

FIRST PRINT

**COMMUNITY PROTECTION (GREGORY WAYNE KABLE)  
BILL 1994**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The objects of this Bill are:

- (a) to enable the Supreme Court to make preventive detention orders against Gregory Wayne Kable; and
- (b) to make provision for the detention of Gregory Wayne Kable in accordance with such an order.

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**PART 1—PRELIMINARY**

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

**Clause 3** declares that the object of the proposed Act is to protect the community by providing for the preventive detention (by order of the Supreme Court made on the application of the Director of Public Prosecutions) of Gregory Wayne Kable and provides that, in the construction of the proposed Act, the need to protect the community is to be given paramount consideration. The clause makes it clear that a detention order may only be made against Gregory Wayne Kable.

**Clause 4** defines various expressions used in the proposed Act.

**PART 2—DETENTION ORDERS**

**Division 1—Detention orders**

**Clause 5** empowers the Supreme Court to make preventive detention orders. Such an order may not be made against Gregory Wayne Kable unless the Court is satisfied:

- (a) that he is more likely than not to commit a serious act of violence; and

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- (b) that it is appropriate, for the protection of a particular person or persons or the community generally, that he be held in custody.

An order will have effect for up to 6 months at a time, as specified in the order. An order will be able to be made under the proposed clause even if Gregory Wayne Kable is in lawful custody, whether under the proposed Act or otherwise, and even if there are grounds on which he may be held in lawful custody otherwise than under the proposed Act.

**Clause 6** empowers the Supreme Court to issue a warrant for the arrest of Gregory Wayne Kable if it is satisfied, on the basis of the information given to the Court in connection with the application for the warrant, that there are reasonable grounds on which a preventive detention order may be made. When arrested under such a warrant, Gregory Wayne Kable will have to be brought before the Court as soon as practicable and, in any case, within 72 hours of arrest.

**Clause 7** empowers the Supreme Court to make interim detention orders pending its determination of proceedings on an application for a preventive detention order.

**Clause 8** provides that only the Director of Public Prosecutions may make applications referred to in clauses 5, 6 and 7.

**Clause 9** provides that a detention order may be made subject to such conditions as the Court may determine and takes effect on the date on which it is made or such later date as is specified in the order.

**Clause 10** requires the Supreme Court to appoint assessors to observe and report to the Director of Public Prosecutions on Gregory Wayne Kable if it makes a detention order against him. An assessor will be a duly qualified medical practitioner, psychiatrist or psychologist.

**Clause 11** empowers the Supreme Court to direct the Commissioner of Corrective Services to make specified medical, psychiatric or psychological treatment available to Gregory Wayne Kable.

**Clause 12** provides for the amendment and revocation of preventive detention orders.

**Division 2—Procedure before the Court**

**Clause 13** provides that proceedings under the proposed Act are to be conducted as criminal proceedings.

**Clause 14** provides that a detention order may not be made against Gregory Wayne Kable unless the Director of Public Prosecutions' case is proved beyond reasonable doubt and unless the Court is satisfied that it is more appropriate for such an order to be made than for action to be taken under the Mental Health Act 1990 for Gregory Wayne Kable's involuntary detention.

**Clause 15** provides for proceedings on an application under the proposed Act to be commenced by summons, and allows the Supreme Court to hear and determine such an application in the absence of Gregory Wayne Kable on proof of service or attempted service of the summons.

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**Clause 16** regulates the procedure to be adopted by the Supreme Court in hearing proceedings under the proposed Act.

**Clause 17** empowers the Supreme Court to prohibit the publication or broadcasting of material that would tend to identify persons (including Gregory Wayne Kable) connected with proceedings under the proposed Act.

**Division 3—Administration of preventive detention orders**

**Clause 18** provides that a detention order is sufficient authority for Gregory Wayne Kable to be held in custody in accordance with the terms of the order.

**Clause 19** provides that a detention order does not have effect while Gregory Wayne Kable is in lawful custody otherwise than under the order.

**Clause 20** requires reports on a Gregory Wayne Kable's condition and progress to be prepared by the Commissioner of Corrective Services and by the assessors appointed for him.

**Clause 21** is a declaratory provision that removes any doubt as to the status of Gregory Wayne Kable, as a prisoner, and the effect of a detention order for the purposes of the Prisons Act 1952, the Crimes Act 1900 and the Sentencing Act 1989.

**Clause 22** requires Gregory Wayne Kable to be discharged from custody at the expiry of the detention order to which he is subject and provides that he must not be discharged from prison, or allowed leave of absence from prison, otherwise than at the expiry of the detention order or in accordance with an order made by the Supreme Court.

**Division 4—General**

**Clause 23** assigns proceedings in the Court under the proposed Act to the Court of Appeal.

**Clause 24** preserves the jurisdiction that may be exercised by the Supreme Court apart from the proposed Act.

**PART 3—MISCELLANEOUS**

**Clause 25** provides for the payment, out of the Legal Aid Fund, of the costs incurred by or on behalf of Gregory Wayne Kable in proceedings under the proposed Act.

**Clause 26** protects certain persons, including the State, from liability for acts and omissions done or omitted for the purposes of, or in connection with the administration of, the proposed Act.



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**Clause 27** provides that the Bail Act 1978 applies to and in respect of Gregory Wayne Kable while he is a defendant to proceedings under the proposed Act.

**Clause 28** provides for the making of rules of court for the purposes of the proposed Act.

**Clause 29** provides for the expiry of the proposed Act on the date occurring 9 months after the date of assent.

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**COMMUNITY PROTECTION (GREGORY WAYNE KABLE)  
BILL 1994**

NEW SOUTH WALES



No.           , 1994

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**A BILL FOR**

An Act to protect the community by providing for the preventive detention of Gregory Wayne Kable.

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

5       1. This Act may be cited as the Community Protection (Gregory Wayne Kable) Act 1994.

**Commencement**

2. This Act commences on the date of assent.

**Object and application of Act**

10       3. (1) The object of this Act is to protect the community by providing for the preventive detention (by order of the Supreme Court made on the application of the Director of Public Prosecutions) of Gregory Wayne Kable.

(2) In the construction of this Act, the need to protect the community is to be given paramount consideration.

15       (3) This Act authorises the making of a detention order against Gregory Wayne Kable and does not authorise the making of a detention order against any other person.

20       (4) For the purposes of this Act, Gregory Wayne Kable is the person of that name who was convicted in New South Wales on 1 August 1990 of the manslaughter of his wife, Hilary Kable.

**Definitions**

4. In this Act:

“**assessor**” means an assessor appointed by the Court under section 10;

25       “**Court**” means the Supreme Court of New South Wales;

“**detention order**” means a preventive detention order or an interim detention order;

“**interim detention order**” means an order referred to in section 7;

“**preventive detention order**” means an order referred to in section 5;

30       “**prison**” means a prison within the meaning of the Prisons Act 1952;



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**“serious act of violence”** means an act of violence, committed by one person against another, that has a real likelihood of causing death or serious injury to the other person or that involves sexual assault in the nature of an offence referred to in section 61I, 61J, 61K, 66A, 66B, 66C, 66D, 66F, 78H, 78I, 78K, 78L or 80A of the Crimes Act 1900.

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## PART 2—DETENTION ORDERS

### Division 1—Detention orders

#### Preventive detention orders

**5.** (1) On an application made in accordance with this Act, the Court may order that Gregory Wayne Kable be detained in prison for a specified period if it is satisfied, on reasonable grounds:

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(a) that he is more likely than not to commit a serious act of violence; and

(b) that it is appropriate, for the protection of a particular person or persons or the community generally, that he be held in custody.

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(2) The maximum period to be specified in an order under this section is 6 months.

(3) An order under this section may be made against Gregory Wayne Kable:

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(a) whether or not he is in lawful custody, under this Act or otherwise; and

(b) whether or not there are grounds on which he may be held in lawful custody otherwise than under this Act.

(4) More than one application under this section may be made for an order against Gregory Wayne Kable.

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#### Arrest warrants

**6.** (1) On an application made in accordance with this Act, the Court may issue a warrant for the arrest of Gregory Wayne Kable if it is satisfied, on the basis of the information given to the Court in connection with the application, that there are reasonable grounds on which a preventive detention order may be made.

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(2) A warrant may be transmitted to the person to whom it is addressed by facsimile transmission, in which case the copy produced by the transmission is taken to be the original document.

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(3) If arrested under the authority conferred by a warrant under this section, Gregory Wayne Kable must be brought before the Court as soon as practicable and, in any case, within 72 hours of arrest.

**Interim detention orders**

5       7. (1) On an application made in accordance with this Act, the Court may order that Gregory Wayne Kable be detained in prison for such period (not exceeding 3 months) as the Court determines pending its determination of an application for a preventive detention order.

10       (2) In particular, such an order (an “**interim detention order**”) may be made so as to enable:

(a) Gregory Wayne Kable to be examined as referred to in section 16 (1) (c); or

(b) reports on Gregory Wayne Kable to be prepared as referred to in section 16 (1) (d); or

15       (c) other proceedings to be brought for the purpose of committing Gregory Wayne Kable to custody or other involuntary detention, before the Court determines the application for the preventive detention order.

20       (3) On an application made in accordance with this Act or on its own motion, the Court may extend the period of an interim detention order for such further period (not exceeding 3 months) as the Court determines if it appears that the proceedings on the application for a preventive detention order will not be determined during the period currently specified in the interim detention order.

25       (4) An interim detention order ceases to have effect, regardless of its terms, when the proceedings on the application for a preventive detention order are determined.

(5) An interim detention order may be made, and its period extended, in the absence of Gregory Wayne Kable.

30       **Director of Public Prosecutions to make certain applications**

8. Only the Director of Public Prosecutions may make an application referred to in section 5, 6 or 7.

**Detention orders generally**

35       9. (1) A detention order may be made subject to such conditions (including a condition specifying the particular prison in which Gregory Wayne Kable is to be detained) as the Court may determine.

(2) A detention order takes effect on the date on which it is made or such later date as is specified in the order.



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**Orders appointing assessors**

10. On or as soon as practicable after making a preventive detention order, the Court must make a further order appointing one or more duly qualified medical practitioners, psychiatrists or psychologists as assessors to observe and report on Gregory Wayne Kable during the period for which the order is in force. 5

**Orders for medical, psychiatric or psychological treatment**

11. On making a detention order, or at any time while a detention order is in force, the Court may make a further order directing the Commissioner of Corrective Services to make specified medical, psychiatric or psychological treatment available to Gregory Wayne Kable. 10

**Amendment and revocation of preventive detention orders**

12. (1) On the application of the Director of Public Prosecutions or Gregory Wayne Kable, the Court: 15
- (a) may amend a preventive detention order by reducing the period for which it is in force; or
  - (b) may revoke a preventive detention order.
- (2) In determining an application under this section, the Court must have regard to the most recent reports prepared under section 20.
- (3) More than one application under this section may be made in relation to the same preventive detention order. 20

**Division 2—Procedure before the Court**

**Nature of proceedings**

13. To the extent to which this Act does not otherwise provide for their conduct, proceedings under this Act are to be conducted in accordance with the law (including the rules of evidence) relating to criminal proceedings. 25

**Standard and nature of proof**

14. (1) The Court must not make a detention order against Gregory Wayne Kable unless it is satisfied that the Director of Public Prosecutions' case has been proved beyond reasonable doubt. 30
- (2) The Court must not make a preventive detention order against Gregory Wayne Kable unless it is satisfied that it is more appropriate for such an order to be made than for action to be taken under the Mental Health Act 1990 for his involuntary detention. 35

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**Conduct of proceedings generally**

15. (1) Proceedings on an application for a preventive detention order are to be commenced by summons in accordance with rules of court.

5 (2) The Court may hear and determine an application for a preventive detention order in the absence of Gregory Wayne Kable if it is satisfied:

- (a) that the summons has been duly served on him; or
- (b) that the summons has not been duly served on him but that all reasonable steps to do so have been taken.

**Hearings**

10 16. (1) In any proceedings under this Act, the Court:

- (a) is bound by the rules of evidence; and
- (b) may order the production of such documents or other things (such as medical reports and medical records) as it considers appropriate; and
- 15 (c) may order an examination of Gregory Wayne Kable to be carried out by one or more duly qualified medical practitioners, psychiatrists or psychologists; and
- (d) may require the preparation of reports as to Gregory Wayne Kable's condition and progress by such persons as it considers appropriate; and
- 20 (e) must have regard to any report made available to it under paragraph (d); and
- (f) may, if the interests of justice so demand, exclude any person (other than a party to the proceedings or the party's legal representative) from the whole or any part of the proceedings.

25 (2) This Act does not affect the right of any party to proceedings under this Act:

- (a) to appear, either personally or by the party's legal representative; or
- 30 (b) to call witnesses and give evidence; or
- (c) to cross-examine witnesses; or
- (d) to make submissions to the Court on any matter connected with the proceedings.

**Orders prohibiting publication of material that may identify persons**

35 17. (1) The Court may, in or in connection with any proceedings under this Act, make an order prohibiting persons generally, or any named person or persons, from publishing or broadcasting the name (including that of Gregory Wayne Kable) of any person:



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- (a) who is a witness in the proceedings; or
  - (b) to whom the proceedings relate; or
  - (c) who is mentioned or otherwise involved in the proceedings.
- (2) Such an order has effect both during the proceedings and after the proceedings are disposed of. 5

(3) For the purposes of this section, a reference to the name of a person includes a reference to any information, photograph, drawing or other material that identifies the person or is likely to lead to the identification of the person.

**Division 3—Administration of preventive detention orders** 10

**Detention orders sufficient authority for Gregory Wayne Kable to be held in custody**

18. A detention order is sufficient authority for Gregory Wayne Kable to be held in custody in accordance with the terms of the order.

**Detention orders ineffective while Gregory Wayne Kable is otherwise in custody** 15

19. A detention order does not have effect while Gregory Wayne Kable is lawfully in custody otherwise than under the order.

**Reports to be prepared**

20. (1) While a preventive detention order is in force: 20

- (a) the assessor or assessors appointed for Gregory Wayne Kable; and
  - (b) the Commissioner of Corrective Services,
- are to make reports to the Director of Public Prosecutions on Gregory Wayne Kable's condition and progress.

(2) Reports under this section must be prepared: 25

- (a) at least once during the period for which the preventive detention order is in force; and
  - (b) whenever else the Director of Public Prosecutions so requires.
- (3) A report prepared by an assessor or by the Commissioner of Corrective Services must contain particulars with respect to the following matters: 30

- (a) a description of Gregory Wayne Kable's general behaviour during the period to which the report relates;
- (b) an opinion as to whether or not Gregory Wayne Kable is still more likely than not to commit a serious act of violence; 35

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- (c) an opinion as to whether or not it is still appropriate, for the protection of a particular person or persons or the community generally, that Gregory Wayne Kable be held in custody;
- 5 (d) an opinion as to whether Gregory Wayne Kable should remain in the prison in which he is currently detained or be transferred to another prison.
- (4) A report prepared by an assessor must also contain particulars with respect to the following matters:
- 10 (a) a description of the current state of Gregory Wayne Kable's medical, psychiatric and psychological condition;
- (b) a description of any medical, psychiatric or psychological treatment made available to Gregory Wayne Kable during the period to which the report relates;
- 15 (c) a description of any medical, psychiatric or psychological treatment undergone by Gregory Wayne Kable during the period to which the report relates;
- (d) an opinion as to whether any medical, psychiatric or psychological treatment (whether of the same kind as that made available during the period to which the report relates or of another kind) should be
- 20 made available to Gregory Wayne Kable during the remainder of the period for which the detention order is in force.
- (5) Particulars of an opinion must include particulars of the grounds on which the opinion is formed.

**Gregory Wayne Kable taken to be a prisoner for certain purposes**

- 25 **21. (1)** While subject to a detention order, Gregory Wayne Kable is taken to be a prisoner within the meaning of the Prisons Act 1952.
- (2) While subject to a detention order, Gregory Wayne Kable is taken to be required by law to be in custody in prison for the purposes of section 352AA of the Crimes Act 1900.
- 30 (3) In any other Act (other than the Sentencing Act 1989) or any instrument under any such Act:
- (a) a reference to a sentence of imprisonment includes a reference to a detention order; and
- (b) a reference to a term of imprisonment includes a reference to the
- 35 period for which a detention order is in force.
- (4) The Sentencing Act 1989 does not apply to or in respect of a detention order.



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**Discharge of Gregory Wayne Kable from prison**

22. (1) Gregory Wayne Kable must be discharged from prison at the expiry of the detention order to which he is subject unless there is lawful reason for continuing to hold him in custody.

(2) Gregory Wayne Kable must not be discharged from prison, or allowed leave of absence from prison, otherwise than: 5

- (a) at the expiry of the detention order to which he is subject; or
- (b) in accordance with an order made by the Court.

(3) This section applies despite any other Act or law to the contrary.

**Division 4—General**

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**Proceedings assigned to Court of Appeal**

23. Proceedings in the Court under this Act are assigned to the Court of Appeal.

**Jurisdiction of Court apart from Act not limited**

24. Nothing in this Act limits the jurisdiction of the Court apart from this Act. 15

**PART 3—MISCELLANEOUS**

**Costs**

25. (1) Gregory Wayne Kable is entitled to legal aid within the meaning of the Legal Aid Commission Act 1979 for the costs incurred by him or on his behalf for or in connection with: 20

- (a) proceedings brought against him under this Act; or
- (b) proceedings by way of appeal from any decision of the Court in proceedings brought against him under this Act.

(2) The nature and extent of legal aid to which Gregory Wayne Kable is entitled under this section, and the terms and conditions on which it is to be provided, are to be determined by the Legal Aid Commission in accordance with the Legal Aid Commission Act 1979. 25

**Protection of certain persons from liability**

26. No action lies against any person (including the State) for or in respect of any act or omission done or omitted by the person so long as it was done or omitted in good faith for the purposes of, or in connection with the administration or execution of, this Act. 30

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**Application of Bail Act 1978**

5       **27. (1)** The Bail Act 1978 applies to and in respect of Gregory Wayne Kable while he is a defendant in proceedings under this Act in the same way as it applies to a person against whom proceedings for an offence referred to in section 8A of that Act are being taken.

**(2)** However, Gregory Wayne Kable is not to be granted bail while he is subject to a detention order.

**Rules of court**

10       **28. (1)** Rules of court may be made under the Supreme Court Act 1970 for regulating the practice and procedure of the Court in respect of proceedings under this Act.

**(2)** This section does not limit the rule-making powers conferred by the Supreme Court Act 1970.

**Expiry of Act**

15       **29.** This Act expires on the date occurring 9 months after the date of assent.

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