Legislative Assembly

20/06/2002

Crimes (Sentencing Procedure) Amendment (Victims' Rights And Plea Bargaining) Bill Hansard Extract

Second Reading

Mr HARTCHER (Gosford—Deputy Leader of the Opposition) [10.00 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Crimes (Sentencing Procedure) Amendment (Victims' Rights and Plea Bargaining) Bill, which proposes amendments to the Crimes (Sentencing Procedure) Act 1999. The Act began operation in 1999 and seeks to regulate the procedures by which offenders are sentenced at law. Since the introduction of the Act it has become increasingly obvious that there are weaknesses in the legislation that need to be addressed. The bill aims to address those weaknesses. I propose to refer to some examples that occurred in the past year, which demonstrate that the expectations of the community in relation to sentencing have not been met.

First, however, I will outline the significant features of the bill. The bill ensures that the plea bargain is made public by the court. It creates a statutory right for a victim to make a statement, written or oral, to be presented to the judge, regardless of the plea bargain. It reduces the current sentencing guideline for discount sentences for guilty pleas to 10 per cent. It ensures that victims give fully informed advice to a plea bargain, and that victims and their representatives, for example, a lawyer or a parent, have the same representation as the accused when negotiating in the plea bargaining process.

Plea bargaining was introduced by the Coalition Government in 1991. It is a necessary part of the criminal justice system, as it helps avoid expensive and lengthy trials and often saves victims from the stress of lengthy criminal trials. Essentially, plea bargaining is a system whereby the accused agrees to plead guilty to a lesser charge or to fewer charges. In return, under the guidelines the court will impose a lesser sentence, normally of between 10 and 25 per cent of the expected sentence, and the prosecution will present to the court an agreed statement of facts.

I refer to the bill. Clause 1 sets out the name of the proposed Act. Clause 2 provides for the commencement date of the proposed Act on a day or days to be appointed by proclamation. Clause 3 is a formal provision giving effect to the amendments to the Crimes (Sentencing Procedure) Act 1999, set out in schedule 1. Section 22 of the Crimes (Sentencing Procedure) Act 1999 requires a court, when passing sentence for an offence, to take into account the fact that the offender has pleaded guilty, and when the offender pleaded guilty or indicated an intention to plead guilty. The court may accordingly impose a lesser penalty than it would otherwise have imposed.

Schedule 1 [1] limits the extent to which a sentence can be reduced to 10 per cent of the penalty that would otherwise have been imposed. Schedule 1 [2], which relates to plea bargaining, provides that a victim of crime must be informed of the decision to plea bargain and must be given an opportunity to inform the prosecutor whether he or she approves of the decision. It is not necessary that the victim consent, but he or she must be able to advise the prosecutor of his or her views. The provisions also require a judge, in sentencing an offender who has pleaded guilty, to publicly disclose the details of any plea bargaining. The bill also provides that victims have the right to ensure that their statements, whether oral or written, are brought to the attention of the judge and the judge is fully informed of their concerns before imposing any sentence.

This legislation has become necessary because of circumstances we have seen in recent times. In a number of prominent and well-publicised cases, victims have felt that their side of the story has not been told to the court. There was the tragic case of the two girls who were subjected to a gang rape in the Hurstville area. A group of youths assaulted them with a knife, kidnapped them and took them to a house where over a period they were subjected to an ordeal of rape. When those assailants pleaded guilty to the crime, the defendant and the prosecutor tendered an agreed statement of facts to the court. The statement of facts omitted salient points, such as the significant issue that the girls were held at knife point. This led the judge to view the situation in a more lenient light than she would have regarded the situation had she known the girls were held at knife point. The girls were outraged. It was a feature in the public campaign that followed the trial that the full facts had not been presented to the court for consideration on sentence.

My amendment will ensure that in such cases not only the agreed statement of facts between the prosecutor and the defence is presented to the sentencing judge, but also the victim's full statement of facts, oral or written. The victim would then know that the judge had knowledge of the full statement of facts as the victim saw them, even if the prosecutor and the defence had not presented the facts in the same way. A further amendment relates to the

whole process of plea bargaining where victims of crime—and "victims" includes the family of a person who has been killed—are not aware of the plea bargaining process or the plea bargaining process is presented to them as a fait accompli. I refer to the sad case of five-year-old Tayla Parker who was cruelly murdered in the Lismore area in 1999. Her convicted killer, Risiti Laupama—who pleaded guilty to the lesser charge of manslaughter although originally charged with murder—had woken the young girl in the middle of the night, sexually assaulted her and then hanged her from a balcony. He was charged with murder, but the prosecution accepted a plea to manslaughter. He received a sentence of only a minimum of eight years imprisonment for the cruel killing of this little girl.

The girl's mother, Kelly Parker, who publicly made her concerns known about the trial and the plea bargaining process, was given little opportunity to express her objection to the charge being reduced from murder to manslaughter. She was not given the benefit of any independent advice. She was simply told what was going to happen and then it was allowed to happen. As a result, the whole story of the suffering and trauma of the family was not disclosed to the court, and the court imposed what can only be regarded as a lenient sentence of a minimum of eight years imprisonment for the sexual assault and killing of a five-year-old girl. The maximum penalty for this offence is 25 years imprisonment. The penalty was reduced on the basis that a plea to a lesser charge was accepted and a discount was given for the offender pleading guilty.

If plea bargaining is going to continue—and it will because it is a fact of life—victims must be fully informed and their views must be taken into account. Victims—or, in the case of murder, their families—must be allowed to have independent advice so that they are fully aware of the court proceedings. Victims are merely taken outside the court and told what is going to happen. They are not given any opportunity to consider what has been put to them or to express an informed view. The purpose of this bill is to make sure that the victims are fully informed and fully consent at every stage of the process. The Coalition believes that this bill is important for victims and that it has community support. The community does not believe that victims should be discarded by the criminal justice system. The community believes that victims are at the very heart of the criminal justice system. The protection of victims and the community are two important roles serviced by the criminal justice system.

This bill provides that any discount, if allowed, will only reduce the expected sentence by 10 per cent. It provides that the victim has the right to make a full written or oral statement to the court as to how the victim saw the event and the facts that led to the charge. That statement will be before the judge when the judge imposes sentence. The bill requires that victims—or, in the case of death, a victim's family—are fully informed of the plea bargaining process and have the opportunity to express their views. Victims will not have the right to veto a plea bargain. The acceptance of a plea bargain is the decision of the prosecutor. But the prosecutor must have the victim's views before him or her when the final decision is made. Further, that bill provides that victims, or a victim's family, are entitled to representation and advice so that they understand the whole process. In that way, the process is not simply presented to them and their ignorance is not taken advantage of.

These are beneficial amendments, which are not inspired by any political spirit but by a spirit of reform of the criminal justice system. If the Government is serious about the reform of the criminal justice system it will accept these amendments to the Crimes (Sentencing Procedure) Act. This Parliament and the Government have the opportunity now to stand up for the victims in our community. If the Government rejects this legislation, and it clearly has the power to do so, it sends a clear message to the community that it is not concerned about the victims. It sends a message that it is more concerned about the process and about supporting the Director of Public Prosecutions in the many decisions he has made that have an ill effect upon the criminal justice system.

If the Government rejects this bill, it is more prepared to stand up for the killer of young Tayla Parker than to stand up for young Tayla Parker herself. The facts in this case are a cry for reform. That her killer was allowed to plead guilty to a lesser charge, her family was not informed properly of his plea and he received a sentence of only eight years imprisonment for the sexual assault and brutal and sadistic killing of a young girl are a cry for reform. That cry has been heard by the Liberal and National parties and has resulted in the presentation of this bill to the House. I commend the bill to the House. I urge the Government to debate it seriously, to look to the interests of victims and, by accepting the bill, to enhance the criminal justice system in New South Wales.