

CRIMINAL CODE AMENDMENT BILL 2000

Second Reading

Resumed from an earlier stage.

HON HELEN HODGSON (North Metropolitan) [4.33 pm]: Mandatory sentencing has provoked unprecedented judicial criticism and distress, expressed in comments such as those of Chief Justice David Malcolm that were documented in the media. The policy behind these laws is a response to the fear that undoubtedly exists in sections of the community, coupled with a perception that the judiciary is not appropriately sentencing offenders. This second perception is exacerbated by media reports. The facts show, however, that in adult courts, burglaries and thefts make up 19 per cent of offences before the court but are the offences most likely to receive a prison sentence. The most recent figures from the Crime Research Centre show that 70 per cent of burglary/theft offenders received a custodial sentence with the average sentence being 20 months. This figure has increased continuously over the past three years. In the Children's Court burglary/theft constitutes 41.6 per cent of all offences with more than one-third of these receiving a custodial punishment. It seems to me that the judiciary is performing its task adequately.

Traditionally, Western Australia has a juvenile detention rate well above the national average. That figure currently sits at 1.7 times higher than the national average. The juvenile detention rate among Aborigines in Western Australia is 32 times the rate of non-Aboriginal juveniles. The proportion of young people dealt with by the Children's Court who were placed in custody rose from 4.1 per cent in 1991 to 12.8 per cent in 1998. This was in spite of the introduction of the Young Offenders Act, which states that imprisonment should be a last resort when punishing juvenile offenders.

The legislation prevents judges and magistrates taking the individual circumstances of each case into consideration when sentencing and denies those convicted the right to appeal against the term of their sentence. Mandatory sentencing laws have evolved from feelings of fear in sections of the community. There is a clash between serious, unresolved social problems and our desire to protect ourselves from the results of these problems by placing our faith in the clumsy and inadequate application of criminal law. We have judges so they can make reasonable decisions based on reasonable consideration of all the circumstances. It is not a politician's job to tell judges what must be done in each case that comes before the court. The extremely limited ability of judges to use community supervision orders does nothing to address the many different concerns raised about mandatory sentencing and means judges lack the ability to use methods to best treat each offender in the circumstances. The judiciary needs some discretion when dealing with such difficult cases and with offenders who commit vastly different crimes for very different reasons. The judiciary needs the option of directing punishment to help prevent reoffending. This will also reduce the number of future victims.

I am not saying that repeat offenders should not be imprisoned. Some of them should be and would be without these laws. Under the home burglary laws, sentences of up to 20 years' imprisonment can be imposed, which is the equivalent of the sentence for manslaughter. I am saying that it is not our place, as political individuals, to cross into the realm of the powers of the judiciary and predetermine a sentence. That amounts to political interference in the proper process and functioning of the courts.

A Western Australian study conducted in 1993 found that mandatory sentencing does not reduce reoffending. The report concluded that, after the introduction of the laws, there was no fall in reported crime rates. The debate that has raged nationally about mandatory sentencing laws has led to a great deal of analysis about the effectiveness of the laws, and the Senate inquiry heard a great deal of evidence on this issue. As far as I am aware, of the many studies into the laws that have been undertaken since their inception, none contains evidence that the laws achieve their stated aim of reducing property crime. In addition to the lack of success in reducing property crime in Western Australia, evidence was produced to the Senate committee that mandatory sentencing leads to emotional ill-health, self harm and increased suicide risk. It entrenches the alienation of young people, particularly young people from indigenous backgrounds. It has also done nothing to make members of the community feel less vulnerable, as evidenced by their continued disquiet about justice issues. We need a new approach. That will mean hard work and innovation rather than sitting back and resting on the ineffective three strikes law, which has not produced results up to now.

The Senate committee found that mandatory sentencing does not work and there is no credible evidence to show that it does. Although the committee received dozens of submissions from expert legal and community bodies, only two, those from the Western Australian and Northern Territory Governments, supported mandatory sentencing. Evidence given to the inquiry also indicated that the reoffending rate for those subject to mandatory sentencing is high. Despite claims that mandatory sentencing assists the victims of crime, the reality is that victims are more likely to be exposed to high recidivism rates from offenders who, having been subject to jail terms in environments often described as "universities of crime", are frequently destined to a life of more crime

and possibly more severe crime. We also learnt from the inquiry that detention of an offender is incredibly expensive; that is, it costs almost \$60 000 a year. At the same time, we know that the causes of crime - homelessness; alienation; alcohol and drug abuse; broken, violent families; unemployment; and lack of education - still need substantial funding and resources to be properly addressed.

Mandatory sentencing does not stop people who are living in despair and disadvantage from committing crimes, some of which constitute petty crime. These laws are an arbitrary response that flies in the face of natural justice and will not stop people from continuing to commit such acts. Of course, we are not saying that individuals who commit crimes should be let off; of course they should face court and be punished, but to impose disproportionate punishments on these people will simply alienate them and entrench them even further in the criminal justice system. I fully support the attitude of Chief Justice David Malcolm who stated -

Unless our community can settle on an alternative method of addressing crime and the rehabilitation of offenders, Western Australia will continue to see an increase in the number of alcohol and other drug dependent offenders.

Yet as a community we persist with such illusory solutions as mandatory sentencing, which is only a short-term, quick-fix solution to impress constituents from one election to the next.

Despite the introduction of these laws, Western Australia still has the highest offender rates for property crime. Therefore, the laws cannot be deterring crimes and are not stopping more people becoming victims. We must reassess what action has been taken and utilise alternative methods to stop the offending.

Data and experience elsewhere strongly suggest that we have achieved no social benefits whatsoever from our high rates of imprisonment by way of reduced crime rates, lower recidivism, less community concern about crime or in any other way. The laws are also not effective in providing any new level of understanding for the community about the justice system, or how mandatory sentencing is more secretive, as the circumstances of the crime are not reflected in the sentence. As the public is crying out that it cannot understand the judicial system, we are not aiding people by this regime.

Three-strike laws are also inconsistent with the principles of restorative justice, as they provide nothing to the victim in terms of reparation or having their sense of loss and violation made more real to offenders. The victim has no assurance that this offender may not re-offend.

The removal of the mandatory sentencing regime is not a complex procedure. The Bill I introduce today will repeal two subsections of section 400 and three subsections of section 401 of the Criminal Code. Section 400 deals with interpretation, and subsections (3) and (4) provide the definition for "repeat offender", which is an offender who commits a burglary offence involving a place ordinarily used for human habitation. Section 401 generally creates the offence of burglary.

This Bill seeks to repeal its subsections that remove judicial discretion in sentencing those who are found guilty of the offence of burglary and are defined as "repeat offenders". The relevant subsections are (4), (5) and (6). The effect of these amendments will be to restore the discretion of the sentencing judicial officer when sentencing offenders found guilty of the offence of burglary. The judge may take into consideration in passing sentence the actual offence committed, the circumstances surrounding the offence, the victim impact statement and the individual circumstances of the offender. In order to ensure there is no doubt about the repeal of mandatory sentencing laws, the Bill also seeks to repeal section 4(3) and section 6 of the Criminal Code Amendment Act (No. 2) 1996, which introduced the current mandatory sentencing regime.

Our job is not to find a quick solution by locking young people away, but to find alternatives that will give a future and hope to the wider community, the victims of crime and the offenders. As the evidence against mandatory sentencing continues to mount, it is evident that the community as a whole needs to take a close look at what mandatory sentencing really provides - that is, the State with the highest burglary rate in the nation, high recidivism rates, lack of transparency in sentencing, no preventive measures to stop crime and no added justice for victims.

In summary, we must look at the simple fact that mandatory sentencing does not work. We now have a choice: To take the easy way out and continue with the current policies that provide no results for anyone, or tackle a very complex problem with multiple causes and attempt to address the causes of burglary offences to prevent future victimisation, yet still recognise the need to proportionately punish offenders for their crimes. Evident in this emotive debate is the immense gulf between the reality of crime and law and order and its perception. This is where we find the clash between judges and academics on the one hand and a genuinely concerned electorate on the other. That is why it is very important that people with real expertise and experience in these areas continue to speak out on the issue.

Just because this law is not the worst in Australia does not make it acceptable. A bad law is a bad law. Just because the judiciary has found ways to mitigate the laws in limited cases, that does not override the principle that Parliament has enacted of mandatory sentencing. If Parliament agrees that the laws in practice can be overridden, Parliament should remove those laws. A justice system that focuses on vengeance and punishment is of little use to those young offenders who are capable of reform, which is about 80 per cent of young offenders. The preference should be for diversionary sentencing options which educate and reform, and have a restorative component that enables young offenders to re-enter society in a beneficial way, without the baggage of bitterness and anger that a disproportionate custodial sentence is likely to instil. Mandatory sentencing is unquestionably unjust; it unquestionably does not work as a deterrent; it is not the most efficient use of taxpayers' money for crime prevention; and it must go. I commend the Bill to the House.

Debate adjourned, on motion by Hon Muriel Patterson.