unsuitable accommodation, increasing to 34 per cent for those in detention. Disengagement from school and employment was similarly high, affecting 53 per cent of the supervised cohort and 54 per cent of those in detention. Exposure to domestic and family violence (DFV) was also widespread, with 62 per cent of all supervised youth and 73 per cent of those in detention having experienced or been directly impacted by violence. This represents a substantial increase over time, with DFV exposure in the detention cohort rising from 57 per cent in 2020.

The prevalence of disability and neurodevelopmental conditions within the detention cohort is particularly pronounced. In 2025, 75 per cent of children in detention were diagnosed with, or suspected of having, a cognitive, physical, or sensory disability. Attention Deficit Hyperactivity Disorder (ADHD) was identified in 64 per cent of detained children, while 23 per cent were identified as having Fetal Alcohol Spectrum Disorder (FASD). These figures indicate that neurodevelopmental impairment is a significant factor in youth justice involvement.

Mental health concerns have also increased over time. Between 2020 and 2025, the proportion of young people with diagnosed or suspected mental health conditions rose from 32 per cent to 46 per cent across all supervision, and from 28 per cent to 43 per cent in detention (peaking at 47 per cent in 2024). Within the detention cohort, anxiety increased from 16 per cent to 29 per cent, post-traumatic stress disorder from 17 per cent to 24 per cent, and depression from 14 per cent to 20 per cent over the same period. Behavioural disorders, including conduct disorder and oppositional defiance, were present in 23 per cent of the detention cohort in 2025.

Substance use remains a near-universal feature of the cohort. In 2025, 83 per cent of young people under supervision and 87 per cent of those in detention reported active substance use. Cannabis was the most commonly used substance, with 81 per cent of detained young people reporting use. Methamphetamine (ice) use remained persistently high, reported by 24 per cent of the supervised cohort and 40 per cent of those in detention. A notable increase was observed in stimulant use (excluding methamphetamines), rising to eight per cent under supervision and 15 per cent in detention in 2025, although this change is attributed in part to improved data capture.

The census also highlights the intergenerational nature of disadvantage. In 2025, 35 per cent of young people under supervision had a parent or guardian who had previously been incarcerated, increasing to 42 per cent within the detention cohort. This reflects a continuation of patterns observed since 2020 and underscores the role of intergenerational contact with the criminal justice system as a contributing factor to youth offending.

Overall, the data demonstrates that children and young people in the youth justice system experience multiple, intersecting forms of disadvantage, including trauma, disability, mental health concerns, substance use, and social

2 Department of Youth Justice and Victim Support, Unpublished correspondence

exclusion. These findings reinforce the need for responses that move beyond justice-based interventions to address the underlying drivers of offending through coordinated and prevention-focused approaches.

The Child Death Review Board's *Understanding the Youth Justice review cohort* report provides important context for understanding the lives behind persistent offending. The Board examined the lives of 30 children and young people who had contact with Youth Justice in the year before their death.

Every young person had experienced childhood adversity, with an average of six adverse childhood experiences across the cohort. Seventeen had experienced unstable housing or homelessness; at least 11 had experienced parental rejection, abandonment or relinquishment of care; and seven had experienced the death of one or both parents. Almost all had used illicit substances, 93 per cent were disengaged from education, training or employment, and 90 per cent experienced mental health issues and/or disability.

Adverse childhood experiences do not occur in isolation. They accumulated across childhood, often alongside exposure to abuse and neglect, domestic and family violence, parental substance use or mental illness, disrupted relationships and repeated contact with statutory systems. More than half of the cohort were Aboriginal and Torres Strait Islander young people, reflecting their continuing overrepresentation in the youth justice system. This shows that these reforms are likely to affect most heavily the children already over-represented in custody: Aboriginal and Torres Strait Islander children, children in care, children with disability, and children without stable housing or reliable adult support. This creates a real risk of detaining a child because the service system cannot supply a service, carer or program, rather than because the child is intrinsically risky and requires custody.

The significance of these findings is not that adversity excuses offending or diminishes accountability. It is that persistent offending cannot be effectively prevented if the system only responds to the offence and not to the conditions in which the offending behaviour has developed.

For many children who repeatedly offend, youth justice contact occurs later in a much longer trajectory of trauma, instability, disengagement and unmet need. Each interaction with the justice system therefore presents not only an opportunity to impose consequences, but an opportunity to interrupt that trajectory.

If our objective is community safety, the question is not simply whether a young person has received a sufficiently strong consequence. It is whether our intervention has changed the factors that make another offence likely.

These are not reasons to excuse serious offending. They are facts that determine whether a bail plan can work.

Alongside this Bill, Queensland should give equal attention to what happens after a child's first interaction with the justice system and, in particular, whether existing bail support arrangements are effective in preventing the next offence.

Queensland has important components of bail and community risk management. These include specialist bail-support outreach and counselling, supervised community accommodation for children granted bail without a safe home, youth co-responder teams, electronic monitoring where suitable services are available, and broader youth justice casework and diversion services. These services can assist children to comply, stabilise accommodation, reconnect with family and education, address substance use and respond quickly to emerging risk. However, the critical question for a court is not whether a program exists somewhere in Queensland. It is whether an appropriate place, worker and service response are available for this child, in this location, at the time the decision is made - including after hours and in regional and remote communities.

The fundamental role of parents is critical in this regard. As I have consistently observed in my youth justice submissions, strong and responsible parenting is one of the most important contributors to community safety and reducing youth offending. I ask myself what the justice system does to reflect this finding. A condition to reside with a parent is ineffective if the parent is absent, incarcerated, affected by serious illness or substance use – and even more so if the parent is unwilling or unable to care for the child. A curfew is not workable without a safe address. Reporting conditions may fail without transport, and complex conditions may not be understood by a child with cognitive or communication disability.

Bail represents an important opportunity for government intervention. It is often the point at which the risks associated with a child's offending, family circumstances and broader vulnerability become visible across police, judicial and government services. The effectiveness of the response should therefore be measured not simply by the conditions imposed on the child, but by what government (and the community) does with that opportunity.

There is a strong case for examining whether Queensland's current bail support arrangements are sufficiently timely, coordinated and accountable. Government should be able to identify quickly what is driving the risk of further offending, determine what intervention is required, mobilise the relevant services and maintain responsibility for follow-through. Police and courts should have confidence that the supports contemplated by a bail plan actually exist and can be accessed, and there should be clear responsibility for responding when arrangements begin to fail. This is particularly important where government imposes complex conditions on a child. The State cannot regard the making of a bail order as the end of its intervention and then measure success or failure solely by whether the child complies.

If government knows that accommodation, transport, family instability, disengagement from education, disability, substance use or other circumstances materially affect the likelihood of compliance and reoffending, an effective public safety response requires government to act on those risks.

If offending on bail is the problem this Bill seeks to address, government should be as ambitious about improving what happens between the first and second offence as it is about increasing the consequences that follow the second offence. That period is where government has its clearest opportunity to intervene, change the trajectory and prevent the harm the Bill is ultimately seeking to address.

I understand that the Queensland Government has the opportunity to improve intensive bail support services through new contracting arrangements that are currently open.

4. “....and then what?” - the purpose of detention

If this Bill passes, more children will be in detention, for longer. Government should publish modelling of the expected additional remand and sentenced population, bed-days, capital works, staffing, watch-house overflow, legal-aid demand and service costs. The modelling should include sensitivity ranges because small changes in the number of affected children or case duration can produce substantial expenditure.

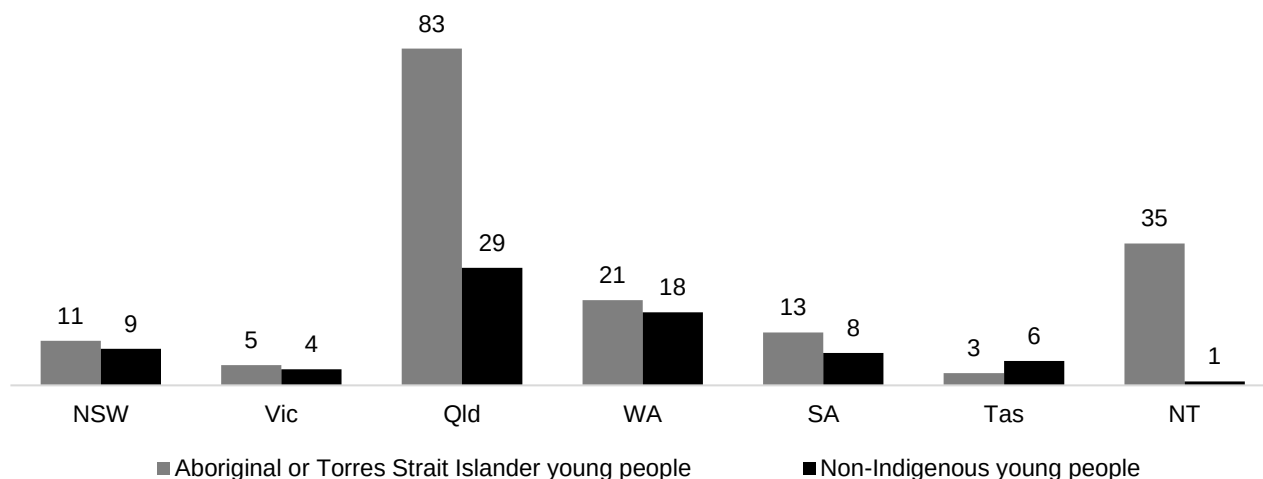
Queensland's unresolved policy question is what the detention system does with the time it has 'purchased'. Custody incapacitates a child for the period of detention. While this may provide immediate protection from further offending in the community, it does not, without effective intervention, reduce the risk after release. Any additional detention capacity must operate as an intensive rehabilitation and transition service. A better detention model would operate as an intensive assessment, education, rehabilitation and transition service.

On entry, every child should receive timely screening for disability, communication needs, physical and mental health, substance use, educational level, cultural needs, family safety and offending drivers. A single plan should then connect daily activity in custody to the child's release destination and post-release supervision.

Release planning should begin on the first day, not shortly before discharge. The child should leave with safe accommodation, education or training, health and disability appointments, identity documents, transport, a responsible lead worker and warm connections to community services. Family, kinship and cultural connections should be restored and improved.

It is evident that a larger detained population will create more occasions for behavioural incidents (assaults, self-harm, uses of force, property damage and staff injury). This does not assume each child becomes more dangerous; it recognises that increased volume and complexity place greater demands on facilities and staff. Mixing children of different ages, vulnerabilities and risk profiles also requires careful classification and accommodation. Queensland is already above the national average for harm events in detention. A plan to address and prevent this, particularly if this Bill passes, is necessary.

Figure 1: Incidents of self-harm and attempted suicide resulting in psychological or medical treatment, or hospitalisation, by jurisdiction, 2024–25



Source: Productivity Commission (2026). *Report on Government Services 2026*, Table 17A.19.

Financially, the Bill's costs extend beyond additional beds. More children serving mandatory custodial sentences will increase demand for police transport, legal assistance, court time, watch-houses, youth detention staffing, education, health care, disability supports, interpreters, cultural support, incident response and post-release services. Contemporary national reporting places the average cost of youth detention at approximately \$1.3 million per young person per year, based on the national average daily cost of detention-based supervision in 2024–25. Given this public cost, if the Bill proceeds, Parliament and the community should be able to determine whether it works. Evaluation should distinguish temporary incapacitation from longer-term prevention. It should compare outcomes with a credible baseline, examine unintended effects and assess whether less restrictive, better-supported alternatives could have achieved the same or greater safety. Independent review after 12 and 24 months would allow early operational correction and a more mature assessment of outcomes.

Conclusion

Serious offending while on bail understandably damages community confidence in the justice system. The community response must therefore not only be clear, practical and evidence-led – it needs to be effective. Some children will need to be detained because their risk cannot safely be managed in the community. The system must be capable of making that decision promptly but more importantly it must be able to address the root causes of that safety risk. Children engaging in harmful behaviours need our attention and support to change. Bail is an interim decision, not a sentence. A stronger justice system cannot rely on custody alone.

A better system would improve risk information, make conditions workable, provide a responsible adult and professional service response where families cannot do so alone, resolve cases without avoidable delay, use detention to rehabilitate, and ensure continuity after release. The two questions that should accompany every expansion of custody are: “and then what?” and “at what cost?”.

If Parliament proceeds, commencement should be supported by clear public reporting and independent evaluation and the Act should contain a review after 24–36 months, or a statutory reconsideration (sunset) mechanism for the exceptional provisions it contains.