



Legislative Council

Crimes (Administration Of Sentences) Amendment Bill Hansard - Extract

11/06/2002

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [8.00 p.m.]: I move:

That these bills be now read a second time.

As the second reading speech is lengthy and has already been delivered in the other place I seek leave to have it incorporated in *Hansard*.

Leave granted.

The first Bill will amend the *Crimes (Administration of Sentences) Act 1999* in relation to the arrest of escaped inmates; the making of oral submissions to the Parole Board by victims of serious offenders; the seizure, forfeiture and disposal of property brought unlawfully into correctional centres; and for other purposes.

The second Bill will amend the *Summary Offences Act 1988* in relation to the powers of correctional officers to stop, detain and search people at places of detention; and for other purposes.

The *Crimes (Administration of Sentences) Act 1999* is the principal Act which governs the administration of sentences by the Department of Corrective Services.

A number of minor deficiencies in the Act have come to light.

The *Crimes (Administration of Sentences) Amendment Bill 2002* will rectify those deficiencies and make other changes in order to facilitate the administration of justice and the effective and secure operation of the correctional system.

I shall now outline the more important changes being made.

Section 39 of the *Crimes (Administration of Sentences) Act 1999* governs the process by which an inmate who has escaped from custody is returned to custody upon arrest.

The amendment to section 39 will make the section consistent with section 352AA of the *Crimes Act 1900*, which relates to the power of a constable to arrest prisoners unlawfully at large other than by means of escaping and the process of returning them to custody after arrest.

The amendment to section 39 will also rectify a deficiency which contributed to the erroneous release of Paul Etienne, an offender who escaped from Central Local Court on 15th November 2001 by crashing through a glass door.

Since Etienne escaped before his court matter had been disposed of, the court did not issue a warrant of adjournment (bail refused) as it would have done had he not escaped.

One of the contributing factors to the erroneous release of Etienne was the fact that the police who recaptured him took him straight back to prison—as the Act currently requires.

Unfortunately their action in taking him there, instead of first taking him before a court and charging him with escape, resulted in the Department of Corrective Services not having any authority to hold him in respect of the charges he was facing when he escaped.

Corrective Services received and held him under a warrant issued when he was sentenced for a previous offence.

When that sentence expired, Corrective Services had no further warrant with which to hold him.

If the police had first taken Etienne before a court and charged him with escape, the court would have remanded him in custody and, as a result, Corrective Services would have had authority to keep him in prison pending charges when his previous sentence expired.

The amendment to section 39 will require police to take an escaped inmate before a court before returning the inmate to prison.

This amendment to section 39 is one of a number of steps being taken by the Government to reduce the likelihood of another erroneous release.

Already, administrative procedures relating to the discharge of inmates from custody have been revised, particularly in relation to inmates who have pending court appearances.

Procedures have also been strengthened to ensure that an inmate's warrant file clearly documents that all sentence administration details have been properly investigated and verified prior to an inmate's release.

Under the new procedures, a senior commissioned correctional officer now has ultimate responsibility for authorising an inmate's release.

Additionally, where an inmate's file contains an order requiring a court appearance subsequent to their date of release, the relevant court is contacted at the earliest possible opportunity (and no later than the day before the scheduled discharge).

The court is advised of the inmate's impending release, and asked if it is intended that the court issue an order which authorises the inmate's continued detention beyond his or her date of release.

The amendment to section 78 of the *Crimes (Administration of Sentences) Act 1999* is a minor technical amendment.

Section 78 makes provision for the use of dogs in the maintenance of security and good order within correctional centres and complexes.

The proposed amendments to the *Summary Offences Act 1988*, which I will speak about presently, will clarify the use of dogs by correctional officers in searching visitors to correctional centres to detect illegal drugs and other contraband.

The amendment to section 78 of the *Crimes (Administration of Sentences) Act 1999* makes it clear that nothing in the section limits the power of a correctional officer to use a dog under the *Summary Offences Act 1988*.

So the *Summary Offences Act 1998* will enable the expanded use of dogs to within the vicinity of a correctional centre or complex when trying to prevent contraband entering the centres.

Section 79 of the *Crimes (Administration of Sentences) Act 1999* governs matters which can be the subject of regulations made under Part 2 of the Act.

The amendment to section 79 will enable the Department of Corrective Services not only to confiscate property unlawfully brought into a correctional centre, but also to seize and dispose of such property.

For example, if a person consistently tried to bring a camera into a correctional centre, officers would ultimately be able to seize and destroy the camera.

Disposal of the camera would deter future attempts to bring a camera into a correctional centre without authority.

Of course, visitors are not allowed to take photographs or record video or audio tapes in a correctional centre without the prior permission of the governor of the relevant correctional centre.

Photographs and tapes can constitute a grave security risk and could assist in an escape.

Correctional officers would not unnecessarily seize or dispose of a camera or other property inadvertently brought into a correctional centre.

But where a person persistently tried to bring a camera into a correctional centre knowing that it was against the law, and one day actually succeeded, then mere confiscation of the film and banning the person from future visits would not be a sufficient deterrent.

The amendments to section 147 and section 190 of the *Crimes (Administration of Sentences) Act 1999* will give to a victim of a serious offender a statutory right to make an oral submission to the Parole Board when it considers making a parole order concerning the serious offender.

Currently, such a person may only make an oral submission if the Parole Board gives its approval.

This is an important change and will benefit the victims of serious offenders.

As I said in the House on 13th March this year in response to a Question Without Notice from the Honourable Member for Georges River, I believe that victims will welcome this change.

Often, a victim prefers to make a personal approach at a parole hearing to explain their personal circumstances and concerns.

Making a personal approach can often demonstrate a victim's concerns far more clearly than a written submission might.

The change will therefore allow a victim to have their personal say regarding the offender—whose crime

may still affect the victim long after it was actually committed.

The word "victim" is defined quite broadly in section 256 (5) of the *Crimes (Administration of Sentences) Act 1999*.

It means a victim of an offence for which the offender has been sentenced, or the victim of any offence which is taken into account during the sentencing process, or even a family representative of such a victim (if the victim is dead or in any way incapacitated).

And, for the record, the Department of Corrective Services also maintains the Victims Register under the *Crimes (Administration of Sentences) Act 1999*.

I am advised that 1,156 victims had registered with the Victims Register by 31 December 2001.

At that date there were 617 "active" registered victims in relation to offenders in custody on that date.

About 200 registered victims per year are advised of an offender's external leave or parole consideration—about two-thirds of whom express a wish to make some form of submission to the Parole Board or the Serious Offenders Review Council.

I would like to acknowledge the work done in this area by Martha Jabour from the Homicide Victims Support Group.

I met Ms Jabour in my Liverpool Street office on Tuesday 19th February 2002 to discuss how we could improve the representation of victims of homicide when they addressed the Parole Board.

Our meeting—and many of her group's proposals—are constructively included in these proposed new amendments.

And for the record, the Government will also be establishing a new part-time position of Victims Support Officer.

This will occur once all the relevant grading and advertising procedures are put in place.

This officer will develop and run information sessions for victims of crimes to help them understand the process and procedures involved in the victims rights and parole considerations.

The amendments to section 263 of the *Crimes (Administration of Sentences) Act 1999* are minor technical amendments.

Section 263 currently excludes personal liability for acts and omissions done in good faith in the administration and execution of the Act.

But correctional officers also carry out functions under the *Summary Offences Act 1988*.

In particular, a correctional officer has the power to arrest a person who attempts to bring contraband into a correctional centre.

Amendments to section 263 of the *Crimes (Administration of Sentences) Act 1999* will extend the exclusion of personal liability for acts and omissions done in good faith by correctional officers and departmental officers.

I now turn to proposed amendments to the *Summary Offences Act 1988*.

The *Summary Offences Act 1988* deals with offences in public places and other places to which the public has access.

Part 4A of the Act relates to offences committed by visitors at places of detention, which are defined as correctional centres, correctional complexes and periodic detention centres.

The Department of Corrective Services wages a constant war against contraband in correctional centres and, in recent times, has been particularly successful in detecting a wide variety of contraband which visitors have attempted to smuggle into correctional centres.

The Government is committed to the prevention of illegal drug use, and the harm caused by illegal drugs, in correctional centres.

Illegal drugs in correctional centres debilitate the health of inmate drug users who become unable to participate effectively in inmate development programs.

They can also potentially lead to stand-over tactics, inmate power structures, an underground economy, needle-stick injuries, assaults and the potential for corruption.

Contraband is not, however, restricted to illegal drugs.

It also includes syringes and other implements of drug-use, offensive weapons, alcohol, and money.

Contraband also includes other unauthorised items such as mobile phones, which can be used by inmates to further their criminal activities.

Mobile phones are being intercepted in increasing numbers.

The circumstances in which contraband can be trafficked into correctional centres are not limited to people visiting inmates.

Contraband can be hidden inside tennis balls or other items and thrown over perimeter walls.

Contraband can also be left hidden in areas near to correctional centres (in car parks or under bushes, for example) for later collection by inmates engaged in ground maintenance.

Despite the best efforts and vigilance of correctional officers in detecting contraband, some contraband still gets through to inmates.

The existing powers of correctional officers to detect contraband therefore need to be increased.

The Bill will give a correctional officer a clear power to stop, detain and search a person whom the officer reasonably suspects may be attempting to smuggle contraband into a correctional complex or correctional centre—or whom the officer reasonably suspects may be carrying out or about to carry out some other unlawful activity.

Apart from inmates and staff, there are three categories of people who may be present at a correctional complex or correctional centre:

- people wishing to visit inmates;
- people visiting as part of their employment (such as delivery drivers, tradesmen effecting repairs or academics doing research);
- and people seeking to carry out some unlawful purpose, such as introducing contraband or intending to aid and abet an escape.

The *Crimes (Administration of Sentences) Act 1999* applies primarily to inmates and does not cover offences which may be committed by these other categories of people.

Existing sections 27B to 27D of the *Summary Offences Act 1988* already give a correctional officer power to arrest a person trafficking contraband into a correctional centre or other place of detention.

And correctional officers do use this power.

As recently as 27th April this year, correctional officers arrested two people outside Silverwater Correctional Centre after one of them was seen to step out of a car and throw a tennis ball over the fence.

The tennis ball was retrieved and found to contain 8 grams of green vegetable matter.

But the *Summary Offences Act 1988* does not give a correctional officer the power to stop, detain and search a person who may be attempting to smuggle contraband into a correctional centre.

Only police officers currently have that power.

Authorised correctional officers can scan visitors with a scanning device such as a walk-through metal-detector.

They can require visitors to empty the contents of their pockets and personal possessions such as bags.

And they can require a visitor to submit to screening by a drug detector dog.

If a person refuses to comply, or if the drug detector dog gives a positive reaction, the officer may refuse to allow the person to enter the correctional centre.

But the officer cannot force the visitor to remain until a police officer is called to conduct a search.

Yet sometimes, grounds for arrest may only arise after a search.

Similarly, the existing section 27E of the *Summary Offences Act 1988* already gives a correctional officer the power to arrest a person loitering about or near any correctional centre or other place of detention without a lawful excuse.

But a correctional officer cannot search such a person.

The officer can ask a loitering person whether they have any lawful excuse to do so, but the officer does not have the power to force the person to demonstrate a lawful excuse or to stop and detain them while police are called to question them.

The new section 27F will therefore give a correctional officer new powers to stop, detain and search a person and a person's vehicle in or near a correctional centre or other place of detention,

The officer can do this if he or she reasonably suspects the person possesses contraband and intends to introduce it into the place of detention, or intends to carry out some other unlawful act.

So the amendment to section 27F strengthens the current powers whereby a correctional officer can only

ask a person to empty bags or pockets, or be screened by a metal detector or a drug detector dog, and deny them entry to the centre.

The new section 27F also gives a correctional officer the power to seize items of contraband found in any search.

The power to stop, detain and search a person or a person's vehicle or personal possessions is an intrusive power.

Accordingly, the Bill requires that a correctional officer may only exercise this power in circumstances where the officer has reasonably formed the view that a person has committed, is committing or has demonstrated an intention to commit an offence.

The Government appreciates that some members of the community may view this section as an attack on civil liberties.

But the new section 27G responds to such concerns.

This section sets out in detail the way in which a search by a correctional officer is to be conducted.

A search conducted by a correctional officer must be conducted with due regard to dignity and self-respect, and by an officer of the same sex as the person being searched.

In particular, a correctional officer will not be permitted to conduct a "frisk-search" or a "strip-search" of a person, or direct a person to remove any item of clothing other than a hat, gloves, coat, jacket or shoes.

The current requirement that a "frisk-search" or a "strip-search" can only be conducted by a police officer is maintained under the amendments.

Additionally, a search of a child or a mentally incapacitated person must be conducted in the presence of an adult who accompanied that child or mentally incapacitated person to the place of detention.

Or, in rare cases, where no adult accompanied them, the search must be in the presence of a non-custodial staff member who will act as an observer.

Honourable Members may question why children or mentally incapacitated persons need to be searched at all when visiting a correctional centre.

Unfortunately, the ingenuity of people who attempt to smuggle contraband into correctional centres does not stop at confining contraband to their own persons or personal effects.

Concealing contraband in babies' nappies, children's clothes, prams and strollers is one of the more common ways of attempting to smuggle contraband into correctional centres—particularly illegal drugs which can be easily concealed in such places.

Correctional officers therefore do need this search power.

The use of babies and children's items is a reprehensible situation—but an unfortunate reminder of the lengths to which some criminals will go to introduce contraband into correctional centres.

The new section 27H authorises a correctional officer to use a dog to conduct any search under the amendments.

Under this section, a correctional officer using a dog to conduct a search must take all reasonable precautions to prevent the dog touching a person, and must keep the dog under control.

However, the new section 27I provides that a correctional officer may use such force as is reasonably necessary to exercise the function under part 4A.

To further answer any possible objections to the new powers of correctional officers, the new section 27J provides for additional safeguards.

Under this section, a correctional officer using the power to detain and search a person or vehicle must not detain the person or vehicle any longer than is reasonably necessary, and in any event for no longer than 4 hours.

The correctional officer must also clearly identify himself or herself (if not in uniform) as a correctional officer and must provide the reason for the exercise of the power and a warning that failure or refusal to comply with a request or direction is an offence.

The new section 27K also creates the following offences:

- failing or refusing to comply with a request made or a direction given by a correctional officer with respect to the new powers to stop, detain and search persons and vehicles;
- failing or refusing to produce anything detected in a search;
- and resisting or impeding a search of a person or vehicle.

In relation to the second point—about failing to produce anything detected in a search—I can provide the House with an example of what we mean.

A correctional officer may direct a person to take off his shoes as part of a search.

If, after the shoes are removed, the officer detects an unusual lump in the person's sock, the officer may reasonably assume that the lump could be contraband.

The officer may then order the person to produce the item from the sock (he cannot touch the person).

And if a person refuses, they commit an offence.

This and the other new offences are subject to a maximum penalty of 10 penalty units—currently \$1,100.

This maximum penalty is less than the maximum penalties for actually introducing contraband but is equal to the maximum penalty for knowingly providing false identity or residence details while visiting correctional centres.

The new section 27L provides that none of the amendments proposed, limits any other powers or functions of a correctional officer or a police officer under this or other Acts.

And the new section 27M provides that evidence is not inadmissible if an item which is discovered in a search is different in nature from the reason the search was carried out.

For example, if a search is carried out in response to the reaction of a drug detector dog and it revealed weapons instead of drugs, the weapons would still be admissible as evidence in proceedings which are taken against the person concerned.

And finally,

The new section 27N provides that a search conducted by a person under the direction of a correctional officer does not subject that person to any personal liability, action, claim or demand.

In conclusion, the proposed amendments to the *Summary Offences Act 1988* will provide correctional officers with the legal powers they need to reduce the supply of illegal drugs and other contraband into correctional complexes and correctional centres, without undermining the civil liberties of persons visiting those places.

The amendments are a valuable weapon in the Government's fight to keep contraband out of correctional centres and prevent illegal drug use within correctional centres.

I commend the bills to the House.