Legislative Assembly

21/03/2002

Young Offenders Amendment (Reform Of Cautioning And Warning) Bill Hansard Extract

Second Reading

Mr STONER (Oxley) [10.09 a.m.]: I move:

That this bill be now read a second time.

It is with great pleasure that I introduce the Young Offenders Amendment (Reform of Cautioning and Warning) Bill. The bill has a number of objects. The first object is to amend the Young Offenders Act 1997 to provide that young offenders who have previously been convicted or found guilty of an offence by a court or who have previously been dealt with under the Act ought not be warned or cautioned under the Act. The second object of the bill is to require that a parent of a young offender be given notice when the offender is warned or cautioned under the Act. The third object of the bill is to provide for more expeditious application of the scheme established by the Act.

The bill would provide for more expeditious application of the scheme in four ways. First, it would require that a warning, caution or conference be given or held as close as possible to the date when the offence to which it relates was committed. Second, it would deprive the child of the opportunity to delay the matter by refusing to choose an adult to be present at the time of admission, caution, giving of explanation or conference. Third, it would give investigating officials the power to appoint a respected member of the community to be present if the child refuses to choose an adult. Fourth, it would remove the discretion of conference administrators and others to overturn referrals for conferences in favour of cautions.

Juvenile crime is a huge issue in rural New South Wales, and indeed throughout the State. Time and again I have been approached in my electorate of Oxley by residents, business people, victims of crime, community groups and even police officers who are concerned about seemingly unabated juvenile crime. Other members share this experience. The message we are consistently getting as parliamentary representatives is that a core group of young offenders is repeatedly committing mainly nuisance crime, with no fear of the consequences.

The current legislation governing such crimes committed by young people, the Young Offenders Act 1997, was intended to give young people who had made a mistake by breaking the law a second chance. That is, they would receive a warning or caution, or in other circumstances participate in a youth justice conference, without the opprobrium of a court appearance or a police record hanging over their heads in future years. Whilst this is an admirable objective, the Young Offenders Act as it stands is full of loopholes in relation to the young recidivist offenders who are making life hell for many law-abiding citizens in our communities.

The reality of this legislation, almost five years since its implementation, is that hardened juvenile criminals are receiving multiple warnings, often for similar crimes, because there is nothing in the Act to prevent that. Similarly, many young offenders are receiving repeated cautions, which, although slightly more formal than a warning, convey many rights to the young person, including the right to determine who is present. There is also no requirement for parents to be told that the child has been apprehended for committing a crime for which they received a warning. So we have the ludicrous situation in which some hard and young thugs repeatedly commit crimes, in the knowledge that they are likely to get off virtually scot-free, without their parents ever knowing.

The Act also gives young offenders enormous rights—for example, to choose which adult or adults are to be present when making an admission or receiving an explanation in relation to an offence, and to give consent to the giving of a caution. These rights, aside from representing significant red tape for investigating police, also effectively enable those in the know to manipulate the outcome, which usually results in a warning rather than a caution or youth justice conference. So again we have a situation where these repeat offenders know very well their rights, which they can use to manipulate the system without ever being forced to acknowledge their responsibilities to the community.

The Act also places time restrictions on the giving of cautions. Of most concern is that under section 26 the caution must be at least 10 days after a notice of caution is given. In this time, many of the problem offenders we are talking about have committed a string of other crimes. Surely commonsense dictates that the caution ought to take place as soon as possible after the commission of the office offence and apprehension by police, in order to provide a stronger link between the undesirable behaviour and the consequences, in terms of a formal caution. By the time they receive a caution, some of these kids have forgotten about which offence they committed.

One feature of the current Act that I do support is the provision for youth justice conferences, which involve

the offender and the victim or representatives of the victim and usually result in some type of restorative justice, such as repairs to damaged property and an apology. However, youth justice conferences occur too infrequently, as young offenders who know their rights under the Act are able to avoid them. Additionally, conference convenors currently have the power to refer cases back for cautions or warnings against the wishes of investigating police, and this often occurs.

In the almost five years since the Carr Labor Government brought in the Young Offenders Act, juvenile crime has skyrocketed. It is only now that the Attorney General is reviewing the operation of the Act. We have had five long years of people suffering bag snatchings, house break-ins, vandalism, property theft and stand-over tactics. In country communities like Kempsey, Coonabarabran, Macksville and Narrandera people have had a gutful of lawlessness that sees citizens, especially the elderly, living in fear, afraid to leave their homes in the knowledge that they are likely to be the victim of break and enter or assault. In fact, I have received petitions from literally thousands of people from those and other towns who are disgusted with a system that has allowed young criminals to wreak havoc and walk away with nothing more than a weak slap on the wrist.

The system can also be demoralising for police who put in a great deal of effort in apprehending juvenile offenders, only to effectively be laughed at by the young criminal who gets off with yet another warning or caution. Another outcome is that non-juvenile criminals may be getting younger friends or siblings to take the rap, in the knowledge that they will get off with a very weak slap on the wrist. This was certainly the case with a friend of mine in Kempsey, a dear lady who has now had her bag snatched twice. In the first instance, an adult offender took her bag; however, his 14-year-old relative admitted the offence when police found the perpetrator. Of course, he was let off with a warning or caution.

We must not forget that during the recent bushfire crisis most of the deliberately lit fires were lit by juveniles. The Premier, in his grandstanding during that crisis, intervened to ensure that young people apprehended for lighting those fires would not receive a warning or caution. But that is precisely what has been happening. The amendment to the Young Offenders Regulation 1997 introduced by the Government following the Premier's tough talk, however, does very little to address the fundamental problems with the Young Offenders Act. All it does is require that youth justice conference outcome plans arising from arson or bushfire offences include visits to burns units and victims, and some reparation for the offence. But this was the probable outcome under the Young Offenders Act without the amended regulation. The Director of Public Prosecutions stated on 4 January:

> The mechanism already exists for that to be done. There's no need for any change to the law to enable that to happen. It can happen now.

So it is clear that the Premier's statements and the subsequent amended regulation were nothing more than spin and rhetoric—an attempt to jump on the bandwagon of public opinion, which was running high following the bushfire crisis. Of even more concern, the amendments did nothing to address the fact that juvenile arsonists under the Young Offenders Act can still get away with a mere warning or caution, never getting anywhere near a youth justice conference. In fact, they could be warned or cautioned on multiple occasions. So the Premier's tough talk and the Government's legislative response were nothing more than window dressing and a cynical attempt to manipulate public opinion. I should like to relate the experience of two of the many thousands of people who want something done about juvenile crime. A man from Kempsey recently wrote to me:

> Violence is continuing to get worse here if you read the paper it is full of crime and home invasions. I have been threatened to be killed for bringing in the police to their hood and am extremely worried as are my family which the youngest child is 9 weeks old. The last couple of days my windows on the house have been completely smashed several times and in the last three months they have set fire to 2 houses because white people lived in there and I'm worried I'm next. The police have been helpful in their advice but at the moment their hands are tied because nobody talks to the police here for fear of retaliation. My children do not sleep the whole night through anymore they wake up screaming and I'm forced to sleep during the day for short periods because I also can't sleep at night due to safety concerns for my kids. By the way the last attack happened in the middle of the day while my 9 week old baby was asleep and it is getting to the stage where my family can't go to the shop without harassment, some of the aboriginal families are using 10 year old kids to smash my house up as the kids can't be charged and the police are powerless, I have to sit up virtually 24/7 with a video camera to try to catch these people as this is the only way the police can do something.

Pursuant to sessional orders business interrupted.

Legislative Assembly

11/04/2002

Young Offenders Amendment (Reform Of Cautioning And Warning) Bill Hansard Extract

Second Reading

Debate resumed from 29 March.

Mr STONER (Oxley) [10.02 a.m.]: It is with great pleasure that I resume my second reading speech on the Young Offenders (Reform of Cautioning and Warning) Bill. When I last spoke to this bill I related the experience of a man from Kempsey, one of the many constituents who had contacted me about concerns with the laws governing juvenile offenders. I now refer to correspondence I received from a lady in Sydney about the experience she has had with her young daughter. She wrote:

> It is my misfortune to have a child that is caught up in the laxity of the current system.
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> Due to the lack of police powers my child, and all those with whom she associates, have absolutely no respect for the police because they are aware that there is nothing that can be done to restrict their behaviour. They carry around a Legal Aid booklet stating that the police cannot even ask their name unless they are actually caught doing something illegal. Therefore they just abuse the police either verbally or by gestures, and as soon as the patrol has passed they continue with their activities.
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> In order that there would be some power returned to the officers to control my child at least, she was charged with shoplifting (yes it was a legitimate charge) and went to court. (Incidentally, she only has to apologise and thinks it is a big joke.) The charging officer is aware of my commitment to protecting my daughter and went through hell & high water to get the backing for the charge. In another instance, she and her friends were given a warning for break and entry into a flat for the purposes of party/drug taking and attempted car theft. I wasn't informed. They again laughed it off. So two weeks later they did the same thing. They were at least taken back to the station and I told the arresting officer (different station) that they should be charged. I asked that he contact the other (shoplifting) officer and they are being charged. What is interesting to note here is that between the incident and the charging this particular officer was on leave. In the interim the police were contacted about having the kids charged, the reply was that they get wrapped on the knuckles for charging minors, and get "into trouble" from the magistrates.
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> This was my experience also, when the police wanted to take an AVO out on her to protect me. This was to enable them to have powers to remove her when she was going ballistic in the house (she has beaten me up and destroyed property, and I am not allowed to do anything other than protect myself, it is illegal for me to restrain her). The police went to the local magistrate and were told not to bother to apply. These are things of which I have had personal experience. However I do know of instances where the police have felt the futility of bringing charges of assault, she thinks it hilarious that she can beat people up and get away with it. She shoplifts, and is a pot user and drinks alcohol to excess. My daughter is 13. The police cannot charge the people who are supplying her with alcohol unless they are caught in the act. When she is listed missing, and I track her down, if the police go to the house where she is and a person over the age of 18 years tells them she is okay, they have no power to remove her. (Neither I nor DoCS are allowed to interfere)
>
> My daughter and her cohorts get up to some unbelievable activities, and a lot of them involve taunting the police.
>
> I really think that you could do with a lot more publicity with your bill. So many people have said to me that these "children" are getting away with too much, the parents/police should "do something". So many do not understand that the police, the parents and even DoCS have no powers to restrict, let alone punish, the behaviour.
>
> Good luck in your endeavours.

The experiences I have related of these two of the many people who have contacted me illustrate the consequences of the Carr Government's lax stance on juvenile crime. Where has the Government been during the last five years—out to lunch? I expect that now it will make some grandiose announcement and attempt to pinch this bill and other Coalition law and order policies. I would welcome the Government bringing in its own bill on juvenile crime if it would improve crime and safety in our communities. However, there is a feeling in the community that the announcements of the Premier and the Minister for Police are too little too late. They have heard too often the rhetoric about increasing the maximum penalties for serious crime. The judges are not imposing maximum sentences! They have heard too often the rhetoric about police on the beat. The reality is that in areas such as

Wauchope the stations are 60 per cent down on officers on the beat. Since this Government came to power crime in New South Wales has skyrocketed. The laxity of laws, such as the Young Offenders Act, is part of the reason for that, as well as an undermanned and demoralised police force.

I turn to the specific amendments that will tighten up the Young Offenders Act to ensure that young criminals, particularly repeat offenders, are properly dealt with. Sections 3, 4, 6, 7 and 8 of schedule 1 amend the Act to preclude a child from being given a warning or caution if the child has previously been convicted or found guilty of an offence by a court or dealt with under the Act. This amendment gives effect to the intention to remove the option of warning or caution for repeat young offenders. Hence, they will be dealt with by way of a conference. Following recent discussions with a representative of the Police Association, I foreshadow a minor amendment in committee to section 6. That amendment will have the effect of allowing some discretion for investigating officers to allow one warning, then one caution in certain circumstances where a conference would not be appropriate for the second offence.

In essence, in certain circumstances a young person could get two chances: first a warning and then escalating to a caution. It is in line with community expectations that with the third strike or subsequent strikes a conference should be held to reinforce the young person's responsibilities to society. This is certainly the view of victims groups, such as Enough is Enough, with whom I have consulted. I cannot speak too highly of Ken Marslew, who is doing groundbreaking work with offenders to get them to acknowledge their actions and attempt to change their behaviour. Item [16] of schedule 1 provides that a child is entitled to be dealt with by conference if the offence is one for which neither a warning nor a caution may be given.

Items [5], [11] and [15] require that parents be notified in the event of a warning or a caution. Items [1] and [12] require that warnings, cautions and conferences be implemented as close as possible to the actual offence and, in the case of a caution, be no more than seven days after the offence. Presently, police are unable to give a caution until at least 10 days and up to 21 days after the offence. Some repeat juvenile offenders would have committed several other offences during this time and may not even remember the offence for which the caution is being given. Items [2], [9], [13], [14], [19] and [24] allow admissions, explanations and cautions to be administered in the presence of a respected member of the community. This will limit the ability of young offenders to stall matters by refusal to choose an adult to be present. This reduction of red tape will be welcomed by police, and will provide for valuable community involvement in the process of managing juvenile crime, for example, by involving an Aboriginal community elder.

Items [17], [18], [20], [21] and [22] remove the discretion of specialist youth officers, conference administrators and the Director of Public Prosecutions to overturn referrals for conferences in favour of cautions. This has been a major source of frustration for both police and victims of crime. Items [24], [25] and [26] contain savings and transitional provisions. I sincerely hope that the Government will not play politics on this important issue but that it will support the long overdue changes contained in the bill. Indeed, police Minister Costa recently indicated very strong support for the changes I am proposing. In a speech to the New South Wales Press Forum on 21 February 2002 the Minister said:

> **The Young Offenders Act**
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> Frontline police believe youth justice conferencing works.
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> It is not a soft option. Making young offenders confront their victims in the presence of families and police is both tough and effective.
>
> And making young offenders perform work for the community such as graffiti removal makes them take responsibility for their actions.
>
> What police are concerned with is the numbers of cautions young offenders are receiving prior to conferencing.
>
> That's why the Government is drafting plans to limit the number of cautions that can be granted before conferencing.
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> Once the limit is reached that young offender has to be conferenced or dealt with by the courts.
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> We will also ensure the actual arresting officer has a role in deciding if a youth justice conference is appropriate.
>
> Changing the Act in this way will entrench the sensible and tough option of youth justice conferencing as a way of dealing with non violent, non serious offenders.
>
> It means habitual young offenders face the consequences of their actions.

I agree wholeheartedly with what the Minister said to the Press Forum. The Minister could save himself some work by simply supporting this private member's bill, the Young Offenders Amendment (Reform of Cautioning and Warning) Bill, which will achieve the very things that he has said he would like to achieve in relation to the Young Offenders Act. If the Government thinks it can improve on this bill I would be happy to consider amendments that could make it better, just as the Opposition moves amendments aimed at improving Government bills.

In summary, this bill represents a long overdue change to laws dealing with young offenders in this State. Because of the Government's laxity, many hardened juvenile criminals have been getting away with a slap on the

wrist while victims of crime have suffered loss, fear and distress caused by young thugs who commit crimes in the knowledge that the consequences are trifling if they are caught. This bill will restore the balance to policing crime that the law-abiding citizens of this State so desperately want. I commend the bill to the House.