Legislative Assembly

12/11/2002

Crimes Legislation Amendment (Criminal Justice Interventions) Bill

Hansard

Extract

Second Reading

Mr STEWART (Bankstown—Parliamentary Secretary), on behalf of Mr Debus [12.02 p.m.]: I move:

That this bill be now read a second time.

The Crimes Legislation Amendment (Criminal Justice Interventions) Bill provides a legislative framework for the operation of intervention programs. The legislation enables programs that have been developed to reduce causes of offending behaviour to be given a formal legislative basis. As honourable members would be aware, intervention programs, or diversion programs as they are sometimes known, currently operate in a number of settings across the State. At times such programs are funded by State agencies and are bound by strict conditions; in other instances they are run by committed local people with varying degrees of accountability and resources. Magistrates have referred offenders to a variety of such programs with much success, and they have a clear discretion to do so. Often they know of the existence of a program first hand; in other instances they must rely on the representations of legal counsel and prosecutors as to the suitability and existence of programs in any one location or region.

This Government acknowledges the value in providing an opportunity for a person to participate in a program that seeks to address the underlying causes of their offending behaviour. It is indisputable that there is an enormous benefit to both the offender and the community in attempting to stop a person from offending through addressing these underlying issues, rather than merely delaying their offending through temporary incarceration. This is particularly so when an offender receives a custodial sentence of six months or less. I am speaking here of people who have committed offences at the lower end of the scale, not serious violent offenders, sex offenders, murderers or drug importers.

Indeed, not only has the Government acknowledged the effectiveness of this approach to minor offenders; it has also been actively promoting this approach. The highly successful trial of circle sentencing, the establishment of the New South Wales Drug Court and the development of traffic offender programs are all examples of criminal justice intervention initiatives undertaken by this Government.

However, it has become apparent that there is a need to provide a formal legislative framework or basis for the operation of such programs; not just government-run programs but also community-based programs, such as community aid panels. A framework will promote consistency, accountability and confidence that programs are being conducted appropriately and for the right type of offenders. Referral to an intervention program will be available at a number of points in the criminal justice process: as a condition of bail after being charged with the offence; as a condition of bail during an adjournment in court proceedings but before any finding as to guilt has been made; as a condition of bail after the person has pleaded guilty or been found guilty by the court but before the person is sentenced; as a condition of being discharged from the offence; or as a condition of a good behaviour bond imposed as the sentence, or as part of the sentence, for the offence.

This is not a radical step. Referral to programs for treatment or rehabilitation is already available under section 36A of the Bail Act 1978. In addition, courts have long been able to exercise their discretion under section 11 of the Crimes (Sentencing Procedure) Act 1999—previously known as a Griffiths bond—to release an offender pending sentence in order to assess the offender's behaviour and capacity for rehabilitation before imposing the sentence. A court has also been free to impose conditions on a good behaviour bond under section 10 of the same Act. This legislation consolidates and refines these existing options and provides a comprehensive regulatory framework for the operation of intervention programs across the State.

I turn now to the key elements of the Crimes Legislation Amendment (Criminal Justice Interventions) Bill. Principally, the bill amends three Acts: schedule 1 amends the Criminal Procedure Act 1986, schedule 2 amends the Bail Act 1978 and schedule 3 amends the Crimes (Sentencing Procedure) Act 1999. Schedule 1 to the bill contains the amendments to the Criminal Procedure Act 1986 and inserts a new part 9, headed "Intervention Programs". The object of the new part is to provide a framework for the recognition and operation of programs of certain alternative measures for dealing with persons who are alleged to or have committed an offence, to ensure such programs apply fairly to all persons and the programs are properly managed and administered, and to reduce the likelihood of future offending behaviour by facilitating participation in such programs.

These objects clearly reflect the intention to provide a clear and certain structure for the operation of programs to ensure that such programs are applied equitably and address the underlying causes of offending behaviour. Proposed section 175 (2) lists the purposes that an intervention program may perform. These purposes

give an indication of what types of programs are intended to be covered by the legislation, including treatment or rehabilitation programs, restorative justice programs and those programs that promote the reintegration of offenders into the community. This includes the current programs of circle sentencing, community aid panels and traffic offender programs. It is not intended to extend to those post-sentence programs being conducted by the Department of Corrective Services or those being supervised by the Probation and Parole Service.

Honourable members will note that these provisions reflect a fair balance between the need to promote respect for the law and to acknowledge the position of victims and the needs of the offender. This balance is further reflected in the acknowledgement of two important aspects of the criminal justice system: the rights of victims, and the positive impact that successful rehabilitation can have on making our communities safer and more peaceful places in which to live and work. I do not think that any member can argue with these two principles: the acknowledgment and protection of the position of victims in any criminal justice process is essential to all sense of fairness and decency. Similarly, to break successfully the cycle of criminal behaviour in which some people find themselves trapped has an undeniable benefit to the individual concerned and society as a whole in terms of human and social costs. Consequently, there is considerable value in enshrining these principles in legislation.

Not all offenders will have the opportunity to participate in such programs. Proposed section 176 states that offences in respect of which an intervention program may be conducted include summary offences and indictable offences that may be dealt with summarily. Section 176 (2) lists a number of exceptions. An offence involving malicious wounding or grievous bodily harm, under sections 35 and 35A (1) of the Crimes Act, cannot be dealt with through an intervention program. This reflects the Government's recognition of the community concern relating to violent crime. Similarly, offences involving sexual violence, such as offences under division 10 of the Crimes Act, and those concerning child prostitution and pornography, are not covered by this legislation for the same reasons. Other offences that are specifically excluded include an offence of stalking, any offence involving a firearm and offences involving drug supply. Proposed section 175 states that the regulations may declare a program an intervention program for the purposes of the legislation.

The regulations can also make provision for a range of other matters concerning the operation of an intervention program or programs, such as eligibility or restrictions on participation, applicable offences, the processes for assessing suitability of offenders, the provision of reports, the persons, bodies or organisations who may participate and the nature of their involvement, the objectives or guiding principles of an intervention program, how intervention plans may be developed and implemented, monitoring and evaluation of an intervention program, the issuing of guidelines, and so on.

The approach will not be one size fits all. Indeed, it cannot be. Intervention programs vary in purpose, in the types of offenders that they deal with and in the way they are conducted and managed. For example, the Traffic Offenders Program is conducted in a very different way to a sentencing circle. In providing for the regulations to make provisions for a range of matters concerning the operation of programs, the legislation ensures a flexibility of approach that accommodates a variety of programs and does not unduly restrict their development or stifle innovation.

The causes of crime are complex. The ways in which we address these causes are, by necessity, also complex, cutting across portfolio and agency boundaries. Under this bill, perhaps more than any other legislation, an interagency approach is required to prepare these regulations to ensure that they are considered, informed, and represent a whole-of-government approach to tackling crime. The Attorney General's Department will establish a Criminal Justice Interventions Unit that will be responsible for co-ordinating the preparation of the regulations. It will also establish mechanisms to ensure that judicial officers and legal representatives have greater access to information concerning intervention programs. It will work with both community groups and other government agencies in relation to standards for operation. This will promote greater certainty and consistency in the operation and application of programs.

I turn now to the machinery aspects of the bill, namely schedule 2 and schedule 3, which amend the Bail Act 1978 and the Crimes (Sentencing Procedure) Act 1999 respectively. The key amendments to the Bail Act 1978 concern sections 36A and 37. Section 36A already provides for bail to be granted on condition that an accused agrees to an assessment of his or her capacity and prospects for drug or alcohol treatment or rehabilitation, or actually participates in such a program. The bill simply includes the additional option of assessment for participation, or participation, in an intervention program to the section.

Section 37 currently relates to restrictions that may be imposed on bail conditions. This bill adds "reducing the likelihood of future offending being committed by promoting the treatment or rehabilitation of the accused person" to the list of purposes for which a condition can be imposed. A breach of a condition imposed under this amendment would be dealt with in the same way as a breach of a bail condition is currently dealt with. Schedule 3, which amends the Crimes (Sentencing Procedure) Act 1986, contains the amendments relating to participation in an intervention program as part of a conditional discharge or good behaviour bond.

Item [2] of schedule 3 amends existing section 5, which requires a court to provide reasons why no penalty other than imprisonment is appropriate when imposing a custodial sentence of less than six months. The bill amends that section by making it a requirement for the court also to provide reasons for not referring a person to an intervention program or other treatment or rehabilitation program. Through being required to provide reasons, the court will have to give careful consideration to the value of incarceration and rehabilitation. Its discretion to sentence as it sees fit is of course in no way impeded by the amendments.

The other key amendments refer to existing section 10 and section 11 of the Act, which relate to conditional discharge and to deferral of sentencing. The amendment to section 10 allows a court to make an order discharging the person on the condition that he or she participates in an intervention program. The court may make such an order only if it is satisfied that it would reduce the likelihood of the person committing further offences by promoting the treatment or rehabilitation of the person. If the person complies with the intervention order—that is, he or she completes the program and any plan that may be part of the program—the court can discharge without a conviction. If a person fails to comply, the court may re-sentence the offender for the original offence. In doing so the court may take into account any time spent in the program and any level of compliance with an intervention plan.

The types of matters that a court may take into account are outlined in the amendments to section 24 and are generally consistent with those already pertaining to good behaviour bonds. The mechanisms for informing the court of non-compliance and progress will generally be articulated in the regulations pertaining to the relevant program or programs. The procedural aspects of intervention orders as a condition of a good behaviour bond are contained in proposed sections 95A to 95D of the Crimes (Sentencing Procedure) Act 1999. Section 95 of the current Act specifies the conditions that must or can attach to good behaviour bonds.

The new sections regulate the circumstances in which participation in an intervention program is a condition of a bond, including referral of offenders for assessment as to suitability, the right of offenders not to participate in a program, and the consequences of not participating. Section 95A (3) makes it clear that the amendments do not limit the power of the courts to impose conditions concerning participation in rehabilitation and/or treatment programs other than those that are intervention programs. In other words, it does not interfere with current judicial discretion to refer for treatment and other rehabilitation that currently exists under the Act.

Item [5] amends section 11, which relates to the deferral of sentencing for rehabilitation or other purposes. The current section 11 is a legislative articulation of the court's discretion in relation to sentencing. The amendments make explicit that deferral of sentencing can occur for the existing purpose of rehabilitation or other purposes, but also for assessing an offender's capacity for participating in an intervention program or for his or her actual participation in such a program. The purpose of explicitly stating this is to make clear the Parliament's intention that it supports referral not just for rehabilitation—commonly thought to mean alcohol or other drug programs—but also for those interventions programs which address the underlying causes of a person's offending.

This amendment in no way detracts from the court's existing discretion to refer for treatment or rehabilitation that is not an intervention program. Clause 6 of schedule 2 makes that clear. Item [13] inserts a new part 8C, which is entitled "Sentencing procedures for intervention program orders". The part is procedural in nature, outlining the requirements relating to the court's satisfaction that the offender is suitable for the intervention program, the requirement that a court explain the obligations under the intervention program order to the offender, the non-compellability of participation in an intervention program and the offender's right not to participate, the consequences for an offender who does not proceed with an intervention order, and the circumstances in which a court may revoke an order.

In closing, I reiterate that this bill does not detract or fetter judicial discretion in any way. It simply articulates an option in relation to sentencing summary and indictable offences dealt with summarily. The bill does not create new programs; it will simply provide a framework for the effective operation of existing programs and trials that will provide greater certainty and clarity. I commend the bill to the House.