

Serial 24
Youth Justice Legislation Amendment Bill 2021
Mrs Manison

A Bill for an Act to amend the *Bail Act 1982*, the *Youth Justice Act 2005* and
the *Bail Regulations 1983* and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

YOUTH JUSTICE LEGISLATION AMENDMENT ACT 2021

Act No. [] of 2021

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2021

An Act to amend the *Bail Act 1982*, the *Youth Justice Act 2005* and the *Bail Regulations 1983* and for related purposes

[Assented to [] 2021]
[Introduced [] 2021]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Youth Justice Legislation Amendment Act 2021*.

2 Commencement

This Act commences on the day after the day on which the Administrator's assent to this Act is declared.

Part 2 Amendment of Bail Act 1982

3 Act amended

This Part amends the *Bail Act 1982*.

4 Section 3 amended (Interpretation)

Section 3(1)

insert

serious breach of bail, see section 7B(1) and (2).

5 Part 2, Division 1A heading amended

Part 2, Division 1A, heading

omit

for certain offences

6 Section 7A amended (Presumption against bail for certain offences)

After section 7A(2A)

insert

(2B) Despite subsection (1), subsection (2) does not apply to a youth.

7 Section 7B inserted

After section 7A, in Part 2, Division 1A

insert

7B Presumption against bail for youth involved in serious breach of bail

- (1) A youth engages in a **serious breach of bail** if the youth, while on bail:
- (a) is charged with a prescribed offence; or
 - (b) subject to subsection (2), breaches a condition of bail contravening:
 - (i) a provision of a conduct agreement as mentioned in section 27A(1)(i) that imposes a curfew on the youth; or
 - (ii) a provision of a conduct agreement as mentioned in section 27A(1)(iaa), (iab) or (ia).
- (2) A breach of a condition of bail mentioned in subsection (1)(b) is not a **serious breach of bail** if the breach is trivial or technical or there are exceptional circumstances for it.

- (3) Bail must not be granted to a youth who has engaged in a serious breach of bail unless the youth enters into a conduct agreement containing:
- (a) a provision mentioned in section 27A(1)(iab) or (ia); or
 - (b) a provision mentioned in section 27A(1)(f) that the youth agrees to reside at the supported bail accommodation prescribed by regulation.
- (4) A youth may be granted bail following a serious breach of bail if the youth enters into a conduct agreement containing a provision mentioned in section 27A(1)(f) that the youth agrees to reside at a specified premises, if neither provision mentioned in subsection (3) is appropriate because the youth resides at a remote location:
- (a) where a provision mentioned in section 27A(1)(iab) or (ia) is not possible due to technology limitations; and
 - (b) that is in the opinion of the court an unreasonable distance from the supported bail accommodation prescribed under subsection (3)(b).
- (5) The requirement for bail cannot be dispensed with for a youth who engages in a serious breach of bail and section 9(2) does not apply with respect to a serious breach of bail.

8 Section 8A amended (Presumption in favour of bail for youths)

After section 8A(1)

insert

- (1A) This section does not apply to a youth who, during release on bail, engages in a serious breach of bail.

9 Section 28 amended (Imposition of bail conditions)

- (1) Section 28(2A), after "subsection (2)"

insert

but subject to section 7B

- (2) Section 28(3A)

omit

Also, a

insert

A

- (3) After section 28(3A)

insert

- (3B) Despite subsection (3A), a court may impose a condition that an accused person who is a youth enter into a conduct agreement containing a provision mentioned in section 27A(1)(iab) if the court orders the preparation of an assessment report in relation to the youth but the report has not been provided to the court.

10 Section 38 amended (Arrest for absconding or breach of condition)

- (1) Section 38(1)

omit

Where

insert

If

- (2) After section 38(4)

insert

- (5) Subsections (2) to (3) do not apply in respect of a youth who has engaged in a serious breach of bail.

11 Section 38AA inserted

After section 38

insert

38AA Serious breach of bail by youth

- (1) If the person brought before the court under section 38(1) is a youth and the court finds that the youth has engaged in a serious breach of bail, the court must, despite anything to the contrary in this Act:
- (a) revoke the youth's original bail; and
 - (b) not grant bail to the youth; and

- (c) by warrant commit the youth into the custody of the CEO (Youth Justice).
- (2) Subsection (1) also applies in respect of a youth brought before the court under section 27 of the *Youth Justice Act 2005* following arrest of the youth under section 123 of the *Police Administration Act 1978*.

12 Part 9, Division 6 inserted

After section 67

insert

Division 6 Youth Justice Legislation Amendment Act 2021

68 Definition

In this Division:

amending Act means the *Youth Justice Legislation Amendment Act 2021*.

69 Application of amendments relating to serious breach of bail

The amendments to this Act by sections 7, 8, 10 and 11 of the amending Act do not apply if the conduct agreement to which the youth was subject at the time of engaging in a serious breach of bail was entered into before the commencement of those sections.

70 Application of amendment to prescribed offences

- (1) The regulation made under section 3B applies as in force after its replacement by section 34 of the amending Act only in respect of an application for bail in relation to an offence that is allegedly committed after the commencement.
- (2) For subsection (1), if any of the alleged conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.
- (3) In this section:

commencement means the commencement of section 34 of the amending Act.

Note for section 70

For an offence allegedly committed before the commencement of section 34 of the amending Act, the regulation under section 3B applies as in force before the commencement.

Part 3 Amendment of Youth Justice Act 2005

13 Act amended

This Part amends the *Youth Justice Act 2005*.

14 Section 5 amended (Interpretation)

Section 5(1)

insert

divert, for Part 3, see section 38.

family responsibility agreement means an agreement under Part 6A, Division 2.

Youth Justice Conference, in relation to a youth, includes:

- (a) a conference with the victim or victims of the offence the youth is believed to have committed; and
- (b) a conference with members of the youth's family.

15 Section 18 amended (Interview of youth)

After section 18(2)

insert

- (2A) Despite subsection (2), the police officer may conduct a breath test, breath analysis or saliva test in relation to the youth in accordance with a requirement of section 24, 29AAA, 29AAB, 29AAC, 29AAD or 29AAF of the *Traffic Act 1987* without a person mentioned in subsection (1A)(c) being present if the officer has made reasonable endeavours to arrange the presence of such a person.

Example for subsection (2A)

Used multiple contact methods to attempt to contact multiple friends, relatives, responsible adults or support persons.

16 Section 22 amended (Charge to be by summons except in certain cases)

After section 22(2)

insert

- (3) Subsection (2)(a) does not apply if the offence with which the youth is charged is a prescribed offence as defined in section 3B of the *Bail Act 1982*.

17 Section 39 amended (Diversion of youth)

(1) Section 39(6)

omit

all words after "an offence"

insert

with which the youth has been charged.

(2) Section 39(7)

omit

18 Section 51 amended (Youth in need of protection)

(1) After section 51(1)

insert

(1A) The Court may take into account a parent's compliance with a family responsibility agreement in forming its belief under subsection (1).

(2) Section 51(5)

insert

parent, see section 140A.

19 Section 64 amended (Court may refer youth to diversion)

(1) Section 64(2)

omit

This section

insert

Subsection (1)

(2) Section 64(2)(b)

omit

offence; or

insert

offence.

- (3) Section 64(2)(c)

omit

- (4) After section 64(2)

insert

- (3) Subsection (1) does not apply if the youth was previously assessed for inclusion in a diversion program or a Youth Justice Conference conducted for the purposes of Part 3.

20 Section 64A amended (Youth Justice Court may dismiss charges)

- (1) Section 64A

omit

The

insert

- (1) Subject to subsection (2), the

- (2) Section 64A, at the end

insert

- (2) The Youth Justice Court must not dismiss a charge for an offence if a youth was included in a diversion program mentioned in section 39(2)(d) or involved in a Youth Justice Conference in respect of the offence but did not successfully complete the program or Conference.

21 Section 64B inserted

After section 64A

insert

64B Court may order appropriate Agency to enter into family responsibility agreement with parent of youth

- (1) The Court may, at any stage of the proceedings against a youth in respect of an offence:
 - (a) order that an appropriate Agency take reasonable steps to enter into a family responsibility agreement with a parent of the youth; or
 - (b) review compliance with a family responsibility agreement in relation to the youth.

- (2) In this section:

appropriate Agency, see section 140A.

parent, see section 140A.

22 Section 83 amended (Orders Court may make)

Section 83(1), at the end

insert

Example for subsection (1)(d)(iii)

Allowing a parent or responsible adult in respect of the youth to demonstrate compliance with a family responsibility agreement.

23 Section 89A inserted

After section 89, in Part 6, Division 2

insert

89A Court may order family responsibility agreement be entered into

- (1) In addition to any other order the Court may make, the Court may order that an appropriate Agency take reasonable steps to enter into a family responsibility agreement with a parent of the youth before the Court.

(2) The Court may make an order under subsection (1) whether or not the Court finds a charge proven against the youth or finds the youth guilty of an offence.

(3) In this section:

appropriate Agency, see section 140A.

parent, see section 140A.

24 Section 140A amended (Definitions)

Section 140A, definition **publish**

omit

25 Section 140B amended (Guiding principles)

Section 140B(2)(c)

omit

or order

26 Section 140C amended

(1) Section 140C, heading

omit

Part

insert

Act

(2) Section 140C(1) and (2)

omit

Part

insert

Act

27 Section 140CA inserted

After section 140C, in Part 6A, Division 1

insert

140CA Relationship of this Part to Court powers

This Part does not affect any power the Court otherwise has under this Act to deal with a youth.

28 Section 140E amended (Family responsibility agreement)

Section 140E(3)

omit, insert

- (3) Before entering into a family responsibility agreement, the appropriate Agency must:
- (a) ensure facilities and services reasonably required by the parent or parents to comply with the agreement are reasonably available to the parent or parents in the relevant region; and
 - (b) consider the following:
 - (i) the circumstances of the youth's family and the likely effect of the agreement on the family;
 - (ii) whether the youth, or a parent of the youth, suffers from a physical or mental disability or condition that causes or contributes to the youth's behavioural problems;
 - (iii) the outcome of any inquiry under Division 3; and
 - (c) ensure procedures are in place for the family responsibility agreement to be regularly reviewed to assess the parent's or parents' compliance and capacity to comply with it.

29 Section 140F amended (Family responsibility agreement not to give rise to enforceable obligations)

- (1) Section 140F

omit

A

insert

- (1) A
- (2) Section 140F, at the end

insert

- (2) Despite subsection (1), a failure of a parent to comply with a family responsibility agreement is information that may raise concerns about a child's wellbeing for the purposes of section 32 of the *Care and Protection of Children Act 2007*.

30 Part 6A, Division 3 heading replaced

Part 6A, Division 3, heading

omit, insert

Division 3 Family circumstances

31 Section 140H amended (General provisions about inquiry)

Section 140H(1)(b)

omit

order

insert

agreement

32 Sections 140J to 140R repealed

Sections 140J to 140R

repeal

Part 4 Amendment of Bail Regulations 1983

33 Regulations amended

This Part amends the *Bail Regulations 1983*.

34 Regulation 2A replaced

Regulation 2A

repeal, insert

2A Prescribed offences

For section 3B of the Act, an offence under or against each of the following is prescribed:

- (a) section 54, 55(1), 65, 66, 69, 125B(1), 127, 130(3A) or (3B), 132, 134, 156, 160, 161A, 165, 174C, 174D, 174E, 174F, 174FA, 174FB, 175, 176, 177, 181, 182, 186, 188A, 189A, 190, 191, 192(3), (4), (7) or (8), 192B, 194, 210, 211, 212, 213, 218, 241 or 243 of the Criminal Code;
- (b) section 188(1) of the Criminal Code in a circumstance mentioned in section 188(2) of the Code;
- (c) section 120 of the *Domestic and Family Violence Act 2007*.

35 Regulation 2AB inserted

After regulation 2A

insert

2AB Supported bail accommodation

For section 7B(3)(b) of the Act, accommodation provided by Saltbush Social Enterprises (Darwin and Alice Springs) is prescribed as supported bail accommodation.

Part 5 Consequential amendments

Division 1 Education Act 2015

36 Act amended

This Division amends the *Education Act 2015*.

37 Section 173 amended (Compulsory conference)

Section 173(8)(d)

omit

, or orders for a family responsibility order under that Act

Division 2 Liquor Regulations 2019

38 Regulations amended

This Division amends the *Liquor Regulations 2019*.

39 Regulation 105 amended (Persons subject to prohibition relating to purchase of liquor)

Regulation 105(b)

omit

or a family responsibility order made under section 140J

Division 3 Youth Justice Regulations 2005

40 Regulations amended

This Division amends the *Youth Justice Regulations 2005*.

41 Part 4A repealed (Family responsibility orders)

Part 4A

repeal

42 Regulation 75 amended (Prescribed forms)

Regulation 75(15B)

omit

43 Schedule 1 repealed (Geographical areas for family responsibility orders)

Schedule 1

repeal

44 Schedule 2 amended (Forms)

Schedule 2, Form 15B

omit

Part 6 Repeal of Act

45 Repeal of Act

This Act is repealed on the day after it commences.