



Attorney-General and Minister for Justice
Minister for Women and Minister for the Prevention of
Domestic and Family Violence

Our ref: 572305/6; 5653403

15 July 2021

Mr Neil Laurie
The Clerk of the Parliament
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Dear Mr Laurie

I refer to e-petition 3492-21 and paper petition 3566-21, tabled in the Legislative Assembly on 15 June 2021 titled *Recidivist crime in Goondiwindi, Warwick and other Queensland towns*.

I would like to assure the petitioners that community safety continues to be a top priority for the Palaszczuk Government. That is why we are delivering a record \$2.86 billion Police Budget for 2021-22 to support police in keeping communities safe across Queensland. This is in addition to \$290.6 million for youth justice services to reduce offending and reoffending by young people.

In the Warwick and Goondiwindi Divisions, police are addressing crime issues with relevant stakeholders and utilising available legislation and resources. For example, in May 2021, a policing operation was conducted in the Goondiwindi area which saw a significant reduction in offending. On 25 May 2021, a delegation of Queensland and New South Wales police met with stakeholders to discuss strategies in addressing the crime issues. Between 8 and 10 June 2021, Operation Tango Agar was conducted in the Goondiwindi area which saw an increased police presence. Further joint police operations are planned. Numerous other strategies such as the use of number plate recognition cameras and crime prevention strategies are also being employed in the Goondiwindi area.

I would also like to assure petitioners that legislating for the return of the offence of "finding of guilt while on bail" (the youth justice bail offence) which was formerly part of the *Youth Justice Act 1992* (YJA) is not the solution to young people who commit criminal offences.

The youth justice bail offence, which appears to be commonly referred to as the 'breach of bail offence', applied only where a young person was found guilty of an offence which was committed while the young person was subject to bail. Unlike the position under section 29(1) of the *Bail Act 1980* (Offence to breach conditions of bail), which applies to adults subject to bail, the youth justice bail offence had no operation where it was alleged that a condition of bail (such as a curfew or residential condition) was breached.

The youth justice bail offence simply did not work to deter young people from crime.

When the youth justice bail offence was in the YJA, we know that of the 185 offenders who were convicted of the offence when it was in effect between 28 March 2014 and 1 July 2016:

- more than 90% of offenders re-offended within 12 months; and

- 94% of offenders re-offended within 24 months.

In addition to not deterring young people from committing crime, the offence itself did not work.

The decision of the Childrens Court of Queensland in *R v S; R v L* [2015] QChC 3 found that a young person convicted of the youth justice bail offence could not be punished for it. The reason for this is that the youth justice bail offence breached one of the fundamental principles of criminal law, namely, that a person cannot be punished twice for the same act or omission. At paragraph 21 of the judgment, the Court found that *"the child's liability for conviction crystallises at the time and place he commits an offence whilst on bail for another offence"* and, as a result, the imposition of a penalty for the offence contravened the rule against double punishment. It was also found that the custodial penalty attached to the offence could not have been imposed in any event. The only penalties that could have been imposed for the offence were a fine, a reprimand or a good behaviour order.

It is important to note that in some regions of Queensland, no young person was ever charged with the youth justice bail offence. Statistics from the Department of Children, Youth Justice and Multicultural Affairs shows that the Toowoomba Youth Justice Service Centre region, which includes Goondiwindi and Warwick, was one of those areas. That no charge was ever laid in either of these towns demonstrates that the youth justice bail offence is not needed to deter young people from committing criminal offences.

If an adult defendant breaches a condition of their bail undertaking, they commit an offence under section 29(1) of the Bail Act and are liable to a maximum penalty of 40 penalty units or two years imprisonment.

Although the offence of breaching a condition of bail under section 29(1) of the Bail Act does not apply to a young person, if a young person is contravening their bail conditions, police can arrest that young person on the spot without a warrant. Police can even arrest a young person who they reasonably suspect is likely to breach their bail before the breach has occurred. The young person can then be taken into custody and brought before a court where the young person's bail undertaking can be varied or revoked.

If an adult defendant is charged with an indictable offence that is alleged to have been committed while on bail, the defendant must 'show cause' as to why their detention is not justified. Further, if an adult defendant is an unacceptable risk of failing to appear, reoffending, endangering the safety or welfare of the public or obstructing the course of justice, they must be remanded in custody.

The Palaszczuk Government recently passed legislation which targets recidivist high-risk youth offenders. The amendments to the *Youth Justice Act 1992* include:

- creating a presumption against bail for youth offenders who are arrested for committing a prescribed indictable offence while on bail for another indictable offence;
- allowing certain courts to impose electronic monitoring devices as a condition of bail for young people aged 16 and 17 years as part of a limited trial;
- allowing courts to take into account assurances from parents and persons supporting a young person that bail conditions will be met when granting a young people bail;

(3)

- codifying the sentencing principle that offending while on bail is an aggravating factor when determining the appropriate sentence; and
- amending the Charter of Youth Justice Principles to include a reference to the need to protect the community from recidivist high-risk youth offenders.

With regards to the petitioners call for the implementation of mandatory minimum sentences for breaching bail, the Bail Act and other relevant legislation currently sets out the maximum penalties and the sentencing principles that can be considered by the court when sentencing. This enables the court to consider the particular and unique facts of each case and determine a punishment which is appropriate and proportionate to the circumstances and nature of an offence.

A particular offence can contain varying degrees of seriousness and a range of conduct can constitute a particular offence. Under the present system of sentencing, the court can acknowledge these differences when determining the appropriate sentence to impose. A mandatory imprisonment requirement for an offence limits the courts ability to impose a sentence which is appropriate and proportionate to the circumstances of an individual case. This is why this Government holds concerns for mandatory minimum sentences.

While the Government holds concerns about mandatory sentencing, the Palaszczuk Government recognises that sentences must reflect community expectations. That is why the Government is committed to giving Queenslanders a stronger voice in sentencing issues through the reinstatement of the Queensland Sentencing Advisory Council (QSAC) after it was abolished by the Liberal National Party (LNP).

QSAC members include legal experts and community advocates with extensive experience in criminal law, domestic and family violence, victims of crime, Aboriginal and Torres Strait Islander justice issues and youth justice. This reflects the Government's awareness of the need to ensure a fair and representative balance of members. Petitioners may be interested to know that in 2017 QSAC reviewed sentencing outcomes in Queensland for breach of bail offences and published a 'sentencing spotlight' on their website. More information about QSAC, its work and the sentencing spotlights online can be found at www.sentencingcouncil.qld.gov.au.

In contrast to the Government's commitment to increase community safety, at the last election, the LNP announced unworkable curfews and fewer police officers. Previously, when last in Government, the LNP implemented failed boot camps and cut funding to early intervention and diversionary programs.

I thank the petitioners for bringing their concerns to the attention of the House and I trust this information is of assistance.

Yours sincerely



Shannon Fentiman MP

Attorney-General and Minister for Justice

Minister for Women and Minister for the Prevention of Domestic and Family Violence

Member for Waterford