Legislative Assembly

20/03/2002

Bail Amendment (Repeat Offenders) Bill Hansard

Extract

Second Reading

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [11.53 a.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Bail Amendment (Repeat Offenders) Bill. The bill is part of a package of reforms designed to target repeat offenders at the bail stage. The bill removes the presumption in favour of bail for certain repeat offenders, making it more difficult for those offenders to be granted bail and providing a disincentive to offenders to commit further crimes. A range of initiatives across government agencies is also being developed to break the cycle of recidivist offending. The issue of bail remains a matter of ongoing community concern. The proper balance between protection of the community and the rights of the accused, who is legally presumed to be innocent, is an important matter that warrants regular monitoring. In recent times concern about the issue of bail has been heightened by police reports about the increasing number of persons who continually re-offend. The Government is pleased to introduce the Bail Amendment (Repeat Offenders) Bill in an effort to offer further protection to the community from the risk of repeat offenders.

I turn now to the provisions of the bill. The bill inserts a new section 9B into the Bail Act. Section 9B provides that the presumption in favour of bail is removed for accused persons, irrespective of the type of offence they have committed, in certain circumstances. Traditionally, bail was refused for offenders who were at risk of flight and in danger of not appearing at their next court date. In recent times the protection of the community has also become an increasingly important criterion for the court to consider. This was particularly the case for serious offenders. Amendments put forward by this Government in 1998 tightened bail criteria in relation to serious offenders. The court must take into account when assessing bail for a person charged with a serious offence the following matters: whether or not it is likely that the person will commit any serious offence while at liberty on bail—that is, section 32 (1) (c) (iv) of the Bail Act—and, if the offence for which bail is being considered is a serious offence, whether, at the time the person is alleged to have committed the offence, the person had been granted bail, or released on parole, in connection with any other serious offence—that is, section 32 (1) (c) (v) of the Bail Act.

There appears, however, to be a growing category of accused persons who commit less serious crimes repeatedly. These offences are generally lower down the scale in criminality in comparison to say, murder, malicious wounding, or drug supply, and fit within the general presumption in favour of bail category. This bill aims to target those offenders who commit less serious offences and are likely to do so again. Proposed section 9B (1) provides that the presumption in favour of bail is removed for those who are charged with other crimes whilst on bail, on parole, or on a bond or community release sentence. The Bureau of Crime Statistics and Research recently released a report on bail called "Bail in NSW: Characteristics and Compliance" which highlighted the increasing incidence of persons failing to appear in compliance with their bail condition to attend at the next court date.

In 14.6 per cent of cases finalised in the Local Courts in 2000, for persons on bail, the accused person had a warrant issued by the court as a result of failing to appear at court. These rates are particularly high for certain offences, particularly property offenders. It is assumed that offenders who fail to appear are committing further offences whilst on bail. Removing the presumption of bail will make it more difficult for these types of offenders to be released into the community. Accordingly, proposed section 9B (2) removes the presumption in favour of bail for any previous offence of failing to appear before a court in accordance with a bail undertaking. Proposed section 9B (3) removes the presumption in favour of bail for any person accused of an indictable offence if the person has been convicted of one or more indictable offences. This provision is to be read in conjunction with the new section 32 (1) (b) (vi). The amendment provides that the court must also have regard to the type of criminal history of the accused person as part of the criteria when considering granting bail.

It is a common maxim that past behaviour is a good predictor of future behaviour. Criminal justice agencies use the existence of prior offences as part of their criteria in assessing high-risk offenders. Of importance, however, is that the existence of a prior offence is only one factor in making that assessment. This is also true of the courts when making bail determinations. The bill requires the court to also consider the type of offence, the seriousness of that offence, the number of previous offences and the length of time between the offences. For example, an accused person with a single prior offence committed five years ago is likely to be treated in a different manner than an accused with five convictions in the past six months. The prior criminal history of the person is only one criterion of many that the court must have regard to when making a bail determination.

Item [4] of schedule 1 inserts further new criteria that should be considered by the court. If the accused person is under the age of 18 or has an intellectual disability, the court must consider any special needs of the

person arising from that fact when assessing the interests of the person in making a determination about the grant of bail. The literature on juvenile re-offending shows that once children are incarcerated in a detention centre, the probability of them committing further offences is very high. Gaol as a last resort for juveniles is, therefore, a particularly important concept. Items [5] to [8] contain new provisions which provide the court with more options when granting bail in relation to the conditions that might be imposed upon the accused person. Often the lack of employment or appropriate residence will be a debilitating factor in deciding whether to grant bail. The availability of supervised bail accommodation and the suitability of the accused person to be bailed to this type of accommodation allows the court to both strengthen existing requirements of bail and divert offenders who might otherwise be incarcerated.

This is particularly important for vulnerable accused persons such as juveniles, intellectually or mentally disabled persons, or persons of an Aboriginal or Torres Strait Islander background. The provisions in proposed section 36 (2A) simply allow the court to consider the appropriateness of bailing accused persons, particularly those of an Aboriginal or Torres Strait Islander background, to supervised bail accommodation if they are suitable and a place is available. This is in line with the recommendations made by the Royal Commission into Aboriginal Deaths in Custody in relation to gaol as a last resort and the overrepresentation of Aboriginal persons in custody.

Provision is also made in the bill to review these amendments in 12 months. As I indicated earlier, these amendments are part of a wider strategy of reform. In addition to procedural changes by police and the courts, joint initiatives are being developed by an interagency working party chaired by my department. Representatives from a number of government agencies have been consulted on these reforms and will continue to meet to develop further programs, including procedural changes and diversion options. I take this opportunity to thank those members of the working party for their effort in ensuring that these amendments are the fairest, most efficient way of tackling this problem of repeat offenders.

Finally, it should be noted that these amendments sit within the context of the Magistrates Early Referral Into Treatment Program [MERIT] as a program that can address repeat offending. This program uses the Bail Act to divert defendants with drug problems into treatment as a condition of bail. It is an "opt in" program, targeting those who are motivated to treat their problem with intensive supervision provided by the Department of Health. In many cases these people already have a significant criminal history and will fit our target of repeat offenders. Early reports on the success of this program are very encouraging. The bill contains constructive and worthwhile reforms. I commend the bill to the House.