



NSW Legislative Council Hansard

Children (Detention Centres) Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 6 June 2006.

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [8.29 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the *Children (Detention Centres) Amendment Bill 2006*. The Bill amends the *Children (Detention Centres) Act 1987*, the *Children (Criminal Proceedings) Act 1987* and the *Crimes (Administration of Sentences) Act 1999* to improve administration of detention centres and the management of detainees and for other purposes.

The proposals in the Bill reflect recognition by the Government of the need to assist with quelling actual serious disturbances, or imminent serious disturbances at juvenile detention centres. The Bill allows the Director-General of the Department of Juvenile Justice, pursuant to section 26 of the Act, to enter into a memorandum of understanding with the Commissioner of Corrective Services with respect to the handling of riots and disturbances at detention centres.

The amendments (proposed section 26(2)) will enable the Commissioner of Corrective Services to provide officers from the Department of Corrective Services to assist with quelling actual serious disturbances, or imminent serious disturbances, at juvenile detention centres upon request by the Director-General of the Department of Juvenile Justice. This new strategy of utilising the resources and expertise of Department of Corrective Services will free up Police resources for their main law enforcement functions.

The Department of Juvenile Justice is well equipped and has trained staff who are able to properly manage and control most incidents that may arise in juvenile detention centres. It is only on rare occasions that the Department of Juvenile Justice may require the assistance of Department of Corrective Services to quell a disturbance. If Department of Corrective Services officers were called to a juvenile detention centre in the event of a disturbance, these officers would be able to use their skills to quickly and effectively restore good order and discipline and ensure the safety of Department of Juvenile Justice staff, juvenile detainees and the local community, in the same way that this service is provided to adult Correctional Centres.

The amendments (proposed section 26(3)) allow the Commissioner, and any correctional officer authorised by the Commissioner, to deal with a riot or disturbance in respect of which such a request has been made as if it were a riot or disturbance in a correctional centre, for which purpose the Commissioner is to have the control and management of the detention centre. If deployed to a juvenile detention centre subject to a disturbance, Department of Corrective Services officers would intervene and control the operation of that centre only to the extent necessary to quell the disturbance and to facilitate proper control and management at the centre. Once good order has been restored to the juvenile detention centre, the Commissioner or delegated officer would return complete control of the detention centre to Department of Juvenile Justice as soon as practicable (proposed section 26(5)).

If deployed to a juvenile detention centre, Department of Corrective Services officers would at all times remain responsible to, and take directions from, the Commissioner of Corrective Services or the Commissioner's delegated officer. In areas of the centre not subject to Department of Corrective Services control, Department of Juvenile Justice procedures and directions must be followed. Pursuant to these amendments, any correctional officer authorised by the Commissioner of Corrective Services has and may exercise the functions of a juvenile justice officer in relation to the detention centre, and has the same functions and immunities in relation to the control of detainees at the detention centre as he or she has in relation to the control on inmates in a correctional centre.

A Department of Corrective Services officer may use force in accordance with clause 50 of the Children (Detention Centre) Regulation for the purposes of preventing or quelling a serious disturbance or imminent serious disturbance in a detention centre. Department of Corrective Services officers deployed to a juvenile detention centre will be able to use dogs (proposed section 26(4)) to assist in the maintenance of good order and security in a detention centre.

The Bill further reflects recognition by the Government that there were a number of shortcomings in the current legislation, in particular with respect to dealing with contraband in centres and measures to deal with the behaviour of detainees in centres.

The Bill provides an undisputable legislative base for urinalysis testing of detainees. This will allow for the detection of illicit drug or alcohol use, which could also indicate trafficking by staff in such contraband. It will also identify staff who may represent an occupational health and safety risk to themselves and other staff members. Urinalysis testing of detainees who appear to be drug affected at the centre or upon returning from leave, assists in targeting detainees who should have their telephone calls monitored by the telephone monitoring system, as well as assisting in the casework management function of detainees generally. Contraband includes not just illicit drugs and alcohol, but also other dangerous and prohibited articles such as cigarettes, weapons and mobile phones. The presence of contraband in juvenile justice centres undermines the Department's efforts to maximise the rehabilitation of juvenile offenders and presents an occupational health and safety risk to staff and detainees.

The Bill enables a juvenile justice officer who is on duty or on site in a detention centre to be required to submit to a breath analysis or to provide a sample for the purpose of testing for drugs and alcohol (proposed section 37J). The amendments also enables a juvenile justice officer who has been taken to hospital following an incident in which a person has been injured or died to provide a sample for the purpose of testing for drugs and alcohol. The proposed section 37L of the Bill protects doctor and nurses from liability for taking samples for the purposes of the Act.

All visitors to centres will be subject to non-intrusive searching similar to that carried out at airports: that is, "walk through" metal detector screening; "wands"; and a request to search the bag of visitors. The searching proposed does not involve physically touching a visitor (proposed section 32A Regulation power).

The Bill makes changes concerning confinement. Currently detainees can be isolated (with respect to serious offences) for a maximum of 3 hours (in the case of detainees under 16) or 12 hours (in the case of detainees 16 or over). Amendments to section 21 increase the maximum period of isolation to 12 hours and 24 hours, respectively. These changes will enable frontline staff to deal with more severe misbehaviour in an appropriate way. Strict procedures will be put in place to govern the use of these extended provisions.

In order to keep confinement periods to an appropriate length, the amendments draw a distinction between young people under, and above the age of 16 years. New South Wales remains the only jurisdiction in Australia to make this distinction with regards to segregation and confinement of juvenile detainees.

Behaviour that is so serious that it falls within the criminal law will be referred to NSW Police, as is currently the case. All detainees in such confinement will be under constant supervision from staff. The Bill also provides for the segregation of detainees (proposed section 19), as distinct from confinement. Segregation is not a punishment for misbehaviour. Segregation of detainees occurs in situations where a detainee exhibits extremely challenging behaviour, to the extent that he or she is a danger to himself, herself or to others. It is proposed that the amendments will remove the present strict upper limit on segregation periods if the Director-General so approves.

Furthermore, any detainee subject to isolation through confinement or segregation is at all times visible to, and able to communicate readily with, an officer. All detainees in isolation are under constant video monitoring. Should a detainee subject to isolation become distressed or attempt to self-harm, then appropriate intervention will take place by trained DJJ and Justice Health staff and/or the specialist crisis management team. It is current departmental practice to make regular (i.e., five or ten minute) checks of detainees considered "at risk" regardless of whether they are isolated or not, and this proposal will have no effect on the continuation of that procedure.

The Director-General may authorise the placement of detainees in their rooms during riots, disturbances or other emergencies in centres. Such a measure is required to enable centre staff to secure centres, and to maximise the safety and protection of detainees in difficult and dangerous situations.

Justice Health operates as a separate organisation providing a state wide medical and nursing service to all detention centres in New South Wales. The Bill provides (in proposed section 37E) for Justice Health to have the power to require detainees to be provided with appropriate medical treatment, and allows them to be given medical treatment without their consent if it is necessary for the purpose of saving life or preventing serious damage to health.

The Bill also provides (in proposed section 14) that the Director-General of Juvenile Justice is required to consult with, and have regard to the recommendations of, the Director-General of the Department of Health in relation to matters concerning a detainee who is a forensic patient within the meaning of the Mental Health Act 1990.

This Bill reflects recognition by the Government of the need to introduce new provisions to the *Children (Detention Centres) Act 1987* to facilitate the administrative transfer of detainees aged 18 and over, to adult custody. In 2001 an amendment to Section 19 of the *Children (Criminal Proceedings) Act 1987* was made to provide for the automatic transfer to adult custody of young people convicted of a serious children's indictable offence when they turned 18 years of age. However, the amendment also provided the Court with the discretion to make an order for the young person to remain in juvenile detention up to the age of 21 years if "special circumstances" existed. Currently, not all young people aged 18 and over in the juvenile system are the subject of the findings of "special circumstances", and some having been assessed as fitting the category of "special circumstances" prove to settle well over time and mature at a faster rate than expected by the courts.

Older detainees may benefit from the special programs provided by the Department of Corrective Services such as the Young Adult Offender Programs, and the opportunity for paid employment offered by the Department of Corrective Services.

To cater for these older detainees, it is proposed to introduce an administrative provision that will allow the transfer of detainees aged 18 and over, who are deemed suitable, to adult custody. Such a provision would also allow the Department to focus on its core target group of juvenile offenders.

The current transfer provisions available under section 28 the Act only provide mechanisms for transferring a detainee only if he or she has previously transferred to the detention centre from a correctional centre, is on remand for a serious offence, exhibited misbehaviour or has presented as a high risk of danger.

The Bill amends section 28(2) so as to provide that the transfer of a detainee who is under 18 can be effected only in the circumstances referred to currently in section 28. The amendment (proposed section 28(2A)) provides that the transfer of a detainee who is between 18 and 21 can be effected not only in these circumstances but also if the Children's Court authorises the transfer or the detainee requests the transfer.

The Bill (proposed section 28(1A)) also makes it clear that a transfer order may be made in relation to a detainee who is absent from, or has not yet been received at, a detention centre. The effect of this amendment is that detainees who are over the age of 21 (such as those who have been arrested following revocation of their parole) can be taken directly to a correctional centre rather than to a detention centre.

It is also intended to apply the same processes currently employed for the automatic transfer of those older detainees from juvenile custody to adult custody under section 19 of the *Children (Criminal Proceedings) Act 1987*. Currently, all detainees transferring to the Department of Corrective Services on a section 19 order are interviewed at least once by the Department of Corrective Services State Coordinator, Young Adult Offender Programs, while still placed at a juvenile detention centre. Family and significant others are invited to participate in these meetings, along with juvenile justice program staff. The detainee's case plan, security classification and placement are discussed and confirmed, and an opportunity is provided for the detainee to ask any questions. Details about the adult correctional system and details about the particular correctional centre in which the detainee will be accommodated are also explained.

This Bill also amends the Freedom of Information Act 1989 (proposed Schedule 1, clause 3C) so as to provide that documents created by the Drug Intelligence Unit of the Department of Juvenile Justice are exempt documents for the purposes of the Act.

On a related note, I am pleased to advise that an historic "Class or Kind Agreement" under section 33(1) of the Commission for Children and Young People Act 1998 is currently being finalised between the Commissioner for Children and Young People and the Director-General of the Department of Juvenile Justice. This agreement recognises for the first time the particular challenges faced by Department of Juvenile Justice staff in exercising legitimate use of force. The agreement specifically recognises that legitimate use of force is not "reportable conduct" for the purposes of the Commission for Children and Young People Act 1998.

The agreement also means that complaints concerning the use of force where the outcome of an investigation is that the allegation is "not sustained due to insufficient evidence" and the allegation is not of a serious nature will not be reportable. Also, allegations of low level neglect where no harm occurred to the detainee will no longer be reportable.

I commend the Bill to the House.