



Bail amendments (including breach of bail) – information for legal stakeholders

Background

The *Strengthening Community Safety Act 2023* (SCS Act) was passed by the Queensland Parliament on 16 March 2023 and commenced on 22 March 2023, making changes to the *Youth Justice Act 1992* (YJA), the *Bail Act 1980* (BA), the *Police Powers and Responsibilities Act 2000* (PPRA) and the Criminal Code.

Within the suite of changes are several amendments impacting bail, including breach of a bail condition as an offence for a young person.

New breach bail condition offence

The Bill amends BA section 29 to make breach of a bail condition an offence for a child.

An ‘override declaration’ (BA s.29(3)) provides that the offence applies to children despite the *Human Rights Act 2019*.

The full suite of youth justice outcomes are available. For example, police can take no action, caution, refer for restorative justice, or start a proceeding (YJA s.11).

The breach bail condition offence applies only where the condition was part of a bail undertaking that the child entered into after the commencement of the changes – that is, on 22 March 2023 or later (BA s.50).

Changes to police officers’ obligation to consider alternatives to arrest for contraventions of bail conditions

Under YJA s.59A, police officers must consider specified alternatives before arresting a young person for a contravention

or likely contravention of bail conditions. The alternatives are taking no action, warning the young person, or making an application to the court to vary or revoke bail.

When considering whether to arrest or take one of the alternatives, the police officer must have regard to the factors listed in YJA s.59A(4).

New s.59AA provides that police officers do not need to consider these alternatives prior to arrest if the condition is attached to bail for:

- a prescribed indictable offence, or
- contravening a domestic violence order or a police protection order under the *Domestic and Family Violence Prevention Act 2012*.

Note that if, for example:

- a child is subject to two separate bail undertakings, one for a summary offence and one for a prescribed indictable offence;
- the first undertaking has a curfew condition, the second does not; and
- the child is found by police in breach of the curfew,

YJA s.59A applies; s.59AA does not apply.

Police retain the discretion to consider alternatives where s.59AA applies (s.59AA(3)).

In exercising that discretion, police officers should be guided by the youth justice principles (YJA schedule 1).

Prescribed indictable offence

Prescribed indictable offences are defined in Schedule 4 (Dictionary) of the YJA. They include life offences, offences which would attract 14 years or more imprisonment for an



adult (except low level drug possession) and various personal, property and motor vehicle offences under the Criminal Code. The SCS Act added unlawful use of a motor vehicle (UUMV) as a passenger (by removing the proviso that the child was allegedly the driver), and entering premises with intent to commit an indictable offence.

The SCS Act also created new circumstances of aggravation for UUMV, some of which attract 14 years for an adult (Criminal Code s.408A(1C) – at night, with violence, armed, in company, or property damage); these are also prescribed indictable offences due to their 14 year penalty.

Police processes on breach of a bail condition

There are two matters for a police officer to consider when a child has breached or is breaching a condition of bail: (1) whether to arrest, and (2) what to do about the offence.

Whether to arrest

The police officer must identify whether the condition breached is part of a bail undertaking for a prescribed indictable offence, and act under YJA s.59A or 59AA accordingly.

If the police officer arrests the child, and does not discontinue the arrest (see PPRA s.380), they must, as soon as reasonably practicable, take the child before a court (PPRA s.393). Bail can then be reconsidered.

What to do about the offence

(Note that where police have arrested on the basis that they reasonably suspected the child was likely to contravene a bail condition, then no offence occurred.)

A breach of bail condition offence is the same as any other offence. Before starting a proceeding for the offence, the police officer must first consider whether in all the circumstances it would be more appropriate to take no action, caution the child, or refer the child for restorative justice (YJA s.11). This is the case even if the child was arrested (PPRA s.380).

Court processes on breach of a bail condition

Following an alleged breach of bail condition, there may be an application to vary or revoke bail (BA s.30(1) & (1A)), or a proceeding for the offence of breaching a bail condition, or both.

Unlike for adults (see BA s.16(1AA), (3)(d)), a breach of bail offence does not place a young person in a 'show cause' position. This is because breach of bail is a simple offence (BA s.35) and does not trigger YJA s.48AF.

Where the child is under 14, police must prove that the child had the capacity to know that they ought not to have breached the bail condition (Criminal Code s.29(2)).

Magistrates may:

- dismiss the charge without any further action if satisfied no action should have been taken by police (YJA s.21(1)(b));
- dismiss the charge because of mental illness or cognitive impairment (*Mental Health Act 2016* s.172)
- dismiss the charge and take no action, caution, direct a police officer to caution, or refer for restorative justice if satisfied the child should have been cautioned (YJA s.21(1)(b), (3)) or referred for restorative justice (YJA s.24A(1), (2)); or
- impose any of the full range of penalties under YJA s.175, including a fine of up to 40 penalty units (\$5,750 as at March 2023 – increases usually occur each July), if the court is satisfied that the child has the capacity to pay (YJA s.175(1)(c), 190); or detention for up to one year.

More Information

For further information about the *Strengthening Communities Safety Act 2023* please email Youth Justice Policy, Strategy and Legislation (YJPSL) at OSED_YJPSL@cyjma.qld.gov.au.

YJPSL cannot give legal advice but may be able to assist with other questions.