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NSW Legislative Council Hansard

CRIMES (INTERSTATE TRANSFER OF COMMUNITY BASED SENTENCES) BILL

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Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [6.05 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

This bill provides for New South Wales participation in a scheme for the formal transfer and enforcement of community-based sentences between Australian jurisdictions.

Community-based sentences are those sentences that are served within the community, are imposed as an alternative to imprisonment, and can be supervised and administered in the local jurisdiction. Community-based sentences are good behaviour bonds, community service orders, home detention orders and periodic detention orders.

At present, all Australian jurisdictions have arrangements in place for transferring the administration of good behaviour bonds. However, no arrangement exists for the bond itself to be transferred. There is also no arrangement for the transfer of other types of community-based sentence.

Currently, if an offender breaches a community-based sentence while in a new jurisdiction, he or she remains accountable to the original sentencing jurisdiction. This situation is less than ideal because it limits the opportunities for enforcement action in the case of an offender who does not comply with their sentence. Extradition procedures are required to return the offender to the original jurisdiction if the offender does not return of their own volition, which can involve the expenditure of significant time, money and effort.

The project of developing legislation suitable for the formal reciprocal transfer and enforcement of community-based sentences between jurisdictions has been ongoing since 1996. Since that time, the Department of Corrective Services has worked in close consultation with members of a working group comprising representatives from each Australian state and territory, relevant agencies and the Parliamentary Counsels Committee, on the development of a suitable legislative model.

In 2000, ACT Corrective Services was given the task of drafting initial legislation for this purpose. The Community Based Sentences (Transfer) Act 2003 was passed by the ACT Legislative Assembly on 20 February 2003. This Act provides model legislation for implementation in all Australian states and territories.

The bill models the scheme provided by the ACT Community Based Sentences (Transfer) Act 2003.

It will be trialled between New South Wales and the ACT in order to establish suitable administrative processes for the efficient running of the scheme. Following an evaluation of the scheme and subsequent discussion and agreement by the jurisdictions, similar legislation will be enacted in each Australian state and territory.

It is impossible to predict accurately how many persons with community-based sentences would transfer into and out of New South Wales if all Australian jurisdictions introduced complementary legislation to enable the transfer of such sentences.

The legislative scheme that already exists for the interstate transfer of parole orders, and the current administrative scheme for the interstate transfer of good behaviour bonds, provide a rough guide.

On the basis of transfers which currently occur under these two schemes, the Department of Corrective Services has estimated that when the proposed scheme for the transfer of community-based sentences becomes Australia-wide, around 200 additional offenders will transfer into New South Wales each year, and around 400 offenders will transfer out of New South Wales each year. If the scheme proceeds New South Wales may therefore be expected to become a "net exporter" of persons with community-based sentences.

I move now to the detail of the bill.

The bill will only apply to sentences imposed in relation to adults. This is because many jurisdictions, including New South Wales, have separate legislative, administrative and judicial regimes for adults and juveniles, and to provide for a single piece of legislation covering both distinct regimes would be administratively inefficient.

Under the scheme created by the bill, an offender with a community-based sentence in New South Wales will be able to transfer the supervision and administration of the sentence to a new jurisdiction on a voluntary basis, provided certain requirements are satisfied.

The offender will then be managed in the new jurisdiction as if a court of the new jurisdiction had imposed the sentence, except for purposes of appeal or review, which will remain the responsibility of the originating jurisdiction.

The scheme will operate in much the same way as the scheme established by the Prisoners (Interstate Transfer) Act 1982 and related interstate legislation.

The sentences that may be transferred from and to New South Wales under the scheme are:

- community services orders;
- home detention orders;
- periodic detention orders; and
- good behaviour bonds.

The bill will not apply to certain types of sentence that may be served in the community namely:

- parole orders;
- sentences to the extent that they impose fines or other financial penalties; and
- sentences to the extent that they require the making of reparations.

Interstate authorities which will administer the scheme will have a designated authority as the authority for that jurisdiction. Having one local authority for each jurisdiction will ensure that there is a single communication point between an offender and a supervising authority, establishing clear communication procedures and practices.

The bill provides that the local authority is to be the Commissioner of Corrective Services who will process requests for transfer of sentences into and out of New South Wales. Details of the transferred sentences will be recorded and maintained on a register. The local authority will make decisions on the basis of information sent by the relevant interstate authority regarding an offender and sentence, provided specific criteria are satisfied.

The criteria that the local authority will apply when deciding whether to accept a request for transfer are as follows:

- the offender has consented to the order and has not withdrawn that consent;
- there is a sentence in New South Wales that corresponds to the sentence imposed in the interstate jurisdiction;
- the offender can comply with the sentence in New South Wales; and
- the sentence can be safely, efficiently and effectively administered in New South Wales.

The local authority will be able to refuse a request for transfer if the criteria are not met, or otherwise at the local authority's discretion. This will be particularly relevant in a case where the local authority becomes aware of concerns expressed by an individual for his or her safety if the offender were to reside in New South Wales.

Discretion may also be exercised in a case where the offender poses an unacceptable administrative burden to New South Wales because the offender has a history of not complying with directions issued by a supervising officer.

If deciding to accept a request for transfer, the local authority may choose to register the sentence, decline to register the sentence or require the offender to meet certain preconditions before registering the sentence.

Imposing preconditions provides a means for the local authority to confirm the offender's ability and willingness to comply with the sentence in New South Wales, before registration and formal transfer occurs. A precondition may include the offender satisfying the local authority before a stated time that the offender is living in New South Wales or that the offender is reporting to a stated person in New South Wales at a stated time and place.

If the local authority decides to accept a request for transfer and registers the sentence, the offender will be supervised and administered by the Probation and Parole Service as though the sentence had been imposed in New South Wales.

The administration of a sentence includes administering a breach of the sentence. Therefore, if the offender does not comply with the conditions of the transfer order, he or she may be re-sentenced by a New South Wales court according to the laws of this State. The New South Wales court may, however, refer to the penalty range and type that would have been applicable in the original jurisdiction, so as to ensure that the transfer does not serve to avoid

the sentencing intentions of the original jurisdiction.

Registration of the sentence does not affect an offender's right to seek an appeal or review of the conviction or finding of guilt or the imposition of a sentence in the original jurisdiction.

As a matter of practicality, if the offender seeks an appeal or amendment of the conviction or the sentence relating to the conviction, the appeal will be made to the original jurisdiction and not to a New South Wales court, even though New South Wales is the jurisdiction supervising and administering the transferred sentence.

In the case that an appeal or request for amendment of sentence is successful, the amended sentence will be administered and supervised in New South Wales as though a New South Wales court had upheld the appeal or made the amendment. It would be contrary to natural justice to prevent an offender from seeking an appeal or review of their conviction or sentence by virtue of registration in a jurisdiction other than the original jurisdiction.

The Government believes that this bill is pivotal legislation. There are many reasons why offenders may wish to transfer to a new jurisdiction. Notable reasons may be proximity to improved family and community support or the prospect of increased choice of employment or study opportunities.

Allowing transfer to a new area in which the offender has good support increases the probability of the offender fulfilling the order, being positively re-integrated back into the community and being diverted from the prison system.

The future involvement of New South Wales in the trial of the scheme with the ACT highlights the contribution New South Wales is making to the corrective services framework nationally, by the framing of a cohesive national approach to corrective services provision and enforcement. The Government encourages early passage of the Bill to ensure prompt and efficient implementation of the scheme.

I commend the bill to the House.

The Hon. DAVID CLARKE [6.06 p.m.]: The Opposition does not oppose the Crimes (Interstate Transfer of Community Based Sentences) Bill, which is designed to establish a scheme allowing for the formal transfer and enforcement of community-based sentences between Australian jurisdictions, such sentences being those that are imposed as an alternative to imprisonment and that can be supervised and administered in the local jurisdiction. Community-based sentences available in New South Wales are community service orders, home detention orders, periodic detention orders and good behaviour bonds. The bill specifically excludes parole orders, fines and reparation orders.

The scheme proposed by this bill will enable an offender with a community-based sentence in New South Wales to transfer voluntarily the supervision and administration of the sentence to a new jurisdiction—that is, another State or Territory—subject to certain requirements specified by the bill. Once the transfer of supervision and administration has been affected, the offender will be managed in the new jurisdiction as if a court of the new jurisdiction had imposed the sentence, with the exception that appeals and reviews will remain as the continuing responsibility of the originating jurisdiction.

Requests for transfer to and from the local jurisdiction will be processed by the Commissioner of Corrective Services as the designated local authority. A register will be maintained to record details of all transfer orders. The commissioner will make decisions pursuant to information on the offender and the sentence applied by the commissioner's interstate equivalent, but subject to satisfaction of criteria: first, that the offender has consented and not withdrawn consent to the order; secondly, that there is a sentence in the local jurisdiction corresponding to the sentence imposed in the interstate jurisdiction; thirdly, that the offender can comply with the sentence in the local jurisdiction; and, fourthly, that the sentence can be safely, efficiently and effectively administered in the local jurisdiction.

The local authority will be empowered to refuse a request for transfer if the criteria are not met. Even if the criteria are met, the local authority may, using its discretion, refuse a transfer request—for example, where safety concerns are expressed by an individual should the offender reside in the local jurisdiction, or in the case of an offender posing an unacceptable administrative burden to the local jurisdiction because of an offender's history in not complying with directions issued by the supervising officer.

Where a local authority accepts a transfer request, the offender will be administered as though the sentence had been made in the local jurisdiction. This will include administering a breach of the sentence so that an offender will be resentenced by a court of the local jurisdiction, according to its laws, if the offender does not comply with the transfer order.

The bill only applies to sentences imposed on adults. The Commissioner of Corrective Services, as the designated local authority, is authorised to delegate functions, other than the power of delegation itself, to other Department of Corrective Services staff. The Minister is to review the proposed Act as soon as possible after five years from the date of assent and table in Parliament a report on the review.

As I have already indicated, the Opposition does not oppose the bill, which allows the transfer and enforcement of

community-based sentences between Australian jurisdictions in a similar way to that currently allowed for the transfer of full-time sentences. As a result, offenders will have the opportunity to be in closer proximity to their family, employment and educational opportunities, and general community support throughout the period of sentence. Hopefully this will serve to assist offenders to more successfully reintegrate into the community as law-abiding citizens, and thereby help reduce the alarmingly high rate of recidivism that exists among offenders in New South Wales.

There is also a community expectation that as a result of this legislation offenders will not in any way serve a more lenient sentence under the new jurisdiction. The Opposition will monitor the situation, on behalf of the people of New South Wales, to ensure that this is not the unintended consequence of the legislation.

Ms LEE RHIANNON [6.11 p.m.]: The Greens also support the Crimes (Interstate Transfer of Community Based Sentences) Bill. Although we believe the legislation is somewhat minimalist, it is refreshing that there appears to be unanimous support for it. Even though it is minimalist, as it comes under the justice—or, as referred to by some, law and order—banner, I wonder whether we would have such measures closer to an election or whether we would be back to beating the drum, which, unfortunately, is so much part of the way the Government has done business when it comes to prisoners' rights.

In 2003 we had 12 major pieces of legislation that were pretty full-on and divisive when it came to justice issues. It is therefore pleasing to have legislation that addresses recidivism, which, as we know, is a huge problem in our society and seems to go hand in hand with the way the prisons of this State are organised.

The Hon. John Hatzistergos: It has nothing to do with prisons.

Ms LEE RHIANNON: I acknowledge the interjection of the Minister for Justice. Recidivism is a major problem. We are talking about a form of punishment. The majority of the people in this State who go to gaol will offend again. So obviously those issues are relevant here. Providing people who have offended with further opportunities for rehabilitation, employment or study, and allowing them to move closer to their families and friends, is an evolved way of promoting a sound justice system.

The Hon. John Hatzistergos: Thank you.

Ms LEE RHIANNON: I acknowledge the Minister's interjection. I again put out a hand to Labor. If the Government does the right thing to address problems with the way justice is meted out in this State, we will certainly work with it. At the moment too many of our laws are turning the system backwards rather than pushing it forward, as this bill is doing.

The bill recognises that people's lives are complex and that we have a responsibility as a society to foster rehabilitation in the best way we can. This justice initiative is, unfortunately, vastly at odds with many others introduced by the Carr Government. Once again I urge the Government to continue the kind of progressive policy that is provided in this bill. We urgently need more resources for rehabilitation services, drug education and training, and employment programs.

We often hear talk about the need for rehabilitation programs in gaols, but so much of the literature shows that rehabilitation programs conducted in our gaols are verging on useless, and that the key issue is to keep as many people out of our gaols as possible. That could easily be done if the Government were to take a harm minimisation approach to drug law reform.

The Hon. John Hatzistergos: Oh, of course!

Ms LEE RHIANNON: I acknowledge the Minister's interjection. Again, the Government's approach is very disappointing. Perhaps the Minister will address this in his reply. Why should people who take drugs but who have not harmed others end up in gaol?

The Hon. Rick Colless: Because they broke the law.

Ms LEE RHIANNON: I would imagine that you have probably broken the law at some time in your life, but we do not put you in gaol. Not every person who breaks the law goes to gaol, and the Hon. Rick Colless is well aware of that. It is important to look at the whole issue of harm minimisation. I remind members of the Federal Government program that I spoke about last week. The Federal Government uses the rhetoric "Get tough on drugs". Under the program the Federal Government has provided funding to give police in all States discretionary powers. Police can issue a caution to people found in possession of small amounts of drugs—not just cannabis, but also ecstasy, heroin and amphetamines. Similar legislation has been introduced in Western Australia. But the Government turned its back on the two trials that were held, and that is absolutely tragic. It was taking a small step to bring some sanity into ways of saving people's lives—

The Hon. Rick Colless: Have you ever been burgled by a drug taker?

Ms LEE RHIANNON: I have not, and I would not want to be in that position. But the solution is not to send these people to gaol. If we send them to gaol, when they are released they will be back on the streets looking for a quick

bit of money, and then it will all happen again. If the Government does not start looking at harm minimisation, the situation will get worse. At the moment we are able to agree on this bill, and I think that is a small step. But, given the interjections, clearly we have a long way to go. I urge both Labor and the Opposition to listen to the Prime Minister. Perhaps the program to which I referred slipped under the Prime Minister's guard, but he signed off on it, and Major Watters is conducting the program.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.17 p.m.]: The Australian Democrats support the Crimes (Interstate Transfer of Community Based Sentences) Bill. We believe that flexibility in sentencing and the ability to tailor a sentence, or sentence alternative, to an individual is a very important step—and to do so through an interstate agreement is also a good idea. I am not sure whether magistrates are as aware as they might be of the various programs that are provided as alternatives to prison, and whether as much use of them is made as could be made. A person I know who was supervising alternatives to prison for drug offenders in Nambucca Heads—I concede that this was some time ago—told me that the lack of supervision meant that prisoners who had trouble getting out of bed did not turn up when required, and that in turn meant, of course, that police would have to escort them to Grafton gaol at vast cost.

The Hon. Catherine Cusack: It's not the Government's fault that they wouldn't get out of bed.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The small amount of supervision that might have been necessary to get them out of bed might have stopped them going off to gaol. In other words, the program was poorly supervised.

The Hon. Catherine Cusack: That's ridiculous!

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I acknowledge the interjection. I am simply making the point that it was much more expensive to send two police officers to Grafton for a day to deliver an offender than it would have been to supervise the drug offender's program. If the object is to save the State money and keep people out of gaol, I suggest there are many cheaper ways of doing it than sticking them back in gaol. The trend—which I hope is the trend and this bill is almost against that trend—to keep people out of gaol and to tailor their sentences with a view to reducing the recurrence of crime, is a step to be welcomed. Certainly the Democrats will welcome it when it happens as a result of this bill.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [6.19 p.m.], in reply: I thank honourable members for their contributions. I shall make some brief observations about matters raised by Ms Lee Rhiannon and the Hon. Dr Arthur Chesterfield-Evans. This bill is not a soft bill, contrary to what those members may think. The object of it is to facilitate sentences being successfully completed. If an offender commits an offence in a jurisdiction other than that in which he or she is ordinarily resident, the sentencing options available to a magistrate or a judge dealing with that matter may be constrained by the fact that the person is not resident in that jurisdiction. Therefore, magistrates and judges may be inclined to impose sanctions other than community-based sanctions, such as monetary penalties, when the circumstances may warrant more severe sanctions, although not as severe as a full-time custodial penalty.

This arrangement provides an avenue whereby, in appropriate circumstances, a community-based sentence can be transferred to another jurisdiction in which the offender is ordinarily resident. It also provides, particularly in the immediate future, for a trial of this system with the Australian Capital Territory, a jurisdiction with which we have, obviously, considerable contact, particularly through cross-border arrangements with communities around the Australian Capital Territory. This will ensure the success of the system of community-based sentences being completed in the jurisdiction in which the offender is ordinarily resident so that the offender does not ultimately have to face the consequences of having a community-based sentence revoked and then, potentially, having to go into full-time custody.

At present people travel a great deal in the New South Wales jurisdiction, and community-based orders may be imposed for offences involving driving breaches. Such offences can be appropriately dealt with in the jurisdiction in which the offence occurs—in the knowledge, of course, that there is a capacity for the sentence to be transferred ultimately to a jurisdiction in which the offender could successfully complete it. That is what this bill seeks to do. There was some reference made to the awareness of magistrates to programs offered in the system. Officers from the Department of Corrective Services regularly attend training sessions conducted at magistrates and judges conferences to inform them of what takes place. I would also point out for the record that judicial officers have a statutory right to visit correctional facilities to ascertain that information for themselves, if they are inclined to take up that option—and some judges do.

Motion agreed to.

Bill read a second time and passed through remaining stages.

[The President left the chair at 6.24 p.m. The House resumed at 8.00 p.m.]

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