

Youth Justice (Electronic Monitoring) Amendment Bill 2025

Explanatory Notes

Short title

The short title of the Bill is the Youth Justice (Electronic Monitoring) Amendment Bill 2025.

Policy objectives and the reasons for them

Section 52AA of the *Youth Justice Act 1992* (the Youth Justice Act) currently allows a court, in certain circumstances, to impose on a grant of bail a condition that the child must wear a monitoring device while released on bail.

Section 52AA was introduced in 2021 to facilitate a trial of electronic monitoring as a bail condition and included an expiry provision. Since 2021, the previous Government made several changes to section 52AA to expand the eligible cohort because uptake was low and they were unable to confirm the effectiveness of electronic monitoring in deterring offending behaviour. The last of the changes was made in August 2024. There was never going to be adequate time to evaluate data arising from the August 2024 amendments before the trial expired, which would have resulted in the electronic monitoring provisions ending without an adequate assessment of the use of electronic monitoring in the youth justice system.

Earlier this year, the Crisafulli Government passed the Youth Justice (Monitoring Devices) Amendment Bill 2025 to extend the duration of the trial of electronic monitoring. The explanatory notes provided that this extension was to enable a substantive review of the trial to be completed, including by drawing on data accumulated as a result of the August 2024 amendments. This comprehensive review was to inform government decisions about electronic monitoring for child offenders.

An independent evaluation of the electronic monitoring trial has now been completed and has made findings in relation to the trial. It found that electronic monitoring conditions were associated with high bail completion (not having bail revoked), reduced reoffending, lower victimisation (less offences involving victims whilst on bail) and reduced time in custody.

These findings demonstrate the effectiveness of electronic monitoring as a condition of youth bail. Therefore, it is intended to make electronic monitoring as a condition of youth bail permanent and statewide, unless the Chief Executive advises that suitable and necessary services are not available. It is also intended to open up the application of electronic monitoring by removing the age limit, and the current eligibility requirements that the child must be charged with certain offences.

The purpose of electronic monitoring as a bail condition is to deter youths from committing further offences on bail, making the community safer. The purpose of the amendments is to

make electronic monitoring permanent, open up its application and consequently increase community safety.

Achievement of policy objectives

The policy objectives will be achieved by amending the Youth Justice Act to:

- make electronic monitoring permanent by removing the expiry provision;
- make electronic monitoring statewide unless the court is advised the child does not live in a location with services to support the condition;
- remove the current eligibility criteria that the child must be at least 15 years of age, charged with a prescribed indictable offence and previously charged with certain offences; and
- simplify the matters a court must consider when determining if an electronic monitoring condition is appropriate.

The Bill also amends the *Youth Justice Regulation 2016* to remove parts 2A (Geographical areas for monitoring device condition) and schedule 1AA (Geographical area for child to live in). These provisions are no longer necessary as the imposition of an electronic monitoring device condition will no longer be limited to specific geographical areas prescribed by regulation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives of this Bill.

Estimated cost for government implementation

Costs arising from the amendments will be dealt with as part of normal budget processes.

Consistency with fundamental legislative principles

The Bill has been prepared with due regard to the fundamental legislative principles (FLPs) outlined in section 4 of the *Legislative Standards Act 1992* (Legislative Standards Act) by achieving the appropriate balance between individual rights and liberties and protection of the broader Queensland Community. However, there is a number of FLPs that may be perceived to be impacted by these amendments.

Clause 4 makes significant amendments to existing section 52AA of the Youth Justice Act, which enables a trial of electronic monitoring devices as a condition of bail for children.

Under new section 52AA(1A), a court may only impose an electronic monitoring device condition if the youth justice chief executive advises the court that all of the following services are available in the area in which the child lives:

- services necessary to support the effective operation of a monitoring device;
- services suitable to support the child's compliance with the condition;
- services suitable to support the monitoring of the child.

The effect of this provision is that it gives the chief executive broad power to decide whether or not a court may impose a monitoring device condition. This may be considered inconsistent with the FLP in relation to making rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (s4(3)(a) Legislative Standards Act).

The effectiveness of an electronic monitoring device condition relies on the presence of particular infrastructure that supports the operation of the device, the monitoring of the child, and compliance with bail conditions. Furthermore, the independent evaluation of the electronic monitoring trial found that engagement with wrap-around and bail support services was associated with increased compliance with bail conditions and a reduction in reoffending. A court would not be able to make an assessment of the suitability of an area without the advice of the youth justice chief executive.

Electronic monitoring conditions will be able to be applied to a child charged with an offence, whether the offence was allegedly committed, or the child was charged, before or after the commencement. This may be seen to have an adverse impact on an individual's rights and liberties insofar as it applies, to a degree, retrospectively (s4(3)(g) Legislative Standards Act). However, the impact is considered minimal as bail is an interlocutory proceeding and it is beneficial for the court to have considerations of all conditions that may be imposed that could mitigate an unacceptable risk the youth may pose to the community. As such, any impact is considered warranted, given electronic monitoring is aimed at promoting compliance with bail conditions, community safety as well as the safety of the youth.

The Bill also engages the FLP that legislation must have sufficient regard to the rights and liberties of individuals which includes their privacy and confidentiality (s4(2)(a) Legislative Standards Act). The impact on the rights and liberties of children, including their privacy and confidentiality, was assessed when the trial was introduced by the *Youth Justice and Other Legislation Amendment Act 2021*, and it was noted that the impact was limited by the narrow eligibility criteria of the trial. However, the amendments significantly depart from those provisions by removing all of the current eligibility criteria. In effect, the only limit on the imposition of an electronic monitoring device condition is that the child must live in a suitable area.

The independent evaluation found that electronic monitoring conditions were associated with high bail completion (not having bail revoked), reduced reoffending, lower victimisation (less offences involving victims whilst on bail) and reduced time in custody. However, the evaluation also found actual usage of electronic monitoring conditions were limited in practice because of the decision, made deliberately under the previous government, to conduct a narrow trial. The findings provide support for opening up eligibility for electronic monitoring, provided the condition is imposed in appropriate settings.

While the amendments remove existing limits, critical safeguards have been retained. The youth justice chief executive will still be required to give to the court a suitability assessment report, but the contents of the report will no longer be prescribed in section 52AA. The court must have regard to the suitability assessment report and any other matter it considers relevant to the decision. This flexibility means that the report can be tailored to each specific child.

All of the requirements for imposing a bail condition in section 52A(2) of the Youth Justice Act will continue to apply, including that any condition must be necessary to mitigate an unacceptable risk, and that the conditions must not involve undue management and supervision of the child. The Charter of Youth Justice Principles underlies the operation of the Youth Justice Act and will continue to apply to decisions about electronic monitoring.

The impact on the youth's privacy is considered justifiable having regard to the promotion of compliance with bail conditions which are aimed in part at protecting the community. This is further supported by the findings of the evaluation report. Having had regard to the potential impacts on the rights and liberties of individuals, the consequences imposed by the amendments are reasonable to achieve the policy intent.

Consultation

Consultation will occur during the parliamentary committee process.

Consistency with legislation of other jurisdictions

Four Australian jurisdictions (South Australia, Western Australia, Northern Territory and Victoria) permit electronic monitoring of young offenders in certain circumstances.

The South Australian electronic monitoring program caters for bail conditions including twenty-four-hour curfew monitoring, curfew between specified hours, and gradual release from detention as a way to reintegrate young offenders into the community.

In Western Australia, electronic monitoring is only available for a sentenced child and may be used for supervised release orders.

Electronic monitoring in the Northern Territory may be used for children on bail or on sentence.

In Victoria, there is a limited two year trial of electronic monitoring as a bail condition for children.

Notes on provisions

Part 1 – Preliminary

Clause 1 provides that this Act may be cited as the Youth Justice (Electronic Monitoring) Act 2025.

Clause 2 provides that the Act commences on 30 April 2026.

Part 2 – Amendment of Youth Justice Act 1992

Clause 3 provides that Part 2 amends the *Youth Justice Act 1992*.

Clause 4 amends section 52AA (Court may impose monitoring device condition).

Subclause (1) omits existing subsection 52AA(1) and inserts a new provision.

This omits the following current requirements for when an electronic monitoring condition could be imposed:

- The child is at least 15 years of age; and
- The offence in relation to which bail is being granted is a prescribed indictable offence; and
- The child—
 - has previously been found guilty of at least 1 indictable offence; or
 - has, in the previous 12 months, been charged with a prescribed indictable offence and the charge—
 - has not been dealt with by a court, withdrawn or otherwise discontinued; and
 - does not arise out of the same, or the same set of, circumstances as the charge for the prescribed indictable offence that bail is being granted for; and
- the court is in a geographical area prescribed by regulation; and
- the child lives in a geographical area prescribed by regulation; and
- the court is satisfied, in addition to being satisfied of the matters mentioned in section 52A(2), that imposing the monitoring device condition is appropriate having regard to the following matters—
 - whether the child has the capacity to understand the condition and any conditions under subsection (2);
 - whether the child is likely to comply with the condition and any conditions under subsection (2) having regard to the personal circumstances of the child; and
 - whether a parent of the child, or another person, has indicated a willingness to the court to support the child to comply with the conditions imposed on a grant of bail; and notify the chief executive or a police officer of a change in the child's personal circumstances that may affect the child's ability to comply with the conditions imposed on a grant of bail or of a breach of the conditions imposed on a grant of bail

New subsection 52AA (1) provides for when an electronic monitoring device bail condition may be imposed.

New subsection 52AA(1) states that a court may, under section 52A(2), impose on a grant of bail to a child a condition that the child must wear a monitoring device while released on bail (a monitoring device condition) if the court is satisfied, in addition to being satisfied of the matters mentioned in that section, that imposing the monitoring device condition is appropriate having regard to –

- (a) the suitability assessment report given to the court under subsection (4); and
- (b) any other matter the court considers relevant.

This clause also replicates a note in subsection 52A(1) referring the court to sections 19, 22, 25, 26, 27 and 28 of the *Human Rights Act 2019*.

The court must still apply subsection 52A(2) before imposing electronic monitoring as a condition of bail. All of the requirements for imposing a bail condition in section 52A(2) of the Youth Justice Act will continue to apply, including that any condition must be necessary to mitigate an unacceptable risk, and that the conditions must not involve undue management and supervision of the child.

Subclause (1) also inserts a new subsection (1A) providing that a court may only impose on a grant of bail to a child a monitoring device condition if the chief executive advises the court that all of the following services are available in the area in which the child lives –

- (a) services necessary to support the effective operation of a monitoring device;
- (b) services suitable to support the child's compliance with the condition;
- (c) services suitable to support the monitoring of the child.

Subclause (2) amends subsection 52AA(3) to remove a requirement for the suitability assessment report to have regard to the matters prescribed in section 52AA(1)(f). This follows from the amendment removing subsection 52AA(1)(f) and has the effect that the matters that must be included in a suitability assessment report are no longer prescribed in section 52AA of the Youth Justice Act.

Subclause (3) omits existing subsection 52AA(5) and replaces it with a regulation-making power enabling matters the chief executive must consider in assessing the child's suitability for a monitoring device condition to be prescribed in regulation later.

Subclause (4) omits subsection 52AA(10) removing the expiry provision making electronic monitoring permanent.

Subclause (5) omits the definition of 'prescribed indictable offence' in subsection 52AA(11). This definition is no longer necessary as the criterion related to a 'prescribed indictable offence' have been removed from this section and references to a 'prescribed indictable offence' have been removed.

Clause 5 omits section 405 (Effectiveness of monitoring device condition after geographical area stops being prescribed or section 52AA expires). This amendment is consequential to amendments that make electronic monitoring permanent and statewide.

Clause 6 inserts new Part 11, Division 27 Transitional provision for *Youth Justice (Electronic Monitoring) Amendment Act 2025*.

New section 443 provides that section 52AA, as amended by the *Youth Justice (Electronic Monitoring) Amendment Bill 2025*, applies in relation to a child in connection with a charge of an offence whether the offence was allegedly committed, or the child was charged, or any step in the proceeding was taken, before or after the commencement.

Part 3 – Amendment of Youth Justice Regulation 2016

Clause 7 provides that Part 3 amends the *Youth Justice Regulation 2016*.

Clause 8 omits Part 2A (Geographical areas for monitoring device condition).

Clause 9 omits Schedule 1AA (Geographical area for child to live in).