YOUNG OFFENDERS AMENDMENT BILL 2004

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 16: Section 32 amended -

Debate was adjourned after the clause had been partly considered.

Ms S.E. WALKER: Before we rose for dinner, the minister was saying how important she thought it was that we have a juvenile justice system in which the offender need not turn up. As her reason, she cited just two examples from the thousands of offenders who have been before the juvenile justice teams. That is the basis for this provision - two examples! When the minister responded to the second reading debate, she gave figures for the number of offenders who had been referred to juvenile justice teams over the past year - I think it was 2 500 to 3 000. If that is correct, and this Act has been in place for 10 years, then around 20 000 juvenile matters have appeared before juvenile justice teams. We are bringing on a provision that is broad and allows a juvenile not to turn up for a meeting if he has a good reason, not necessarily an exceptional reason. However, it does not matter what the reason is; we say that the offender must be present. The report that the minister relies upon does not recommend that the person must not be there. Earlier today, I referred to *The Use of Punishment* by McConville, which states -

> They make clear that victims and offenders, together with their respective 'supporters', must come together in a face-to-face meeting and between themselves must determine the outcome of that meeting. This model fits with the forms of restorative justice . . .

Nowhere in this book is it suggested that we have a restorative justice juvenile justice team meeting to which the offender does not turn up. The offender is given leave and the restorative justice process goes on regardless. The Opposition does not support this clause and will vote against it.

Mrs M.H. ROBERTS: As I pointed out before the dinner break, some of these offences are, in a sense, victimless, or indeed the only victim could well be the offender himself. For example, the offence of possession of a small amount of marijuana would be a victimless offence in that the only victim is the offender because he is the person to whom it serves as a detriment. In that instance, there is no victim to confront face to face at a meeting, which is where the member for Nedlands is wrong. I went through some of those instances before the break, and in some cases this would cause undue hardship, as I suggested. There may be a situation in which someone is terminally ill, where either there is no victim or, alternatively, there is a victim who is happy with the reparation on offer, and is quite happy to accede to that without there being the face-to-face meeting as has been referred to. The fact of the matter is that, if the victim wants the face-to-face meeting, it will take place, if there is a victim in the first instance, and if that victim wants a meeting. If they are not happy with the situation, victims have a right, according to the legislation, to have the offender back in court. There is no issue here; it is a simple beat-up by the Opposition and, although the member for Nedlands may keep talking about the victim having a right to be there, some of these offences may not involve a victim. This is only in place for exceptional and very rare circumstances, and it is worth having.

Ms S.E. WALKER: It should not be there at all. The minister talks about the victim not being there, but I am talking about the offender not being there - the person who commits the offence. It is simply unacceptable, and I find the minister's argument confusing. She is just confusing herself about what the Opposition is saying. We are not talking about the victim being present; we are talking about the offender not being present. I do not think she will find that the Western Australian community would support the offender not being present. The Opposition will not be supporting this clause.

Clause put and a division taken with the following result -

Ayes (26)

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

Noes (18)

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

Pairs

Mr J.J.M. Bowler	Mr R.A. Ainsworth
Dr G.I. Gallop	Mr M.W. Trenorden
Mr E.S. Ripper	Mr M.G. House

Independent Pair

Mr P.G. Pendal

Clause thus passed.

Clauses 17 to 29 put and passed.

Clause 30: Section 147A inserted -

Ms S.E. WALKER: Can the minister explain the new procedure for the supervised release order?

Mrs M.H. ROBERTS: The proposed new section 147A of the Young Offenders Act 1994 automatically cancels a supervised release order if the young offender re-offends and receives a custodial sentence. This amendment is necessary to clarify the operation of the amendments to section 149. The proposed new section 147A is identical to the provisions that apply to offenders on parole under section 67 of the Sentence Administration Act 2003.

Ms S.E. WALKER: Under the new provisions, there is provision for a retrospective breach; that is, a young offender, having apparently successfully served a supervised release order, can be found later to have committed a procedural breach or a breach by way of an offence. Will there be a difference in the way the person is treated if it is a procedural breach, or a breach by an offence?

Mrs M.H. ROBERTS: This measure relates primarily to re-offending because if it occurred prior to it, we would expect the staff to have taken action. I move -

Page 27, line 14 - To insert after "imposed" the phrase "within 6 months".

It was considered an oversight that a time frame was not put in place under this provision. The average length of a juvenile sentence is about five months. It was suggested that a limitation be put in place in the legislation, and that six months is an appropriate limitation.

I point out that under the current provisions of the Act, when a juvenile has reached the end of an order and the order has not been breached, no further action can be taken. This provision will toughen up that provision and allow action to be taken within that six-month period.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 31 to 35 put and passed.

Clause 36: Section 157 amended -

Ms S.E. WALKER: This clause relates to the quorum of members who are present for the Supervised Release Review Board. Section 157(1) of the Young Offenders Act states -

At a meeting of the Board 3 members are required to be present . . .

The next two subsections will be deleted under this Bill. Subsections (2) and (3) state -

(2) For the purpose of dealing with a matter that involves a person who has an aboriginal background, the quorum is to include a member who has such a background.

(3) When dealing with a matter that involves a male person, the quorum is to include at least one male and when dealing with a matter that involves a female person, the quorum is to include at least one female.

When dealing with a juvenile female it is important that a person of the same sex is present on the board. The same applies to males and Aboriginal people. I am not sure where the Supervised Release Review Board sits; perhaps when it sits, the minister will let us know. These provisions were thought to be important when the Bill was drafted and the Act was passed. I wonder whether it is expediency rather than the interest of justice, which costs money, that is motivating the proposed changes. Is it a matter of expediency?

Mrs M.H. ROBERTS: It is intended that wherever possible, and as a general practice, a female or Aboriginal person will be present in those circumstances. However, I am advised that to repeal the two subsections would be good practice because at the moment sometimes the deputy chairman of the board is not available and, as a result, young people are kept in custody for longer periods. The rationale is that young people should not be kept in custody because neither an Aboriginal person nor a female person is able to be present. It could result in the juveniles being further penalised beyond that which is necessary. This amendment will free up the system and allow that to take place. I am advised that there have been instances in which juveniles have been kept in custody beyond the extent of their order because either a female or an Aboriginal person has not been available.

Ms S.E. WALKER: That does not tell us anything. How many board members are available at any time? Does the board meet in Perth? Where does it meet? The minister says that people have been kept in custody. For how long have they been kept in custody? How long has this been going on? Can the minister be more specific?

Mrs M.H. ROBERTS: This amendment was made at the request of the Supervised Release Review Board. It is not a matter of just grabbing someone to sit on the board for a day or a period of time; the members are appointed. I understand there have been quite a number of instances in which these incidents have occurred. I cannot provide the member with the exact figure at the moment. This amendment has been made at the request of the Supervised Release Review Board. It advises me that this measure will improve its practices and ensure that young people are not unduly penalised.

Ms S.E. WALKER: Who are the current members of the board? Where does the board meet and how often does it meet?

Mrs M.H. ROBERTS: Currently the board meets at the Banksia Hill detention centre. I understand it includes Judge Sadleir. I am about to provide the member with the names of the other board members. It meets once a fortnight. Often when legislation is put in place the practicalities are not considered to the degree they should be. Given that this legislation has been in place for some years it is an opportune moment to work out the practical matters. If situations are occurring that are resulting in undue delay and are penalising juveniles unfairly and are delaying their release beyond a date on which they should be released, we can ameliorate the situation. My view is that we should. As I mentioned, the chair is Judge Sadleir. One member is a police officer and another is a community member called Ross Oliver. There is also an Aboriginal officer. The names I have been given are Dot Henry and Joan Wynch. The Department of Justice representative is John Sawle.

Ms S.E. WALKER: Why does the minister not just appoint more members? What is the problem?

Mrs M.H. Roberts: We cannot do so under the Act.

Ms S.E. WALKER: Why does the minister not change the Act to avoid the possibility of an injustice to an Aboriginal or any male or female? Why not appoint more members and have a larger pool of male, female and Aboriginal members? The board meets at the Banksia Hill Detention Centre; they know when the meetings are on. Why cannot the minister do that?

Mrs M.H. ROBERTS: The requirement to participate on the board is that a person has a certain level of expertise and experience in dealing with these matters. It is not a matter of just being able to appoint a number of people and call them in at a moment's notice. That is not appropriate to the circumstance. The people who work with the situation in practice advise me that this is the simplest and best way of progressing.

Ms S.E. WALKER: This is very poor. We are talking about justice. This is the most expedient way to deal with it; it is simple. We should not worry about appointing more members. Are the members paid?

Mrs M.H. ROBERTS: It is my understanding that community members are paid. I am advised that some people do not attend on a particular day. As a result, it would be unfair to penalise the juvenile concerned for the member not being available on the day. This is an expert board. As the member is aware, some juveniles appear before it on a number of occasions. The board members develop expertise and experience in dealing with these people. We are certainly of the view that the people who sit regularly on the board are more than capable of making decisions regarding the broad cross-section of offenders. It is far better that we proceed with a meeting rather than detain juveniles in custody unnecessarily.

Ms S.E. WALKER: That argument does not wash. I have met people who have told me they have been on the Parole Board, and I have been staggered that they have served on the board. It is okay to say that particular expertise is needed, but there are lots of people who could perform the functions of members of the Supervised Release Review Board. It is not as though it will cost the Government any more because I presume people are paid only when they turn up. The Opposition will not support this provision because it is unfair to juveniles. To say that an Aboriginal, male or female may not be released soon enough is not the case. Such persons may not be released at all because, for instance, an all-male board may not understand a female juvenile's perspective. The same may apply to a male juvenile or an Aboriginal person. The Opposition will always go for fairness over expediency and it will not support this provision.

Clause put and a division taken with the following result -

Ayes (25)

Mr P.W. Andrews	Mr J.C. Kobelke	Mr N.R. Marlborough	Mr D.A. Templeman
Mr C.M. Brown	Mr R.C. Kucera	Mrs C.A. Martin	Mr P.B. Watson
Mr A.J. Dean	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)*
Mrs D.J. Guise	Mr J.A. McGinty	Mr J.R. Quigley	
Mr S.R. Hill	Mr M. McGowan	Ms J.A. Radisich	
Mr J.N. Hyde	Ms S.M. McHale	Mrs M.H. Roberts	

Noes (17)

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

Pairs

Mr J.J.M. Bowler	Mr R.A. Ainsworth
Dr G.I. Gallop	Mr M.W. Trenorden
Mr E.S. Ripper	Mr M.G. House

Independent Pair

Mr P.G. Pendal

Clause thus passed.

Clause 37 put and passed.

Clause 38: Section 170 amended -

Ms S.E. WALKER: The minister reminds me of something from *Star Trek*.

Mrs M.H. Roberts: I am not actually a *Star Trek* fan.

Ms S.E. WALKER: The minister refers to things that are not in existence or not even on the horizon!

Mrs M.H. Roberts: Do not be so old fashioned!

Ms S.E. WALKER: I can imagine the minister coming in soon with one of those funny hats with the pompoms.

This clause states -

After section 170(j) the following paragraph is inserted -

(ja) refuses or fails to wear when required under this Act to do so a device for the purpose of having a body sample taken or detecting the presence of a substance in the body of the detainee;

There is no device; there is none on the horizon. We should not be supporting this provision. If we did, we might as well bring all sorts of Star Trek and Star Wars legislation into the Legislative Assembly in the expectation that something would be created in the future. Members on this side of the House keep their feet on the ground. We are not in cyberspace like members opposite. We are acting on behalf of the community. We have our feet on the ground. We will not support any legislation that talks about devices that do not exist.

Mrs M.H. ROBERTS: We had a little discussion on this point earlier in the debate this evening. I advised the member for Nedlands that patches that detect drugs can already be worn. They are like sweat patches. It is not New Age. There are no pompoms on people's heads. There is no flying sky high or anything, although -

Mrs C.L. Edwardes: Trekkers do not wear pompoms.

Mrs M.H. ROBERTS: I do not watch Star Trek; I am not a fan. The member for Nedlands knows a lot more about that than I do.

Ms J.A. Radisich: There is someone out in space and it is not you, minister.

Mrs M.H. ROBERTS: That is right. I am not the space cadet. I have gone into some detail about the future. This is a generic clause. There would be nothing better than to be able to properly monitor juveniles in this circumstance. A sweat patch is one thing that is being trialled in other jurisdictions. It may well be something that we can use here, or there may be another device that we can use. That is why the clause is generic and broad. Members would have to agree that if there were a capacity to use a simple, non-intrusive device to do that monitoring, we should use it for the benefit of the individual involved, his monitoring and, therefore, the community at large.

Ms S.E. WALKER: So we should, but the minister will be asking us to read tea leaves next, because no device is available. When the minister has one, she can bring in the legislation. Do members remember the photograph of the Attorney General with the eye device in the prisons? Nobody has seen or heard of it since! When the minister gets the device, she can bring in the legislation. She knows that if it is good, she will get our support.

Clause put and a division taken with the following result -

Ayes (25)

Mr P.W. Andrews	Mr J.C. Kobelke	Mr N.R. Marlborough	Mr D.A. Templeman
Mr C.M. Brown	Mr R.C. Kucera	Mrs C.A. Martin	Mr P.B. Watson
Mr A.J. Dean	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)*
Mrs D.J. Guise	Mr J.A. McGinty	Mr J.R. Quigley	
Mr S.R. Hill	Mr M. McGowan	Ms J.A. Radisich	
Mr J.N. Hyde	Ms S.M. McHale	Mrs M.H. Roberts	

Noes (16)

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

Pairs

Mr J.J.M. Bowler	Mr R.A. Ainsworth
Dr G.I. Gallop	Mr M.W. Trenorden
Mr E.S. Ripper	Mr M.G. House

Independent Pair

Mr P.G. Pendal

Clause thus passed.

Clauses 39 to 45 put and passed.

Schedule 1: Transitional -

Mrs C.L. EDWARDES: Clause 2 of the schedule is headed "Conditions of employment of "group workers" on commencement to continue". Can the minister explain what this means for the group workers? Will the position of "group worker" remain? Has that changed? How many people will be involved in the continuation of their conditions of employment? Why was it necessary to include this provision in the Bill? What has changed to require that?

Mrs M.H. ROBERTS: Yes, there will still be group workers. The only real change is that the chief executive officer, rather than the minister, will be the employer. We have included this provision so that there will be no ambiguity and so that the continued employment of these people will not be in jeopardy in any way.

Schedule put and passed.

Title put and passed.

Reconsideration in Detail - Motion

On motion by Mrs M.H. Roberts (Minister for Justice), resolved -

That the Bill be reconsidered in detail for the further consideration of clause 29.

Reconsideration in Detail

Clause 29: Section 145 amended -

Mrs M.H. ROBERTS: I move -

Page 26, line 17 to line 23 - To delete the lines and substitute -

(1) If a court finds a person guilty of an offence and -

(a) a supervised release order is in force in respect of the person; or

(b) at any time within the period of 6 months before the finding is made -

(i) a supervised release order was in force in respect of the person;

(ii) the offence took place during that supervised release order; and

(iii) the court imposes a custodial sentence in respect of that offence,

the court is to give the Board and the chief executive officer notice of the finding and of the way in which the matter has been disposed of by the court.

Mrs C.L. EDWARDES: I wonder how the court will process that matter in terms of providing the information to the chief executive officer. Although the minister is talking about the Department of Justice, and essentially the same chief executive officer is involved, she refers to entirely different functions.

Mrs M.H. ROBERTS: That is a very good question. The Government is working on a new system called the community business information system - CBIS - so it will be in place when the legislation is enacted.

Mrs C.L. Edwardes: Is it anticipated that the day the court finds a person guilty of an offence, the matter will pass immediately through to the supervisory board?

Mrs M.H. ROBERTS: Yes. That is what we are attempting to do. Specifically, we are looking at e-messaging - electronic messaging - directly from the court.

Amendment put and passed.

Clause, as amended, put and passed.

House adjourned at 9.41 pm
