YOUNG OFFENDERS AMENDMENT BILL 2004

Second Reading

Resumed from 18 August.

MS S.E. WALKER (Nedlands) [3.05 pm]: This Bill was brought on for debate as part of the $20 million reform package for juveniles. I look in the Bill and wonder for what we will be paying out money. The Bill refers to a body sample monitoring device, yet no such device is available. I ask myself why this Government is bringing in this legislation that contains, in part, a provision for a device that does not exist. That is one issue the Opposition has with this Bill. The Opposition will support certain provisions of the Bill, but it is concerned about changes to the juvenile justice teams, and I will come to that.

The Young Offenders Act is an excellent Act as it currently operates. It was introduced during the time of the Court coalition Government by the then Attorney General, Hon Cheryl Edwardes. The Act, along with the Victims of Crime Amendment Bill, the sentencing Bill and the Bail Act, formed the Court Government's law and order policy. The Young Offenders Act was based on the policy foundation of toughness but fairness. Anyone who knows that legislation - there are very few members on the Government side - knows that it is a comprehensive package for juveniles that steers the majority of offenders away from the criminal justice system. At the time it charted a new direction for juvenile justice in Western Australia. I am talking about an Act that was assented to in 1994. The focus was widened to take account of parents, victims and the broader community's wellbeing. The legislation was based on the concept that an offender would pass through a series of gateways, which was intended to screen out minor from more serious offences, and to provide appropriate penalties for those offences. When the legislation was introduced in 1994, the then Attorney General, Hon Cheryl Edwardes, outlined in some detail in the second reading speech that unique legislation for juvenile justice. At that time, the legislation for the management and administration of juvenile justice was contained in the Child Welfare Act 1947 and the Children's Court of Western Australia Act 1988. The legislation represented a welfare approach that included practices such as the use of indeterminate orders and a lack of emphasis on due process. The 1986 review of the juvenile justice system set the groundwork for the development of the Children's Court of Western Australia Act and the concept of directing young offenders away from formal processing. The coalition Government then regarded the juvenile justice system as having three goals in the broader criminal justice system. The first was to protect the public, the second was the fair treatment of those individuals in the criminal justice process and the third was to minimise the instance of crime. The Act, as it stands, implements a three-tier modification approach to accommodate factors specific to children. The first tier was that it recognised that much juvenile offending was transitory and minor, and that juveniles should not be given greater punishment for an offence than adults would receive for a similar offence. The second tier was that young offenders must accept responsibility for their actions. The third tier placed an emphasis on parents as major players in juvenile justice and indicated that their active roles should be supported and evaluated. Additional elements were outlined by the then Attorney General at page 362 of *Hansard* of 12 May 1994. I will read them because this Bill might affect some of them. -

> Additional elements include: Recognition of the rightful place of victims of crime in the justice system; a strong commitment to prevention and diversion programs for minor offenders; support for programs which achieve positive behavioural change; establishment of an effective post release sanction based supervision program; and, introduction of an effective alternative to the Crime (Serious and Repeat Offenders) Sentencing Act. Above all, a goal for all those working with juvenile offenders is the re-establishment of responsible citizenship, attitudes and behaviour in young people.

It was the Government's intention at that time to not only operate juvenile justice under welfare legislation but also to consolidate all of the juvenile justice provisions in one Act. That Act set out the objectives and principles that were to be pursued then. Hon Cheryl Edwards, the then Attorney General, ensured that the Bill contained those objectives and principles. It is worth looking at those because sometimes when we introduce legislation, such as this Bill, into this place those objectives and principles are lost. When a Bill is introduced, I always refer to the second reading speech to see what the Bill was all about in the first place. I am a bit disturbed about some of the provisions in this Bill. During consideration in detail the minister might explain them. They may not be as watered down as the Opposition perceives them to be.

Some of the objectives of the Young Offenders Act are -

> (b) to set out provisions, embodying the general principles of juvenile justice, for dealing with young persons who have, or are alleged to have, committed offences;
>
> (c) to ensure that the legal rights of young persons involved with the criminal justice system are observed;
>
> (d) to enhance and reinforce the roles of responsible adults, families, and communities in —

(i) minimising the incidence of juvenile crime;

(ii) punishing and managing young persons who have committed offences; and

(iii) rehabilitating young persons who have committed offences towards the goal of their becoming responsible citizens;

(e) to integrate young persons who have committed offences into the community

I will read some of the general principles of juvenile justice, of which there are many -

(d) victims of offences committed by young persons should be given the opportunity to participate in the process of dealing with the offenders to the extent that the law provides for them to do so;

(f) responsible adults should be encouraged to fulfil their responsibility for the care and supervision of young persons, and supported in their efforts to do so;

. . .

(j) punishment of a young person for an offence should be designed so as to give the offender an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways;

Those principles and objectives have no direct effect or power but provide guidelines for those involved in the application of the legislation.

One of the provisions of the Act enables the exchange of information. Section 17 of the Act contains a confidentiality provision, which, at the time, the coalition said was a critical part of the Bill. I have looked at various pieces of research on this and that aspect is important because the confidentiality of the records of young offenders could be maintained so that when offenders, many of whom committed offences during a transitory stage, moved on, they would leave that behind them. This Bill provides for an enormous sharing and exchange of information. I am not quite sure how far that will extend. Will it now extend to confidential information from psychiatric and psychological reports and past criminal records of young offenders being broadcast? I am not sure. That is one of the issues that the Opposition would like the minister to explain.

The then Attorney General said at page 363 of her second reading speech -

> Provisions relating to the exchange of information are clearly critical now that he juvenile justice area has been separated from the Department for Community Development. Many of the children and families being supervised by the juvenile justice division of the Ministry of Justice are likely to be involved with the Department for Community Development. Just as it is critical that certain information be shared for the benefit of the families involved, so should some of the information be kept entirely separate. The provisions of the Bill specify three types of information: Records of findings of guilt; case management information; and, records of convictions.

This Bill seeks to widen the number of government departments that receive information and, I understand, the type of information they may receive. It is similar to the Victims of Crime Act, which provides a right of confidentiality to victims and which this Government chose to take away from them. It has allowed the broadcasting of highly personal and confidential information to non-investigatory bodies in this State.

The Young Offenders Act deals with the overuse of the arresting of young offenders, which is reflected in many reports. In 1994 the number of juveniles arrested in this State was the highest in Australia. The major reason was that, procedurally, it was far simpler for Western Australian police officers to arrest juveniles than to deal with them through other methods. Changes were made in 1991 to accommodate that under the Child Welfare Act and the police were provided with alternatives, such as the ability to issue a "Notice to Attend" or a caution. However, a number of legal problems were experienced and that provision was not utilised. Those previous provisions were also incorporated in the Young Offenders Act and enlarged administratively to provide for the issuing of a "Notice to Attend". That notice can be used to prosecute offenders who breach court orders and also as confirmation of service, as it must be served personally on the parents of the offender, as responsible adults. That was a major reform of the Young Offenders Act. A major strategy of the Act was to create a process other than arrest for the majority of young people who break the law on only one or two occasions. The cautioning system, which research found to be highly effective, was a diversionary strategy.

The other significant change was the establishment of juvenile justice teams, which was the second strategy put in place by the Court coalition. This Bill provides for significant changes to that strategy. As I said, the juvenile justice team was a uniquely Western Australian response to juvenile offending. In June 1993 two pilot teams were established in Thornlie and Fremantle. Each team comprised a juvenile justice officer from the then Ministry of Justice, a police officer, a Department of Education representative and a representative of the local

Aboriginal community, where appropriate. The police took their cases from the Police Service or the Children's Court. The police can refer a juvenile to a team instead of laying a charge, and the courts can also refer if they are considering dismissing a charge, or seeking to provide some punishment. The juvenile justice team invites the parents, the victims and the offender to take part, as the then Attorney General said, in a process of finding a suitable punishment for the offence. The purpose of the meeting is to achieve unanimous agreement on the outcome. In her second reading speech on the parent Bill, the minister said that if social or educational issues emerged during the meeting of that group, they should be identified and dealt with. At page 364 of *Hansard* the then Attorney General is reported as saying -

> The essential elements of the juvenile justice teams are -
>
> > Offenders directly face the consequences of their actions;
> >
> > restitution or reparation takes place;
> >
> > parents or responsible adults are actively involved in the process and in the supervision of any outcome subsequently ordered; and
> >
> > support services or at least avenues for support are available at the time the child is being dealt with.
>
> This model of operation is simpler and more cost effective than the family group conference process in New Zealand and flexible enough to accommodate different cultural and family groups.

The Attorney General also said -

> Through this Bill it is the Government's intention to provide a legislative base for the teams which is strong enough to retain the basic concept as described but flexible enough to be structured in different ways to accommodate implementing the teams statewide.

I do not think that the teams have been implemented statewide. I will be interested to hear from the minister whether any progress has been made in that regard. I understand that changes will be made in relation to juveniles and Aboriginal communities. The Attorney General also said -

> The Bill provides for the setting up of juvenile justice teams statewide, the role of the coordinator, the decision making processes of the teams, the powers of the teams to deal with cases and matters relating to referrals to the teams. Payment of restitution or compensation is achieved by agreement. Where no agreement can be reached either on the question of restitution or compensation, the matter must be sent back to the referring authority. Failure to comply with the agreed restitution or compensation will also result in referral back to the referring authority.

It was supposed to be the first point of contact between police and young offenders, provided that they had committed a non-schedule offence. That would be a police caution. The Attorney General went on to say -

> When the police have exhausted their cautioning options, and provided the offence is a non-scheduled offence, the offender will be referred to the teams.
>
> The Children's Court will deal with scheduled offences, offences where the police decide to proceed by notice to attend or arrest, and cases where the offender does not admit to the offence.
>
> Where the team cannot agree on an outcome, or where the agreed penalty, restitution or compensation is not carried out, the matter will be referred via the police to court.
>
> The teams will also deal with matters referred by the Children's Court in certain circumstances.

Importantly, the Attorney General at that time also said -

> Together with the successful police cautioning program the teams represent a major response to early and minor offending. It needs to be absolutely clear that these diversionary measures are not intended to go soft on minor offenders. Rather the intent is for this group to be dealt with in a more direct and expeditious way, . . .

As I have said, some of the amendments in this Bill refer to juvenile justice teams. The Bill is said to be the result of a report that was released in February 1998 by Rosemary Cant and Rick Downie on the evaluation of the Young Offenders Act four years after its implementation. I thank the minister and her advisers for making that report available to me. When I looked through the report, I could not find the recommendations for the changes to the juvenile justice teams that appear in the Bill.

I will go through what the Bill intends to do to the Young Offenders Act. Section 24 of the Young Offenders Act deals with referrals to juvenile justice teams. Section 25 provides that only certain matters may be referred to the teams, and I will not go through the schedule 1 and schedule 2 offences. However, it is apparent from

reading sections 27 and 28 of the Act that two types of people can refer a young person to a juvenile justice team: first, a prosecutor under section 27; and, secondly, the court. The Act has been in place since 1994. Section 28, "Referral to team by court", states -

> Instead of itself dealing with a young person who has been charged with an offence, the court may, whether or not the person has pleaded to the charge and whether or not the person has been found guilty of an offence, refer the matter for consideration by a juvenile justice team.

That section will be repealed by this Bill. The proposed new section states -

> (1) If a young person has been charged with an offence, the court may refer the matter for consideration by a juvenile justice team -
>
> (a) before dealing with the charge;
>
> (b) after a plea of guilty has been entered but before the court records a finding that the young person is guilty of the offence;
>
> (c) after a hearing of the charge but before the court records a finding that the young person is guilty of the offence; or
>
> (d) after a plea of not guilty has been entered and the court has found the charge proved but before the court records a finding that the young person is guilty of the offence.

Importantly, proposed new subsection (2) states -

> A consideration under subsection (1) of whether or not it is appropriate to refer a matter for consideration by a juvenile justice team is to be made without an adjournment for any assessment of the young person concerned.

I ask why. The current practice is that the president of the court or a judicial officer requires an assessment of the offender to be done to determine whether it is appropriate to refer the matter to a juvenile justice team. The minister might correct me, but I understand that when an assessment is done, someone looks at any psychological reports on the offender or does a psychological or psychiatric assessment. There might be records to look at. I do not know. Certainly the court will be able to assess whether the person is suitable for referral to a juvenile justice team. This will now be a mandatory requirement. I also note that the wording has changed. It now refers to the court considering whether it is appropriate for the matter to be referred to a juvenile justice team. Should it not be a question of whether the offender is suitable to be sent to a juvenile justice team? It is not the matter that is assessed; it is the offender who is assessed. Why has that been altered? It seems to me that it is perfectly reasonable to assess whether an offender is suitable to be sent to a juvenile justice team. It takes a lot of time, energy and resources to organise a juvenile justice team.

Section 29 of the Act, "First offenders usually should be referred to a team", states -

> The discretion given by section 27 or 28 -

That is, referral by a prosecutor or a court -

> is to be exercised in favour of referring the matter to a juvenile justice team if the young person has not previously offended against the law.

All that section 29 says to the prosecutor and the court is that if the offender has not previously offended, they must exercise discretion in favour of sending the person on. That is changed under the provisions of this Bill, which means that under section 29 a young person is not to be taken to have previously offended against the law. In simple terms it means that they have not offended against the law, but this Bill is qualifying what that means. Clause 14 of the Bill states that section 29 is amended by inserting after subsection (1) -

> (2) A young person is not to be taken to have previously offended against the law merely because he or she -
>
> (a) has been cautioned under section 22;

That is something new. A person could have previously offended against the law and been cautioned. Therefore, this is an extension of the current provision. It continues -

> (b) has accepted responsibility for the act or omission constituting the offence under section 25(4); or
>
> (c) has agreed to comply or has complied with the terms specified by a juvenile justice team for disposing of a matter under section 32.

Does that mean that offenders will be going to the juvenile justice team on multiple occasions? I do not think, from reading the then Attorney General's second reading speech, that juvenile justice teams were supposed to be set up for that. I would like the minister to explain that during the consideration in detail.

The other issue with the juvenile justice team can be found at section 32 of the current Act, powers of the juvenile justice team, which reads -

> (1) A juvenile justice team dealing with a young person for an offence may determine the way in which it considers the matter should be disposed of and invite the young person to comply with terms to be specified by the team.

This is important. It continues -

> (2) If the young person is not present at the proceedings or a party withdraws his or her agreement to having the matter dealt with by a juvenile justice team or will not agree to terms specified by the team, the team may send the matter back -
>
> (a) if the matter was referred by a person, to that person; or
>
> (b) if the matter was referred by the court, to the court . . .

An amendment is now being made to the Act providing that it does not matter if the victim does not turn up. That section will provide that if a young person is not present at the proceedings and does not have a good reason for not being present, certain events will follow. This means that the ridiculous situation will arise in which a young offender can be referred to a juvenile justice team but not be present at the proceedings, and the juvenile justice team can carry on in his absence. That is wrong because that is not the premise on which the power was originally given under the Act.

The reasons that the minister gave in the second reading speech for the new removal of one of the parties is that there was once a child who had a terminal illness and there was once a child who was interstate. I am sure that if those matters went back to the court the court could accommodate them, but to allow the court to proceed without the person being present leaves the gate wide open for the team to operate without the offender being present.

The other reason given in the minister's second reading speech was that one of the party members may become emotional. I understand that sometimes during a juvenile justice team meeting a victim will become a bit emotional. That is understandable. I refer to the evaluation of the Young Offenders Act and what was said about the juvenile justice team in the report published in 1998, which reads -

> The Western Australian juvenile justice model draws on Braithwaite's theory of reintegrative shaming. The Juvenile Justice Team Practice Manual describes reintegrated shaming thus:
>
> *The theory of reintegrative shaming is that discussion of the harm and distress caused to both the victim and the offender's family will communicate shame to the offenders for what they have done. Secondly, this theory also has the view that the intention of assembling around the offender people who care about them and respect them the most is to foster reintegration - that is the healing of social relations.*

It was not intended that the offender be absent from the juvenile justice team proceedings. I will pick out some other observations by Rosemary Cant and Rick Downie in their evaluation of the Young Offenders Act as it relates to juvenile justice teams. They wrote at page 31 -

> The objectives of the Juvenile Justice Teams as they are currently constituted are:
>
> . . .
>
> - To provide the victim with an opportunity to be part of the process in addressing the behaviour and contributing to a resolution of the offences committed against them.

It is to ensure that young persons are held accountable for their offending behaviour by getting them to accept responsibility for the offence and to make amends for their action.

I am interested to know whether the minister has any figures. They gave some data on the number of individual juveniles dealt with by the juvenile justice teams in 1996, which was 16 per cent of the overall total. The statistics show that in 1998, 59 per cent of the juveniles were cautioned; 16 per cent were sent to the juvenile justice teams; and 24 per cent were sent to the court. The authors of the report also looked at some of the strengths and problems when implementing team processes. They wrote -

> The format of the family meeting appeared remarkably consistent across all Teams (country and metro) but the dynamics of each meeting clearly vary according to the skills and experience of the coordinator

> and the police officer and the attitudes/emotions of offenders, victims and parents. Some meetings go better than others do and at times considerable control must be exercised to ensure that an angry victim does not derail the meeting.
>
> . . .
>
> Although largely taken for granted in any discussion about the Juvenile Justice Teams, the fact that the Ministry of Justice and the Police Service have worked collaboratively to establish and maintain the Teams must be identified as a major strength. A Juvenile Justice Team without one of the parties would be a poorer model.

This Government is suggesting that should be done in this legislation. It is opening a gateway that will allow a juvenile justice team to progress in the absence of the juvenile. Not only is it opening a gateway in that way, but it seems to me that it is also opening a gateway to allow repeat offenders to attend juvenile justice teams. I would like to know the real reason behind this Government's bringing in what I see as a ridiculous provision to allow a juvenile justice team to progress in the absence of the juvenile. I believe this will cause the public to lose all confidence in the system. It is supposed to be a diversionary approach. It is not about the prosecution referring a juvenile. It is about the court referring a juvenile who has not committed any of the offences in the schedule to a juvenile justice team in which the victim, and the offender and his or her family, can sit down and work through a solution. It is supposed to be a process that benefits the juvenile.

The report states at page 44 -

> Young people experienced a range of emotions about meeting the victim. Many were nervous and scared, -

Some might say and so should they be. It continues -

> some were embarrassed or ashamed, and some were sorry or felt sympathy for the victim. Twenty per cent said that they had learnt something about the impact of their behaviour on the victim.
>
> For example:
>
> > *To see the people you are hurting are real people.*
> >
> > *Emotional damage that was caused. Financial cost to the victim.*

The report was quite extensive. It summed up the matter by saying -

> Ninety-two per cent of offenders interviewed were satisfied with the way that they had been dealt with by the Teams. . . . The fact that so many of the young people felt that people had listened to them, that they had been treated fairly and with respect and courtesy and that their rights had been protected is a credit to the Teams.

The report goes on to say that the picture in the country is very different from that in the metropolitan area, because there are no specialist teams in the country. I will come back to that during consideration in detail, because we need to look at that matter.

The Opposition would like to support the Bill. However, we are concerned about the watering down of the provisions with regard to the juvenile justice teams. I cannot see anything in the report, unless I have missed something, that recommends that the offender should not turn up at the juvenile justice team to be dealt with. We are also concerned that the Bill contains a ridiculous provision about a body sample monitoring device that has not even been invented yet.

As I understand it, the juvenile justice teams are centred around restorative justice and punishment. I took the opportunity today when I had a spare five minutes of looking at a book titled *The Use of Punishment* by Seán McConville. That is quite a recent book on the use of punishment, and it contains a chapter on restorative justice. He states -

> The term 'restorative justice' as yet has no settled meaning, but for the purposes of this chapter we will take it to encompass values, aims and processes that have as their common factor attempts to repair the harm caused by criminal behaviour.

We accept that, because it is in the Young Offenders Act. It continues -

> Most restorative justice advocates agree that its core values include: mutual respect; the empowerment of all parties involved in the process; accountability; consensual, non-coercive participation and decision-making; and the inclusion of all the relevant parties in dialogue. The inclusion of victims as 'relevant parties' is generally agreed to be an extremely important value.

It goes on to say -

> The latter argue that this should seek to restore all three groups who are recognised as having a legitimate interest in determining the response to an offence - offenders, victims and those making up the wider society - and that restoration should address their material and emotional loss, safety, damaged relationships, dignity and self-respect. The key aim for many is to give a voice to both victims and offenders.

It says also -

> Through dialogue it is hoped that victims' feelings of anger or fear towards 'their' offender, or crime more generally, will be alleviated, and that offenders will experience genuine remorse and develop a greater sense of victim empathy.

It appears to me that the minister is seeking to set up a system that will protect offenders from the feelings that are generated by the victims at the juvenile justice team meetings. If that is the case, the Opposition cannot support the Bill. How can we support a Bill that seeks to water down the diversionary procedures to such an extent that the offender will not need to be present?

Lastly, McConville says -

> Restorative justice schemes are usually targeted at young offenders, particularly those at an early stage of their criminal career who have not committed a serious offence.

I have spent a fair bit of time talking about the juvenile justice system. The minister has told the House the reasons that she believes these amendments need to be made. I cannot find in the report any recommendation that the juvenile not turn up at the juvenile justice team.

The Bill also proposes amendments with regard to retrospective breaches of a supervised release order, internal investigations by the chief executive officer of any alleged incident in a juvenile detention centre, certain arrangements for Aboriginal communities, and the use of a body sample monitoring device. The Bill also proposes the insertion of a new section 15A with regard to the disclosure of personal information. It is claimed that that will help protect the physical safety of young offenders. I find that remarkable, given some of the policies of this Government with regard to the protection of children. The Opposition would like to support this Bill. However, we seek clarification of a number of issues. We want to know why the Bill provides for the use of a monitoring device when no such device exists, and whether this is just a window-dressing exercise. We also want to know why the Government is proposing to water down the concept of juvenile justice teams to such an extent that confidence in the system, which is already shaky, will be rendered even more shaky.

MRS C.L. EDWARDES (Kingsley) [3.47 pm]: I want to comment on one particular aspect of the Young Offenders Amendment Bill, and that is the juvenile justice teams. Juvenile justice teams are a valuable option to divert juveniles who are not serious or repeat offenders away from the juvenile justice system and in particular the court system. The juvenile justice teams provide for penalties that are totally different from those that a court can impose on juvenile offenders. It is extremely important that the community maintains confidence in the juvenile justice teams. Juvenile justice teams have proved to be very valuable for both victims and offenders. However, it is critical that the offenders take part in the juvenile justice teams. We cannot ever have a situation in which juvenile offenders can be diverted from the court system but do not need to attend the juvenile justice team, because that will mean that the juvenile justice teams will fall into absolute disrepute. That is absolutely critical to the value of a juvenile justice team.

When reflecting on how the juvenile justice teams were originally developed, I looked at the history of juvenile justice teams. They started in November 1991 when the original concept was raised by prominent Aboriginal persons at a conference on juvenile crime. Those concepts were then developed by the State Government Advisory Committee On Young Offenders, and later by the Labor Government. The current Treasurer, who was the then minister responsible for juveniles being dealt with by the community development department, developed the juvenile justice teams. However, there was never an intention that they should replicate the New Zealand family group conferencing. Although the minister and many of his staff, and my staff and I, visited New Zealand, there was never an intention by any of us that the juvenile justice teams should replicate the New Zealand family group conferencing. The clear parameters were that the teams were to be a local response developed to meet the local Western Australian conditions.

I say that because, in looking at some of the changes that are now being put forward, it appears that some of the concepts go back to what was part of the family group conferencing system in New Zealand. The model that is now called juvenile justice teams was developed by an across-government working group that included Aboriginal representation. The ability of the New Zealand family group conferencing concept to apply in the Australian context has been questioned in a number of forums; for example, in 1992 at the Australian Institute of Criminology juvenile crime conference in Adelaide, and again in 1994 at the Australian Institute of Criminology

crime prevention conference in New South Wales. In particular, Aboriginal representatives at those conferences questioned the relevance of the concept. I picked that up from some of the changes as perhaps being the flavour behind some of the amendments that are before us today.

The New Zealand juvenile justice system based its welfare-oriented legislation - I believe this is one of the key differences - on a totally different concept of who came before family group conferencing, and for what reason. It was also a major part of its welfare-oriented legislation, which was called the Children, Young Persons, and Their Families Act 1989. It is so different from anything in Western Australia as to make any comparison meaningless. In New Zealand, most of the offences that we would consider less serious - that is, the non-scheduled offences, estimated at about 80 per cent - are dealt with by arrangements between the police and the juvenile justice authorities in that country. The outcomes range from withdrawal of charges through to cautions and, in some cases, conditions. That means that only the more serious matters are considered by family group conferences in New Zealand. Therefore, the system that originated in New Zealand is totally different from what was developed in Western Australia. An example of something which we would not have in Western Australia and which is dealt with under the family group conferencing scheme in New Zealand is the possibility of an offender on an offence of dangerous driving causing death while in a stolen car appearing before a team and being required to apologise to the victim's relatives and pay for the headstone, which is what one New Zealand consultant who was in Western Australia in 1993 described to us. It should not and will not happen in this State. Therefore, we cannot compare family group conferencing in New Zealand with the development of juvenile justice teams in Western Australia. They have different origins, different offences and a different base for attendance before them. Therefore, they are totally different.

When people make a comparison between the two - in particular, Aboriginal representatives and others who would like the offender to not even attend - it is wrong to compare what happened in New Zealand with the way our system developed in Western Australia. At that time we wanted to establish a flexible system that could be tailored to suit all sorts of circumstances. There were a number of different examples. I remember one quite vividly. A first-time offender, a young 11 or 12-year-old, broke into a home and stole something of a minor nature. No-one was home at the time. However, the outcome of that break and enter offence was the impact that it had on the five-year-old who lived in the home and who was subsequently one of the victims. The outcome of that attendance before the juvenile justice team was that the offender had to play on a regular basis, weekend after weekend, with the five-year-old. The five-year-old did not then connect the bogeyman with the offender. That actually worked. The five-year-old was then able to go back to more regular sleeping patterns than was the case straight after the burglary. That sort of thing cannot be gained from the Children's Court handing down a sentence. It is valuable.

If there are circumstances that involve the family, such as alcohol or drug abuse and the like, people can enter into some arrangements under which departments will come in and help the family. However, it is not like the New Zealand system, under which people are required to have family conferencing. In Western Australia it is not a prerequisite that the whole family, and/or the extended family, must be brought in. Although it can happen when necessary, the requirement for that is not locked in.

In New Zealand, the family group conferencing is required to be convened before any child appears in the court. Again, that is a marked difference from what occurs in Western Australia. It was never intended to be the case in Western Australia. If the system is to be used to divert all young offenders from the Children's Court system, we will very quickly lose the confidence of the community in this type of diversionary program. In New Zealand, that is how it was established. Again, it must be kept in mind that it was part of the welfare-oriented legislation, and had a totally different basis from what was established in Western Australia. It also makes it a very cumbersome and expensive process. In 1994, the difference between a case in New Zealand and one in Western Australia was that the cost in New Zealand was five to six times more than in Western Australia.

The Western Australian legislation also proposes that a court can, under certain dismissal with conditions provisions, refer an offender to the team for the development and implementation of the conditions. Therefore, the juvenile justice team would develop those conditions. Further, if the court believed that the matter was trivial, it could ask the police to refer the matter to the juvenile justice teams. However, it is very important that the juvenile justice team get the agreement of all conference members. That was one point of similarity between the family group conference system that operated in New Zealand and the system we established in Western Australia. That process empowered all the members of the family group conference and/or all the members of the juvenile justice team. When there is no agreement, the offender goes back to the Children's Court. What would be the value of having the agreement of all conference members if the offender did not appear before the juvenile justice team? The value would be lost. A victim has the right to attend or make a submission to the JJT. Some wish to eyeball the young offender. Some are quite happy never to see the young offender but very happy to make a submission on what should happen to the young offender or on the impact of the offence on the victim. Again, a juvenile justice team has a different composition from a family group conference. A family

group conference has potentially 12 parties. However, in Western Australia, in total contrast, the minimum number includes the offender; the responsible adult; the coordinator; the police officer; a representative from the Department of Education and Training; the victim, if he or she wishes to participate; and if the offender is a member of an ethnic or minority group, a representative of that group. That is not an option; an ethnic or minority group representative must be present.

For people to have confidence in the system, it is absolutely critical that there be agreement. If all persons do not agree, including the young offender, the system will fall into total disrepute with the community. That would be very sad because I believe it is a valuable tool that has stood the test of time. In some instances, concerns have been raised, obviously by victims who have not attended the JJT, that the outcome has been less than desired. There is still work to be done to educate victims on the potential outcomes and what can happen to a young offender. However, in no circumstances whatsoever can an offender not attend and a conference proceed without the offender. There are no circumstances in which an offender should not be required to attend. If the offender is not in the State or there are no other good reasons for the offender's non-attendance, the matter should be referred back to the Children's Court and the offender denied the benefit of the diversionary option through a juvenile justice team.

MRS M.H. ROBERTS (Midland - Minister for Justice) [4.03 pm]: I thank both the members for Nedlands and Kingsley for their thoughtful contributions to the debate on this legislation. Essentially we have brought forward this Bill to strengthen the existing legislation. We want to provide for more effective supervision of offenders, address any shortcomings in the provision of services to Aboriginal communities and increase support for victims.

Some criticisms that have been raised by members during this debate include a criticism that the Bill provides for the use of devices that do not exist. Essentially, a number of devices are provided for in the legislation. One device, which is essential and potentially very effective, is an electronic monitoring device that is generally applied in the form of an ankle bracelet. For the first time, this legislation will enable us to utilise those devices with juveniles. That is a very positive move. We have set down strict conditions for their use and I believe they will help us to more effectively manage young offenders in the community and better protect other community members. I believe the device referred to by the member for Nedlands was a monitor for illicit drug use. I had commented in my second reading speech that such a device had not yet been developed. However, since only last Friday we have started saliva testing for drug use in prisons. That is certainly a step forward. Previously the main method of testing for drug use in prisons was through urine analysis, which was used Australia-wide. That method of testing obviously takes a little more time than a saliva test and takes about three days for a result. The saliva test by comparison is much quicker, is fairly non-invasive and provides a determination on the presence of drugs within 10 minutes. The technology used in saliva tests is constantly advancing. Many companies have made claims about their particular devices. The Department of Justice is trialling two different saliva tests. I know that from a road safety perspective, Governments around Australia have been trialling various devices for kerbside saliva testing. Progress is certainly being made very quickly. It therefore makes sense, given the time it takes to pass legislation in this House, to be forward thinking and to make provision for the quick advances in technology. I note also that in other places sweat patches have been trialled. Again, they may be able to be put into common use sooner than members imagine. The pace of technology is fast and we must be ahead of the game. We do not want to find that we cannot use available technology because our legislation is not forward thinking enough. I am very pleased that we have put these forward-thinking initiatives into the legislation.

I can provide to the member for Nedlands the information she requested on the number of juveniles who have been treated in different ways. During 2002, 1 733 juveniles were referred to a JJT from the police without arrest. A further 1 053 juveniles were referred from the Children's Court following arrest. In more than 75 per cent of JJT referrals the parents have been actively involved.

The following is information on the contact juveniles have had with the justice system. At the 2001 census, there were 221 584 juveniles in Western Australia; that is, young people between 10 and 17 years of age. By 2002, the number was estimated to be 225 639. Of that estimate, six per cent, 13 382, of juveniles had some form of formal contact with police; 3.4 per cent, 8 101, were cautioned; 1.3 per cent, 2 786, were sent to juvenile justice teams; 1.1 per cent, 2 495, had a court appearance; 0.3 per cent, 787, were fined; and 0.1 per cent, 325, were in custody. Those figures are provided to give people an indication of how juveniles in Western Australia are dealt with.

There was also some focus on the issue of a young person potentially not being present for a juvenile justice team. As I pointed out, I think, in my second reading speech, that would occur on a rare occasion. It is not standard practice and not something that is readily accepted. I draw members' attention to the explanatory memorandum, in which reference is made to clause 16 of the Bill. It reads -

> The intent of section 32 of the *Young Offenders Act 1994* is that all parties (the young person, responsible adult and victim) must agree to the outcome of a juvenile justice team process and if they do not the matter is referred back to the court.
>
> The inclusion of subsection (1a) clarifies that all parties and not just the young person must agree to the outcome.
>
> The amendment to subsection (2) enables a team to proceed if the young person cannot be present, provided there is a good reason for the absence. Cases have occurred where a young person has become terminally ill or the family has moved interstate.
>
> Amendments to subsection (3) define "a party" to team proceedings and enable the team Coordinator to exclude a party from direct contact with others if that party is considered to pose a risk to the safety of another party. Occasionally participants become extremely emotional and this provision enables the Coordinator to prevent harm occurring. The excluded party maintains the capacity to agree or not with the process continuing and the outcome.

As I pointed out, if they do not agree, that matter is referred back to court. The main reason for this amendment is to cover the exceptional circumstance; namely, when the victim does not attend and when the juvenile is unable to attend due to exceptional circumstances. I referred to circumstances in which individuals have been terminally ill or interstate. If the victim does not attend and insists upon a meeting, the team process continues. If the team process cannot be run, the matter is then returned to court. It is not the case that nothing happens; the matter is referred back to court.

The member for Nedlands also raised concerns about the sharing of information. The advice in the explanatory memorandum is that the purpose of the amendment is to allow sharing of information between agencies about children at risk and to ensure that, in the case of young persons entering the adult justice system, the appropriate medical and criminal records are available. As members are aware, as juveniles turn 18 years of age they move into the adult prison system. This provision will enable greater sharing of information between agencies. In some cases, if the adult prison system is aware of medical and criminal record details, it may well and truly be to the benefit of the individual, as well as to those taking care of the individual and the wider community.

I refer the House to clause 10 on page 3 of the explanatory memorandum, which reads -

> The amendment enables victims of juvenile crime to be given the name and last known residential address of the young person for the purpose of taking civil action against the young person.
>
> This provision will assist victims of juvenile crime to seek compensation. A penalty of $6000 or imprisonment for 2 years applies if information is used for any other purpose.

This provision will assist victims of juvenile crime to seek compensation because that can certainly be an issue for victims of crime when the offender is under 18 years of age. Presently, we are unable to provide the name or the last-known residential address of the young person to the victim. That then denies the victim the opportunity of seeking compensation. We will open that up, and that is why the legislation will enable the provision of that information. We want victims to be able to seek compensation when that is appropriate but they may use that information only for the seeking of compensation. If they use the information for any other purpose, they will be liable to a fine of $6 000 or a penalty of two years imprisonment.

One of the benefits of this legislation is that we will be able to make greater use of juvenile justice teams in remote areas. The member for Nedlands referred to comments made by the minister responsible for introducing the 1994 legislation that the juvenile justice teams would operate throughout the State. Despite those undertakings given in 1994, juvenile justice teams have not operated effectively throughout the State. They have been an option predominantly available in the metropolitan area. At present only a few juvenile justice officers are available in the Kimberley, Pilbara, Murchison and goldfields. We want to be able to expand the teams into remote Aboriginal communities. One of the points raised about the use of juvenile justice teams in remote Aboriginal communities is the potential for the relatives of young offenders to be part of a team that deals with those offenders. I can assure the House that it is the intention of the Department of Justice to allow teams to involve community members only in communities that are large enough to avoid the potential for relatives of young offenders to be appointed to a team. It is estimated there will be potentially 28 communities in the Kimberley, 12 in the Pilbara, six in the Murchison and six in the goldfields. If the legislation is passed, the department plans, initially, to immediately establish teams in seven communities in the Kimberley and three in the Pilbara. Planning has not been undertaken for the Murchison and goldfields but that will, of course, follow. Increased staffing as a result of the recommendations of the Gordon inquiry will enable us to appoint regional coordinators who can train and supervise community members on team processes. As the member for Kingsley highlighted, the referral of young offenders to a juvenile justice team can be a very good and effective option.

However, in some areas in our State - arguably those in which they are most needed because of the problems indigenous communities face - we have not been able to provide that service; it is more readily available elsewhere. The police must then consider their options when they are dealing with a young person with minor offending behaviour.

A couple of smaller issues were raised but I am happy to deal with those during the consideration in detail stage. I thank those members opposite for their support of the legislation. I am quite confident that the legislation provides for devices that may be available in the immediate future, and that is very sensible. I also reassure the House that an offender not being present at a meeting will be a very rare exception not the rule. If the process is not agreed to - that is, if the victim does not consent - the matter will go back to court.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clauses 1 to 5 put and passed.

Clause 6: Section 11 amended and transitional -

Ms S.E. WALKER: Will the minister give an overview of why clause 6 has been deemed necessary?

Mrs M.H. ROBERTS: This will enable the chief executive officer, rather than the minister, to appoint officers and persons to implement and administer the Act. This includes the appointment of particular classes of officers and employees specified in regulations. The amendments will also allow the CEO to make regulations in relation to their functions, employment conditions, disciplinary procedures and termination of employment. These provisions will make the appointment of former ministerial employees more consistent with normal public sector appointment provisions. Transitional provisions will ensure continuity of employment and conditions for existing employees.

Clause put and passed.

Clause 7: Sections 11A to 11E inserted -

Ms S.E. WALKER: This clause outlines the powers and duties of custodial staff at detention centres. Proposed section 11B states that a person who is appointed as a custodial officer has a responsibility to maintain the security of the facility or detention centre and is liable to answer for the escape of a detainee placed in his or her charge or for whom he or she has a responsibility when on duty. Why has that been included in the Bill? Do custodial officers currently have those responsibilities?

Mrs M.H. ROBERTS: Yes, in practice they do have those responsibilities.

Ms S.E. WALKER: What is the reason for the proposed section if the officers currently have those responsibilities?

Mrs M.H. ROBERTS: I think it was seen as an opportunity to clarify matters.

Ms S.E. WALKER: Is something not clarified at the moment? Is there a problem?

Mrs M.H. Roberts: No, not that I am aware of.

Ms S.E. WALKER: Have custodial staff always had that responsibility?

Mrs M.H. ROBERTS: I understand that yes, they have always had that responsibility and this is merely something that was suggested by departmental officers and draftspersons. It is certainly not something I sought, but was recommended to government as sensible practice to clarify responsibilities.

Ms S.E. WALKER: Are the use of force in prescribed circumstances and the use of restraints powers that custodial staff currently have, and has it always been that way?

Mrs M.H. Roberts: Yes.

Ms S.E. WALKER: Nothing will be changed? Is the use of restraints a new provision?

Mrs M.H. Roberts: No.

Ms S.E. WALKER: Why are we now legislating for it in the Bill?

Mrs M.H. ROBERTS: That matter is currently covered by juvenile custodial rules. The State Solicitor's advice is that it is better provided for in legislation, so that has occurred.

Ms S.E. WALKER: Is it fair to say that proposed sections 11A, 11B, 11C and 11D really are already in practice?

Mrs M.H. ROBERTS: Yes, they are already in practice.

Ms S.E. WALKER: Proposed sections 11E and 11F refer to assistance by prison officers and police officers. Do police officers and prison officers currently have the power vested in them under those sections? Is that the current practice?

Mrs M.H. ROBERTS: No. As the explanatory memorandum points out, the State Solicitor's Office has advised the department that the existing powers under the Prisons Act of 1981 for the emergency support group do not extend to their use in detention centres. The provision will allow for the use of controlled weapons with the CEO's approval, but will not allow for the use of firearms. These provisions are consistent with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, or the Beijing rules.

Ms S.E. WALKER: Is the emergency support group classified as prison officers?

Mrs M.H. Roberts: They are prison officers, yes.

Ms S.E. WALKER: They are not allowed in detention centres at the moment. Do they go into detention centres?

Mrs M.H. ROBERTS: There is no clear existing legislative power for them to do so, and this will give them a clear legislative power to enter detention centres.

Ms S.E. WALKER: Do prison officers go in there at the moment? Is it current practice that they go into detention centres, or is this completely new?

Mrs M.H. ROBERTS: As it currently operates, they would go in only on occasions. For example, they might collect a prisoner or prisoners. However, that is not a matter for the use of a team or something of that nature; it is a matter of occasional visitations for specific purposes.

Ms S.E. WALKER: Is it fair to say that prison officers can go in there now? Is proposed section 11F, "Assistance by police officers", a new provision? Do they go in there at the moment, whether or not routinely?

Mrs M.H. ROBERTS: Yes, police officers currently go in there.

Clause put and passed.

Clause 8: Section 12 amended -

Ms S.E. WALKER: This is a rather contentious clause, which will amend section 12(5)(b) of the Young Offenders Act. For the management and control of departmental facilities etc, section 12 of the Young Offenders Act provides -

> (5) Rules made under subsection (4) may -
>
> (a) confer a discretionary authority on any person or class of persons;
>
> (b) confer authority to require a young person at a facility to submit for the purpose of having a body sample taken.

After "body sample taken" the words "or to wear a device for the purpose of having a body sample taken or detecting the presence of a substance in the body of the young person" will be inserted. There was no mention of such devices in the minister's second reading speech, and there are no such devices, because her advisers told me that. She referred to saliva tests as a reason for this provision. Frankly, the Opposition cannot support legislating for something that does not exist. Currently there simply are no devices for the purpose of detecting the presence of a substance in the body. I cannot see the point of the Opposition supporting something that does not exist. I accept that progress is being made with saliva testing and I accept that there are urine analysis tests. I understand that a couple of years ago patches were introduced to stop people smoking. However, there are no new devices for this testing. I am therefore wondering why this provision is in the Bill.

Mrs M.H. ROBERTS: Although currently there are no accredited devices, saliva testing units and patches exist. Manufacturers of those devices attest to their effectiveness and veracity. I am very confident that saliva test units are well advanced, and I expect that they are accurate. It is rather like roadside testing. Until such time as such devices have been properly accredited and authorised, test results need to be able to stand up in a court of law. Such devices are currently not accredited and therefore we cannot say that there are existing devices that we intend to use immediately. However, I believe the principle here is important. We need to have a clear power, when juveniles are subject to an order such as this, to test them for drug use. If they are found to be using certain illicit substances, we need to be able to deal with that. Currently a urine test is used to detect the

presence of drugs, but I am confident that in the very near future accurate devices will be accredited. We are not talking about 10 years or five years away; I suggest that we are talking about the next year or two.

Ms S.E. Walker: Bring back the legislation then.

Mrs M.H. ROBERTS: The member is a bit soft on drug use if she is not prepared to think ahead.

Mrs C.L. Edwardes: That is good logic!

Mrs M.H. ROBERTS: I cannot work out why the Opposition would not want those devices and why it would not want us to be testing juveniles. Since the last advice to the member, we are already trialling saliva tests for adult offenders in our prison system.

Ms S.E. Walker: Under what provision?

Mrs M.H. ROBERTS: If the member wants to make a statement she can stand up and make it, but she should stop interrupting me.

Ms S.E. Walker: You did not mind until I asked a difficult question.

The ACTING SPEAKER (Mr A.P. O'Gorman): Order!

Mrs M.H. ROBERTS: Thank you, Mr Acting Speaker. Rapid advances are being made in this technology. We may find a device that we are able to use within the year. I certainly would not expect it to be longer than a year or two for that device to be accredited and able to be used. Many devices are under trial in various jurisdictions. We are already trialling two separate saliva tests for adult offenders in the justice system. Of course, we have the right under our legislation to take urine analysis samples or other samples from adult offenders in the prison system. For the good of the juveniles involved and for the good of the wider community, we need to know, especially when juveniles are being released back into the community, that they are maintaining drug-free habits. If juveniles are not maintaining drug-free habits, my clear view is that they are in breach and should be dealt with for that drug use. To do anything else is a soft option. It may be that the pace of technological change decades ago was a little slower, but the pace of change now is very fast. We will certainly be able to have devices that will perform these tests in the very near future. Why should we in Western Australia not be prepared for those advances in technology?

Ms S.E. WALKER: The Opposition has given bipartisan support to any devices that we think will help detect the location of drugs in prison, but to ask us to vote for the wearing of a device that is not known to us - I know from my briefing that there is nothing on the horizon - is simply not acceptable.

Mrs M.H. Roberts: You are wrong.

Ms S.E. WALKER: The minister's advisers are advising me differently from the minister. The Opposition will not support a provision for the wearing of a device when we do not know what the device is. The minister has not given us an inkling. There is nothing on the horizon. Under what section of what Act is the Department of Justice carrying out compulsory saliva tests? I would support them, but the minister has raised the matter. Also, what Act allows the department to conduct compulsory urine analysis tests?

Mrs M.H. ROBERTS: It seems that the member for Nedlands is a little ignorant of the provisions of the Sentence Administration Act and the Prisons Act.

Ms S.E. Walker: Enlighten me.

Mrs M.H. ROBERTS: We have powers under both those Acts to take relevant samples. I would have thought that someone in her position would have known that.

Ms S.E. Walker: I was testing you out.

Mrs M.H. ROBERTS: We are here to scrutinise this legislation, not for the member to ask her own little dorothy dix questions. She may say that she is testing me out, but I assume that if she asks a question, she does not know the answer.

Ms S.E. Walker: You have a very poor track record.

Mrs M.H. ROBERTS: Does the member have a problem?

The ACTING SPEAKER: Order! We have been trying to get through this fairly quickly. Questions have been going back and forth and the member has plenty of opportunities to ask questions. I ask her to hold her questions until she has the call.

Mrs M.H. ROBERTS: I am really disappointed in the Opposition's response to this. We are quite simply putting forward something that will enable us to ensure that those juveniles who are under an order to report to a

juvenile justice team are kept drug free. Rather than merely take their word for it they will be properly monitored to ensure that they are staying drug free. Members opposite must be really soft on the use of drugs by juveniles if they do not want us to be able to test them. They are saying that when and if technology is fully available and accredited, they expect us to come back into the House with an amendment. One would have to ask why would they want us to stall on this. I cannot imagine a single reason.

The member for Nedlands is forever twisting my words one way or another and saying that I did or did not say this or that or that my advisers said this or that, but the fact of the matter is that we are already trialling saliva tests for drugs. I tell the member here and now that patches that can determine the presence of drugs are already in existence. Devices are already available, but those devices have not been fully tested and accredited. However, the moment they are, why would we not want our teams to be able to assess the juveniles involved? This is about ensuring that young offenders, and especially young offenders who could easily offend again in the community, are properly monitored for drug use. If I were living next door to one of them, if they were back at home and there was a link between their drug use and the crimes that they were committing, I would want to know that they were being monitored for drug use. We are on the verge of being able to do that. We are a forward thinking Government. We have put it into legislation. This is clearly the most appropriate way to go.

Mrs C.L. EDWARDES: I am interested in how "device" is defined. Although the minister has talked about patches, that is only one device. Devices could be all sorts of instruments and so on. We would like to know, as I am sure the community would like to know, what the minister is requiring young juveniles to wear. We are not talking about saliva testing but something totally different. It is therefore important that this House and the community be informed of what the minister means by "device".

Mrs M.H. ROBERTS: I draw the member's attention to clause 8, which reads -

> Section 12(5)(b) is amended by inserting after "body sample taken" -
>
> "
>
> or to wear a device for the purpose of having a body sample taken or detecting the presence of a substance in the body of the young person
>
> ".

The definition of "device" is the common definition that one would find in a dictionary. I imagine the definition would be quite broad. I certainly envisage that it could include a patch, and it would certainly be able to include something like a saliva test. I would consider that a patch would fall under the definition of "device".

Mrs C.L. Edwardes: How is a saliva test conducted? Would it be included in the word "device"?

Mrs M.H. ROBERTS: The current technology that is used by the Police Service is that generally saliva tests are taken by placing a sponge swab on the end of a stick and pressing that briefly against the inside of the person's cheek, and then blotting it onto paper.

Mrs C.L. Edwardes: Would that be defined as wearing a device?

Mrs M.H. ROBERTS: It would not be wearing a device. It would certainly be the use of a device or a test. We are simply seeking to get ahead of the game. It is obvious that in the future the legislation will need to be amended. There is no point in requiring the legislation to be continually brought back for amendment. I cannot imagine what the word "device" conjures up in the minds of members opposite. Clearly no-one wants to put in place some dreadfully invasive device. This will generally be a device that is non-invasive and practical. A patch is one of the things that will fall into that category.

Ms S.E. WALKER: In the previous clause we had no difficulty with the use of restraints as a device. However, the minister cannot bring legislation into this Parliament for something that may or may not happen in the future. Wearing a device is not the same as giving a person a saliva test. I have seen those tests. A saliva test is not the wearing of a device. I know from the minister's advisers that the patches did not work and that they are not on the horizon at this time. The minister cannot bring in a Bill to provide for something that may or may not happen in the future and ask us to support it. How can we lend our support to something that does not exist? I believe this is just a form of window-dressing and something that the minister has not thought through clearly. Therefore we cannot support it.

Mr J.L. BRADSHAW: One of the problems that I have seen occur over the years, not just since I have been a member of Parliament but also in my previous life, is that people who are charged with an offence often get off on a technicality. The big problem with this clause is that it is probably not tied down sufficiently. We need to ensure that if a system is put into place to try to detect the use of drugs by a person, the person cannot get off on a technicality. It is important that we get this clause correct and tied down so that there will be no way of getting around this issue in the future.

Mrs M.H. ROBERTS: The member for Murray-Wellington has made a very good point and in fact has illustrated why we have made this clause and the reference to a device as generic as we have. The member has said that often people get off on a technicality because the law is not prescriptive enough. Often the law is too prescriptive, because it narrows down what can be used. If we narrow it down to urine testing, a specific type of saliva test or just the use of patches, then in the future, if a form of testing is used that does not fit within the legislation, the legislation will need to be amended. The reason we have decided to use a broad generic term with regard to the device and the testing is so that it will be all encompassing. We do not want to be tied to a particular kind of technology. We want to have available a broad range of options so that we will not be caught out, as the member for Murray-Wellington has said.

The member for Nedlands actually defeated her own argument when she referred to restraining devices, because we have also sought to be non-specific with regard to restraining devices. We do not want to prescribe that people can be restrained only with handcuffs or certain objects or devices. We have left that as a broad generic term so that as advances in technology occur we will be able to use those new devices to restrain people.

This is a very forward-thinking clause. It will help the juvenile justice teams to monitor these young people. It will also be beneficial to the young people themselves, because if we know that they are on drugs, we will be able to help them. It will also be beneficial to the wider community, because if these kids start to go off the rails potentially we will know straightaway and we will be able to deal with them before they offend again.

Clause put and a division taken with the following result -

Ayes (26)

Mr P.W. Andrews	Mr S.R. Hill	Mr M. McGowan	Mrs M.H. Roberts
Mr C.M. Brown	Mr J.N. Hyde	Ms S.M. McHale	Mr D.A. Templeman
Mr A.J. Dean	Mr J.C. Kobelke	Mr A.D. McRae	Mr P.B. Watson
Mr J.B. D'Orazio	Mr R.C. Kucera	Mr N.R. Marlborough	Mr M.P. Whitely
Dr J.M. Edwards	Mr F.M. Logan	Mrs C.A. Martin	Ms M.M. Quirk *(Teller)*
Dr G.I. Gallop	Ms A.J. MacTiernan	Mr M.P. Murray	
Mrs D.J. Guise	Mr J.A. McGinty	Ms J.A. Radisich	

Noes (18)

Mr D.F. Barron-Sullivan	Mrs C.L. Edwardes	Mr W.J. McNee	Ms S.E. Walker
Mr M.J. Birney	Mr J.P.D. Edwards	Mr A.D. Marshall	Dr J.M. Woollard
Mr M.F. Board	Ms K. Hodson-Thomas	Mr B.K. Masters	Mr J.L. Bradshaw *(Teller)*
Dr E. Constable	Mr M.G. House	Mr P.D. Omodei	
Mr J.H.D. Day	Mr R.F. Johnson	Mr T.K. Waldron	

Pairs

Mr A.J. Carpenter	Mr R.A. Ainsworth
Mr J.J.M. Bowler	Mr R.N. Sweetman
Mr J.R. Quigley	Mr M.W. Trenorden
Mr E.S. Ripper	Mr B.J. Grylls

Independent Pair

Mr P.G. Pendal

Clause thus passed.

Clause 9: Section 15A inserted -

Ms S.E. WALKER: This clause deals with disclosure of personal information relating to young offenders. Proposed section 15A states -

> Upon being requested to do so by the Director-General -

The ACTING SPEAKER (Mr A.P. O'Gorman): Members, it is very difficult to hear the member for Nedlands. If members want to have conversations, I ask that they have them outside.

Ms S.E. WALKER: It states -

> **Disclosure of personal information relating to young offenders**
>
> (1) Upon being requested to do so by the Director-General of the Department, -

I presume that is the Department for Community Development -

> the chief executive officer may provide the Director-General with information relating to a young person . . .

What information is it envisaged will be passed to the Director-General of the Department for Community Development? What information will be provided to any member of the Mentally Impaired Defendants Review Board? What information will be provided to the chief executive officer, a superintendent or an officer, a prison officer or a contract worker? Nowhere is that defined, as far as I can see.

Mrs M.H. ROBERTS: Essentially, it is only information that is necessary to carry out their statutory functions.

Ms S.E. WALKER: What information is that? Is it the criminal record, a psychologist's report, a psychiatric report, victim impact statements or something written in a diary? Is the minister saying that she cannot tell us?

Mrs M.H. ROBERTS: No, I am not. I am saying that it would vary according to whom the information is being conveyed to and what that person's statutory obligations are. In some circumstances it would be information about the nature of the offending or information that was necessary for the care and safety of the individual concerned.

Ms S.E. WALKER: The Opposition cannot support this. The minister is being tricky. She is not telling us what the personal information is. It is information that is personal to the juvenile. We know, from going back to the second reading speech of the then Attorney General Hon Cheryl Edwardes, that confidentiality was a big thing under the Young Offenders Act, because when people move on, as most of them do, they do not want their personal information scattered around different departments, and certainly not with a contract worker, a prison officer or any officer employed under the Prisons Act. I would think that parents of children who went through the juvenile justice system, even if it was for only minor matters, as most of them are, would not want this to happen. A young person may have tried to commit suicide. All sorts of reports could be sent out. I believe it is important that the young offender is protected. I am wondering how the Department for Community Development works at the moment regarding information that is personal to an offender. Surely the department gets an assessment, and surely someone who goes along to the juvenile justice team has information. If the minister is unable to give any sense or meaning to the word "information", the Opposition cannot support carte blanche distribution of personal information on young people in this way.

Mrs M.H. ROBERTS: If the member for Nedlands would like to inform herself of why this kind of information sharing is required, I suggest that she read the report of the Gordon Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities and the recommendations in it about the sharing of information by agencies. One of the criticisms in the Gordon report was that agencies were too restrictive in the information they shared. Because of those restrictions, they often failed to protect the very people that they are required to protect under law. Therefore, if the member wants some justification for this, I suggest that she read the Gordon report and educate herself about these matters. She may then understand that being restrictive by keeping the information in silos can work to people's disadvantage, cause serious injury and harm, and even result in the death of people who are vulnerable and those whom we want to protect.

These clauses are in the legislation for very good reason. This is about protecting people, saving their lives and providing for their care and custody. The Department of Justice has a duty of care to those people with whom it deals. As such, it is appropriate that it be fully informed and that DCD, when it has a duty of care, be appropriately informed of what it needs to be informed of to carry out its statutory responsibilities.

It is just a nonsense to suggest that this provides for carte blanche distribution of personal information. Clause 9, proposed section 15A - I will not waste the time of the House by reading it all - quite specifically outlines the individuals who can be informed, why they would be informed and what information should be disclosed. I highlight the fact that proposed section 15A states up front on page 7 of the Bill -

> . . . to a young person where the provision of that information is necessary -

I highlight the word "necessary". It is not gratuitous, carte blanche or just if the CEO happens to feel like providing it. It must be necessary. The proposed section then continues with proposed paragraphs (a), (b), (c), (d) and (e), and gives the reasons for that information going across. It then refers to some of the officers and the statutory provisions.

This clause is absolutely essential to this legislation. It will be of enormous benefit to the most vulnerable people in the community. I say to the member for Nedlands and those opposite that before they even think about voting against this clause, they should look at what Sue Gordon said, look at the reality of this information and look at what can happen if information that should be shared between departments is not. Why should we not have this clause in the legislation when it could result in the saving of someone's life, in someone not being

taken advantage of and in protecting either the individuals concerned or people with whom they come into contact?

Mrs C.L. EDWARDES: There is no doubt that some young people have fallen through the cracks over the years, not just in this State but around Australia, when various departments have not worked in a collaborative and coordinated way. However, the issue that we want to raise is: what is the personal information that will be shared? Will the information include name, address and age?

Mrs M.H. Roberts: It will vary depending on the circumstances. In some circumstances it will not be necessary, for example, to have someone's address, and in others it might be.

Mrs C.L. EDWARDES: Will it include the history of offending?

Mrs M.H. Roberts: In some circumstances it will.

Mrs C.L. EDWARDES: In relation to an offence being committed by the misuse of information, mistakes have happened in the past when departments have disclosed information accidentally. Many people in the community would be very happy to see the names of young juvenile offenders on the front page of *The West Australian*. Those people would not be disinclined to support that. That principle will not be changed by this clause. Will the policy of not naming young juvenile offenders continue; and, if so, what protection, other than a penalty fine of $6 000 for an offence, will be put in place to ensure that disclosure of information will not occur in a way that offends the policy?

Mrs M.H. ROBERTS: I note that the penalty in this clause is imprisonment for two years or a $6 000 fine. I believe that the threat of imprisonment for two years would be a matter of concern to the individuals involved in the misuse of information. I make the point again that this provision refers to the use of information that is necessary for carrying out the statutory functions of the individuals involved. It is all spelt out in clause 9. For example, proposed new subsection (3) refers to a member of the Mentally Impaired Defendants Review Board and states -

> . . . a young offender or detainee, for the purposes of carrying out the member's functions under that Act.

Therefore, each case depends on the function of the individual involved. The individual will be provided with only information that can assist the individual in that function. Proposed new subsection (8) states -

> A person who uses information received under this section for any purpose other than a purpose for which he or she is authorised under this section commits an offence.
>
> Penalty: $6 000 and imprisonment for 2 years.

That is a fairly strong penalty for the misuse of this information. Currently information is not allowed to be shared. Often information that could be shared sensibly, if it were allowed, would be beneficial to the individual or the people with whom the individual comes into contact. These are very sensible amendments and address the Gordon inquiry's criticisms of the existing restrictive situation between agencies. I believe this is a sensible clause, as it relates to the disclosure of only information that is necessary to be disclosed. The clause also states what the information is necessary for and that it is available only to a limited range of persons who have a statutory responsibility. The information must be in relationship to that statutory responsibility and, further, if there is any inappropriate disclosure, a significant penalty will be imposed.

Ms S.E. WALKER: It is simply not good enough for the minister to come into Parliament and say that she wants to share information and not be able to give an example of why the information needs to be shared.

Mrs M.H. Roberts: They are all in the clause.

Ms S.E. WALKER: Do not interrupt me.

Mrs M.H. Roberts: It is all in the clause.

Ms S.E. WALKER: Do not interrupt me. The minister went on about me interrupting her. She should please not shout at me. I do not need her to shout at me.

Mrs M.H. Roberts: No-one shouted at you; don't tell fibs.

Ms S.E. WALKER: I read out parts of the Jack van Tongeren appeal during debate in this place on the Criminal Code Amendment (Racial Vilification) Bill to illustrate my example. The minister stands in this place and tells me to go educate myself about Sue Gordon's recommendations, but she cannot tell me what they are. We are trying to work out what possible information about young people could be sent into cyberspace. Does the minister know that doing that could work against the juvenile? For instance, if a juvenile who had suicidal

tendencies found that other people knew of it - or something else that he thought was kept personal but was being offered to different agencies - that could make him feel suicidal and may not help his progress. It is not good enough for the minister to say that it will be information that is necessary. That is not the question we are asking. We are asking the minister to give us the ambit of the information that will be sent. The minister is not responding because she is uncomfortable about the sort of personal information that will be sent. It could be information such as psychological or psychiatric reports or the diaries that people have kept. Who knows? The minister is not telling us. Frankly, young people's lives are too precious and too valuable to allow information to be sent indiscriminately to different groups without knowing how it will be used. It is quite obvious that such information can be misused, because there are imprisonment penalties for its misuse. It would be a disaster if the personal information of someone of a tender age was misused. It is not good enough for the minister to come into this place and tell me to go educate myself. It is sad that the minister has not prepared herself and refuses to let us know why she wants these provisions. She has not told us whether a lack of information in the past has resulted in the loss of life. Has the lack of information resulted in someone being taken advantage of? She has not told us that. That is what we want to know. We want her to place on record in this Parliament the information that she will send. She cannot do that either; therefore, I cannot foresee the Opposition supporting the clause.

Mrs M.H. ROBERTS: Sue Gordon, in her report, certainly found that children had been sexually abused because of a lack of information sharing. That is one finding that the member for Nedlands and other members opposite might take into account. Also I would have thought the member for Nedlands was familiar with Richard Harding's Hakea deaths in custody report, in which he commented at length on the necessity for an exchange of information between the juvenile justice system and the adult prison system. It is interesting to note the member for Nedlands's suggestion that we should not share information about someone having suicidal tendencies. I would have thought that was one case in which information should be shared. Surely the authorities in the adult prison system would want to know whether someone from the juvenile system had suicidal tendencies so that a special watch could be kept on the person and he or she be treated accordingly. I think the member for Nedlands has shot down her own case in flames.

Clause put and passed.

Clause 10: Section 17 amended -

Ms S.E. WALKER: This is another interesting provision. It provides power to a victim or, by the looks of it, a representative of the victim. Proposed new subsection (3) states -

> If a person proposes to commence a civil action against a young person who is being or has been dealt with in the Children's Court for a offence for compensation for any damage or loss suffered as a result of the offence, the appropriate officer of that Court may divulge to that person -
>
> (a) the name of the young person; and
>
> (b) the last known residential address of the young person.

Any person who proposes to commence a civil action against a young person can get that young person's address. That young person may be only an offender and not a convicted person, as I understand it. Perhaps the minister will explain why that information can be divulged.

Mrs M.H. ROBERTS: I can certainly clarify that the person intended to have that information and take that action is the victim. Parliamentary counsel has drafted that intention in this way. I am not sure that someone who was not a victim would be able to commence a civil action. If the member for Nedlands is aware of that being the case anywhere, I would be interested to hear about it. The instruction to parliamentary counsel is that victims should be able to take civil action. At present, the fact that victims are not entitled to have the name or last known address of the offender simply means they cannot take civil action and, therefore, they cannot get justice. This clause has been included to give rights back to victims, and it is one that the Government fully supports. A penalty of two years imprisonment or a fine of $6 000 will apply if a victim discloses that information for any purpose other than commencing the civil action. This clause will be very positively received by victims.

Mrs C.L. EDWARDES: Will it occur only when the magistrate makes an order for compensation? Will the person then need to take that order and the information to the local court in order for it to be enforced? How does it occur today?

Mrs M.H. ROBERTS: Obviously, a magistrate may not make an order in all cases. Although that information would be available if a magistrate were to make an order, this provision will allow the process to be much more expedient and more direct, and will ensure the victim's ready access to the information.

Clause put and passed.

Clause 11: Part 3 Division 2 inserted -

Ms S.E. WALKER: Will the minister tell us how this clause will work?

Mrs M.H. ROBERTS: That is a generic question. The application of this clause is already on record. Some weeks ago I provided the member with the clause notes. I do not think we should waste the Parliament's time reading out the clause notes unless the member for Nedlands particularly wants me to do that. Essentially, these arrangements have been included for the Aboriginal community. I do not know whether the member was in the Chamber when I responded during the second reading stage about what we will do in the Pilbara, the Kimberley and other regions. This will enable arrangements with councils in remote Aboriginal communities so that they can take part in the supervision. It is detailed on page 3 of the clause notes I provided.

Mrs C.L. EDWARDES: I know that today, individuals within Aboriginal communities already have the responsibility of monitoring juvenile offenders under any of these orders. Why has it been necessary to provide it in this Bill? Have some instances of enforcement of that supervision fallen through the cracks? I thought this had been in place for quite a number of years.

Mrs M.H. ROBERTS: As the member for Kingsley is clearly aware, existing arrangements are provided within the Prisons Act but this provides clear arrangements in the juvenile justice legislation.

Mrs C.L. Edwardes: If the minister is saying that juveniles are not currently supervised on Aboriginal communities, that is wrong; they are.

Mrs M.H. ROBERTS: They can be.

Mrs C.L. Edwardes: They have been.

Mrs M.H. Roberts: They are quite often dealt with under a supervised bail arrangement. I suspect that is how they are currently occurring rather than through the juvenile justice teams.

Ms S.E. WALKER: The minister mentioned the areas but how many communities will be potentially affected? Will the people in those communities need training and, if so, how long will that take? What is the process for choosing those people?

Mrs M.H. ROBERTS: I advised the House in my second reading response that we believe that potentially approximately 28 communities in the Kimberley, 12 in the Pilbara, six in the Murchison and six in the goldfields will be affected and that, initially, we would prioritise seven in the Kimberley and three in the Pilbara. Yes, training will be required. As part of the increase in staffing that occurred as a result of the Gordon inquiry, additional officers have been placed in the regions. I also note that, as a result of the Gordon inquiry, we will establish multifunction police facilities in nine remote communities. That will mean that a permanent police presence will be established in those communities for the first time, and it will allow for greater involvement of police. That has not previously occurred owing to the lack of police stations and lack of police presence. The distances involved have made it very difficult for anything like this to work. It will be a start. It will not all happen overnight. Training will be required. The construction of the first three of our multifunction police facilities is under way. The construction of three more will commence next year. More complementary development in these communities is necessary to enable things to happen effectively. I am very confident that, with this legislative framework, we will be able to make a significant difference in those communities.

Mrs C.L. EDWARDES: The minister said that only in supervised bail circumstances are juveniles now supervised in Aboriginal communities. I cannot accept that is the case. I am absolutely sure that, under these orders, juveniles have been placed with communities for their supervision, particularly in the Laverton-Kalgoorlie region. Will the minister clarify that?

Mrs M.H. ROBERTS: The member for Kingsley is probably correct but, for the first time, this will provide an appropriate framework for people to be involved in this kind of process. It will set down guidelines for what is required by way of supervision and provide some appropriate parameters.

Ms S.E. WALKER: The minister referred to juvenile justice teams but this is community supervision agreements.

Mrs M.H. Roberts: The member for Nedlands is quite right; I should have said community supervision.

Ms S.E. WALKER: Are they the ones that arise as a result of a court order?

Mrs M.H. Roberts: That is right.

Ms S.E. WALKER: Who presently supervises these Aboriginal juveniles?

Mrs M.H. ROBERTS: Presently, supervision is provided from major towns in the region rather than on location in those communities. Clearly, supervision of people in remote communities from major towns is difficult, to say the least. The responsibilities are with the Department of Justice personnel in major towns.

Ms S.E. WALKER: Those as yet untrained Aboriginal community members will be required to supervise young people who could be the subject of a community work order, a youth community based order, an intensive youth supervision order, a conditional release order or a supervised release order. Surely people who carry out that supervision will require a lot of training and a lot of monitoring, given the potential requirement for procedures such as urinalysis testing. I do not have any problem with the concept, and nor does the Opposition. I think it is admirable. However, I wonder how will it work and what will it cost. Has an analysis been done of the resources that will be required? The minister mentioned that the Gordon inquiry has resulted in new officers being placed in the region. I understand that they are child protection workers; they are not Department of Justice officials, who usually supervise young offenders under a range of orders. There must be more than 60 officers and 10 have not been trained yet. Has the minister done an analysis of how many juveniles would potentially come into the seven communities in the Kimberley and the three in the Pilbara in one year and the types of orders they are usually under?

Mrs M.H. ROBERTS: One thing we will not ask these communities to do is supervise orders that they are not able to supervise. There may still be some limitations in the system. Some people may be under some restrictive orders that require them to stay in a major town rather than in a community. This is ground breaking. We need to put in place ways to work with communities and we need to be able to set it up so that it works and does not fail. We will not ask the impossible of them. We will not ask them to supervise orders which are too difficult for them to supervise or which they do not have the capacity or backup to supervise. If the orders are such that it is deemed not appropriate for the juveniles to be supervised in the community, they will not be supervised in the community; they will need to be supervised in a town. We can ask only what is possible of them.

There has been an increase in the number of juvenile justice officers. Following the Gordon inquiry there also has been an increase in the number of regional programs officers. This program is ground breaking in terms of what occurs anywhere in Australia. To work with Aboriginal communities rather than take the kids out of those communities or have inadequate supervision of them has great potential to turn around the lives of the young people in those communities. Work is being done by the Department of Justice for the seven communities in the Kimberley and the three in the Pilbara in preparation for the passage of this legislation.

Ms S.E. WALKER: Can the minister tell me how many juvenile justice officers have been put on and where? The minister did not tell me how many juveniles this could affect in the seven trial areas in the Kimberley and the three in the Pilbara.

Mrs M.H. ROBERTS: I cannot give the member those figures off the top of my head. However, statewide we have put on about 55 officers in total. If the member would like to give me notice of a question, I am quite happy to give her a breakdown of where those 55 people are located and what they are doing. We have put on more officers and, depending on the success of these programs, there may be some movement in the system. There may well be a need for further staff. We will start this program in the first instance in some communities and expand it into others. Because it is new and cutting edge and has not been done in this way before, we will have to assess the number of staff involved. However, we think it has great potential for success and certainly is worthy of trialling. Presumably there will be some savings in other areas if juveniles do not have to travel to other places and can be contained within their own community.

Ms S.E. WALKER: Proposed section 17C, which refers to the appointment of a monitor, states -

> (1) The chief executive officer may appoint as a monitor of a young person who has an aboriginal background, a person who is appointed from a panel of persons nominated under subsection (2).

What would a monitor, as opposed to a supervisor, do? Why is there a differentiation between the appointment of a monitor being made on a paid or honorary basis?

Mrs M.H. ROBERTS: At page 11 of the Bill reference is made to "monitor" and to "supervise". The monitor can supervise. The monitor is not necessarily a supervisor. The definitions of "monitor" and "supervise" are not connected to whether the person is paid. It provides for either a supervisor or a monitor to be paid or unpaid.

Clause put and passed.

Clause 12: Section 25 amended -

Ms S.E. WALKER: The part that the Opposition is most concerned about is the referral to the juvenile justice team. The first amendment is to section 25(4), which will then state -

> A matter can only be referred to a juvenile justice team if the alleged offender accepts responsibility for the act or omission constituting the offence, and agrees to having the matter dealt with by a juvenile justice team rather than by a court, but if the juvenile justice team cannot agree on how to deal with the

young offender or for some reason refers the young offender to the court then such acceptance is not to be construed as an admission that the offence was committed or a plea of guilty, or otherwise used in evidence against the offender.

Why is there the addition of the words "or a plea of guilty"?

Mrs M.H. Roberts: Which part is the member referring to?

Ms S.E. WALKER: I just read the first amendment in clause 12. I read out section 25(4) with the words "or a plea of guilty". The Bill will also insert in section 25 the principle that a matter cannot be referred to a juvenile justice team if any one potential participant in the particular proceedings of the team does not agree to having the matter dealt with by a juvenile justice team. Is that practice already the case; and, if so, why is it being inserted into the Act?

Mrs M.H. ROBERTS: I hope I explain this correctly to the member. As the member has referred to, the original intent - it is the intent of the existing legislation - was that referral to a juvenile justice team should not be regarded as a guilty plea. However, I am advised that, for example, when there is no agreement and the matter comes back to court, some magistrates have considered the referral to a juvenile justice team as a guilty plea. The original intent was that if a young person was prepared to accept responsibility for the offence and went to a juvenile justice team, it was not an admission of guilt. If matters were not resolved at the juvenile justice team meetings, the young person still had the option of going back to court and entering a not guilty plea. I understand that some magistrates have not considered it in that way. If I may clarify the position, it occurred when an alleged young offender went to the juvenile justice team and did not agree with the facts as presented and disputed the facts. The young person could then go back to the court and enter a not guilty plea. However, I am advised that some magistrates have taken the acceptance of going to a juvenile justice team to mean a plea of guilty, which I am advised was not the original intention. My advice is that what is proposed here clarifies the original intention and is in line with it.

Clause put and passed.

Clause 13: Section 28 replaced -

Ms S.E. WALKER: This is where we have a little bit of difficulty. I will not go through the current section 28, which I read out in my second reading contribution, but basically it does not say anything about the recording of a finding. Proposed new section 28 refers several times to the recording of a finding by the court. We are referring to a referral to the juvenile justice team by the court as opposed to a prosecutor. First, why has the minister included additional provisions in the proposed new section 28? Second, why does the minister believe that an assessment should not be made and why has she taken away from the court the option of an assessment?

Mrs C.L. EDWARDES: The section allowed the courts to make an order even if it was a dismissal order and then allowed it to refer the young offender to a juvenile justice team, as I said in my second reading contribution, for certain conditions to be placed on him. I am just wondering what has happened in the past 10 years that would now require the minister to say that the courts cannot make an order before there is a referral to the juvenile justice team, because it was clearly intended that could be the case and that it would be necessary in certain circumstances.

Mrs M.H. ROBERTS: The member for Kingsley is quite right, but in practice, as part of what the magistrate determines when sending an offender to a team, orders for restitution and so forth are also made, when that was originally intended to be within the realm of the juvenile justice team. It has been clarified in this way so that it complies with the original intent of the legislation. From what I can gather, judges have not wanted to deal with it in the way the member has outlined. In some circumstances they will make compensation or other orders rather than allow that to be done by the juvenile justice team, as was suggested, which in a way I suppose subverts the whole intention of setting up the juvenile justice team.

Ms S.E. WALKER: As I understand it from looking at the current provision, when a court finds the offender guilty or when a young offender pleads guilty, that person can still go to the juvenile justice team and the court can record the finding. The proposed section seems to be providing that in a variety of circumstances the court cannot record a finding any more but must send the young person to the juvenile justice team before it records a finding, whereas now the court can record a finding but still send the young person to a team. Is the minister saying that after recording a finding the court does not have power now to send an offender to a juvenile justice team?

Mrs M.H. ROBERTS: The member's original premise is not quite right. The member has said that the court may not make a finding and still send an offender to a juvenile justice team or the court can record a finding and send an offender to a juvenile justice team. That is as it is at present. With this legislation those two options will still remain in place.

Ms S.E. WALKER: Just to clarify it, if a person pleads guilty and the court records the finding, that person will be sent to a juvenile justice team. If the court hears the charge, finds the young person guilty of the offence and records the finding, that person can still be sent to a juvenile justice team.

Mrs M.H. Roberts: Yes.

Ms S.E. WALKER: If the young person pleads not guilty but the court finds the charge proved and records the fact -

Mrs M.H. Roberts: Perhaps I will clarify this: yes, the young person can still be sent to a juvenile justice team if the young person consents and accepts responsibility.

Ms S.E. WALKER: If a young person pleads not guilty but the court finds the charge proved and records the finding, the young person can still be sent to a juvenile justice team.

Mrs M.H. Roberts: Yes.

Ms S.E. WALKER: I asked the advisers about this but I was not persuaded by what they had to say. The wording in proposed section 28 reads -

> A consideration . . . of whether or not . . . to refer a matter for consideration . . .

It is therefore a consideration of whether to send a juvenile to a team without an adjournment for any assessment of the young person concerned. Why is that? Why would there not be an assessment if it were thought necessary to see whether the person was capable, for instance, of carrying out a particular type of order? Once the person gets to the juvenile justice team, I am not sure that there is an assessment of whether the person can carry out a particular type of order.

Mrs M.H. ROBERTS: One of the reasons for this change is that the current situation has resulted in a lot of time delays. If consent is given for the matter to go to a juvenile justice team and an assessment can be made at that stage, what currently occurs is that time delays are being built into the system, and when an assessment is called for, there will be some further time delay. In any event, the young person is sent to a juvenile justice team. The concern is that unnecessary time delays are being built into the system when a young person could be progressing straight to a juvenile justice team.

Mrs C.L. Edwardes: The juvenile justice team could call for an assessment if it were required. The provision therefore cuts out the interim step that is currently in place.

Mrs M.H. ROBERTS: That is right. I am told that this will be a more practical way of dealing with it. There is still the potential for an assessment to take place for the information of the juvenile justice team, but, at the moment, almost irrespective of what the report comes back with, often the magistrate will send the young person to the juvenile justice team anyway if there is agreement with the parties involved.

Clause put and passed.

Clause 14: Section 29 amended -

Ms S.E. WALKER: Section 29 of the Act is headed "First offenders usually should be referred to a team" and provides -

> The discretion given by sections 27 and 28 is to be exercised in favour of referring the matter to a juvenile justice team if the young person has not previously offended against the law.

The term "offended against the law" is now proposed to be qualified so that a young person will not be taken to have previously offended against the law merely because he or she has appeared previously before a juvenile justice team. It seems to me that a young person will now be able to appear multiple times before a juvenile justice team. Is that correct?

Mrs M.H. ROBERTS: The member is asking whether a person can continue to appear before a juvenile justice team; that is, whether it can be a pattern of behaviour. The answer is yes. It is permitted under this clause, as it is permitted under the existing legislation, that a person can on a number of occasions appear before a juvenile justice team. I understand there has been at least one instance in which a judge has determined that because an individual has appeared before a juvenile justice team on a number of occasions, that is a pattern of behaviour and therefore should be regarded as a first offence. The original intention of the legislation was that an appearance before a juvenile justice team was not a finding of guilt and therefore should not be regarded as an offence. This clause will clarify that matter.

Mrs C.L. EDWARDES: Section 29 refers to a young person who has not previously offended against the law. The minister is now proposing to define as a first offender a person who may be a second, third, fourth, fifth or even sixth offender. That is misleading, because such a person is not a first time offender. What is the public policy reason behind this amendment?

Mrs M.H. ROBERTS: This amendment will clarify the fact that a caution or an appearance before a juvenile justice team is not classified as an offence.

Ms S.E. WALKER: This will open the gateway for a person to appear on multiple occasions before a juvenile justice team.

Mrs M.H. ROBERTS: As members will be aware, it is at the discretion of the police or the court as to whether a person will appear before a juvenile justice team. The current practice is that a young person can make a number of appearances before a juvenile justice team. This amendment will confirm that practice.

Clause put and a division taken with the following result -

Ayes (23)

Mr P.W. Andrews	Mr F.M. Logan	Mr M.P. Murray	Mr M.P. Whitely
Mr J.B. D'Orazio	Ms A.J. MacTiernan	Mr A.P. O'Gorman	Ms M.M. Quirk *(Teller)*
Dr J.M. Edwards	Mr J.A. McGinty	Mr J.R. Quigley	
Mrs D.J. Guise	Mr M. McGowan	Ms J.A. Radisich	
Mr S.R. Hill	Mr A.D. McRae	Mrs M.H. Roberts	
Mr J.C. Kobelke	Mr N.R. Marlborough	Mr D.A. Templeman	
Mr R.C. Kucera	Mrs C.A. Martin	Mr P.B. Watson	

Noes (19)

Mr C.J. Barnett	Mr J.H.D. Day	Mr W.J. McNee	Mr T.K. Waldron
Mr D.F. Barron-Sullivan	Mrs C.L. Edwardes	Mr A.D. Marshall	Ms S.E. Walker
Mr M.J. Birney	Ms K. Hodson-Thomas	Mr B.K. Masters	Dr J.M. Woollard
Mr M.F. Board	Mr M.G. House	Mr P.D. Omodei	Mr J.L. Bradshaw *(Teller)*
Dr E. Constable	Mr R.F. Johnson	Mr P.G. Pendal	

Pairs

Mr A.J. Carpenter	Mr R.A. Ainsworth
Mr J.J.M. Bowler	Mr R.N. Sweetman
Dr G.I. Gallop	Mr M.W. Trenorden
Mr E.S. Ripper	Mr B.J. Grylls
Ms S.M. McHale	Mr J.P.D. Edwards

Clause thus passed.

Clause 15 put and passed.

Clause 16: Section 32 amended -

Ms S.E. WALKER: Clause 16 proposes to amend section 32. In my second reading contribution I referred to the importance of having the offender, the victim and the parties present at the juvenile justice team meeting. It seems to me that the Opposition cannot support a situation in which the offender is not present. Section 32(2) is proposed to be amended by inserting after "the proceedings" the words "and does not have a good reason for not being present". It would then read -

> If the young person is not present at the proceedings and does not have a good reason for not being present or a party withdraws his or her agreement to having the matter dealt with by a juvenile justice team or will not agree to terms specified by the team, the team may send the matter back -

As I understand it, the juvenile justice team will then proceed to an outcome without the offender being present. How can it do that in a practical sense? Must it not have the agreement of all the parties?

Mrs M.H. ROBERTS: Yes. As I pointed out, this would happen only in a rare or exceptional circumstance. The member for Nedlands is quite right. Any outcome must have the agreement of the offender. If there were no such agreement, it would not be an appropriate outcome, and the matter would need to go back to court.

Ms S.E. WALKER: How can there be an appropriate outcome if the offender is not there? What will happen?

Mrs M.H. ROBERTS: The examples I gave were that someone might be terminally ill, interstate or whatever. The coordinator involved would obviously need to have discussions with the young person about what was likely to be proposed and what the likely outcomes were. Those matters would be discussed with the young person. It may well be that during that time the young person is able to be communicated with on the phone or by some other means, even though he is not physically present. The offender might also be communicated with in advance. Once a proposed outcome eventuated, that would have to be agreed by each of the parties

Ms S.E. WALKER: Has this happened on many occasions? If so, will the minister tell me on which occasions?

Mrs M.H. ROBERTS: The advice to me is that it happens very rarely, because it is certainly the view that the young person is wanted and expected to be present. Therefore, this is a rare event. I have cited two examples on a couple of occasions already.

Ms S.E. WALKER: The fact is that if a young person has a terminal illness and the matter goes back to court, obviously the court will deal with it in an appropriate way. The situation would be the same if a person was interstate. In this clause, the Government is seeking to put in some very loose wording; namely, "and does not have a good reason for not being present". What is a good reason? Is it that the person missed the bus? The minister said that it is only in exceptional circumstances or rarely. However, the provision does not say that it is only in exceptional circumstances; it does not qualify it. The point is that the report which I have read out and on which the minister is relying to bring these provisions into the Bill does not say anything about the offender not being present as a recommendation. The minister mentioned in her second reading speech that the offender might be upset by the victim getting angry, or being emotional or upset. I do not think that is a good enough reason.

Mrs C.L. Edwardes: That is part of the whole process.

Ms S.E. WALKER: That is right. I also referred to the part of the report that states that the offender should be present. It is imperative. I cannot see the point of being able to open a gateway like this for a juvenile not to be present at this sort of team meeting. Therefore, the Opposition cannot support this clause unless the minister can persuade us otherwise.

Mrs C.L. EDWARDES: The Opposition does not support this for all the very good reasons that the juvenile justice teams were established in the first instance; that is, that all the persons who would be present before a juvenile justice team had to reach agreement. It is fundamental that there cannot be agreement if the offender is not there and does not have a good reason for not being present. If magistrates can misinterpret section 25 regarding an admission that the offence was committed or pleas of guilty, how does the minister think they will interpret "and does not have a good reason for not being present"? I believe that the examples to which the minister has alluded can be addressed in any event. If an offender is over east, he should not be. He should be here before the court. If the offender is upset by the victim, I am sorry, but that is the process. The offender may not want to attend a juvenile justice team meeting to which he has consented. He may have gone before the court or the police and consented to a JJT, but he may not have attended and may not have a good reason for not doing so. I just do not accept that this is absolutely essential for the good working of the JJTs. It is absolutely essential to ensure that we have the confidence of the community. JJTs do a fantastic job and are a valuable tool. My concern is that if we lose the confidence of the community, we will lose that valuable tool. There will need to be only one bad example of a juvenile offender who has attracted a large amount of media attention but who did not have a good reason for not being present. I suggest that the minister delete this provision and not put the amendment forward. It is absolutely wrong and defeats the whole purpose of the legislation. It defeats the consent and the fact that there must be agreement by all parties to the outcome of the JJT. It is wrong.

Mrs M.H. ROBERTS: I challenge the proposition that the member for Kingsley has put that it defeats the consent. It quite clearly does not defeat the consent, because unless all parties agree on the outcome, there is no consent and the matter goes back to court. The safety net is that it goes back to court unless all the parties concur.

Mrs C.L. Edwardes: He is not there. How can that be done if he is not there?

Mrs M.H. ROBERTS: The member for Kingsley ducked out briefly or wandered around when I gave that explanation to the member for Nedlands.

Mrs C.L. Edwardes: I was talking to the Leader of the House.

Mrs M.H. ROBERTS: That is fine; I am happy with that.

Mrs C.L. Edwardes: Don't just say I ducked out; okay? Don't give a wrong impression.

Mrs M.H. ROBERTS: I apologise if I have offended the member for Kingsley in any shape or form.

Mrs C.L. Edwardes: Don't give the wrong impression.

Mrs M.H. ROBERTS: I hate to give the wrong impression. The fact of the matter is that I have referred to a couple of examples. The member for Kingsley asked me why we need these provisions. I have suggested that one example could be a terminally ill person. The fact of the matter is that the person may have consented to be part of the process. He may well have consented to the reparation and the other things that the victim is happy with. To pursue the line of argument being put forward by those opposite, there may be a situation in which all the parties are in agreement. The offender may have agreed to make certain reparations and so forth that are required. However, if the offender is not physically able to go back to the juvenile justice team, according to members opposite, he will have to go back to court and have his day in court. Likewise, the offender may have moved interstate and have a job that may be disrupted if he has to travel back to Perth. In the interim, he may have communicated with the other parties, albeit not in person, and determined to make reparation to the satisfaction of the victim and all the parties concerned. All the parties may have signed off on that. To my way of thinking, it is a nonsense to say that the person must be physically present for a meeting in Perth.

We are talking about the exceptions. This is not the day-to-day way in which it will operate. Why would we want somebody who has already reached agreement to be put to the expense of travelling to and from Perth and taking time off work when there is no net gain from that? The victim gains nothing, nor does the system. In fact, we would involve the community in a lot of needless cost, because it would involve a court appearance and court time that are not necessary because the person has gone to a juvenile justice team. Likewise, those opposite would expect a terminally ill person to have his day in court, even if it is a minor offence and that person has agreed to make full reparation.

The other point I make is that for some crimes there is no apparent victim. That could be a traffic offence or when somebody has a small amount of marijuana, for example. Therefore, there is no victim component to it.

Debate adjourned to a later stage of the sitting, on motion by Mr J.C. Kobelke (Leader of the House).

[Continued on page 6167.]

Sitting suspended from 6.00 to 7.00 pm