



Crimes Amendment (Murder of Police Officers) Bill 2007

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Extract from NSW Legislative Council Hansard and Papers Thursday 10 May 2007.

Second Reading

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [4.30 p.m.]: I move:

That this bill be now read a second time.

I am honoured to introduce this bill on behalf of the Opposition, all New South Wales police officers and their families. The bill amends the Crimes Act 1900 to provide that compulsory life sentences are to be imposed by courts on persons convicted of murdering police officers. A compulsory life sentence is to be imposed if the murder was committed while the police officer was executing his or her duties or as a consequence of, or in retaliation for, actions undertaken by any police officer. This bill is one of the most important pieces of legislation that I have spoken on in my time in Parliament.

In recent weeks the deaths of police officers have been receiving publicity for all of the wrong reasons. The tragic suicides of our young officers, the attempted suicide of even the more senior and the very public breakdown of another young officer are a reminder to all of us of just how tough it is to be a police officer in 2007. Last year, along with the police commissioner, the then Minister for Police and many police, former police and their families, I attended the eighteenth annual National Police Remembrance Day memorial service and laying of wreaths at the Wall of Remembrance in the Domain next to the Art Gallery. The Wall of Remembrance marks the sacrifice of all police officers in the execution of their duties, and in particular the 248 officers whose names have been added to the New South Wales Police honour roll. On the night of Police Remembrance Day, as a mark of respect, Sydney Opera House was bathed in a blue light

For members who are not aware, National Police Remembrance Day is held on 29 September, which is St Michael's Day. St Michael is the patron saint of police and archangel to protect and defend people. Last September's commemoration was even more significant with the official opening of the National Police Memorial by the Prime Minister in Canberra. The memorial is to all police officers throughout Australia who have served our community and have lost their lives in the execution of that service. The ceremony was tinged with sadness. Just the day before Police Remembrance Day, Sergeant Colin McKenzie, a highway patrol officer based at Ballina, became ill during rehearsals for the Canberra service and subsequently passed away. He was yet another officer to die while undertaking his duty.

As honourable members would be aware, I joined the New South Wales Police Force in 1980. It is a sad fact that since then the names of 73 New South Wales police officers have been added to the New South Wales Police honour roll. The honour roll commemorates those members of the New South Wales Police who have paid the ultimate sacrifice in the execution of their duty. These officers gave their life to protect us. This bill acknowledges that police play a unique role in protecting the community. As the law currently stands, there is not a sufficient deterrent to attacking and murdering a police officer in New South Wales. Police put their lives on the line every time they walk or drive into a situation that they do not have control of and in which they seek to gain control and effect the arrest of an offender or offenders.

Since 1995 at least 18 police officers have died as a result of duty-related incidents. These include five who were murdered in the course of carrying out their duty. Another four police officers are assaulted every day. It is unacceptable that people involved in some of these murders are now enjoying freedom. That should change and this bill seeks to effect that change. There can be no clearer justification for this legislation than the fact that since 1980, 11 officers have lost their lives as a result of the actions of offenders who have attacked police executing their duty to protect the community. They are Sergeant Keith Haydon, shot by an offender on 24 November 1980; Constable Pashalis Katsivelas, shot by an escaping prisoner on 4 April 1984, from recollection at Concord Hospital; Sergeant Paul Quinn, shot by an offender following a pursuit on 30 March 1986; Constable Brett Sinclair, from injuries sustained whilst affecting an arrest on 25 October 1988; Constable Allan McQueen, shot whilst affecting an arrest of a fellow attempting to break into a motor vehicle only a few hundred metres from where we are now on 5 May 1989; on 9 July 1995, two officers, Senior Constable Peter Addison and Senior Constable Robert Spears, shot by an offender at Crescent Head as they got out of their vehicle to enter a home; Constable David Carty, stabbed during an affray in Western Sydney on 18 April 1997; Constable Peter Forsyth, stabbed whilst affecting an arrest on 28 February 1998; Senior Constable James Affleck, struck by a motor vehicle whilst deploying road spikes to stop a stolen car on 14 January 2001; and Constable Glenn McEnallay, shot by an offender at Matraville following a pursuit on 3 Apr 2002.

Honourable members should be aware that in response to this bill, which was introduced into the other place by the New South Wales Liberal leader in May last year, the New South Wales Police Association issued a circular to their members throughout New South Wales, which stated:

Members are advised that, following discussions last evening with the State Opposition, your Association has determined to support the Bill which proposes mandatory life sentences for anyone convicted of murdering a police officer.

In light of the recent decisions relating to the murders of David Carty and Glen McEnallay it is apparent that there is strong community support for police and for the introduction of measures which would deter offenders from assaulting and killing members.

Delegates elected to attend your Association's Biennial Conference commencing on 21 May will be asked to endorse a campaign for 3,000 additional police and to strengthen laws aimed at protecting members. In the interim members are asked to contact their local member of state parliament and express their support for this legislation. It is only by hearing first hand the concerns of constituents that politicians will be motivated to act.

The circular was signed by Bob Pritchard, President of the New South Wales Police Association. I have no doubt that some members will argue that police should not be given special consideration. The simple fact is that police have a legislated duty to go to the assistance of community members who are in need or to confront offenders, whether they are on duty or not. Twenty-four hours a day, whether they are wearing the uniform or not, they have a legislated duty to act. Coming to the assistance of the community at any time, whether they are on or off duty, is not something that they have a choice about. This House needs to acknowledge that being a police officer brings with it a different set of dangers than any other occupations or professions.

As I mentioned earlier, Senior Constable Jim Affleck was run down when he tried to stop an offender's car during a high-speed pursuit in south-western Sydney. He was attempting to deploy road spikes designed to deflate the tyres of speeding vehicles and bring them to a stop. The offender who ran down Senior Constable Affleck received only a minimum sentence of 12 years. Today is an opportunity for all honourable members to vote in support of our police. This bill inserts a new section into the Crimes Act 1900 after section 19A. It reads:

19B Compulsory life sentences for murder of police officers

1) A court is to impose a sentence of imprisonment for life on a person who is convicted of murder of a police officer if the murder was committed:

- While in the execution of the police officer's duty, or
- As a consequence of, or in retaliation for, actions undertaken by that or any other police officer in the execution of the officer's duty.

2) A person sentenced to imprisonment for life under this section is to serve the sentence for the term of the person's natural life.

3) This section applies to a person who is convicted of murder of a police officer only if the person was of or above the age of 18 years at the time the murder was committed.

4) If this section requires a person to be sentenced to imprisonment for life, nothing in section 21 (of any other provision) of the Crimes (Sentencing Procedure) Act 1999 or in any other Act or law authorises a court to impose a lesser or alternative sentence.

5) Nothing in this section affects the prerogative of mercy.

The concept of protecting police has support on both sides of the Chamber. In April 2002, just after Glenn McEnallay was murdered, then Premier Carr said:

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

In May last year one of those involved in Glenn's murder had his conviction for murder quashed. A few short days later, his parents spoke out in favour of this bill when it was introduced into the other place. Bob McEnallay said:

They support us in our time of need but when something goes wrong there's no one there to support them.

Bob and his wife, Judy, were joined by the father of David Carty in support of this bill. Members would remember the tragic murder of Constable David Carty, who was stabbed to death after being brutally assaulted in the car park of the Cambridge Tavern at Fairfield in April 1997. These parents know that this bill will not bring their sons back. And, unfortunately, it will not keep their killers in jail. But it will keep future killers of police where they belong: behind bars—as the former Premier said, in the dingiest, darkest cell forever.

The quashing of the conviction of the driver of the car that carried the killer of Constable McEnallay highlights the important issue of joint criminal enterprise and whether people were jointly involved in an act of murder. The community and the Opposition—and certainly Glenn McEnallay's parents—believe the driver of the car involved was implicated in the murder and should have stayed in jail for the murder of Glenn. The cases of those involved in the murders of David Carty and Glenn McEnallay highlight the soft stance taken in New South Wales against people who murder police officers. This bill is another step in providing a higher level of protection for police. In 1997 former Attorney General Jeff Shaw spoke on the Crimes Amendment (Assault of Police Officers) Bill, saying:

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.

In June 2002 the then Leader of the Opposition in the other place introduced a similar private member's bill to this bill. At that time John Brogden wrote to the Premier foreshadowing the bill, and sought bipartisan support for it. When introducing the bill he 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.

In response the Parliamentary Secretary for Police, who led for the Government, said:

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

Today Government members have the opportunity to stand by this commitment and that of former Premier Carr, who, I remind members, 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 ...

They have the opportunity to stand by the commitment of the Premier, who said on 11 May:

We want these people to rot in jail.

Government members have the opportunity to vote for this legislation, which will mean that those who murder police officers will rot in prison. In conclusion, my experiences during more than 16 years of service shaped my belief that those who murder police officers should spend the rest of their natural lives behind bars. I do not anticipate that the use of this legislation will be required all that often—in fact, I hope that it is never needed. But it should be on the statute book to deter those who would consider, even for a second, acting to murder our police. I ask all members to carefully consider this bill and vote to support our police officers, and indeed their families, who every day they go to work kiss their loved ones good-bye knowing the dangers that confront them.