

SEXUAL ASSAULT AGAINST CHILDREN — PERPETRATOR BAIL CONDITIONS

816. Mr I.M. BRITZA to the Attorney General:

I refer to the very concerning situation in Broome, which was referred to by the Leader of the Opposition in his question to the Premier today, of the alleged rape of a four-year-old girl by an individual who had been on bail for six weeks. Could the Attorney General provide the house with information on whether this is, in fact, the case; and, if so, how might this have happened?

Mr C.C. PORTER replied:

I thank the member for Morley for his question, and I also acknowledge the questions that have been asked by the Leader of the Opposition. What I will not do today is go through the details as they pertain to this individual alleged offender, because in doing that, all I could do is potentially prejudice any trial against that person that may ensue into the future.

However, with respect to the specific question as to the monitoring of bail conditions, Leader of the Opposition, in these circumstances monitoring of bail conditions is the responsibility of the resident police officer in Broome. I am still receiving further information, but there is no indication there was any difficulty in monitoring those conditions.

Mr E.S. Ripper: Or any failure.

Mr C.C. PORTER: That is right. Save to say, as the Leader of the Opposition no doubt knows, bail conditions do not translate to 24-hour supervision of a person in the community.

The Leader of the Opposition has raised a very important issue of public policy that I am very much keen to address today. Both yesterday and today the Leader of the Opposition raised this issue. He asked, “Will the government now commit to changing the law to ensure that those charged with serious sexual offences against children are not eligible for bail?” In effect, the Leader of the Opposition is asking whether this government will remove judicial discretion completely when it relates to child sex offences. I would be interested to know what the member for Mindarie thinks about that. Whilst I consider that this is an area which warrants some reform, simply taking away a judicial officer’s discretion entirely would not be the right response. What we would end up with in this jurisdiction is the bizarre situation —

Mr E.S. Ripper: Are you saying that on this matter, you trust the judges?

Mr C.C. PORTER: The Leader of the Opposition does not, clearly, and that is the point, is it not?

Mr E.S. Ripper: You do?

Mr C.C. PORTER: I do, and I will tell the Leader of the Opposition why. The Leader of the Opposition would end up with the bizarre situation where judges would have discretion in an offence of murder but not in respect to a sexual offence against a child.

Bail arises in two situations. First of all, if someone has committed an offence and there is no history of offending, bail is at large—the judge has discretion whether or not to give bail. The judge looks at whether or not the person might commit an offence if the person were given over to bail, whether there is a danger to public safety and other factors that relate around public safety. Clearly, these are excruciatingly difficult decisions. We do not have the actual ability to predict the future. Even with all of the wisdom and experience of judges, there are numerous cases where someone is granted bail and then goes on to commit an offence. The solution to that situation is not to remove entirely a judge’s discretion to run bail. The second situation in which bail could be granted is when someone is already on bail for a serious offence and commits another serious offence. Parliament’s response to that situation historically, and as it exists in this jurisdiction, is to restrict the discretion of the judge. In that situation, the judge can grant bail only if exceptional circumstances are shown. Exceptional circumstances relate to a serious offence. A serious offence is categorised in schedule 2 of the Bail Act. Interestingly, sexual offences such as rape generally are serious offences, but sexual offences against a child are not nominated as serious offences in schedule 2 of the Bail Act. There is no question that is an anomaly, but wanting reform in that area, which I do accept should occur, is different from that which the Leader of the Opposition suggests, which is a complete overreaction. I also add that the former Labor government changed schedule 2 of the Bail Act on numerous occasions and did not pick up this anomaly or move to add sexual offences against children to schedule 2. I agree that is ripe for reform.

I will finish this contribution to the Parliament by noting that our judicial officers are very, very strict on bail and, historically, have been getting stricter. Ten years ago, in 1998, 4 021 people were denied bail and then later were either acquitted or did not receive a term of imprisonment. Ten years later, in 2008, 10 157 people were denied bail and then later were acquitted or did not receive a term of imprisonment. Our judges are already

excruciatingly tough on the decision of bail and, yes, sometimes that decision is imperfect. But let me say this to members: every action in criminal justice has a reaction. If we pepper more and more offences into schedule 2 of the Bail Act, and I will agree that child sex offences is one we must look at, the calculus is simple: if we get tougher on bail and make bail harder to get, more people will be incarcerated awaiting their trial who may well be acquitted or who may well not get a term of imprisonment. That is precisely what this government has done, in effect, with parole. The new chair of the Prisoners Review Board of Western Australia has been much tougher with parole. The fact is that more people have been jailed. What was the member for Warnbro's response on ABC 720 radio to that situation—that is, 855 more people in prison because of tougher restrictions on parole? The member for Warnbro stated, "All we hear from the government is another crackdown, another change to legislation to show how tough we are." The fact is the tougher we are on parole, the more people in jail; the tougher we are on bail, the more people in jail. However, I would agree that reform is warranted with child sex offences.

Mr P. Papalia: Are you taking credit for the Parole Board being tougher?

Mr C.C. PORTER: The Parole Board is tougher; again, an exercise of judicial discretion, just as with bail. If we change the Bail Act, the result will be the same: more imprisonment. What I am saying is that the member for Warnbro cannot talk tough and then complain about people going to jail, because if we are tough on law and order, people end up in jail.