



## Legislative Assembly Hansard,

Extract from NSW Legislative Assembly Hansard and Papers Thursday, 11 May 2006.

### CRIMES AMENDMENT (MURDER OF POLICE OFFICERS) BILL

**Bill introduced and read a first time.**

#### Second Reading

**Mr PETER DEBNAM** (Vaucluse—Leader of the Opposition) [10.00 a.m.]: I move:

That this bill be now read a second time.

In the past week a number of cases has caused great concern to the community and to police officers in New South Wales. The issues flow from the murder of police officers some years ago. Senior Constable Glenn McEnallay was murdered in April 2002. In the past week someone involved in Glenn's murder had his conviction for murder quashed; I do not think any of us can understand that judicial decision. It goes to the issue of joint criminal enterprise and to whether people were jointly involved in an act of murder. The community and the Opposition—Glenn McEnallay's parents certainly believe this—believe that the driver of the car involved was implicated in the murder and should have stayed in gaol for the murder of Glenn McEnallay. The issues of whether the individual should have been charged with murder and whether he should have stayed in gaol needs to be resolved.

The case highlights that a soft stance is taken in New South Wales against people who murder police officers, and it provides an opportunity again to raise the issue of what is an appropriate sentence for someone who murders a police officer. The second issue came up with a fellow called Esho, who was released from gaol yesterday after serving only five years after he was implicated in the killing of David Carty. Esho is clearly an animal; he should not be on the streets. That goes back to a legalistic debate about whether he was involved in the killing. I am of the view that he was involved, and that issue should provoke another debate in New South Wales about whether we should consider the concept of collective responsibility for people involved in a criminal act. These people should be charged with the serious offence that other people were charged with—in this case, the murder of David Carty.

We cannot fix that today but we can highlight the issue—we need to consider this seriously—of what penalty is imposed on people who murder police officers. We also need to consider how widely we should distribute the charge of murder to other people involved or implicated in the killing. This week there is an opportunity for both sides of Parliament to consider both questions. The bill I introduce today is straightforward and simple, and I will run through it in a minute. It simply states that anyone who is convicted of the murder of a police officer should get life imprisonment. That is it. It will not leave with the judiciary the discretion on sentence; it will simply say that if a jury convicts someone of murder it is compulsory that that person gets life imprisonment.

The second issue is that of collective responsibility or joint criminal enterprise. Should we simply say that all criminals involved in the activity should be charged with murder or with whatever offence it is? That issue is worthy of debate and we should pursue it. Records show that minimal sentences were imposed in cases of police officers killed during, say, the past decade. In the case of the murder of Jim Affleck, who was run down while trying to stop a car, the minimum sentence for the offender was only 12 years. In terms of violence in the State, the police annual report shows that about 1,500 physical assaults on police occur each year. That is an extraordinary number. All the police in this State know that they stand a good chance, over a number of years, of being assaulted while in the line of duty, on the job. Policing is a dangerous job, and we need to acknowledge that.

I shall list the police officers who have died in the course of duty over the past 10 years: on 30 May 1995 Inspector Paul Daley died while on duty; 8 June 1995, Senior Sergeant Wayne George died; 15 June 1995, Senior Constable Peter McGrath; 9 July 1995, Senior Constable Peter Addison; 9 July 1995, Senior Constable Robert Spears; 18 April 1997, Constable David Carty; 28 February 1998, Constable Peter Forsyth; 10 June 1998, Senior Constable Ronald McGowan; 13 July 1998, Senior Sergeant Raymond Smith; 7 January 2000, Constable Matthew Potter; 14 January 2001, Senior Constable James Affleck; 1 February 2002, Senior Probationary Officer Robert Brotherson; 3 April 2002, Constable Glenn McEnallay; 13 April 2002, Senior Constable Christopher Thornton; 3 February 2003, Constable Kylie Smith; 15 September 2003, Detective Sergeant Mark Speechley; 19 June 2004, Constable Shelley Davis; and 4 April 2005, Constable Graeme Lees. That is a list of police officers who died while on duty, some in accidents and some through illness occasioned by their responsibilities; others were murdered. The officers who were murdered were Peter Addison, Robert Spears, David Carty, Peter Forsyth, Jim Affleck and Glenn McEnallay.

I acknowledge the presence in the Speaker's Gallery of Bob and Judy McEnallay, the parents of Glenn, and John Carty, the father of David. We thank them for coming along today. This is an important issue for the

community. Bob, Judy and John believe this is an important issue for all police officers in future. They realise that there is nothing we can do today that would bring back Glenn or David, or, indeed, affect the sentences applying to the people who killed them. The parents believe that something should be done for police officers in the future, and that is a point we make to every honourable member of this House. Today is an opportunity for every member to vote in support of police in the future.

If honourable members were to search their hearts and talk through the issues they would agree that the right thing to do is to draw a line in the sand and send a very strong message. The former Premier did send a strong message but, unfortunately, did not back it up. In April 2002, just after Glenn died, Premier Carr said:

I want those who murder police officers to go to gaol forever. I want those who murder police officers to go to the dingiest, darkest cell that exists in a prison system ...

Any one of us today would say that the person or people responsible for the callous murder of Glenn McEnallay should be put away for life.

The former New South Wales Premier said that in April 2002, a week after Glenn McEnallay was murdered. We should not listen to what this Government says, we should look at what it does, and that is what I will now address. The Parliamentary Secretary for police led for the Government on the Opposition's bill introduced in 2002. The Premier did not speak on the bill, the Attorney General did not speak on the bill and the Minister for Police did not speak on the bill. The Government put forward the Parliamentary Secretary to debate the bill, and he said:

The Government wants people who murder police officers to rot in prison; we have never resiled from that position.

The Government has never resiled from that stated position but it has never introduced legislation that would deliver on that promise, and that is terribly unfortunate. Today we have another opportunity to put such legislation in place. I know that Bob, Judy and John will keep fighting hard until legislation is in place to protect future police officers, as a legacy to David and Glenn. And we all ought to consider that; we should consider this bill to protect every police officer as a legacy to David and Glenn. In 1997, when introducing the Crimes Amendment (Assault of Police Officers) Bill, former Attorney General, Jeff Shaw, made a speech that is worthwhile repeating, in part. He said:

The bill is predicated upon a belief that police officers are rightfully owed a measure of protection by the community. That is so for at least two reasons.

First, police officers place themselves in positions of risk on behalf of the community. Second, an attack on a law enforcement officer strikes at the core of our system of democratic government.

Those who seek to harm the persons responsible for the enforcement of laws passed by our Parliament should be subject to special punishment.

That principle is already recognised in the Crimes Act. Section 58 of that Act imposes a higher maximum gaol penalty for the offence of common assault of a police officer than is imposed for the same offence against a civilian. Indeed, the relative maximum penalties are five years and two years respectively.

Surprisingly, and anomalously, the principle is not carried through by the Crimes Act to apply to more serious assaults that in fact inflict injury.

That was the Labor Attorney General in 1997 setting out an argument in support of the bill I have introduced today. I have quoted the former Premier, the Parliamentary Secretary for Police and the Attorney General, all from this Government, who have expressed the same sentiment as the Opposition has expressed, and indeed the same sentiment as the community and police have expressed, but they did not deliver. On 2 June 2002 the Opposition introduced this same bill. On 5 April 2002, my predecessor, John Brogden, wrote to the Premier about the death of Senior Constable Glenn McEnallay. He made the point that the Coalition would introduce the bill, and sought bipartisan support for it.

The bill was introduced in due course and it was clear that the Government would not support it, but the rhetoric continued from the Government about being tough. I make the point, again, that the Coalition bill introduced in June 2002 is exactly the same as the bill I have introduced today. It is very simple, and it contains only a few pages. It provides simply that if a person is convicted by a jury for the murder of a police officer that person will be sentenced to life imprisonment. We wanted to keep the bill very simple. When introducing the bill, my predecessor said:

... this bill will require that anybody who murders a police officer acting in the line of duty will go to gaol for life. We believe that, because of the nature of the job, police officers in New South Wales should be afforded extra protection under the law when they are on duty. When police officers are in uniform on duty or have recalled themselves to duty they put themselves forward when others step back. They put themselves in danger and do so to protect you, and me and the citizens of the State. The law should recognise that to murder a police officer is one of the most serious crimes in the State.

That is really the crux of the matter. People frequently ask me why the law should be different in the case of a police officer. My answer is that they are our agents, they are the front line, they are that thin blue line, they put themselves between physical violence and bullets, they put themselves between those bullets and us and sometimes they die. We owe it to those officers who lost their lives and to those officers who are physically assaulted every single year. Honourable members should be aware that about 1,500 assaults on police occur every year. We owe it to them to provide some further protection. The nature of the job is such that we cannot protect them on the spot other than to provide them with the best equipment, the best resources, the best numbers, but also with the best deterrent.

It is very clear that the law in New South Wales has no effective deterrent for assaulting a police officer, for killing a police officer, or indeed for carrying an illegal weapon. The Opposition makes that point continually. In New South Wales on the remote chance that a person carrying an illegal pistol is caught, he or she will be given a slap on the wrist. In fact, two years ago one young man bought a pistol and carried it illegally for the purpose of intimidating someone in a pool hall. He proceeded to do that. He was stupid, he was caught, but the court gave him a three-month sentence for carrying an illegal pistol. He appealed that sentence because he knew that no-one in New South Wales had been sentenced to anything like three months for carrying an illegal pistol. That sent a really strong message to all the thugs and criminals he knew—as Bob Inkster said, people now wear pistols like jewellery in New South Wales—and that is the problem, there is no effective deterrent.

The Opposition wants to put in place this bill as a deterrent; it provides that if someone kills a police officer that person will go to gaol for life. It has no rhetoric about rotting in dingy corners of gaol cells or anything else, as the former Premier said. It simply says that if someone kills a police officer he or she will go to gaol for life. In due course the Government responded to the Opposition bill. It introduced the Crimes Amendment (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Bill 2002. The Premier and the Minister for Police did not speak to our bill. The Parliamentary Secretary, in debating the Crimes Amendment (Murder of Police Officers) Bill said:

The first standard offence in the Government's bill—which deals with the murder of a police officer—carries a standard sentence of 25 years.

It sounded tough and I remember at the time the Government ran its position very strongly in the media in September 2002. The Government tried to convince the community that it was taking a tough stand. It did not highlight—and we tried to highlight it at the time and I highlight it again—that in the back of the bill are 13 mitigating factors. The bill requires judges to take account the mitigating factors. They apply not only to murder but also to a number of other offences. The provision states:

The mitigating factors to be taken into account in determining the appropriate sentence for an offence are as follows:

The first is that the injury, emotional harm, loss or damage caused by the offence was not substantial. Clearly, in the case of murder that does not apply. The second is that the offence was not part of a planned or organised criminal activity. That goes to the heart of the issue with the driver of the car and Glenn McEnallay. Clearly every smart defence lawyer in the world will jump on that sort of mitigating factor. The next one—think of this in the context of murdering a police officer—is that the offender was provoked by the victim. The next one is that the offender was acting under duress—what do honourable members think criminals do?

The next mitigating factor is that the offender does not have any record. That could mean that the offender has not been caught before but he or she has just murdered a police officer. The other mitigating factors are: that the offender is a person of good character; that the offender is unlikely to re-offend; that the offender has good prospects for rehabilitation; that the offender was not fully aware of the consequences of his or her actions; a plea of guilty; the degree of pre-trial disclosure by the defence; and the degree of assistance by the offender to law enforcement authorities.

There is no more serious crime in this State than killing our law enforcement agents, our police. Parliament needs to acknowledge that and reflect that in our laws. As I have said before, I do not care whether the Government supports this bill or waits a week and introduces its own bill to make life sentences compulsory. Either way, if the Government does that we will support it. In 1996 when I introduced the bill to confiscate cars of people who were terrorising communities by using their cars, the Government refused to support it and the community then took on the Government. A few months later the Government introduced its own bill and we supported it and congratulated the Government for doing that, under pressure from the community. I am happy to do that again, but I would be equally happy today, or when we next debate the bill, if the Government indicated it will support compulsory life sentences for killers of police.

I will applaud the Government if it supports that, just as I have applauded the Government when it has adopted any other provisions. As I said, in 1996 I congratulated the Government. Last week it changed the name from NSW Police to New South Wales Police Force. That followed what the Opposition did earlier in the year. We released an 11-point plan, and the Government adopted that last week. That is good. I am pleased to see the Government will adopt our good, commonsense policies. For the past two years I have spoken about the 600 police the Labor Party slashed in New South Wales. The Government reversed that a couple of months ago and says it will reinstate them. That is good; we are pleased.

I have asked the Government to change the commissioner's contract to ensure that the police commissioner actively encourages the reporting of all crime and public disorder. I am sure that in due course, in the next six months, the Government will adopt that, and I will congratulate it at that time. I have asked the Government to reduce the police ministry and the police media bureaucrats by 70 per cent and transfer those savings to front-line police to fund those police officers that were slashed. I am sure the Government will do that and I will congratulate it when it does so. I have asked the Government to change centralised local area commands back to locally led, locally based policing. When it does that we will congratulate it.

I have asked the Government to re-empower police with their arrest and search powers, with an urgent reform of the Law Enforcement (Powers and Responsibilities) Act. When the Government does that we will thank it on behalf of the community. I have asked the Government to strengthen police powers in relation to offensive language and conduct, with the aim of raising the accepted standards of public decency. I hope it does that within the next six months. I have asked it to reinstate the graffiti task force and strengthen related penalties and the powers of magistrates. It has moved some way towards doing that but it has a little way to go yet. I have asked the Government to reduce the warnings and cautions for young offenders to one, to get rid of the Labor Government's unlimited warnings and three cautions. When it does that, we will congratulate it.

I have asked the Government to urgently reform the police promotions system, which has been a cause of great concern to police for at least the past four years. We have received every promise in the world that that was going to happen but it has not been reformed as yet. I have asked the Government to reform the complaints system, which is a major problem to serving, front-line police officers, and it constrains their freedom of movement. It is a system that attempts to intimidate front-line police, a system that thugs and criminals know very well and use to handcuff police, not the offenders. I have asked the Government to strengthen the role of the Judicial Commission to make judges and magistrates more accountable to the community, and if it does that I will congratulate it.

This bill is simple. It says that if somebody is convicted of the murder of a police officer it is compulsory that that person gets a life sentence, for the term of his or her natural life. It is straightforward. It has the overwhelming support of police. It has the overwhelming support of the community. I ask honourable members to search their consciences. I know it is difficult for Government members. I know it is difficult for the Government to support these initiatives, but I ask honourable members to think on behalf of the community and on behalf of the 14,500 police in New South Wales who want to see this line drawn in the sand. It will not bring back Glenn or David or any of those police officers who have been murdered in the past, but it will draw a line in the sand.

Parliament will be sending a message not only to the criminals and thugs who are fearless in taking on the police but also to the judiciary. It says: here is the line in the sand, we want it walked, and anybody who crosses that line in the sand should go to gaol forever. It is a simple message. Both sides of the House can support this initiative, either in this bill or in the Government's bill in a few weeks. It will send out that message very clearly. It is a topic that gets a lot of media attention. It will continue to get a lot of media attention. If we can jointly send that strong message, we will change the behaviour of these fearless thugs in New South Wales.

Over the past decade or so in New South Wales many of these young men have grown up knowing they can get away with anything. They have progressed from teenage crime, antisocial behaviour, through to assaults, intimidation, fraud, robbery, and armed robbery. Then they discovered machetes and knives and guns, and they are now fearless because they know the justice system in this State works for them, and on the remote chance that they get caught, they will get a slap over the wrist. That is the difficulty. The lack of justice in New South Wales means it is the police who are being handcuffed, not the offenders. This bill gives us a chance to send that really strong message to any offender from today, or from whatever day Parliament passes this bill, that anybody who steps over that line will go to gaol for life. I commend the bill to the House. I ask every member of this House to vote on this bill according to the sentiments of the community and the police and to support it.