

Bail Amendment Bill 2022

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Bail Amendment Bill 2022

A Bill for

An Act to amend the *Bail Act 1982*.

The Parliament of Western Australia enacts as follows:

1 **1. Short title**

2 This is the *Bail Amendment Act 2022*.

3 **2. Commencement**

4 This Act comes into operation as follows —

- 5 (a) sections 1 and 2 — on the day on which this Act
6 receives the Royal Assent (*assent day*);
7 (b) sections 9 and 10 — on the day after assent day;
8 (c) the rest of the Act — on the 28th day after assent day.

9 **3. Act amended**

10 This Act amends the *Bail Act 1982*.

11 **4. Section 3 amended**

12 In section 3(1) insert in alphabetical order:

13

14 *sexual offence* means —

- 15 (a) an offence described in Schedule 2 that is of a
16 sexual nature; or
17 (b) an offence under a written law that has been
18 repealed, if the acts or omissions alleged
19 against the accused that constitute the offence
20 under the repealed written law would constitute
21 an offence referred to in paragraph (a); or
22 (c) an offence of attempting, or of conspiracy or
23 incitement, to commit an offence referred to in
24 paragraph (a) or (b); or
25 (d) an offence of becoming an accessory after the
26 fact (as defined in *The Criminal Code*
27 section 10) to an offence referred to in
28 paragraph (a) or (b);
29

1 **5. Section 6A amended**

2 In section 6A(1) delete the definition of *serious offence*.

3 **6. Section 9 amended**

4 (1) In section 9(1):

5 (a) delete “he” and insert:

6

7 the officer

8

9 (b) delete paragraph (c) and insert:

10

11 (c) without limiting paragraph (a) or (b) — to
12 consider what, if any, conditions should be
13 imposed to enhance the protection of an alleged
14 victim of an offence with which the accused is
15 charged, if —

16 (i) the accused and the alleged victim are,
17 or are reasonably believed by the officer
18 to be, in a family relationship; or

19 (ii) the offence charged is a sexual offence
20 and the alleged victim is a person who is
21 under 18 years of age when the case for
22 bail is to be considered.
23

24 (2) In section 9(2) delete “he is”.

1 **7. Schedule 1 Part C clause 1A inserted**

2 At the beginning of Schedule 1 Part C insert:

3

4 **1A. Terms used**

5 In this Part —

6 ***child victim***, in relation to a discretion to grant bail, means a
7 person —

8 (a) against whom a relevant offence is alleged to have
9 been committed; and

10 (b) who is under 18 years of age when the discretion is
11 to be exercised;

12 ***family member*** has the meaning given in the *Restraining*
13 *Orders Act 1997* section 4(3);

14 ***pending offence***, in relation to a discretion to grant bail,
15 means an offence for which the accused is awaiting trial at
16 the time the discretion is to be exercised, whether or not the
17 discretion arises in the course of proceedings relating to that
18 offence;

19 ***relevant offence***, in relation to a discretion to grant bail,
20 means an offence —

21 (a) in connection with which the accused is, at the time
22 the discretion is to be exercised, in custody awaiting
23 an appearance in court before conviction; and

24 (b) in the course of proceedings relating to which the
25 discretion to grant bail arises.
26

1 **8. Schedule 1 Part C clause 3 replaced**

2 Delete Schedule 1 Part C clause 3 and insert:

3

4 **3. Matters relevant to cl. 1(a)**

5 In considering whether an accused may do any of the things
6 mentioned in clause 1(a), the judicial officer or authorised
7 officer must have regard to the following matters —

- 8 (a) in relation to each relevant offence — the strength
9 of the evidence against the accused;
- 10 (b) in relation to each pending offence —
- 11 (i) the nature and seriousness of the offence;
12 and
- 13 (ii) the probable method of dealing with the
14 accused for the offence, if convicted;
- 15 (c) in relation to each pending offence and each offence
16 of which the accused has previously been
17 convicted — the conduct of the accused, after the
18 time or alleged time of the offence, towards —
- 19 (i) any person against whom it was, or was
20 alleged to have been, committed; and
- 21 (ii) any family member of such a person;
- 22 (d) the character, previous convictions, antecedents,
23 associations, home environment, background, place
24 of residence, and financial position of the accused;
- 25 (e) the history of any previous grants of bail to the
26 accused;
- 27 (f) any other matter which the officer considers
28 relevant.

29 **3AA. Additional relevant matters in cases of sexual offences**
30 **against child victims**

- 31 (1) This clause applies if —
- 32 (a) a relevant offence is a sexual offence against a child
33 victim; and

- 1 (b) the accused is not a child.
- 2 (2) In considering under clause 1(a)(iii) whether the accused, if
3 not kept in custody, may endanger the safety or welfare of
4 the child victim, the judicial officer or authorised officer
5 must have regard to the matters mentioned in subclause (3).
- 6 (3) The matters are the following —
- 7 (a) the age of the child victim;
- 8 (b) the age of the accused;
- 9 (c) whether the child victim is in a family relationship
10 with the accused;
- 11 (d) the living arrangements of the child victim and of
12 the accused;
- 13 (e) the importance of safety, continuity, security and
14 stability in the child victim's —
- 15 (i) living arrangements; and
- 16 (ii) family and community relationships;
- 17 (f) the physical and emotional wellbeing of the child
18 victim.

19 Note for this clause:

20 The *Crimes Act 1914* (Commonwealth) section 15AAA
21 provides that a bail authority must not grant bail to a person
22 charged with, or convicted of, certain Commonwealth child
23 sex offences unless the bail authority is satisfied that
24 circumstances exist to justify bail.

25 **3AB. Concerns of child victims**

- 26 (1) This clause applies if —
- 27 (a) a relevant offence is a sexual offence against a child
28 victim; and
- 29 (b) either —
- 30 (i) the child victim expresses concern to the
31 prosecutor that the accused, if not kept in
32 custody, may endanger the safety or welfare
33 of the child victim; or

- 1 (ii) a family member of the child victim or a
2 police officer investigating the relevant
3 offence informs the prosecutor that the child
4 victim has expressed that concern;
5 and
6 (c) the accused is not a child.
- 7 (2) The prosecutor must inform the judicial officer or authorised
8 officer about —
9 (a) the child victim’s expression of concern; and
10 (b) so far as practicable, the reasons for that concern.
- 11 (3) In considering under clause 1(a)(iii) whether the accused, if
12 not kept in custody, may endanger the safety or welfare of
13 the child victim, the judicial officer or authorised officer
14 must have regard to that information.
15

16 **9. Schedule 1 Part C clause 4 amended**

17 In Schedule 1 Part C clause 4(1) delete “shall be exercised having
18 regard to the questions set out in clause 1 as well as to any others
19 which the judicial officer considers relevant.” and insert:
20

- 21 must be exercised having regard to all of the following —
22 (a) the fact that the accused has been convicted of the
23 offence;
24 (b) the probable method of dealing with the accused for
25 that offence and for any pending offence;
26 (c) the questions set out in clause 1;
27 (d) any other considerations that the judicial officer
28 considers relevant.
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s. 10

1 **10. Schedule 2 amended**

2 (1) In Schedule 2 item 1:

3 (a) before the row relating to s. 221E(1) insert:

4

s. 186(1)	Occupier or owner allowing young person to be on premises for unlawful carnal knowledge
s. 187(2)	Facilitating sexual offence against child outside WA
s. 192(1)	Procuring person to have unlawful carnal knowledge by threat, fraud or administering drug
s. 204A(2)	Showing offensive material to child under 16
s. 204B(2)	Using electronic communication to procure, or expose to indecent matter, child under 16
s. 204B(3)	Using electronic communication to procure, or expose to indecent matter, child under 13
s. 217(2)	Involving child in child exploitation
s. 218	Producing child exploitation material
s. 219(2)	Distributing child exploitation material
s. 219(3)	Possessing child exploitation material with the intention of distributing it
s. 220	Possession of child exploitation material

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(b) after the row relating to s. 318 insert:

- | | |
|------------|---|
| s. 320(2) | Sexual penetration of child under 13 |
| s. 320(3) | Procuring child under 13 to engage in sexual behaviour |
| s. 320(4) | Indecently dealing with child under 13 |
| s. 320(5) | Procuring child under 13 to do indecent act |
| s. 320(6) | Indecently recording child under 13 |
| s. 321(2) | Sexual penetration of child of or over 13 and under 16 |
| s. 321(3) | Procuring child of or over 13 and under 16 to engage in sexual behaviour |
| s. 321(4) | Indecently dealing with child of or over 13 and under 16 |
| s. 321(5) | Procuring child of or over 13 and under 16 to do indecent act |
| s. 321(6) | Indecently recording child of or over 13 and under 16 |
| s. 321A(4) | Persistently engaging in sexual conduct with child under 16 |
| s. 322(2) | Person in authority sexually penetrating child of or over 16 |
| s. 322(3) | Person in authority procuring child of or over 16 to engage in sexual behaviour |
| s. 322(4) | Person in authority indecently dealing with child of or over 16 |

s. 10

s. 322(5) Person in authority procuring child of or over 16 to do indecent act

s. 322(6) Person in authority indecently recording child of or over 16

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(c) after the row relating to s. 326 insert:

s. 327(1) Sexual coercion

s. 328(1) Aggravated sexual coercion

s. 329(2) Sexual penetration of child who is a relative

s. 329(3) Procuring child who is a relative to engage in sexual behaviour

s. 329(4) Indecently dealing with child who is a relative

s. 329(5) Procuring child who is a relative to do indecent act

s. 329(6) Indecently recording child who is a relative

s. 329(7) Sexual penetration of person who is a relative

s. 329(8) Consent to sexual penetration by person who is a relative

s. 330(2) Sexual penetration of incapable person

s. 330(3) Procuring incapable person to engage in sexual behaviour

s. 330(4) Indecently dealing with incapable person

s. 330(5) Procuring incapable person to do indecent act

s. 330(6) Indecently recording incapable person

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(2) In Schedule 2 after item 2 insert:

2AAA. *Children and Community Services Act 2004*

s. 101(1) Failing to protect child from harm

s. 192(1) Employing child to perform in indecent manner etc.

s. 192(2) Parent permitting child to be employed to perform in indecent manner, etc.

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(3) In Schedule 2 after item 2a insert:

2AAB. *Prostitution Act 2000*

s. 5(1) Seeking person to act as prostitute in, or in view or within hearing of, public place, if person is a child

s. 6(1) Seeking person to be prostitute's client in, or in view or within hearing of, public place, if person is a child

s. 15 Acting as prostitute for child

s. 16(1) Causing or permitting child to act as prostitute

s. 16(2) Acting with intent to induce child to act as prostitute

s. 10

s. 17(1) Obtaining payment for prostitution
by child

s. 18(1) Agreement for prostitution by child

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2 (4) In Schedule 2 after item 3 insert:

3

4. Commonwealth Criminal Code

s. 115.1(1) Murder of Australian citizen or
resident

s. 115.2(1) Manslaughter of Australian citizen
or resident

s. 115.3(1) Intentionally causing serious harm to
Australian citizen or resident

s. 115.4(1) Recklessly causing serious harm to
Australian citizen or resident

s. 132.2(1) Robbery

s. 132.3(1) Aggravated robbery

s. 132.4(1) Burglary

s. 132.5(1) Aggravated burglary

s. 270.3(1) Intentional enslavement

s. 270.3(2) Reckless enslavement

s. 270.5(1) Causing person to enter into or
remain in servitude

s. 270.5(2) Conducting business that involves
the servitude of another person

s. 270.6A(1) Causing person to enter into or
remain in forced labour

s. 270.6A(2) Conducting business that involves
the forced labour of another person

s. 270.7	Deceptive recruiting for labour or services
s. 270.7B(1)	Causing person to enter into a forced marriage as victim
s. 270.7B(2)	Being party to a forced marriage not as victim
s. 270.7C	Causing person to enter into debt bondage
s. 272.8(1)	Engaging in sexual intercourse with child under 16 outside Australia
s. 272.8(2)	Causing child under 16 to engage in sexual intercourse outside Australia
s. 272.9(1)	Engaging in sexual activity with child under 16 outside Australia
s. 272.9(2)	Causing child under 16 to engage in sexual activity outside Australia
s. 272.10(1)	Aggravated offence against section 272.8(1) or (2) or 272.9(1) or (2)
s. 272.11(1)	Persistent sexual abuse of child under 16 outside Australia
s. 272.12(1)	Engaging in sexual intercourse with person between 16 and 18 outside Australia — defendant in position of trust or authority
s. 272.12(2)	Causing person between 16 and 18 to engage in sexual intercourse outside Australia — defendant in position of trust or authority
s. 272.13(1)	Engaging in sexual activity with person between 16 and 18 outside Australia — defendant in position of trust or authority

s. 10

s. 272.13(2)	Causing person between 16 and 18 to engage in sexual activity outside Australia — defendant in position of trust or authority
s. 272.14(1)	Procuring child under 16 to engage in sexual activity outside Australia
s. 272.15(1)	“Grooming” child under 16 to engage in sexual activity outside Australia
s. 272.15A(1)	“Grooming” person to make it easier to engage in sexual activity with child under 16 outside Australia
s. 272.18(1)	Benefiting from child sex offence outside Australia
s. 272.19(1)	Encouraging child sex offence outside Australia
s. 272.20(1)	Preparation or planning for offence against section 272.8, 272.9, 272.10, 272.11 or 272.18
s. 272.20(2)	Preparation or planning for offence against section 272.12 or 272.13
s. 273.6(1)	Possessing, controlling, producing, distributing or obtaining child abuse material outside Australia
s. 273.7(1)	Aggravated offence against section 273.6
s. 273A.1	Possession of child-like sex dolls, etc.
s. 302.2(1)	Trafficking commercial quantity of controlled drug
s. 302.3(1)	Trafficking marketable quantity of controlled drug
s. 302.4(1)	Trafficking controlled drug

s. 303.4(1)	Cultivating commercial quantity of controlled plant
s. 303.5(1)	Cultivating marketable quantity of controlled plant
s. 303.6(1)	Cultivating controlled plant for commercial purpose
s. 304.1(1)	Selling commercial quantity of controlled plant
s. 304.2(1)	Selling marketable quantity of controlled plant
s. 304.3(1)	Selling controlled plant
s. 305.3(1)	Manufacturing commercial quantity of controlled drug for commercial purpose
s. 305.4(1)	Manufacturing marketable quantity of controlled drug for commercial purpose
s. 305.5(1)	Manufacturing controlled drug for commercial purpose
s. 306.2(1)	Pre-trafficking commercial quantity of controlled precursor
s. 306.3(1)	Pre-trafficking marketable quantity of controlled precursor
s. 306.4(1)	Pre-trafficking controlled precursor
s. 471.19(1)	Causing child abuse material to be carried by a postal or similar service
s. 471.19(2)	Requesting another person to cause child abuse material to be carried by a postal or similar service
s. 471.20(1)	Possessing, controlling, producing, supplying or obtaining child abuse material for use in offence against section 471.19(1) or (2)

s. 10

- s. 471.22(1) Aggravated offence against section 471.19(1) or (2) or 479.20(1)
- s. 471.24(1) Using a postal or similar service to procure child under 16 for sexual activity with sender
- s. 471.24(2) Using a postal or similar service to procure child under 16 for sexual activity with another person who is an adult
- s. 471.24(3) Using a postal or similar service to procure child under 16 for sexual activity with another person who is under 18
- s. 471.25(1) Using a postal or similar service to “groom” child under 16 for sexual activity with sender
- s. 471.25(2) Using a postal or similar service to “groom” child under 16 for sexual activity with another person who is an adult
- s. 471.25(3) Using a postal or similar service to “groom” child under 16 for sexual activity with another person who is under 18
- s. 471.25A(1) Using a postal or similar service to “groom” another person to procure child under 16 for sexual activity with sender
- s. 471.25A(2) Using a postal or similar service to “groom” another person to procure child under 16 for sexual activity with another person who is an adult

- s. 471.25A(3) Using a postal or similar service to “groom” another person to procure child under 16 for sexual activity with another person who is under 18
- s. 471.26(1) Using a postal or similar service to send indecent material to child under 16
- s. 474.22(1) Using a carriage service for child abuse material
- s. 474.22A(1) Possessing or controlling child abuse material obtained or accessed using a carriage service
- s. 474.23(1) Possessing, controlling, producing, supplying or obtaining child abuse material for use through a carriage service
- s. 474.23A(1) Conduct for the purposes of electronic service used for child abuse material
- s. 474.24A(1) Aggravated offence against section 474.22(1), 474.22A(1) or 474.23(1)
- s. 474.25A(1) Engaging in sexual activity with child under 16 using a carriage service
- s. 474.25A(2) Causing child under 16 to engage in sexual activity with another person using a carriage service
- s. 474.25B(1) Aggravated offence against section 474.25A(1) or (2)
- s. 474.25C Using carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, child under 16

s. 10

- s. 474.26(1) Using carriage service to procure child under 16 for sexual activity with sender
- s. 474.26(2) Using carriage service to procure child under 16 for sexual activity with another person who is an adult
- s. 474.26(3) Using carriage service to procure child under 16 for sexual activity with another person who is under 18
- s. 474.27(1) Using carriage service to “groom” child under 16 for sexual activity with sender
- s. 474.27(2) Using carriage service to “groom” child under 16 for sexual activity with another person who is an adult
- s. 474.27(3) Using carriage service to “groom” child under 16 for sexual activity with another person who is under 18
- s. 474.27AA(1) Using carriage service to “groom” person to procure child under 16 for sexual activity with sender
- s. 474.27AA(2) Using carriage service to “groom” person to procure child under 16 for sexual activity with another person who is an adult
- s. 474.27AA(3) Using carriage service to “groom” person to procure child under 16 for sexual activity with another person who is under 18
- s. 474.27A(1) Using carriage service to transmit indecent communication to child under 16

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