



Legislative Council

Drug Court Amendment Bill Hansard

- Extract

20/11/2002

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.18 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Drug Court has been a successful pilot project, which has benefited the community and many program participants. It is this success that has influenced the Government's decision to extend the project for a further two years. Honourable members would by now be aware of the positive results of the Bureau of Crime Statistics and Research evaluation of the New South Wales Drug Court. It represents—I am told—the first cost-benefit analysis of a crime and punishment program in Australia. The bureau found the Drug Court program has been more cost effective for the community than imprisonment. The number of drug-related offences was reduced, illicit drug use was significantly reduced throughout the program and the health of court participants improved, thereby lessening the burden on offender and health system alike. This is a significant inroad into drug-related crime. When one considers that a significant number of people in our prisons are there at least in part as a result of drug-related crime, the Drug Court performs a significant community service.

Another benefit is that participants remaining on the program showed clear and sustained evidence of improvement in their health and social functioning. This reduces the burden on our health system, and improves the amenity and safety of our communities. While the Drug Court offers offenders an alternative to conventional custodial sanctions, an offender who breaches this program is basically blowing his or her last chance. The program is the last stop before a full-time prison sentence. There is a clear incentive for participants to reject their habit and improve their quality of life. The benefits of the Drug Court program are not restricted to the graduates. Indeed, the Government's advice is that nearly all of those who participate in the program are costing the community less and are less likely to commit another crime. The Attorney General's Department convened a senior working party in May 2001 to provide advice to Government on future Drug Court activity in New South Wales. This bill introduces a number of the recommendations of the Bureau of Crime Statistics and Research evaluation and the senior working party. The bill has also been informed by the practical experience of the Drug Court.

I now turn to the amendments. The bill proposes that section 3 of the Act be amended to reflect the role of the Drug Court in reducing drug dependency in adult offenders, promoting their reintegration into the community and thereby reducing their need to resort to criminal activity to support that dependency. Section 3 of the Act sets out the object of the Act—namely, "to reduce the level of criminal activity that results from drug dependency". This stated objective suggests that the only issue facing Drug Court participants is their drug dependency. The experience of the Drug Court is that participants have a range of health and social deficits, not only drug dependency, that needs to be addressed to achieve rehabilitation. The proposed amendment acknowledges the broader role the Drug Court plays in reintegrating participants into the community. The bill proposes that the maximum period for which an offender can be committed to a correctional centre for detoxification and assessment under section 8A of the Act be extended from seven to 21 days. This is a largely procedural and commonsense change, which acknowledges that the period required for detoxification and assessment can exceed seven days.

The bill proposes that section 8A of the Act be expanded to cover participants who are held in custody awaiting the commencement of a suitable treatment plan. This relates mainly to offenders who are waiting for a Drug Court-funded bed within one of the contracted residential rehabilitation services. These places are limited, and even if a bed is available it may not be suitable for the individual needs of the offender. Therefore, many offenders spend several weeks waiting for their Drug Court program to commence. The amendment would allow this to occur without additional court appearances. The bill proposes that the Act specify the range of conditions that may be imposed upon a participant in the course of a program. In the same way that section 16 of the Act outlines the range of sanctions and rewards that may be imposed upon an offender, the Act should outline the range of conditions that may be imposed upon an offender during the course of a program.

It is important that offenders are made aware at program entry of the possible conditions to which they may be made subject. This will include attendance at treatment, requirements to undergo case management supervision, and requirements to undergo judicial supervision and testing for drug use. The bill proposes that the Drug Court Act incorporate the concept that, should the Drug Court be satisfied on the balance of probabilities that having regard to the objects of the Drug Court Act the offender has substantially complied with the program, the Drug Court may terminate the program. Currently participants need to choose to leave the program, and while the court actively encourages them to do so this amendment would support those people exiting the program more quickly. It needs to

be made clear that this amendment cures an anomalous situation. In effect, it empowers the court to make the same decision to terminate participation in the program as is available to the program participant.

Upon a termination decision by the Drug Court for substantial compliance, it is the case that stern conditions will often apply, including the imposition of a custodial sentence. The bill proposes that section 10 (1) (b) be deleted and amended so that if the Drug Court is satisfied, on the balance of probabilities, that the offender is unlikely to make any further progress on the program or that the offender's further participation in the program poses an unacceptable risk to the community that the person may re-offend it may decide to terminate the program. Currently, the court cannot terminate the program of an offender who has been charged with an offence involving violent conduct after entering the program unless the court is also satisfied that "no useful purpose is to be served" by the offender's further participation in the program. The proposed amendment would allow the court to act decisively to terminate the participation of an offender not deemed to be making suitable progress in the program, and allow that program place to be immediately allocated to a new participant.

As I have stated, the court is presently required to be satisfied that there is "a useful purpose" to further participation, thereby allowing people who are making no effort to continue with a program if there remains a benefit that could be achieved. The amendment means that those who are not benefiting will not be available to avoid serving their sentence. The proposed amendment should substantially increase the cost-effectiveness of the program. The bill proposes that the protection afforded by section 31 (3) of the Act be extended to include reports in relation to a client's general progress on the program, and communications made by members of staff of the Drug Court to other members of staff at the Drug Court in the course of any pre-hearing discussions. This amendment would ensure that the regular reports submitted by service providers have the status of protected information. The bill proposes that section 58 of the Crimes (Sentencing Procedure) Act 1999 not apply to sentences imposed under sections 7 and 12 of the Drug Court Act.

Section 58 of the Crimes (Sentencing Procedure) Act 1999 provides that in particular circumstances a local court may not impose a new sentence of imprisonment to be served consecutively with another sentence of imprisonment. This provision creates a difficulty when a participant on the Drug Court program commits a further offence after commencing the program. I am advised that in some cases an additional penalty cannot be imposed by the court for an offence committed while on the program. This amendment addresses that concern. The bill also proposes that matters that are the subject of an ex parte conviction be able to be taken into account by the Drug Court when imposing a sentence under section 7 of the Act. The practice of the court is to call in all outstanding charges against an offender and sentence them under section 7 for all offences outstanding as at the date of their entry into the program. It is the case that offenders who appear in the Drug Court may be the subject of outstanding warrants that have been issued as a result of their failure to attend other proceedings in the Local Court.

Sometimes the Local Court has convicted the offender ex parte and issued a warrant for his or her arrest. However, once an offender has been convicted, such matters cannot be dealt with on indictment or cannot be taken into account on sentence in the Drug Court. All outstanding matters should be able to be dealt with by the Drug Court at the time a person is sentenced prior to commencing the program. So that they can be taken into account, it is proposed that matters the subject of an ex parte conviction be capable of being placed on a form 1 and be taken into account by the Drug Court when sentencing.

The bill proposes that the Act be amended to provide that suspension of a sentence under the Act does not result in the suspension of any mandatory period of disqualification under the road transport legislation. The bill proposes that an order placing an offender on the Drug Court program not be made unless the court is satisfied that any person with whom the offender intends to reside, or continue, or resume a relationship during his or her time on the program has consented in writing to any accommodation plan. This is an appropriate safeguard. This bill makes a number of changes that will add to the efficiency and effectiveness of the Drug Court. I commend the bill to the House.