

The document was current at June 2023, and explains changes made at that time. For up-to-date information, please search 'Changes to the *Youth Justice Act 1992*'.

Youth justice and other legislation change

Updated June 2023

On 22 March 2023, the **Strengthening Community Safety Act 2023 (the SCS Act)** came into force. The SCS Act made changes to several other Acts.

Youth Justice Act 1992 (YJ Act) and Bail Act 1980 (Bail Act) amendments

The SCS Act amended the **youth justice bail** and **youth justice sentencing frameworks** and established new arrangements for the transfer of 18-year-olds to adult custody and multi-agency collaborative panels.

Youth justice bail framework

Breach of bail

The SCS Act amended the Bail Act so that breaching a condition of bail is an offence for children. A bail condition is a requirement such as a curfew, a requirement to report to police, or a prohibition on contacting a co-accused.

The offence only applies where the child entered into the bail undertaking after commencement of the SCS Act.

Extension and expansion of monitoring device provisions

The SCS Act extended the trial of electronic monitoring of eligible young people on bail for two years, until 30 April 2025, and expanded the eligibility to include young people aged 15 and over, instead of the previous 16 and over.

The use of electronic monitoring devices as a condition of bail in certain circumstances was initially trialled in five locations — Townsville,

North Brisbane, Moreton, Logan and Gold Coast. A review was conducted by the Department of Children, Youth Justice and Multicultural Affairs, with former Police Commissioner Robert (Bob) Atkinson AO, APM providing an independent peer review.¹

The review found that while there are some benefits associated with electronic monitoring, its effectiveness in deterring offending behaviour cannot yet be confirmed, nor can any changes to offending be attributed to engagement with the trial, because of the low numbers during the review period.

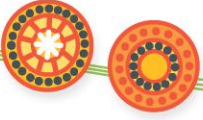
Numbers increased towards the end of the period considered by the review (up to September 2022), and have increased since. Three further trial sites commenced on 19 June 2023: Mount Isa, Cairns and Toowoomba.

The extension and expansion of the trial provides an opportunity to establish a more robust evidence base to support decisions on the future use of electronic monitoring devices. The use of electronic monitoring devices will be further reviewed in the lead up to the new expiry date.

Arrest for contraventions of bail conditions

The SCS Act removed the mandatory requirement for police officers to consider alternatives to arrest for a child who is on bail

¹ Available at <https://www.cyjma.qld.gov.au/about-us/performance-evaluations/electronic-monitoring-trial-evaluation>



for a prescribed indictable offence, or for contravention of certain domestic violence orders. Police retain the *discretion* to consider alternatives to arrest in those circumstances.

Expansion of presumption against bail

The presumption against bail applies where a child is charged with a 'prescribed indictable offence' alleged to have been committed while the child was on bail for an indictable offence.

The SCS Act expanded the definition of 'prescribed indictable offence' for the purposes of the presumption against bail to include unlawful use of a motor vehicle as a passenger, and entering premises with intent to commit an indictable offence.

The SCS Act also amended the Criminal Code (see below) to introduce new circumstances of aggravation for unlawful use of a motor vehicle with a 14 year maximum penalty, including committing the offence at night or in company. Those circumstances of aggravation are now prescribed indictable offences.

Youth justice sentencing framework

New serious repeat offender declaration scheme

The SCS Act introduced a scheme under which a court, on the application of the prosecution, can declare a child to be a 'serious repeat offender'. This applies where the child is being sentenced for a prescribed indictable offence and has previously been sentenced to at least one detention order for a prescribed indictable offence, and the court is satisfied there is a high probability that the child would commit a further prescribed indictable offence.

The court must consider a pre-sentence report prepared by Youth Justice, and have regard to:

- the child's previous offending history and bail history
- any efforts at rehabilitation by the child, and
- any other matter the court considers relevant.

Where a declaration is made, the sentencing principles currently in the Youth Justice Act continue to apply, but the court is required to have *primary* regard to five new principles:

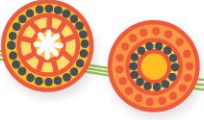
- the need to protect members of the community
- the nature or extent of any violence used during the offence
- the extent of any disregard by the child for public safety during the offence
- the impact of the offence on public safety, and
- the child's criminal and bail history.

A declaration remains current for a period of 12 months, during which any court of like or lower jurisdiction must also have primary regard to the new sentencing principles when sentencing for a prescribed indictable offence. If the child was sentenced to detention when the declaration was made, the declaration continues until 12 months after the child is released.

Changes to conditional release orders

A conditional release order is an intensive community-based order that can be imposed when a period of detention is suspended, meaning the child is released subject to supervision and participation in programs.

The SCS Act lengthened the maximum duration of a conditional release order from three months to six months, and introduced a requirement that children sentenced to a conditional release order for a prescribed indictable offence serve their suspended period of detention if they breach the order, unless there are special circumstances.



Courts to consider bail history when sentencing

The SCS Act made clear that a court is to take into account any bail history put before it when sentencing a child. This could include information about compliance or non-compliance with bail conditions or reoffending or abstaining from offending while on bail. The information provided to the court could be mitigating or aggravating.

Further amendments to the Youth Justice Act

Transfer of 18-year-olds to adult correctional facilities

The SCS Act introduced new arrangements for the transfer to adult custody of both sentenced and remanded 18-year-olds:

- a sentenced detainee is liable for transfer if they turn 18 and have a further two months to serve, rather than the previous six months;
- a freshly remanded person who is over 18 will go straight to adult custody, where previously this happened only if the person was over 19; and
- the chief executive has a discretion to transfer a young person on remand who is over 18.

The young person is guaranteed an opportunity to obtain legal advice, and to provide a submission to the chief executive. The chief executive's decisions are reviewable by the Children's Court.

Multi-Agency Collaborative Panels

The SCS Act established multi-agency collaborative panels (MACPs) in legislation. MACPs have existed since 2021, to facilitate a collaborative response to the needs of young offenders through a multi-agency and multi-disciplinary approach.

The new provisions provide for the MACP system's purpose, membership, and the responsibilities of core members.

Information will continue to be shared amongst members under an arrangement established under the YJ Act. These arrangements allow information sharing for the purpose of coordinated service delivery and ensure appropriate privacy protections for children.

Amendments to the Criminal Code

Increase in maximum penalties relating to unlawful use of motor vehicles

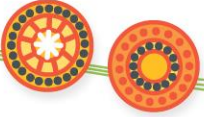
The SCS Act increased the maximum penalty for the unlawful use of a motor vehicle (UUMV) from 7 to 10 years imprisonment. It also increased the maximum penalty for the existing circumstance of aggravation, relating to the defendant's intention to use the vehicle for another indictable offence, from 10 to 12 years imprisonment.

New circumstances of aggravation for unlawful use of motor vehicles

The SCS Act created a new circumstance of aggravation with a maximum of 12 years imprisonment, where the offender publishes material on a social media platform or online social network to advertise their involvement in the UUMV offence.

It also created circumstances of aggravation for a UUMV offence, with a maximum penalty of 14 years imprisonment, where:

- the offence is committed at night, or
- the offender:
 - uses or threatens to use actual violence
 - is or pretends to be armed
 - is in company with one or more persons, or
 - damages, threatens or attempts to damage any property.



Given one of these new circumstances of aggravation covers damage or attempted damage to any property, the SCS Act removed the previous circumstance of aggravation of *wilful* damage.

Disposition and jurisdiction

For adult and child defendants charged with UUMV involving violence or where the defendant was armed or pretended to be armed, or for property damage exceeding \$30,000 where the defendant does not plead guilty, the charge must proceed 'on indictment'. This means a magistrate cannot finalise the charge; it must go before a judge.

The remaining circumstances of aggravation will be dealt with, generally, by magistrates, but magistrates have an overriding discretion to commit a matter to a judge if the magistrate is of the view that the maximum penalty available to a magistrate (for children: 12 months detention) is inadequate.

These arrangements for disposition mirror the arrangements for similar offences which carry the same circumstances of aggravation, such as Criminal Code s. 427 – Unlawful entry of vehicle for committing indictable offence.