



# Legislative Assembly

## Children (Detention Centres)

### Amendment Bill Hansard

#### Extract

27/02/2002

#### Second Reading

**Mr CRITTENDEN** (Wyong—Parliamentary Secretary), on behalf of Mr Debus [9.28 p.m.]: I move:

That this bill be now read a second time.

This bill amends the Children (Detention Centres) Act 1987 to extend the sentence of juveniles who have escaped or failed to return from leave by the number of days that they are unlawfully absent from custody. The colloquial term "street time" is used to refer to the time an offender is unlawfully absent from custody. The bill also amends the juvenile justice legislation to clearly state the delegation of functions by the Minister for Juvenile Justice in the Children (Detention Centres) Act 1987. Juvenile detainees who escape from lawful custody, when apprehended, are either charged under section 33 of the Children (Detention Centres) Act or are charged with the common law offence of escaping from lawful custody. Juvenile detainees who fail to return from leave are charged under section 37A of the Children (Detention Centres) Act. If juveniles are charged and found guilty of escape or failure to return from leave, they can be given an additional term of up to three months, but currently cannot be made to serve the time they were unlawfully absent from custody.

In the past the now repealed section 447A of the Crimes Act 1900 operated to add street time to escapees' sentences, but not to those of juvenile detainees who failed to return from leave. Section 447A of the Crimes Act was repealed when the Crimes (Administration of Sentences) Act 1999 became law in 2000. Section 254 of the Crimes (Administration of Sentences) Act, which largely replaces section 447A of the Crimes Act, does not apply to juvenile offenders who are sentenced under the Act. Amending the Act to include street time in the sentence of a detainee found guilty of escape under section 33 of the Act would mean a return to the status quo prior to the changes to the Crimes Act that occurred when the Crimes (Administration of Sentences) Act was proclaimed.

In addition, for the first time juvenile detainees who are charged with failure to return from leave will be required to serve street time. Amending the Act to include street time in the sentence of a detainee found guilty of failing to return from leave under section 37A (1) removes the inconsistency and confusion that exists in the detention centres. For example, experienced detention centre staff have advised that it is not uncommon for clients who failed to return from leave to be charged with escape—section 33—rather than fail to return from leave, where the detainee has made a deliberate and planned effort to escape while on leave. As the offences of escaping and failing to return from leave are separate offences to the original offence for which the offenders are serving a control order, the punishment should be separate and not concurrent with any other order.

The Department of Juvenile Justice has been advised by the Crown Solicitor that the Community Welfare Act 1987 does not provide a power to the Minister for Juvenile Justice to delegate the Minister's functions under juvenile justice legislation because no order has been made under the Public Sector Management Act 1988 to construe references to "Minister" in section 5.1 (1) of the Community Welfare Act to include references to the Minister for Juvenile Justice. It appears that the definition of "community welfare legislation" in the Community Welfare Act does not include juvenile justice legislation and that the powers of delegation available to the Director-General of the Department of Juvenile Justice under section 5 (2) of the Community Welfare Act accordingly do not extend to the director-general's functions under the juvenile justice legislation. Parliamentary Counsel has recommended that this matter be rectified by amending the Children (Detention Centres) Act 1987 to clearly state the delegation of functions by the Minister for Juvenile Justice.

The Children (Detention Centres) Act and Crimes (Administration of Sentences) Act take differing approaches to the custodial status of detainees and inmates. Whilst this poses no difficulty to the operation of these Acts, it can create anomalies in other legislation. The Child Protection (Offenders Registration) Act 2000 is one such piece of legislation. Detainees should be treated in the same manner as adult inmates for the purposes of the Child Protection (Offenders Registration) Act 2000. Schedule 3.1 to the bill makes the necessary definitional changes to achieve that. I commend the bill to the House.