

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

Explanatory Notes

Short title

The short title of the Bill is Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026.

Policy objectives and the reasons for them

The Bill's primary objectives are to:

- protect the community from serious offending;
- deter offending while on bail and promote compliance with bail orders;
- ensure that offenders who commit serious offences while on bail are appropriately held accountable; and
- strengthen community safety and improve public confidence in the bail system.

The Bill responds to community concerns that the existing bail laws do not adequately deter or hold accountable offenders who commit serious offences while on bail.

The Bill implements the Government's 'Breach Bail, Go to Jail' policy by introducing a new offence of committing particular offences while on bail, unlawfully at large or failing to appear, carrying a mandatory minimum sentence of one year detention or imprisonment, to be wholly served in a detention centre or corrective services facility.

The Bill also introduces a new bail threshold for a defendant who is charged with certain serious offences while on bail, unlawfully at large or failing to appear, making it more difficult for those defendants to be granted bail.

Both the new offence and new bail threshold apply to youths who commit, or are charged with, a 'significant offence'. A 'significant offence' is an offence listed in section 175A of the *Youth Justice Act 1992* (Youth Justice Act) and is known as an 'Adult Crime, Adult Time' offence.

For adults, the new offence and new bail threshold apply to those who commit, or are charged with, a 'prescribed offence' set out at new Schedule 1 of the *Bail Act 1980* (Bail Act). Prescribed offences include all significant offences as well as additional serious offences committed by adults (including coercive control and child sex offences).

As a result of these strong reforms to bail laws, it is also necessary to extend the existing framework of human rights overrides and exemptions which currently apply under the Youth Justice Act (sections 56, 210, 262 and 262A) in relation to the detention of youths in watch-houses and other relevant facilities. This override and exemption framework is set to expire on 31 December 2026. However, the challenges presented by the significant demand on youth detention centres persist, and therefore the Bill will remake and extend the operation of these override provisions and exemptions for another five years.

Further, given these reforms will impact the management of detainees in watch-houses more generally (including for adult detainees), the Bill will also introduce an equivalent exemption in the *Police Powers and Responsibilities Act 2000* (PPRA) from section 58 of the *Human Rights Act 2019* (Human Rights Act) to provide consistency between the Youth Justice Act and the PPRA.

Achievement of policy objectives

The policy objectives are achieved by amending the Bail Act, the PPRA, the *Young Offenders (Interstate Transfer) Act 1987* and the Youth Justice Act to:

- introduce a ‘high degree of confidence’ test for defendants charged with a prescribed offence (for adults) or a significant offence (for youths, also known as an Adult Crime, Adult Time offence) while on bail, unlawfully at large or failing to appear;
- create a standalone offence in the Bail Act for committing a prescribed offence (for adults) or a significant offence (for youths, also known as an Adult Crime, Adult Time offence), while on bail, unlawfully at large or failing to appear, carrying a mandatory minimum sentence of 1 year’s imprisonment to be wholly served in custody;
- require police and courts to provide a warning to defendants about the new offence and the mandatory minimum penalty when a defendant is granted bail for any offence;
- remove the mandatory requirement under section 11 of the Youth Justice Act for police officers to consider diversionary options before commencing proceedings against a child, converting this obligation to an operational discretion;
- remake the existing human rights overrides and exemptions in the Youth Justice Act which relate to the detention of youths in watch-houses and other relevant facilities, and introduce a new exemption from section 58 of the Human Rights Act into the PPRA which relates to the management of detainees in watch-houses;
- make other minor and technical amendments.

High degree of confidence test

The Bill will reverse the presumption in favour of bail for both adults and youth who are charged with either a prescribed offence (for adults) or a significant offence (for youths, also known as an Adult Crime, Adult Time offence) which was allegedly committed at any time while the defendant was on bail for another offence, unlawfully at large with respect to that bail, or failed to appear in relation to a summons or notice to appear for another offence. These defendants will be required to show cause why their detention in custody is not justified.

Where an adult or youth does ‘show cause’, the Bill introduces a further new bail threshold at new section 16AA of the Bail Act and new section 48AG of the Youth Justice Act. The Bill provides that the court or police officer must refuse bail unless the defendant satisfies the decision-maker to a high degree of confidence they will not commit a further prescribed offence (for adults) or a further significant offence (for youths, also known as an Adult Crime, Adult Time offence) if granted bail.

The new high degree of confidence test is intended to operate in addition to the existing bail requirements and to ensure that an adult who commits a prescribed offence, or a youth who commits a significant offence (also known as an Adult Crime, Adult Time offence), while on bail, unlawfully at large or having failed to appear before a court is subject to a more stringent assessment before being released on bail.

The Bill requires the court or police officer to consider the defendant’s release from custody in a prescribed sequence. Prescribing the sequence in which the bail tests are to be considered is intended to provide clarity and reduce complexity.

The first step is consideration of the existing show cause requirement under section 16(3) of the Bail Act or section 48AF of the Youth Justice Act. A defendant who is in a show cause position must show cause why their detention in custody is not justified.

The show cause requirement operates as an exception to the usual presumption in favour of bail and places the onus on the defendant to establish, on the balance of probabilities, why their detention is not

justified. If the defendant fails to show cause why their detention is unjustified, bail must be refused and the court or the police officer does not proceed to consider the new bail threshold.

Where the defendant has shown cause, the onus remains on the defendant to satisfy the court or the police officer, to a high degree of confidence, that the defendant will not commit a prescribed offence (for adults) or a significant offence (for youths, also known as an Adult Crime, Adult Time offence) while on bail. This is an additional requirement for release and is directed specifically to the risk of further serious offending while on bail.

New sections 16AA of the Bail Act and 48AG of the Youth Justice Act are not intended to alter the existing case law or approach courts may take in determining whether a defendant has 'shown cause'. The sequential structure ensures that the existing show cause requirements continue to operate as they do under the Bail Act and Youth Justice Act, while introducing an additional and more stringent requirement for defendants who fall within the new category.

The new high degree of confidence test will apply to defendants who are charged with committing a prescribed offence (for adults) or a significant offence (for youths, also known as an Adult Crime, Adult Time offence) after commencement, while on bail, unlawfully at large or having failed to appear before a court regardless when the initial bail was granted or summons or notice to appear was served.

New offence – Offence to commit particular offences while on bail, unlawfully at large or failing to appear (section 29AA offence)

The Bill introduces new section 29AA into the Bail Act which creates an 'Offence to commit particular offences while on bail, unlawfully at large or failing to appear' (section 29AA offence). A defendant commits a section 29AA offence if they commit a prescribed offence (for adults) or a significant offence (for youths, also known as an Adult Crime, Adult Time offence) at any time while on bail for any offence, unlawfully at large after their bail has been revoked, or the defendant failed to appear before a court as required by a summons or notice to appear served on the defendant in relation to any offence.

The section 29AA offence includes a mandatory minimum penalty of 1 year's imprisonment to be wholly served in a corrective services facility. The maximum penalty for the offence is three years imprisonment.

The Bill explicitly displaces section 16 of the Criminal Code, providing that a defendant sentenced for both the particular offence and the section 29AA offence is not taken to be punished twice for the same conduct.

The Bill also displaces section 17 of the Criminal Code to ensure that a defendant may be convicted of the section 29AA offence after being convicted of the particular offence, subject to the requirement that the section 29AA offence was charged before the defendant was sentenced or otherwise dealt with for the particular offence (see new section 29AC(2)).

The section 29AA offence will continue to apply to a defendant even if they are subsequently found not guilty of the original offence for which they were granted bail. This is because the section 29AA offence is concerned with the defendant's breach of their undertaking not to offend while on bail, rather than with the outcome of the original proceedings. The section 29AA offence also captures defendants who offend while unlawfully at large with respect to bail or having failed to appear before a court in accordance with a summons or notice to appear to make sure these defendants are not in a better position than defendants who are subject to bail or attend court and may be released on bail.

A defendant is taken to have committed the section 29AA offence if the defendant is convicted of the underlying prescribed offence (for adults) or significant offence (for youths, also known as an Adult Crime, Adult Time offence).

A defendant can be charged with a section 29AA offence at the same time they are charged with the underlying prescribed offence (for adults) or significant offence (for youths, for Adult Crime, Adult Time offence). The Bill provides, at section 29AC of the Bail Act, a person cannot be charged with, or prosecuted for, the section 29AA offence after the person is sentenced or otherwise dealt with for the prescribed offence (for adults) or significant offence (for youths, also known as an Adult Crime, Adult Time offence).

Evidence of the defendant's conviction for the underlying prescribed offence (for adults) or significant offence (for youths, also known as an Adult Crime, Adult Time offence), and evidence of the fact that the defendant was granted bail or served with a summons or notice to appear in relation to any offence is admissible to prove the section 29AA offence.

The section 29AA offence and the prescribed offence (for adults) or significant offence (for youths, also known as an Adult Crime, Adult Time offence) can be joined in the same complaint or indictment. If they are joined, the Bill provides that a person charged with the section 29AA offence must not be asked to enter a plea for that offence until the person has been convicted of the prescribed offence (for adults) or significant offence (for youths, also known as an Adult Crime, Adult Time offence) that is subject to the section 29AA offence.

Where a defendant commits more than one prescribed offence (for adults) or significant offence (for youths, also known as an Adult Crime, Adult Time offence), arising out of the same circumstances, or same set of circumstances, the Bill provides that the person will only be subject to one section 29AA offence; multiple offences that arise out of the same set of circumstances will be treated as one episode of offending.

Section 29AD clarifies that a court that has jurisdiction to hear and determine the prescribed offence (for adults) or significant offence (for youths, also known as an Adult Crime, Adult Time offence) has jurisdiction to hear and determine the section 29AA offence.

The Bill amends the Youth Justice Act to apply the new section 29AA offence to youths. The section 29AA offence is prescribed under section 175A of the Youth Justice Act bringing the offence within the adult sentencing regime for significant offences committed by youths (also known as Adult Crime, Adult Time). Accordingly, a youth convicted of the section 29AA offence will be sentenced under the Adult Crime, Adult Time framework, including the requirement that the mandatory minimum period of custody required under the Bail Act be served wholly in a detention centre.

The amendments ensure that the mandatory minimum penalty operates consistently for adults and youths. Where the Bail Act requires the mandatory minimum term to be served wholly in a corrective services facility, the Bill makes clear that the corresponding period of detention for a youth offender must be served wholly in a detention centre.

The Bill also prevents a court from dealing with a youth for the section 29AA offence by way of a court diversion referral to a restorative justice conference under section 163 of the Youth Justice Act. This ensures that the mandatory minimum penalty for the section 29AA offence cannot be avoided by court diversion to a restorative justice process.

The section 29AA offence will only apply to defendants who are granted bail, or who are served with a summons or notice to appear, after commencement and go on to commit a prescribed offence (for adults) or a significant offence (for youths, also known as an Adult Crime, Adult Time offence) while on that bail, unlawfully at large with respect to that grant of bail or having failed to appear before a court with respect to that summons or notice to appear. This means that both the grant of bail or summons or notice to appear, and the relevant underlying offence must occur after commencement for the offence to apply.

Offence warning

Section 29AB (Offence warning) requires a court or police officer granting bail to warn the defendant that committing particular offences while on bail or unlawfully at large is an offence with a mandatory minimum penalty of 1 year's imprisonment to be wholly served in a corrective services facility.

The purpose of the warning is to draw to the defendant's attention the section 29AA offence and its consequences, so that the defendant is aware of the consequences of further offending on bail. The provision is not intended to require a court or police officer to provide a detailed explanation of the prescribed or significant offences, the operation of the section 29AA offence, or the sentencing regime.

The warning is intended to be a simple and proportionate measure to put a defendant on notice of the potential consequences of offending on bail.

A court is not required to give the warning if the defendant does not appear before the court.

Where the warning is being given to a defendant who is a youth, the court or police officer must also have regard to principle 7 mentioned in schedule 1 of the Youth Justice Act. In practice, this requires courts and police officers to explain the offence to youths in a way they can understand.

However, failure by a police officer or court to give this warning does not affect the defendant's liability in regard to the new offence or any other matter, and it is not a ground of appeal to a conviction against the section 29AA offence.

Removal of mandatory requirement for police to consider diversionary options for youths

Under current section 11 of the Youth Justice Act, police are required to consider diversionary options before commencing proceedings against alleged youth offenders for certain offences.

The Bill amends section 11 of the Youth justice Act by replacing the mandatory obligation ('must consider') with a discretionary power ('may consider'). However, the Bill does not impact a police officer's discretion to utilise diversionary options where appropriate; it will simply not be a requirement for police officers to consider a diversionary pathway for any offence.

The Bill makes amendments to section 59A and removes section 59AA of the Youth Justice Act to remove mandatory requirements for police to consider alternatives to arrest for alleged bail condition breaches.

These amendments will streamline police responses and simplify operational provisions regarding diversionary options. While frontline police retain discretion to utilise diversion where appropriate, it is intended that removing the mandatory prerequisite to consider these options will provide greater certainty when initiating formal proceedings against repeat youth offenders.

Amendments to PPRA and Youth Justice Act relating to the management and control of detainees

The policy objectives are achieved by amending the PPRA to provide a clear legislative framework for the management and control of persons in QPS watch-houses, including the transfer of persons from watch-houses to other authorised locations, and to clarify the application of the Human Rights Act to those decisions.

The Bill inserts new section 639AA of the PPRA which provides that section 58 of the Human Rights Act does not apply to acts and decisions reasonably necessary for the administration of the PPRA that relate to a person in custody in a watch-house or the transfer of a person in custody in a watch-house from the watch-house under section 640 of the PPRA.

New section 639AA of the PPRA further provides an override declaration under section 43(1) of the Human Rights Act which outlines that the new section has effect despite being incompatible with human rights and despite anything else in that Act. As a consequence, an existing override declaration found within section 640 of the PPRA will be omitted upon new section 639AA commencing.

Consistent with section 45 of the Human Rights Act, the override declaration will expire five years after commencement.

To ensure there is consistency between the legislative frameworks that administer the custodial arrangements of persons in watch-houses, the amendments to the PPRA are in similar terms to section 262A of the Youth Justice Act.

The Bill remakes existing human rights override declarations in the Youth Justice Act relating to measures to manage youth detention centre capacity and the safe operation of the youth justice detention system.

Sections 56, 210, 262 and 262A of the Youth Justice Act contain provisions subject to human rights override declarations, including provisions relating to the establishment and operation of detention centres. The existing override declarations are due to expire on 31 December 2026.

The Bill remakes relevant override declarations so that they expire five years after commencement of the Bill, in accordance with section 45 of the Human Rights Act.

Minor and technical amendments

The Bill makes a minor technical amendment to the *Young Offenders (Interstate Transfer) Act 1987* to ensure that youth in Queensland who are subject to a sentence order under section 175A(2) of the Youth Justice Act are considered ‘young offenders’ for the purposes of that Act. This will enable the facilitation of transfer to, from and through Queensland for this cohort.

The Bill also corrects an erroneous cross-reference in section 136(2)(c)(i) of the Youth Justice Act. The amendment is technical and corrective only. It is not intended to change the substantive operation of section 136.

Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives except by legislation.

Estimated cost for government implementation

Implementation of the Bill will have operational and financial impacts across Queensland Corrective Services, the Queensland Police Service, the Department of Youth Justice and Victim Support, Queensland Courts, prosecutions and the legal assistance sector.

These impacts will be addressed through normal government processes.

Consistency with fundamental legislative principles

This 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 the protection of the broader Queensland community.

High degree of confidence test

The Bill amends the Bail Act and the Youth Justice Act to provide that where a defendant is charged with committing particular offences while on a bail, unlawfully at large or having failed to appear, they must be refused bail unless the court or a police officer has a high degree of confidence they will not commit a prescribed offence (for adults) or a significant offence (for youths, also known as an Adult Crime, Adult Time offence), while on bail.

The new test will infringe on the rights and liberties of individuals (section 4(3)(a) of the Legislative Standards Act). Further, the reversal of the onus may be viewed as a reversal of the onus of proof in criminal proceedings, if a broad interpretation of the presumption of innocence is adopted (section 4(3)(d) of the Legislative Standards Act).

No person's rights to be released on bail are extinguished automatically and rights to seek a review of or appeal a decision to refuse bail are retained. Each defendant is able to present evidence to satisfy the new threshold for bail.

However, for those defendants who have a propensity for committing serious offences while on bail, unlawfully at large or having failed to appear, there is a higher bar for release. This is appropriate and proportionate given the need to protect the community from serious offending, strengthen community safety and improve public confidence in the bail system. What ultimately satisfies a police officer or a court to a high degree of confidence will be determined by police or the court on a case-by-case basis considering all the relevant circumstances.

A transitional provision clarifies that these amendments will apply to prescribed offences (for adults) or significant offences (for youths, also known as Adult Crime, Adult Time offences) committed after commencement, regardless of when the initial bail was granted or a proceeding started. This retrospective application is justified as the prescribed offence (for adults) or significant offence (for youths, also known as an Adult Crime, Adult Time offence) is committed after commencement and will ensure that the identified risk is considered for all relevant offending post-commencement.

New offence – Offence to commit particular offences while on bail, unlawfully at large or failing to appear

The section 29AA offence will infringe on the rights and liberties of individuals (section 4(3)(a) of the Legislative Standards Act). The section 29AA offence will require the court to impose a mandatory period of imprisonment. Mandatory sentencing limits judicial discretion to impose a sentence that reflects the individual circumstances of the offending and the offender. Offenders may be liable to a greater punishment than what may have been imposed without the mandatory minimum sentence.

The court will be required to impose a mandatory sentence irrespective of factors that might otherwise mitigate sentence. These considerations are heightened because the proposal requires the mandatory sentence to be served wholly in a corrective services facility or detention centre.

As the section 29AA offence will be made out on conviction for the underlying subsequent offence (and it contains a mandatory minimum penalty), there is a high likelihood that the offender will be convicted and punished twice for the same conduct (once for the substantive offence, once for the section 29AA offence).

Displacement of the principles against double punishment and double jeopardy necessarily affects the operation of natural justice (section 4(3)(b) of the Legislative Standards Act), and therefore the rights and liberties of individuals. Displacing these well-established principles is considered necessary to give effect to the policy intent that breaching bail by serious offending constitutes a distinct wrong against the administration of justice which is separate from the harm caused by the underlying crime.

Removal of requirement for police to consider diversionary options for youth offenders

The Bill amends section 11 of the Youth Justice Act to provide that a police officer may consider alternatives to proceeding against a youth offender rather than must. The Bill amends section 59A of the Youth Justice Act to provide that a police officer is not required to but instead may consider alternatives to arrest upon contravention of a bail condition. This may impact on a child's rights and liberties, as it may increase the chances of a youth being arrested and charged, both initially and when on bail.

However, the Bill does not seek to omit a police officer's ability to apply discretionary or alternative approaches; police officers will still have the discretion to take actions other than arrest (e.g. take no action or issue a warning where that is appropriate). Further, a police officer may consider the circumstances of the alleged offending and the child's criminal history in deciding the most appropriate cause of action.

Decisions by police officers in these circumstances will also be subject to the youth justice principles under the Youth Justice Act.

It is therefore considered that the amendments have sufficient regard to the rights and liberties of children in these circumstances.

Amendments to the PPRA

The Bill may raise FLP issues in relation to whether legislation has sufficient regard to the rights and liberties of individuals. In particular, the Bill inserts new section 639AA of the PPRA which provides an override declaration that applies to acts and decisions reasonably necessary for the administration of the PPRA that relate to persons in custody in a watch-house or the transfer of a person in custody in a watch-house from the watch-house under section 640 of the PPRA. The Bill also inserts an exemption from section 58 of the Human Rights Act to provide that conduct authorised under this provision is not unlawful only because it is incompatible with human rights.

These amendments may affect the human rights of persons detained in watch-houses. However, the amendments are considered justified having regard to the need to ensure the safe, secure and effective management of watch-houses, including the transfer of persons in custody, and to provide a clear and consistent legislative framework for the administration of persons held in custody in Queensland.

The Bill may raise FLP issues under section 4(3)(a) of the Legislative Standards Act because the rights and liberties of persons detained in watch-houses are to some extent, dependent on the exercise of administrative power. In particular, the amendments authorise a watch-house manager to give reasonable directions, take reasonably necessary steps, and transfer persons in custody for the good management and control of watch-houses.

This approach is considered justified because the powers are confined by statutory thresholds of reasonableness and necessity and are directed to the legitimate operational objective of ensuring the safe and effective management of watch-houses and the transfer of persons in custody.

The Bill may raise FLP issues in relation to the institution of Parliament as it includes override declarations under the Human Rights Act. The override declarations are expressly provided for under section 43 of the Human Rights Act and are subject to the safeguards in the Human Rights Act, including the requirement that the override be exceptional, the need for a Statement about Exceptional Circumstances, which accompanies the Bill, and expiry after five years under section 45 of the Human Rights Act.

Remake of human rights override declaration

The Bill extends the operation of a number of human rights override declarations in the Youth Justice Act by five years. These provisions will continue to impact significantly on the rights and liberties of a child, as they make it lawful for children to be held in watch-houses for long periods of time, and enable the establishment of places as detention centres that might otherwise be considered incompatible with human rights. Further detail is provided in the Statement about Exceptional Circumstances that accompanies the Bill.

Consultation

The development of the reforms set out in the Bill have been informed by consultation.

Consistency with legislation of other jurisdictions

The Bill is unique to Queensland. However, some aspects of the Bill are present in some other Australian jurisdictions.

High degree of confidence test

The high degree of confidence test (or equivalent) is used in New South Wales, the Northern Territory, and Victoria to a limited degree.

In New South Wales, there is a temporary ‘high degree of confidence’ test that applies to 14 to 17 year-olds who are charged with motor theft and serious breaking and entering offences while on bail for those types of offences. There is no equivalent test for adults. The court must have a high degree of confidence that the youth will not commit a ‘serious indictable offence’ while on bail. ‘Serious indictable offence’ means an offence punishable by at least five years imprisonment.

The Northern Territory also recently introduced a ‘high degree of confidence’ test which operates differently. It applies to both adults and youths when they are subject to a presumption against bail. The court must have a high degree of confidence that the person will not commit a ‘prescribed indictable offence’ or a ‘serious violence offence’ (both defined in the legislation) or otherwise endanger the safety of the community. It applies where the person is charged with certain offences, including a serious violence offence, serious sexual offence, murder, terrorism, sabotage, arson, serious harm or breach of domestic violence order if there is a previous conviction, serious offences (with maximum penalties of over five years imprisonment) committed on bail for another serious offence, and a serious offence if there is a previous conviction for a serious offence within 10 years.

Victoria also has a similar ‘high degree of probability test’ which is part of the unacceptable risk test in some circumstances.

New offence – Offence to commit particular offences while on bail, unlawfully at large or failing to appear

In Victoria, section 30B of the *Bail Act 1977* (Vic) contains an offence to commit an indictable offence while on bail. The offence applies to both adults and children. It has a maximum penalty of 30 penalty units or 3 months imprisonment. There is no mandatory minimum penalty that applies.

Other jurisdictions (South Australia, Western Australia, and Northern Territory) have offences relating to breaching a bail undertaking (similar to existing section 29 of Queensland’s Bail Act).

Notes on provisions

Part 1 – Preliminary

Clause 1 provides that, when enacted, the Bill may be cited as the *Breach Bail, Go to Jail and Other Legislation Amendment Act 2026*.

Clause 2 provides that this Act will commence on 30 November 2026.

Part 2 – Amendment of the Bail Act 1980

Clause 3 provides that this part amends the *Bail Act 1980* (Bail Act).

Clause 4 amends section 6 (Definitions) by inserting definitions of *convicted*, *notice to appear*, *prescribed offence*, *section 29AA offence* and *significant offence*.

Convicted, of an offence, for new sections 29AA and 29AC, is defined by reference to new section 29AE.

Notice to appear means a notice to appear under section 382(2) of the *Police Powers and Responsibilities Act 2000* (PPRA).

Prescribed offence means: an offence mentioned in schedule 1; an offence under section 535 of the Criminal Code of attempting to commit an offence in schedule 1; an offence under of sections 541 and 542 of the Criminal Code of conspiring with another person to commit an offence in schedule 1; and an offence under section 544 of the Criminal Code of becoming an accessory after the fact to an offence mentioned in schedule 1.

Section 29AA offence is defined by reference to new section 29AA(10).

Significant offence means an offence mentioned in section 175A(1), (1A), (1B) or (1C) of the *Youth Justice Act 1992* (Youth Justice Act).

Clause 5 amends section 7 (Power of police officer to grant bail).

Subclause (1) amends section 7(2) to provide a note that police officers must consider new section 16AA for when the prescribed police officer must refuse to grant a person bail.

Subclause (2) amends section 7(9) to omit the definition of *notice to appear*.

Clause 6 amends section 14(1)(a) (Release of persons apprehended on making deposit of money as security for appearance) to reflect the schedule of offences for which bail must not be granted under section 14 is now schedule 2.

Clause 7 amends section 14A(1) (Magistrates Courts may grant cash bail or permit to go at large) to reflect the schedule of offences for which bail must not be granted under section 14A is now schedule 2.

Clause 8 amends section 16(3) (Refusal of bail generally) to reverse the presumption in favour of bail and require an adult defendant to show cause why their detention is not justified where they are charged with a prescribed offence alleged to have been committed at any time while

the defendant was released on a previous grant of bail, unlawfully at large or failed to appear before a court under section 16AA.

Clause 9 inserts new section 16AA (Refusal of bail for defendants charged with prescribed offence committed while on bail, unlawfully at large or failing to appear).

New section 16AA(1) provides that this section applies to an adult defendant charged with a prescribed offence that is alleged to have been committed at any time while the defendant was released on a previous grant of bail, unlawfully at large in relation to a previous grant of bail, or failed to appear before a court in relation to a summons or notice to appear served on the defendant.

New section 16AA(2) provides that a court or an authorised police officer must refuse to grant bail to the defendant in connection with the charge for the prescribed offence unless the defendant satisfies the court or officer to a high degree of confidence that the defendant will not commit a further prescribed offence while released on bail.

New section 16AA(3) provides that the court or police officer may make a decision under subsection (2) only after considering whether to refuse to grant bail to the defendant under section 16(3).

New section 16AA(4) provides that if a court grants the defendant bail, the order granting bail must state the reasons for the decision.

New section 16AA(5) provides that if a police officer grants the defendant bail, the officer must make a record of the reasons for the decision.

New section 16AA(6) provides that new section 16AA does not affect the operation of section 16.

New section 16AA(7) is an override declaration which provides that, for the purposes of section 43(1) of the *Human Rights Act 2019* (Human Rights Act) this section has effect despite being incompatible with human rights, and despite anything else in the Human Rights Act. In accordance with section 45(2) of the Human Rights Act, this provision will expire five years after commencement.

New section 16AA(8) declares that a defendant is taken to be released on a previous grant of bail even if the defendant has not entered into an undertaking in relation to the bail as required by the Bail Act or the court declares under section 31 that the defendant's undertaking in relation to the bail is forfeited.

New section 16AA(9) defines *failed to appear before a court, previous grant of bail and unlawfully at large*.

Failed to appear before a court, in relation to a notice to appear or summons served on a defendant, means failed to appear during the period:

- beginning when the defendant is to appear before the court as required by the notice to appear or summons; and

- ending on the earlier of the defendant surrendering, or being taken, into custody for any reason, or all charges of an offence to which the notice to appear or summons relates are finalised.

Previous grant of bail, in relation to a defendant charged with a prescribed offence, means bail granted:

- by a court or police officer under the Bail Act or part 5 of the Youth Justice Act; and
- in connection with a charge of another offence; and
- before the defendant is alleged to have committed the prescribed offence.

Unlawfully at large, in relation to a previous grant of bail to a defendant, means being at large during the period:

- beginning when the previous grant of bail is revoked, whether or not a warrant for the apprehension of the defendant is issued; and
- ending on the earlier of the following events to happen: the defendant surrenders, or is taken, into custody for any reason, or the charge of the offence against the defendant to which the previous grant of bail relates is finalised.

Clause 10 amends section 19B(7) (Review of particular decisions) to provide that orders made under section 19B(6) will also be limited by new section 16AA of the Bail Act and section 48AF and new section 48AG of the Youth Justice Act.

Clause 11 amends section 19C(6) (Review by Supreme Court of magistrate's decision on a review) to provide that orders made under section 19C(5) will also be limited by new section 16AA of the Bail Act and section 48AF and new section 48AG of the Youth Justice Act.

Clause 12 inserts new sections 29AA – 29AE.

New section 29AA (Offence to commit particular offences while on bail, unlawfully at large or failing to appear)

New section 29AA(1) provides that a defendant commits a misdemeanour if the defendant is granted bail by a court or police officer under the Bail Act or part 5 of the Youth Justice Act in connection with a charge of an offence and:

- the defendant commits, as an adult, a prescribed offence at any time while the defendant is released on the grant of bail or is unlawfully at large in relation to the grant of bail; or
- the defendant commits, as a child, a significant offence at any time while the defendant is released on the grant of bail or is unlawfully at large in relation to the grant of bail.

The minimum penalty for this misdemeanour is imprisonment for 1 year wholly served in a corrective services facility. The maximum penalty is 3 years imprisonment.

New section 29AA(2) provides that a defendant commits a misdemeanour if:

- the defendant commits, as an adult, a prescribed offence at any time while the defendant failed to appear before a court as required by a notice to appear or summons served on the defendant in relation to an offence; or
- the defendant commits, as a child, a significant offence at any time while the defendant failed to appear before a court as required by a notice to appear or summons served on the defendant in relation to an offence.

The minimum penalty for this misdemeanour is imprisonment for 1 year wholly served in a corrective services facility. The maximum penalty is 3 years imprisonment.

New section 29AA(3) provides that for subsections (1) and (2), a defendant commits:

- a prescribed offence if the defendant is convicted of the prescribed offence; or
- a significant offence if the defendant is convicted of the significant offence.

The note refers to new section 29AC.

New section 29AA(4) provides that if a defendant commits 2 or more prescribed offences (for adults) or significant offences (for youths) arising out of the same, or the same set of, circumstances, the defendant must not be convicted of, or punished for, more than 1 offence against subsection (1) or (2).

New section 29AA(5) provides that despite any other law, including section 45 of the *Acts Interpretation Act 1954* and section 16 of the Criminal Code, a person may be convicted of and punished for an offence against subsection (1) or (2) despite the person already having been convicted of and punished for the prescribed offence or significant offence that is the subject of the offence against subsection (1) or (2).

New section 29AA(6) provides that section 17 of the Criminal Code does not apply in relation to a trial of a person charged with an offence against (1) or (2) only because the person has already been convicted of the prescribed offence or significant offence that is the subject of the offence against (1) or (2).

New section 29AA(7) provides that subsection (6) does not limit or otherwise affect new section 29AC.

New section 29AA(8) is an override declaration which provides that, for the purposes of section 43(1) of the Human Rights Act, new section 29AA has effect despite being incompatible with human rights, and despite anything else in the Human Rights Act. In accordance with section 45(2) of the Human Rights Act, this provision will expire five years after the commencement.

New section 29AA(9) declares that a defendant is taken to be on bail for subsection (1) even if the defendant has not entered into an undertaking in relation to the bail as required by the Bail Act or the court declares under section 31 that the defendant's undertaking in relation to the bail is forfeited.

New section 29AA(10) provides that an offence against subsection (1) or (2) is a *section 29AA offence*.

New section 29AA(11) defines *corrective services facility, failed to appear before a court and unlawfully at large*.

Corrective services facility is defined by reference to schedule 4 of the *Corrective Services Act 2006*.

Failed to appear before a court, in relation to a notice to appear or summons served on a defendant, means failed to appear during the period:

- beginning when the defendant was to appear before the court as required by the notice or summons; and
- ending on the earlier of the following events to happen: the defendant surrenders, or is taken, into custody for any reason or all charges of an offence to which the notice of summons relates are finalised.

Unlawfully at large, in relation to a defendant granted bail, means being at large during the period:

- beginning when the grant of bail is revoked, whether or not a warrant for the apprehension of the defendant is issued; and
- ending on the earlier of the following events to happen: the defendant surrenders, or is taken, into custody for any reason, or the charge of the offence against the defendant to which the grant of bail relates is finalised.

New section 29AB (Offence warning)

New section 29AB(1) provides that this section applies if a court grants bail to a defendant under the Bail Act or part 5 of the Youth Justice Act and the defendant appears before the court when bail is granted, or if a police officer grants bail to a defendant under the Bail Act or part 5 of the Youth Justice Act.

New section 29AB(2) provides that the court or police officer must warn the defendant that committing particular offences while on bail or unlawfully at large is an offence against the Bail Act and the minimum penalty for the offence is 1 year's imprisonment served wholly in a corrective services facility.

The warning is intended to be a simple measure to ensure the defendant is expressly put on notice of the potential consequences of further offending while on bail.

New section 29AB(3) provides that if the defendant granted bail is a child, the court or police officer must have regard to principle 7 mentioned in schedule 1 of the Youth Justice Act when giving the warning mentioned in subsection (2) to the child.

New section 29AB(4) provides that failure to comply with subsection (2) or (3) does not affect the defendant's liability for an offence against section 29AA(1), the validity of a proceeding for the offence or any other matter and is not a ground of appeal against a conviction for an offence against section 29AA(1).

New section 29AC (Proceedings for section 29AA offence)

New section 29AC(1) provides that a charge of a section 29AA offence against a person may allege that the person committed a prescribed offence or significant offence despite the person not yet being convicted of the prescribed offence or significant offence.

New section 29AC(2) provides that if a person is not charged with a section 29AA offence before the person is sentenced, or is otherwise dealt with, for the prescribed offence or significant offence that is the subject of the section 29AA offence, the person cannot be charged with, or prosecuted for, the section 29AA offence.

New section 29AC(3)(a) provides that, despite any other law, evidence of a person's conviction for a prescribed offence or a significant offence that is the subject of the section 29AA offence is admissible in a proceeding for the section 29AA offence to prove the person committed the offence that is the subject of the section 29AA offence. An effect of this provision is that it overrides section 148 of the Youth Justice Act.

New section 29AC(3)(b) also provides that, despite any law, evidence of the fact that the person was granted bail in connection with a charge of an offence is admissible in the proceeding to prove the person was on bail for the offence, as well as evidence of the fact that the person was served with a summons or a notice to appear in relation to an offence is admissible in the proceeding to prove the person was served with the summons or notice in relation to the offence.

However, new section 29AC(4) provides that, unless the evidence mentioned in subsection (2) is otherwise admissible, the court and, if there is a jury, the jury must not have regard to the evidence for any other purpose before receiving a plea of guilty or making any decision of guilt in relation to the section 29AA offence.

New section 29AC(5) provides that subsection (6) and (7) apply in relation to a proceeding for a charge of a section 29AA offence if the charge and a charge of the prescribed offence or significant offence that is the subject of the section 29AA offence are joined in the same complaint or indictment against the same person.

New section 29AC(6) provides that the person must not be asked to plead to the section 29AA offence unless and until the person is convicted of the prescribed offence or significant offence.

New section 29AC(7) provides that if the person is convicted of the prescribed offence or significant offence, the court must then decide the section 29AA offence and a jury for a trial in relation to the prescribed offence or significant offence need not be sworn afresh in relation to the section 29AA offence.

New section 29AD (Court's jurisdiction for section 29AA offence)

New section 29AD(1) provides that, despite any other law, a court has jurisdiction to:

- hear and decide a charge of a section 29AA offence if the court has jurisdiction to hear and decide a charge of the prescribed offence or significant offence that is the subject of the section 29AA offence; or

- try a person charged with a section 29AA offence if the court has jurisdiction to try the person for a charge of the prescribed offence or significant offence that is the subject of the section 29AA offence; or
- hear and decide a charge of a section 29AA offence, or try a person charged with a section 29AA offence, if the court has dealt with the prescribed offence or significant offence that is the subject of the section 29AA offence.

New section 29AD(2) declares that that if a Magistrates Court is to hear and decide a charge of a prescribed offence or significant offence that is the subject of a section 29AA offence, the court has jurisdiction to hear and decide the section 29AA offence whether or not the charge of the section 29AA offence and the prescribed offence or significant offence are joined in the same complaint or indictment.

New section 29AD(3) provides that if a Magistrates Court hears and decides a charge of a section 29AA offence summarily under subsection (1), the court has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose.

New section 29AD(4) provides that subject to the Bail Act, the provisions of an Act in relation to hearing and deciding a charge of a prescribed offence or a significant offence that is the subject of a section 29AA offence apply to a proceeding for a charge of the section 29AA offence as if the offence were the prescribed offence or significant offence.

New section 29AE (Meaning of *convicted* for ss 29AA and 29AC)

New section 29AE(1) provides that for sections 29AA and 29AC, a person is *convicted* of an offence if the person is found guilty of the offence by a court, on a plea of guilty or otherwise, whether or not a conviction is recorded.

New section 29AE(2) provides that a reference in subsection (1) to a person being found guilty of an offence includes a finding of guilt, within the meaning of schedule 4 of the Youth Justice Act, against the person as a child for the offence.

However, new section 29AE(3) provides that a person is not *convicted* of an offence if the person's conviction for the offence is set aside or quashed.

Clause 13 amends section 35(3) (Proceedings for offences) to provide that the section does not apply in relation to a prosecution for a section 29AA offence. The note refers to new sections 29AC and 29AD.

Clause 14 inserts new section 53 (Transitional provision for Breach Bail, Go to Jail and Other Legislation Amendment Act 2026) to provide for transitional provisions.

New section 53(1) provides that new section 16(3)(h) applies to a prescribed offence committed on or after the commencement.

New section 53(2) provides that new section 16AA applies in relation to a grant of bail being considered under that section in connection with a charge of a prescribed offence committed after the commencement.

New section 53(3) provides that new sections 29AA to 29AE and 35 apply in relation to bail granted to a person under the Bail Act or under part 5 of the Youth Justice Act from the

commencement and a summons or notice to appear served on a person from the commencement.

New section 53(4) provides that for subsection (3), it is irrelevant whether (a) the offence in relation to which the person is granted bail or is served with a summons or notice to appear happened before or after the commencement, or (b) the proceeding for the offence mentioned in (a) was started before or after the commencement.

New section 53(5) provides for a definition of *new*. *New*, in relation to a provision of this Act, means the provision as in force from commencement.

Clause 15 inserts new schedule 1 (Prescribed offences). New schedule 1 prescribes offences in the Criminal Code, the *Drugs Misuse Act 1986* and the *Weapons Act 1990*.

Clause 16 rennumbers the schedule (Offences for which bail must not be granted under section 14 or 14A) as schedule 2.

Part 3 – Amendment of Police Powers and Responsibilities Act 2000

Clause 17 provides that this part amends the PPRA.

Clause 18 replaces the existing note in section 367(3)(a)(i) (Arrest of person granted bail) to refer to section 59A of the Youth Justice Act for the matters a police officer may consider before arresting a child in particular circumstances under this subparagraph.

Clause 19 inserts new chapter 21, part 1, division 1AA (Preliminary). Under this new division, new section 639AA (Human Rights Act 2019, s 58 does not apply to particular acts and decisions) is inserted.

New section 639AA(1) declares that section 58 of the Human Rights Act does not apply to acts and decisions that are reasonably necessary for the administration of the PPRA and relate to a person in custody in a watch-house, or the transfer of a person in custody in a watch-house from the watch-house under section 640. An example is included of a decision by a watch-house manager under section 639 to give a direction to a person in custody in a watch-house to ensure the good management and control of the watch-house.

New section 639AA(2) is an override declaration which provides that, for the purposes of section 43(1) of the Human Rights Act, this section has effect despite being incompatible with human rights, and despite anything else in the Human Rights Act. In accordance with section 45(2) of the Human Rights Act, this provision will expire five years after the commencement.

New section 639AA(3) provides that subsection (1) and subsection (3) itself also expire five years after the day on which subsection (2) commences. This means the exclusion of section 58 of the Human Rights Act for the specified acts and decisions is time limited.

Clause 20 amends section 640 (Transfer of persons in watch-houses) to remove existing sections 640(3) to (5), dealing with the transfer of persons in watch-houses, as those subsections are superfluous upon the commencement of new section 639AA.

Part 4 – Amendment of the Young Offenders (Interstate Transfer) Act 1987

Clause 21 provides that this part amends the *Young Offenders (Interstate Transfer) Act 1987*.

Clause 22 amends section 3 (Interpretation) so that the definition of *young offender* includes any young offender in Queensland who is subject to a sentence order under one of the following provisions of the Youth Justice Act:

- section 175(1)(d), (da), (db), (e) or (g);
- section 175A(2);
- section 176(1), (2) or (3).

This ensures that youths who are subject to a sentence order imposed under s175A(2) of the Youth Justice Act are appropriately captured and are considered young offenders for the purposes of the *Young Offenders (Interstate Transfer) Act 1987*.

Part 5 – Amendment of the Youth Justice Act 1992

Clause 23 provides that this part amends the Youth Justice Act.

Clause 24 amends section 11 (Police officer to consider alternatives to proceeding against child) to remove the requirement that a police officer must consider alternatives to proceeding against a child.

Subclause (1) amends the heading of section 11.

Subclause (2) removes the use of the word ‘must’ from existing section 11(1) and replaces it with ‘may’. This removes the requirement that police must consider alternatives to proceeding against a child.

Subclause (3) amends the wording in existing section 11(2) to provide that police officers may, not must, have regard to, in considering section 11(1), the circumstances of the alleged offence, and the child’s criminal history and, if the child has been in any other way dealt with for an offence under any Act, the other dealings.

Subclause (4) amends existing section 11(3) by removing the words ‘comply with a requirement’ and replacing them with ‘take action’ to provide that police officers can delay starting a proceeding in order to take action under section 11(1) or (2).

Subclause (5) omits existing sections 11(4), (5) and (7) for operational consistency.

Subclause (6) renumbers existing sections 11(6), (8) and (9) accordingly.

Clause 25 amends section 47 (Bail Act 1980 applies) to amend a note to include reference to new section 16AA.

Clause 26 amends section 48 (Releasing children in custody in connection with a charge of an offence) to amend a note to include section 48AG in considerations as to when a child must not be released from custody.

Clause 27 amends section 48AF (Releasing children charged with prescribed indictable offence while on release).

Subclause (1) amends the heading of section 48AF.

Subclause (2) amends section 48AF(1) to include that the section also applies in relation to a significant offence alleged to have been committed at any time while the child was on a previous grant of bail, unlawfully at large or failed to appear before a court under section 48AG. This extends the application of the show cause test to the same circumstances that enliven the operation of the new high degree of confidence test under new section 48AG.

Clause 28 inserts new section 48AG (Releasing children charged with significant offence committed while on bail, unlawfully at large or failing to appear).

New section 48AG(1) provides that the section applies in relation to a child in custody in connection with a charge of a significant offence alleged to have been committed at any time while the child was released on a previous grant of bail, unlawfully at large in relation to a previous grant of bail, or failed to appear before a court in accordance with a summons or notice to appear served on the child.

New section 48AG(2) provides that a court or police officer must refuse to release the child from custody unless the child satisfies the court or officer to a high degree of confidence that the child will not commit a further significant offence while released.

New section 48AG(3) provides that a court or police officer may make a decision under subsection (2) only after considering whether to refuse to release the child under section 48AF(2).

New section 48AG(4) provides that in making a decision under subsection (2), a court or police officer must have regard only to the matters relevant to the risk of the child committing a further significant offence while released.

New section 48AG(5) provides that if a court releases the child, the order releasing the child must state the reasons for the decision.

New section 48AG(6) provides that if a police officer releases the child, the officer must make a record of the reasons for the decision.

New section 48AG(7) provides that new section 48AG does not affect the operation of sections 48AAA and 48AF.

New section 48AG(8) is an override declaration which provides that, for the purposes of section 43(1) of the Human Rights Act this section has effect despite being incompatible with human rights, and despite anything else in the Human Rights Act. In accordance with section 45(2) of the Human Rights Act, this provision will expire five years after the commencement.

New section 48AG(9) declares that a child is taken to be released on a previous grant of bail even if the child has not entered into an undertaking in relation to the bail as required by the Bail Act or the court declares that the child's undertaking in relation to the bail is forfeited.

New section 48AG(10) provides for definitions of *failed to appear before a court*, *previous grant of bail* and *unlawfully at large*.

Clause 29 amends section 50(4)(a) (Dealing with children not brought before Childrens Court in accordance with s 49) to provide that subsection (2) applies subject to section 48AF and new section 48AG of the Youth Justice Act.

Clause 30 amends section 56 (Custody of child if not released by court) to remake the existing human rights override declaration.

Clause 31 amends section 59A (Police officers must consider alternatives to arrest for contraventions of bail conditions).

Subclause (1) removes the use of the word ‘must’ from the heading of existing section 59A and replaces it with ‘may’.

Subclause (2) omits existing section 59A(1)(c) to ensure that all grants of bail for all types of offending are captured.

Subclause (3) amends section 59A(2) to omit the words ‘other than’.

Subclause (4) amends the wording in existing sections 59A(3) and (4) to remove the use of ‘must’ and replaces it with ‘may’.

Subclause (5) omits existing section 59A(5).

These amendments remove the requirement that police must consider alternatives to arrest for contraventions of bail conditions.

Clause 32 omits existing section 59AA (Police officers may consider alternatives to arrest for contraventions of bail conditions – bail granted for serious indictable offence etc.) as the amendments to section 59A capture this section and render it unnecessary.

Clause 33 amends existing section 136 (Application of Corrective Services Act 2006) to remove reference to subsection 135(7)(b).

Clause 34 amends existing section 162(1) (When court must consider making court diversion referral or presentence referral) to provide that the subsection does not apply to an offence under section 29AA of the Bail Act.

Clause 35 amends section 163 (Power of court to make restorative justice process referral) to insert new section 163(1A) which provides that the court must not refer an offence against section 29AA of the Bail Act to the chief executive under subsection (1) for the purpose of making a court diversion referral in relation to a child.

Clause 36 amends section 175A (Sentence orders – significant offences to which adult penalties apply).

Subclause (1) inserts new section 175A(1AA) to provide that section 175A applies if a court is sentencing a child for an offence under section 29AA of the Bail Act.

Subclause (2) makes a minor grammatical edit to section 175A(1).

Subclause (3) inserts new 175A(2A) to provide that, for subsection (2), it is irrelevant that a child may not be liable to an offence under section 29AA of the Bail Act in the same

circumstances as an adult. This ensures that there are no legal barriers to the imposition of a penalty for the section 29AA offence.

Subclause (4) inserts new 175A(5A) which provides that a requirement under section 29AA of the Bail Act that a term of imprisonment to be served wholly in a corrective services facility is the minimum penalty for the offence is taken to be a requirement that a period of detention to be served wholly in a detention centre is the minimum penalty for the offence.

It also inserts new 175A(5B) which declares that subsection (5A) does not limit or otherwise affect part 8, division 2A of the Youth Justice Act. This means that youth serving a minimum mandatory period detention for new section 29AA of the Bail Act can still be transferred to a corrective services facility in accordance with part 8, division 2A of the Youth Justice Act.

Clause 37 amends section 210 (Detention to be served in detention centre) to remake the existing human rights override declaration.

Clause 38 amends section 227 (Release of child after service of period of detention).

Subclause (1) makes a minor amendment to the heading.

Subclause (2) makes an amendment to existing section 227(4)(b) to ensure that the section does not affect the operation of minimum mandatory penalties under section 175A.

Clause 39 amends section 262 (Establishment of detention centres and other places) to remake the existing human rights override declaration.

Clause 40 amends section 262A (Human Rights Act 2019, s 58 does not apply to particular acts and decisions) to remake the declaration that section 58 of the Human Rights Act does not apply to particular decisions and the human rights override declaration.

Clause 41 inserts new part 11, division 13 (Transitional provision for Breach Bail, Go to Jail and Other Legislation Amendment Act 2026) which provides for transitional provisions.

New section 451 provides that the amendments to section 11 apply in relation to any consideration of alternatives by a police officer under that section, whether the offence relevant to the consideration was committed before or after the commencement.

New section 452 provides that section 48AF(1)(a), as inserted by the Act, applies in relation to a charge of a prescribed indictable offence committed before or after commencement. This is because this provision replicates the existing section 48AF(1). It also provides that section 48AF(1)(b) applies in relation to a charge of a significant offence only if the offence was committed on or after the commencement.

New section 453 provides that section 48AG, as inserted by the Act, applies in relation to a child in custody in connection with a charge of a significant offence only if the offence was committed on or after the commencement. Therefore, courts and police officers are limited to imposing this test to grants of bail relating to relevant offending allegedly committed after commencement of this Act.

New section 454 provides that section 59A, as amended by the Act, applies in relation to any consideration of alternatives by a police officer and is not limited to offences or contraventions committed, or bail granted, after the commencement.

Clause 42 amends the dictionary to include a definition of *significant offence*.

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