

FAMILY VIOLENCE LEGISLATION REFORM BILL 2024

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, read a first time.

Second Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [9.04 pm]: I move —

That the bill be now read a second time.

Since coming to office in 2017, Labor has demonstrated a strong commitment to protecting the victims of family violence and improving community safety. Amongst other things, the Labor government invested in improved monitoring devices that use GPS technology to provide near real-time monitoring and locational tracking, which enables conditions to be imposed that restrict the wearer to particular areas; enhanced the powers of courts to order electronic monitoring as part of bail and sentencing; introduced serial family violence offender declarations, with a requirement that courts and the Prisoners Review Board must consider imposing electronic monitoring whenever these offenders are subject to community supervision, as part of the most comprehensive family violence law reform package ever seen in WA; and increased the penalty for interfering with the operation of an electronic monitoring device imposed under the High Risk Serious Offenders Act 2020.

Indeed, protecting victim-survivors of family violence was a key focus in the 2024–25 state budget, which announced that \$96.4 million will be invested in initiatives, including \$53.8 million for family and domestic violence response teams to expand operations to seven days a week and to roll out additional community corrections officers, \$14.2 million to fund the operations of a new family and domestic violence one-stop hub in the Perth metropolitan area, \$6.2 million to establish a dedicated organisation that will support and develop family and domestic violence-informed workforces, and \$4 million to increase crisis accommodation capacity across the state through the addition of supported accommodation to two rapid rehousing programs.

The Labor government commissioned an investigation into the viability of using GPS tracking devices on a wide cohort of offenders. Following the review of the results of the trial, the government resolved to mandate the use of electronic monitoring for repeat and high-risk family violence perpetrators in Western Australia. Under this bill, when an eligible person is being considered for a relevant order by a judicial officer, a court or the Prisoners Review Board, they must be subject to a mandatory electronic monitoring condition unless exceptional circumstances exist. Three groups, or cohorts, of persons will be captured by this bill. This means that they will be subject to mandatory electronic monitoring unless exceptional circumstances apply. The intent of this bill is to ensure that repeat and high-risk family violence offenders are subject to electronic monitoring at bail, following sentence, if released into the community, and/or following release from prison. This will not apply to children.

Cohort A is those persons who are subject to a family violence restraining order and who are subsequently accused or convicted of a family violence offence, category A, committed against a person protected by the family violence restraining order. Cohort B is those persons who are subject to a serial family violence offender declaration and are subsequently accused or convicted of a family violence offence, category B. Cohort C is those persons who are released from prison under an early release order—specifically, a parole order, a re-entry release order or a post-sentence supervision order for a family violence offence, category A, and who are bound by a family violence restraining order; or a family violence offence, category B, and subject to a serial family violence offender declaration.

It is estimated that these reforms will see 550 offenders from these cohorts subject to electronic monitoring. To define the cohorts within the scope of this bill, the term “family violence offence” in the Bail Act 1982, the Sentence Administration Act 2003 and the Sentencing Act 1995 will be modified. The current definition of “family violence offence” will be renamed “family violence offence, category B”. A new category will be introduced for the purpose of this reform called “family violence offence, category A”, which is the same as family violence offence, category B, but excludes offences against the Restraining Orders Act 1997. This is necessary because it is not intended that a breach of a restraining order alone will be captured by these reforms.

Cohorts A and B will be subject to electronic monitoring under the following orders: bail, pre-sentence orders, community-based orders, intensive supervision orders and conditional suspended release from imprisonment orders. Cohort C will be subject to electronic monitoring under the following orders: early release orders, parole and re-entry release orders, and post-sentence supervision orders.

It is intended that electronic monitoring be imposed unless there are exceptional circumstances. A finding of exceptional circumstances is a very high threshold and will be determined on a case-by-case basis. The bill does not define what constitutes exceptional circumstances. This will be left to the court and the Prisoners Review Board, which are very well versed at applying such provisions.

I will now go over some of the nuances around bail in this reform. Under clause 3F of schedule 1, part C of the Bail Act, a presumption against bail exists for cohort B. The court must request that a community corrections officer prepare a report about the accused's suitability to be subject to a home detention condition, as well as factors relevant to the victim. This report can take up to three weeks to prepare. The court will then make a decision as to whether bail should be granted with a home detention condition. Under the bill, if bail were to be granted, the provisions would be expanded so that regardless of whether a home detention condition is imposed, electronic monitoring must be imposed unless there are exceptional circumstances.

Cohort A is persons who are granted bail under the current provisions. The only policy shift contemplated by this bill is that cohort A must be subject to electronic monitoring if bail is granted. A suitability report will not be required for cohort A, but the Bail Act allows a judicial officer to request more information about the accused and remand them in custody for up to 30 days until that information is received. The bill also provides that the judicial officer may ask a community corrections officer to provide a list of conditions that may be applied to the accused while the accused is subject to an electronic monitoring condition.

This bill will create new offences related to the operation of electronic monitoring. It will be an offence for a person subject to electronic monitoring to fail to wear an approved electronic monitoring device, fail to permit the installation of an approved electronic monitoring device at the place where the offender resides or at any other specified place, fail to charge the electronic monitoring device to ensure that the device is operational at all times, and to enter an exclusion zone without reasonable excuse. These offences will be punishable by up to three years' imprisonment and a fine of up to \$36 000. Importantly, these new offences will be serious offences for the purposes of the Criminal Investigation Act 2006. This means that the police will be able to arrest a suspect without a warrant in the interests of victim safety and wellbeing.

This bill also makes provision for police to access the Department of Justice's electronic monitoring system in near real time to enable officers to take swift and appropriate action. Importantly, police will also be able to use the electronic monitoring information for any reasonable purpose in the performance of their functions. This means that the electronic monitoring information may be used by police to investigate any matter, even if it is not connected to family violence. This will provide an enhanced level of safety for not only the victim-survivor, but also the community as a whole.

It should also be noted that the new offences related to electronic monitoring will also be serious offences for the purposes of the Bail Act. This means that if a person is charged with committing one of the new offences under this bill while on bail for another serious offence, a presumption against bail will apply. Together, these measures will significantly strengthen the approach to addressing family violence and protecting victims.

The bill will amend the Restraining Orders Act 1997. Last year, the government committed to a phased approach to criminalising coercive control, and this bill will deliver the legislative component of the first tranche of reforms. In response to recommendation 9 of the 2023 report titled *Legislative responses to coercive control in Western Australia: Consultation outcomes report*, the definition of family violence in the Restraining Orders Act will be enhanced to include a reference to the patterned nature of coercive control behaviours and their cumulative effect. This will require justice professionals to consider the impact of multiple acts over a period, ensuring that these insidious behaviours are better recognised as family violence.

On addressing gender-based violence, the state government remains committed to stopping the deaths of and ending the violence against women and children. The measures in this bill align with national cabinet's agenda, as well as efforts under the *National plan to end violence against women and children 2022–2032: Ending gender-based violence in one generation* to strengthen accountability and the consequences for perpetrators, improve police responses to high-risk and serial perpetrators and improve information sharing about perpetrators across systems.

In conclusion, this bill demonstrates the government's commitment to protecting victims and the community and builds upon the government's strong track record of delivering legislative and other reform in this area. That record includes the introduction of the High Risk Serious Offenders Act 2020, which has enabled high-risk serious offenders to be detained and supervised beyond the duration of their sentence when appropriate, new offences and measures targeting perpetrators of family violence, over \$400 million of investment into family violence initiatives and, relevant to the bill at hand, amendments to expand the use of electronic monitoring at all touchpoints within the criminal justice system. I remind the chamber of our earlier reforms in March that mean interfering with or removing an electronic device will result in a mandatory six-month term of imprisonment. This bill will greatly enhance the safety of victim-survivors by ensuring greater perpetrator accountability by mandating the imposition of electronic monitoring conditions, which will allow their whereabouts to be monitored around the clock, facilitate police surveillance of perpetrators by allowing police direct access to the Department of Justice's electronic monitoring data system and empowering police to respond swiftly to the commission of new electronic monitoring-related offences by perpetrators, such as entering exclusion zones established for the safety of victim-survivors.

In accordance with standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does the bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper [3372](#).]

Debate adjourned, pursuant to standing orders.