

**2012**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**BAIL AMENDMENT BILL 2012**

**EXPLANATORY STATEMENT**

**Circulated by  
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## **Introduction**

This explanatory statement relates to the Bail Amendment Bill 2012 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

## **OVERVIEW**

The purpose of the Bail Amendment Bill 2012 is to amend the *Bail Act 1992* (the Bail Act) by including the Youth Justice Principles currently contained in the *Children and Young People Act 2008*. (note that the *Crimes Sentencing Act 2005* also refers to these principles at section 14A). The Bill limits the exercise of existing discretionary police powers by providing that the exercise of power must be consistent with the Youth Justice Principles and the best interests of the child.

The Bill also provides an explicit discretionary power for police to refer children who may have breached the Bail Act to a relevant service, such as the After Hours Bail Support Service as an alternative to arrest.

This Bill improves consistency across the various Acts that deal with children's interactions with the criminal justice system. The inclusion of the Youth Justice Principles, as articulated in the *Children and Young People Act 2008* section 94, in the Bill is designed to provide a greater focus on the best interests of the child and accepted best practice when police intervene with children.

The Youth Justice Principles are currently used when a child is applying for bail. Section 23 of the Bail Act sets out the criteria that must be considered in determining a grant of bail and this includes 'the youth justice principles in s 94 of the *Children and Young People Act 2008*' (section 23(1)(b)). The principles relate to a child's cultural identity, social responsibilities, unique needs, age, maturity and developmental capacity. In addition to the principles the Bail Act currently provides that the primary consideration in a decision about the granting of bail must be the best interests of the child (section 23(2)).

The Bill would create greater clarity for police when considering an arrest of a child for breaches of the Bail Act, and strengthen the role of the After Hours Bail Support Service.

Recent research into New South Wales trends in legal proceedings for breach of bail, juvenile remand and crime found that most young people who breached bail were not

arrested for further offences whilst on bail, but commonly for breaching curfew conditions and not being in the company of a parent (another condition of their bail).<sup>1</sup>

It is clear from recent available data that breach of bail is a very common reason for the admission of young people to Bimberi, with 83 of the 170 young people remanded at Bimberi in 2009-10 admitted for breach of bail.

The Bill seeks to provide for greater use of diversionary pathways for children and to prevent unnecessary contact with the criminal justice system. International and national research indicates that in most cases, increased involvement with the criminal justice system, be that police, youth justice detention centres or the courts has negative impacts. Children who have experienced multiple periods of short term remand for relatively minor breaches of the Bail Act are also likely to have poorer outcomes and ultimately increased contact with the criminal justice system.

Remand is not always the most appropriate option. In fact greater community based support may improve the circumstances of the child in question. Anecdotal evidence from the ACT indicates that for many children, safe and secure accommodation is a key factor in their bail conditions, and often in their ability to meet those conditions.

This approach to child and youth justice is in line with worlds best practise principles, and is an evidence based approach.<sup>2</sup>

The insertion of the new requirements in the Bail Act does not interfere with police officers powers in relation to a child who is in the act of committing an offence, or may have committed another offence while on bail. In those circumstances the alleged offender will be arrested for the alleged offence rather than a breach of bail conditions. The Bill is primarily concerned with minor breaches of bail, and does not prevent police taking a child into custody if in the circumstances, and following consideration of the principles and any other relevant Legislation, is it appropriate to do so.

## **HUMAN RIGHTS**

The Bill engages the right of a child to the protection needed by the child because of being a child, without distinction or discrimination of any kind protected by section 11 of the *Human Rights Act 2004*. The Bill significantly improves the protection of this right by setting out the explicit factors that a police officer must consider and be satisfied of before arresting a child.

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<sup>1</sup> Vignaendra, S., Moffatt, S., Weatherburn, D. and Heller, E, *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, New South Wales Bureau of Crime Statistics and Research, Crime and Justice Bulletin Number 128.25.

<sup>2</sup> See generally *Effective Practice In Juvenile Justice; Review of Effective Practice in Juvenile Justice*, Report for the New South Wales Minister for Juvenile Justice, Noetic Solutions Pty Limited (2010).

## SUMMARY OF CLAUSES

### **Clause 1 Name of the Act**

This clause is a technical clause and sets out the name of the proposed Act as the *Bail Amendment Act 2012*.

### **Clause 2 Commencement**

This clause provides that the new Act will commence on its notification day.

### **Clause 3 Legislation amended**

This clause identifies the Act to be amended is the *Bail Act 1992*.

### **Clause 4 Arrest without warrant of person on bail New section 56A (2A) and (2B)**

This clause inserts into section 56A a new subsection (2A) requiring the consideration of Youth Justice Principles and the best interests of the child, and a new subsection (2B) providing for the discretion for police to refer a child facing arrest for breaches of bail to an appropriate service.

The amendments limit the ability of police to arrest a child without warrant for breaches of the Bail Act to circumstances where the police officer is satisfied on reasonable grounds that the arrest is in the best interests of the child and in accordance with the Youth Justice Principles.

The amendments also provide that should a police officer, because of a belief formed when considering the two requirements, in new subsection 2A, determine that the most appropriate course of action would not be to arrest a child, the police officer may instead decide to make a referral relevant to the child's needs, rather than actioning an arrest.

A relevant example would be an instance of a child released on bail conditions to reside as directed, a common condition of bail. If, during the course of that placement the child left the premises after a dispute with the responsible caregiver, they would have effectively breached their bail conditions. Whilst the placement may not in fact be unsafe, the child's perception of the dispute may have led to the child running away. If this child were then to be apprehended by the police, arresting the child without warrant may well be more detrimental to the child's welfare and serve no useful purpose in enforcing the bail condition.

If the child were arrested they would be escorted to a police station, and possibly remanded to Bimberi Youth Justice Centre until appearing before a court. It may well have benefited both the child and the caregiver if instead support was offered to re-engage with the bail conditions, or consider making alternate arrangements for a brief time until a bail variation could be put in place.

The clause gives the example of the After Hours Bail Support Service as a relevant service that children may be referred to. Until recently, in contrast to other Australian

jurisdictions, the ACT did not have specific bail assessment and support programs. The After Hours Bail Support Service provides a service for young people who are at risk of being remanded in custody, to assist them to remain in the community.

The Service's target group is young people in police custody in relation to fresh offences, where the watch house sergeant is considering refusing bail and young people already on bail, who have breached their bail or who are at risk of breaching their bail. The Service makes assessments of young people's suitability for bail and provides support and advice to young people, family and other supports and the police. This Service operates between 5pm- 2am weekdays and 4pm-2am weekends and public holidays.

The introduction of the After Hours Bail Support Service has now provided children, families, police and community service providers a possible alternative to short periods of remand because of breaches of the Bail Act and the Bill will better integrate this and other support services with police decisions applying the Bail Act provisions.

**Clause 5      Section 56A (3)**

This clause is a consequential amendment based on the substantive changes provided for in clause 4.