NSW Legislative Assembly Hansard

Crimes (Administration of Sentences) Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 17 October 2006.

Second Reading

Mr PAUL McLEAY (Heathcote—Parliamentary Secretary) [11.38 p.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time.

The object of the Crimes (Administration of Sentences) Amendment Bill 2006 is to make various amendments to the Crimes (Administration of Sentences) Act 1999, which is the principal Act that governs the administration of sentences. The amendments will make a number of miscellaneous changes to the Act and will clarify certain aspects of the operation of the Act. The amendments relate to such things as lifetime supervision of lifetime parolees, transfer of juvenile inmates to prison hospitals, home visits to offenders under periodic detention orders and home detention orders, reinstatement of periodic detention orders that have been revoked, suspension of warrants of commitment, creation of a unit within the department to oversee compliance and monitoring of offenders in the community, and other minor, consequential and ancillary matters. The bill also makes a consequential amendment to the Children (Detention Centres) Act 1987. I shall now outline some of the proposed changes to the Act.

The bill inserts a new section 128B to provide that any parole granted to an offender serving an existing life sentence within the meaning of schedule 1 to the Crimes (Sentencing Procedure) Act 1999, namely, a life sentence imposed in accordance with the law prevailing before the truth in sentencing legislation of 1989, which commenced in 1990, is to be subject to a condition requiring lifetime supervision during which the offender must comply with obligations imposed by the Commissioner of Corrective Services. Those obligations must not be inconsistent with the standard conditions imposed by the regulations or any condition imposed by the sentencing court or the State Parole Authority. The proposal to make life parolees subject to lifetime supervision would remove the need for the State Parole Authority to consider whether or not to make further supervision orders: life parolees would always be subject to lifetime supervision on parole.

The bill provides that the Commissioner of Corrective Services is to have the power to determine the level of supervision to be applied to life parolees and may oversight the case management of a life parolee, including being able to impose additional and reasonable supervisory conditions, not inconsistent with the conditions determined and imposed by the State Parole Authority, and be able to refer a matter to the State Parole Authority for consideration of breach action, where the commissioner is of the opinion that the behaviour of the parolee warrants such. Given the level of public interest in life parolees and the time frame of their parole order—that is, the remainder of a lifetime—it is appropriate that the Commissioner of Corrective Services have the authority to determine the level of parole supervision applicable to a life parolee.

The high level of case management and supervision of life parolees may include the imposition of obligations to supplement parole conditions imposed by the State Parole Authority, such as a change in the frequency of home visits, electronic monitoring or other forms of supervision made possible by future advances in technology. If, for example, the commissioner determined that electronic monitoring was necessary for a life parolee, it would then be a breach of parole for the life parolee to remove or interfere or otherwise tamper with, the electronic monitoring equipment.

The availability of the proposed commissioner's power with respect to life parolees should assist to re-assure the public that the eventual release of notorious offenders does not compromise public safety. The bill proposes to amend section 41C (2) of the Act to enable the Commissioner of Corrective Services to order juvenile inmates from Kariong Juvenile Correctional Centre or any other future juvenile correctional centre, to be transferred to Long Bay Hospital, or any other adult correctional centre that provides health services, for medical attention without the need for the involvement of the Minister for Justice or the Serious Offenders Review Council. Currently under section 41C (2) the Minister may order that a juvenile inmate be transferred from a juvenile correctional centre to an adult correctional centre on the recommendation of the commissioner if the inmate is of or above the age of 18 years, or on the recommendation of the Serious Offenders Review Council [SORC] if the inmate is under 18 years of age.

The current mechanism provided in section 41C (2) is not efficacious if there is a need to transfer a juvenile offender from Kariong Juvenile Correctional Centre to Long Bay Hospital, an adult correctional centre, for medical services. Under section 41C (3) the commissioner and the SORC cannot make a recommendation to the Minister for the transfer of a juvenile inmate unless they are satisfied that:

(a) the inmate wishes to be transferred;

(b) the inmate's behaviour is or has been such that he or she should be transferred;

(c) it is in the inmate's best interests that he or she be transferred; or

(d) the association of the inmate with other juvenile inmates at the juvenile correctional centre constitutes, or is likely to constitute, a threat to the personal safety of any other person, the security of the juvenile correctional centre, or the good order and discipline within the juvenile correctional centre.

A transfer to effect medical services or treatment is not entertained or encompassed by either the current wording of, or regime constructed by, the legislation as it stands. While it is arguable that section 41C (3) (c), which refers to the inmate's best interests, may be applicable in circumstances where an inmate requires medical treatment, it is felt that the proposed amendment is required for the sake of providing clarity. The regime that is constructed, whereby the Minister is the decision maker based on advice received from the commissioner or the SORC, is one which takes time and is ill suited to the immediacy of the situation presented by the need for medical treatment and services. Further, the SORC is a part-time body and difficulties may present in gathering a quorum at short notice. Therefore, delays may be experienced in making urgent decisions.

As the commissioner is charged with the responsibility for the care, direction, control and management of all correctional facilities under section 232 of the Crimes (Administration of Sentences) Act 1999, it is preferable that the commissioner is the decision maker in a situation where a transfer is to be effected for medical treatment or services. The provisions of section 41C need to read in conjunction with section 23, which confers on the commissioner a general power to transfer inmates from one correctional centre to another. Under section 23 (1) the commissioner is able to move adult inmates from one correctional centre to another for a variety of reasons. However, section 23 (2) limits the commissioner's ability to move juvenile inmates. Section 24 of the Act permits the commissioner to order that an inmate be transferred to a hospital or some other place if of the opinion that it is necessary or desirable for the inmate to receive medical attention. However, the section does not apply to the transfer of juvenile inmates.

Recently, a juvenile inmate at Kariong required a mental health assessment. The only way for the assessment to be completed was for the inmate to be transferred from Kariong to Wyong Public Hospital, where the inmate was admitted for one week. During this time two staff from Kariong had to be rostered for each shift, 24 hours per day for the seven days of the juvenile's admission. The overtime cost was significant. At the end of the assessment period the inmate was returned to Kariong with no change to his medication. Owing to the existing terms of the legislation the department had no alternative but to place the public at risk and incur an overtime expense in order for the mental health assessment to be undertaken. The proposed amendment will provide for future assessments to be carried out at Long Bay hospital, at no risk to the public and with no overtime cost to the department.

A senior psychiatrist, Professor Greenberg, who is undertaking work for Justice Health and who is experienced in both the adult and juvenile correction environments, subsequently informed the Department of Corrective Services that he could have undertaken the necessary assessment at Long Bay hospital had it been legislatively possible to transport the juvenile to the prison hospital. Further, Kariong is a small correctional centre with a limited staffing quotient. All staff at Kariong have to satisfy stringent child protection checks and undergo specific training in dealing with juveniles.

Accordingly, when staff need to be reassigned to cover hospital duties for admitted juvenile inmates, there is limited capacity for staff from other adult correctional centres to be redirected to work at Kariong, thereby filling the shortfall. It is in the interests of fair and equitable time out of cells for all inmates at Kariong, and in the interests of avoiding unnecessary admission to the public hospital system and juvenile inmates who can be appropriately and cost-effectively managed at Long Bay hospital, that the Act be amended. The bill also amends section 41C to require prior consultation with the chief executive officer of Justice Health before such a transfer may be made.

The bill amends section 81 to make it an obligation under an offender's periodic detention order that the offender will permit home visits by members of staff of the Department of Corrective Services. The purpose of the home visits is to ensure that the reasons provided by an inmate for a leave of absence or failure to report are genuine. A similar amendment to section 104 is proposed in relation to offenders under home detention orders. The bill amends section 114 of the Act to require an offender to continue performing community service work after the expiry of the relevant maximum period for the community service work order. Under section 114 applications for an extension of the period of a community service order must be made on the grounds that it would be in the interests of justice to extend that period, having regard to circumstances that arise since the relevant community service order was made.

At present, even if an extension is granted a community service order offender must cease work in the period between the expiration of the original community service order and when the court grants an extension of the order. It is in the interests of justice that when an application for an extension to a community service order is

made in good faith prior to the expiration of the order, a community service order offender may be required to continue to work after the expiration of the original order until the court determines whether to grant the extension.

The bill amends section 164A of the Act to ensure that an offender's application for the reinstatement of a periodic detention order that has been revoked may not be made until the offender has spent at least three months in custody since the order was revoked. Currently, under section 164A an offender whose periodic detention order has been revoked may apply to the State Parole Authority for an order reinstating the revoked periodic detention order in respect of the remaining balance of the offender's sentence. A condition of the reinstatement being granted is that the offender must have served, since the revocation, at least three months of his or her sentence by way of full-time detention. However, currently offenders are applying for reinstatement well before they have served at least three months in full-time detention and the authority is considering such applications shortly after the three-month period has expired. The purpose of the amendment is to restore the corrective value of the minimum period of full-time detention that is required to be served after a periodic detention order is revoked.

Reinstatement is intended to be a privilege, not a right, and an offender should be required to satisfy the State Parole Authority that the circumstances that caused their periodic detention order to be revoked have changed so that the offender is once again suitable for periodic detention in accordance with section 66 of the Crimes (Sentencing Procedure) Act 1999. The bill provides that in the application for reinstatement, the offender must indicate what the offender has done, or is doing, to ensure his or her compliance with the order in the event that it is reinstated. The bill amends section 181 to enable the State Parole Authority to recall or suspend any warrant that it has issued under that section. This power is expected to be useful, for example, when, after the revocation of a periodic detention order, medical certificates are received that justify the periodic detainee's absence from periodic detention, for example, due to hospitalisation or being placed in a drug rehabilitation clinic.

The bill inserts a new section 235G into the Act to enable the commissioner to appoint members of staff of the department as compliance and monitoring officers. The unit will oversee compliance and monitoring of offenders in the community, namely those under periodic detention, home detention and community service orders and external leave programs. Compliance and monitoring officers will be able to exercise, in relation to offenders outside a correctional centre, certain powers of arrest, powers of drug and alcohol testing and powers of search and detention. Those powers are currently exercisable by correctional officers only.

Any qualifications on the exercise of those powers by correctional officers will apply equally to their exercise by compliance and monitoring officers except that they will be able to be exercised wherever the offender happens to be. The proposed section is not to be construed as conferring a power of entry to premises. In relation to access by victims to all documentation concerning serious offenders, section 193A subsection (2) of the Crimes (Administration of Sentences) Act 1999 currently gives victims of a serious offender access to all documents held by or, on behalf of, the State Parole Authority in relation to the offender. Feedback from representatives of key victims lobby organisations is that giving victims access to all documents has not benefited them. By way of example, victims have found it distressing to read that a serious offender has had access to medication for a psychological disorder, whereas the victim has not had access to that.

Other information about a serious offender's participation in a specialist program may be wrongly interpreted by the victim. For example, the custody-based intensive therapeutic program for sex offenders may discharge an offender from the program early. The early discharge may happen for any number of reasons, not all of which are negative or indicative of some kind of failing on the serious offender's behalf. However, the victim may not understand that and instead may latch on to the reference to the early discharge, and interpret it only as a negative situation, whereas that may well not be the case. Accordingly, with the consent of the key victims lobby groups the Government is amending section 193A to restrict the class of documents to which a serious offender's victim is entitled to be given access. Victims will continue to have access to documents that indicate the measures the offender has taken, or is taking, to address his or her offending behaviour. I commend the bill to the House.