PRISONS AMENDMENT BILL 2002

Second Reading

Resumed from 13 March.

MS SUE WALKER (Nedlands) [3.00 pm]: The Opposition supports the Prisons Amendment Bill 2002, provided safeguards are put in place for biometric identification and stiffer penalties are imposed for the release of that information. If the Opposition is not satisfied on those two counts, it will withdraw its support for this legislation.

This Bill purports to do four things: first, it purports to enhance the security of prisons by preventing or banning indefinitely people who bring illegal items or substances into prisons; secondly, it purports to increase the security by replacing the current identification of visitors with biometric identification. In proposed section 60A, biometric identification includes "a fingerprint, palm print, eye print, voiceprint or other physical or personal characteristic provided or used to prove the identity of a visitor to a prison." Thirdly, this Bill purports to increase the early discharge discretion for prisoners, which is vested in the director-general and the prison superintendent. The director-general, under certain conditions, can now increase early discharge from 10 to 30 days, and the prison superintendent from three to 10 days.

I will speak firstly about visitors. Prison visits are dealt with under part VII of the Prisons Act 1981. The section dealing with the definition of prisoners contains approximately eight classifications of prison visitors: first, prison visitors appointed by the Governor under sections 54 and 55; second, justices of the peace under section 56; third, judges of the District Court and the Supreme Court under section 57 - I note that magistrates are not included in that section, and I will refer to the relevance of that later; fourth, friends and relatives under section 59; fifth, officials under section 61; sixth, legal practitioners under section 62; seventh, police under section 63; and, eighth, public officers. Public officers may include commonwealth or state crown prosecutors or anyone authorised by law to have access to a prisoner pursuant to section 64.

The amending legislation seeks to change the way in which visitors are identified, but does that include the eight classes referred to above? Is the minister changing the identification procedure for all of the eight classes I have mentioned? It would appear, by virtue of section 65, that the chief executive officer may issue permission to visit as he thinks fit to certain categories; that is, prison visitors, justices of the peace and judges of the Supreme Court and the District Court. However, sections 59 and 65 operate to invoke a mandatory provision for all other visitors.

Section 60 of the Prisons Act states -

> **Declaration of visitors.**
>
> (1) On the occasion of the first visit under section 59 or 65 of a person to a prisoner who is confined in a prison prescribed by regulations for the purposes of this section, -

This Bill will delete the words "prescribed by regulations for the purposes of this section". I understand the reasoning for that, and the Opposition has no quarrel with it. The section continues -

> the person shall, -

That means it is mandatory -

> before being permitted to make the visit to that prisoner, be informed by the superintendent, or an officer appointed by him for the purposes of this section, of the provisions of this subsection and the consequences of breach of this section and shall be required -

Again, that means it is mandatory -

> by the superintendent or such officer to make and sign a declaration on the prescribed form with respect to his identity, his friendship or relationship with the prisoner concerned (if applicable), and the purpose of his visit.

I presume that the section will continue to apply to all eight categories, unless the first three categories about which I spoke - that is, judges of the District Court or Supreme Court, the special class of prison visitors, and justices of the peace - are exempted under section 65, which states -

> **Other visitors to prisoners**
>
> (1) A person, other than a person who may be permitted to visit or interview a prisoner under section 59, 61, 62, 63, or 64 or otherwise under this Act, who desires to visit a prisoner for a bona fide purpose may be permitted to do so by the chief executive officer.

This subsection applies to the first three categories of visitors, as they are defined in sections 54, 56 and 57. Subsection (2) of section 65 states -

> Permission to visit a prisoner under this section may be given subject to such conditions as the chief executive officer thinks fit.

I will ask the minister during consideration in detail whether this means that the chief executive officer will be able to exempt the first three categories of visitors from biometric identification. The other five classes of visitors would still be subject to that identification procedure. Those classes of visitor can include friends and relatives of prisoners; officials; lawyers; police officers, including detectives conducting internal police investigations and the Commissioner of Police; public officers; the local mayor or a councillor of a shire; members of Parliament; doctors; psychiatrists; psychologists; etc. Section 65 will remain in force. The amendment to section 60 will not affect the mandatory nature of this section. I will ask the minister whether, given that all people must identify themselves, every category of persons or only the five latter categories will be subject to the biometric identification procedure. Will the first three categories - that is, judges of the District and Supreme Courts, justices of the peace and prison visitors, which are a special category of person - be exempted from the procedure? In my view, the use of biometric identification to enhance security within the prison system has the dangerous and explosive potential of compromising the security of a wide range of government officials, including councillors, members of Parliament, police officers and parole officers. When these people visit prisons, they will be required to provide a biometric identification, which will reveal that person's unique characteristics. The danger is to not only public officials but also friends and relatives who visit prisoners. In a moment, I will refer to why biometric identification is dangerous.

This legislation would make it mandatory for visitors to give their unique identification to a prison officer, yet it does not outline how, where and under whose control that information is to be stored and who would have access to it. That is very dangerous given the current climate of world terrorism in which measures have been taken to step up security in this State. This legislation is hastily drafted. Although it is well-meaning, the Government has given no thought to the consequences. A new offence would be created under proposed section 60A to provide for penalties for people who pass on this valuable information. The penalty would be a paltry $2 000 fine or imprisonment for 12 months. The heading of proposed section 60A is "Protection of proof of identity of a visitor to a prison", and states -

> (1) In this section -
>
> **"proof of identity"** means a fingerprint, palm print, eye print, voiceprint or other physical or personal characteristic provided or used to prove the identity of a visitor to a prison.
>
> (2) A person must not give any proof of identity to any other person unless -
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> (a) the proof of identity is given to a prison officer for the purpose of checking the identity of a visitor to a prison; or
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> (b) the person is required to do so by an order of a court.

Magistrates, members of Parliament, councillors or ordinary people could give their unique identification features. This legislation does not tell us how that information would be stored, who would store it and who would have access to it. Recently, an outside body infiltrated the Department of Transport to gain access to information. Over the years, that has occurred in other departments in this State. This legislation is dangerous and is wanting because it does not secure the information that will be sought from a range of visitors under the Prisons Act. The minister's second reading speech stated -

> Importantly, safeguards are proposed in the Bill to prevent any unlawful disclosure of such personal information.

What are the important safeguards? The proposed penalties in this legislation provide for a fine of only $2 000 or imprisonment for 12 months. I warn the Minister for Justice and Legal Affairs that during the committee stage I will move an amendment to delete the words "Penalty: $2 000 or imprisonment for 12 months", and substitute them with a fine of $25 000, or imprisonment for 10 years. I do that on the basis that section 378 of the Criminal Code provides for a maximum penalty of seven years imprisonment for stealing. However, under this legislation, if someone were to steal information from a wide cross-section of people, the penalty would be a paltry $2 000 fine or imprisonment for 12 months. I suspect that someone drafted this Bill using the disclosure of official secrets section of the Criminal Code, because the penalties are the same. The penalties in this Bill are paltry compared with the penalties imposed on a person who was caught stealing a car. The Opposition will not support this legislation unless the Minister for Justice puts in place some safeguards for visitors to a prison who will give their unique characteristics to a prison officer.

This legislation also deals with the banning of persons from prisons. Section 66 of the Prisons Act provides that -

> If the superintendent is of the opinion that a visitor or any other person is likely to interfere with the preservation of the good order or the security of a prison . . .

According to the Attorney General, the problem is that although that section enables a superintendent to refuse a person entry to a prison, the refusal has to be exercised upon each occasion that a person seeks to enter a prison. Therefore, there is no capacity within the Act to ban a person from entering a prison for a period. It is a little dangerous to allow someone to ban a person for an indefinite period. I have been in touch with the organisations that support prisoners, and they have not raised any problems with that provision. However, I believe that some cap should be put on the period for which a ban can apply, given that the long title of the Prisons Act is -

> An Act to make provision for the establishment, management, control, and security of prisons, the custody and welfare of prisoners and for related matters . . .

I will raise this matter again during consideration in detail, and I hope the Attorney General will take on board the welfare of prisoners and the consequences for a prisoner of having a friend or relative banned indefinitely. The Bill does not outline the "prescribed circumstances" in which a ban can be imposed, nor for how long a ban can be in existence. It is also disturbing that in this part of the Bill, the rules of natural justice are eliminated.

The third aspect of the Bill is that it authorises the Director General of the Department of Justice and prison superintendents to extend the early discharge periods for prisoners in certain circumstances. The second reading speech states -

> The 30 days early discharge will not be available to prisoners serving terms for serious crimes against a person or acts of violence that are of a particularly serious nature such as sexual assault, grievous bodily harm etc.

However, the Bill does not categorise the range of offences for which a person will be able to apply for early discharge. The second reading speech states also that prisoners who are serving terms for serious crimes will only be able to apply for a maximum of 10 days early discharge; and the increased early discharge of up to 30 days will only be applied by the chief executive officer to prisoners who have displayed exemplary behaviour. I understand that as a management tool, but when we get to consideration in detail I would like the Attorney General to define what he means by "exemplary behaviour", because the Bill says nothing about that. The second reading speech states also -

> The early discharge of 10 days is applicable to prisoners whose conduct and work have been of a high standard and who are to be released to freedom.

It states also -

> Early discharge can only be accessed by prisoners who are to be released to freedom; it is not applicable in cases in which a prisoner is released on parole . . .

What does that mean? Does that mean that such a prisoner will not have any parole? A prisoner who is released on parole is still serving a sentence under the Act; therefore, he will not be released to freedom. I would like the Attorney General to clarify what he means by that part of the Bill. My amendments are in the process of being drafted. That concludes the Opposition's position on this Bill.

MR ANDREWS (Southern River) [3.19 pm]: I support the Prisons Amendment Bill, particularly because Hakea Prison is in my electorate. I will be interested to see the member for Nedlands' amendments. I believe this legislation will receive the support of the House. The primary reason for this Bill is that a number of issues have arisen in prisons since the 1981 Act came into effect. We often read articles in newspapers about the prevalence of drugs in prison. I am not too sure of the extent of it. We have seen from such examples as old war films on television that articles can be smuggled in and out of prisons. Some groups of people always have the capacity to overcome the system.

These amendments are important because of the insidious effects of drugs in prisons, as well as the effects of other contraband items that are occasionally smuggled into prisons. I had a discussion with a friend of mine in the legal profession who assured me that in other States, members of the Press have on occasions presented themselves as visitors to a prison and passed themselves off with suspect identification. They have then been able to interview prisoners, write their stories and have the prisoners receive money. The Bill seeks to address those sorts of developments that have occurred over the past 20 years. The Bill raises the issue of the use of technology to identify persons. As the available technology becomes more precise, amendments must be made to enable such developments to fit in with the existing Prisons Act. Overall I support the Bill because many

aspects of it will give prisoners the incentive to behave in an exemplary manner. The member for Nedlands spoke about this, and I am sure we will come up with a definition for it.

Three key aspects of the Bill that have already been identified are the early discharge of prisoners, which will be achieved by increasing the powers of the director general and the superintendents of the prisons; the biometric identification of visitors to prisons; and the amendments, as I say, that will identify certain persons who may be banned from prisons in Western Australia.

As to the early discharge of prisoners, one can ask, and I am sure many of our constituents would ask, why are we proposing to let prisoners out of prison early and not serve the whole of their sentences. There are probably two answers to that question. One is that because of the cost of several hundred dollars a day to keep a person in prison, an early release of up to 30 days will save the State thousands and thousands of dollars. That of itself is not sufficient reason. The obvious reason is that the Bill will give superintendents a tool that will enable them to drag correct behaviour out of prisoners; in other words, this piece of legislation can be effective as a management tool.

The amendments will give the director general the power to release prisoners up to 30 days early. Currently under section 31 of the Prisons Act, the figure for early release is up to 10 days immediately before the day when a prisoner's sentence is due to expire. The section states "his sentence". The amendments increase the power of the prison superintendent to release prisoners at any time up to 10 days early. Currently it is only three days. I am pleased that the early discharge will apply to prisoners whose behaviour has been exemplary, in whatever way that will later be defined. The amendments allow for consideration of the special individual circumstances of prisoners, such as health. It may be beneficial for a prisoner or his relatives that he be eligible for early discharge. The welfare of the prisoner is obviously taken into account. It includes transporting the prisoner home and providing him with some means of seeking employment. It also includes a variety of compassionate grounds affecting individual cases.

I am led to believe that the Bill will apply only to prisoners who are to be released from prisons. Prisoners who are available for release on parole are not eligible, nor are those on home detention or those for whom there is a work order. The Attorney General has said that early discharge is not to be made available for those who have committed serious crimes against the person, particularly those who have committed violence against the person and in cases in which the victim may be at risk. I am pleased that provision has been included in the legislation. Obviously we want only those persons who can be safely released onto the streets to be released early, and we want those who do not deserve early release to be kept in prison. As I said, the obvious advantage to the state budget will be the savings. More importantly, it will be an effective tool for the smooth running of prisons.

Another interesting aspect of this issue is the development of technology that will allow biometric identification. The minister recently visited Hakea Prison and demonstrated this technology. I am sure it will provide a great variety of means of identifying prisoners and visitors. The need for biometric identification has arisen in the light of stories about visitors sharing identification. People visiting prisoners must produce a variety of forms of identification. However, we cannot rely on ordinary forms of identification, as evidenced by the number of cheques that are dishonoured regularly. People are not always who they say they are.

Proposed section 60A will be inserted in the Act. That proposed section is headed "Protection of proof of identity of a visitor to a prison" and reads in part -

> (1) In this section -
>
> "**proof of identity**" means a fingerprint, palm print, eye print, voiceprint or other physical or personal characteristic provided or used to prove the identity of a visitor to a prison.

It will allow enough scope for future developments of the technology, so there should be no need for further amendments to the Act.

As I said, the identity of visitors entering a prison cannot be guaranteed, although I do not imagine that the number of people with doubtful identification is very high. It is obviously difficult to say. The facial recognition system that the minister demonstrated involves 35 points of the face. It is another technology that seems to improve every day. I have also heard of new technology that allows for rapid scanning of baggage and material that people intend to take into prisons. Obviously the accurate identification of persons entering prisons is very important to the security of prisons. That security is one of my major concerns in the light of a prison being in my electorate.

Anyone looking at the downside of the legislation could call the introduction of biometric identification a potential infringement on the rights of visitors to prisons. However, visitors appreciate that the ability to visit

prisoners is a privilege, not a right. In order to retain that privilege they must be prepared to submit themselves to prescribed forms of identification.

I believe that the third aspect in the Bill relating to visitors is legislated for in other States and Western Australia is falling into line with them. Presently a prison superintendent can refuse a person entry or remove a person who the superintendent believes could destroy the good order or security of his prison. However, the weakness in that provision lies in the fact that that person can be banned for only one day. The superintendent must reconsider the ban every time that person presents himself to the prison. That is both time consuming and no doubt trying. This Bill will enable the superintendent to ban a person for a specified period. It will also enable the banning of groups of people, for example, persons known to be involved in organised crime, if information is provided that their entry may breach the security of a prison. The minister will no doubt explain the prescribed reasons for that during the consideration in detail stage. Clause 7 provides a sensible means by which persons considered undesirable visitors to a prison can be banned from returning every day or from moving repeatedly around the prison system. It is an effective provision that will handle that problem.

What does it mean for my constituents? Anything that affects the efficient operation of a prison will encourage better behaviour from prisoners. That will provide greater security for my constituents. Financial savings are beneficial for the whole of the State. Banning undesirable visitors from prisons means that they will not enter my electorate whenever they choose. A major aspect of this Bill is that banning such people will provide additional security for people in my electorate. That is not to say that the prison in my electorate causes any major problems for my constituents. I support anything that provides greater efficiency in the management of prisons. I commend this Bill.

MR BRADSHAW (Murray-Wellington) [3.30 pm]: I support the Bill. Having examined the Bill and read the second reading speech I am not sure whether it will achieve a lot; however, it does not contain anything to which I object.

People on the outside looking in, and those who have little to do with the prison system, are often concerned about the things that make their way into prisons. People may think that prisons are the easiest places to keep free of drugs, knives and other items that prisoners are not supposed to have. Prisons are secure places, and people have to register before they can enter, yet drugs are rife throughout the prison system. Somebody looking at the system from the outside and not knowing how the system works may believe that it is the easiest thing in the world to keep such things out of prisons. I wonder whether any of the provisions will have an impact on drugs and other paraphernalia finding their way into prisons. Other things that get into prisons are mobile phones, pornography, alcohol, syringes, ammunition and credit cards.

I need to know how biometric identification will work. Every day lots of people visit friends and relations in prison. It probably totals thousands of people a week. I am interested to know how such people will be identified. Some people will have false identification and will provide false information about who they are. How tight will biometric identification procedures be? Will every visitor to a prison be identified in this way? Will they have to provide a thumbprint or have an optical check? If not, the system will be defeated.

I am concerned about early release of prisoners for good behaviour. People outside the prison system are concerned that offenders may be sentenced to three years imprisonment but serve only one year, because they get one year off for good behaviour and one year off under the early release scheme. Such prisoners serve only one-third of their sentence. The minister has told the House that there will be additional early release provisions for good behaviour by prisoners. A prisoner would have to be pretty dopey to not behave himself in prison. I suppose there are some who do not behave.

Mr McGinty: There are quite a few who do not measure up.

Mr BRADSHAW: I cannot understand the mentality of such people. Why do they play up in prison? If they are that way inclined, they will probably behave that way whether or not there is the prospect of early release.

The minister is doing his best to keep wrongdoers out of prison rather than put them in. People outside the system want wrongdoers to be in prison so that they cannot bash or rob others, or steal cars. I think the Government is going in the wrong direction, but I understand why. Our prisons are bulging at the seams, and the cost of maintaining prisoners is very high. If things keep going the way they have, the State will have to build more prisons. The minister has said over the past year that he wants fewer people in prison. Most people in society want fewer people in prison, but for the reason of reducing crime rather than because it costs too much. The minister and I disagree about the reasons for keeping people out of prison. The Government is doing it for purely economic reasons, not for the right reasons.

I am prepared to support this legislation but I am not sure it will achieve a lot. I need to know how biometric identification will work and whether every visitor will have to be identified in that way. If not, it will be a waste of time and money. The minister said that prison superintendents will have to ban individuals on each occasion. It would be better to put people's names on a list and simply not let them into a prison. People will eventually get the message that they are not wanted. I am not sure whether legislation is needed to give prison superintendents that power. However, it is not a big deal. Under those circumstances, I support this legislation.

MR JOHNSON (Hillarys) [3.37 pm]: The Bill contains provisions that warrant a great deal of support. I am sure the Opposition will support the Bill provided some amendments are made at the consideration in detail stage.

I support the parts of the Bill that give authority to prison superintendents to refuse admission to certain prison visitors, and the grounds on which they are refused admission. I am concerned that superintendents have to do it on every occasion. A person who has been ejected from a prison or been refused admission must be refused admission on every subsequent occasion. I support a ban being imposed on people who introduce illegal substances into prisons. We know such things happen. I support a ban being imposed on people who cause problems and disruption within a prison during a visit. Such people should not be allowed to visit prisoners or behave in that way. The Opposition agrees with that part of the Bill. The Government will receive total support from this side of the House.

Someone who has taken illegal substances into a prison should be subject to a total ban. Such a person should never be allowed to visit a prisoner again. That could mean that people would not be able to visit their husband, wife or partner. Bearing in mind the enormous problems with illegal substances already, I would not feel sorry if a person who broke the law and took illegal substances into a prison were banned for at least 12 months. Something must be done to stop those people bringing illegal substances into prisons. In reality, if they are stopped, prisoners who want to receive illegal substances will find other people to provide them.

Between 20 and 25 per cent of prisoners in Western Australia have been found to take illegal substances within 24 hours of a urine test. That is a dreadful state of affairs. Something is wrong with the system even if only 20 per cent of prisoners access illegal substances. In the main it is probably visitors who bring in these illegal substances; however, we know that some prison officers have brought them in and supplied them to prisoners for profit. Prison officers are charged with the custody of prisoners, so any officers who bring in illegal substances commit an even greater offence. I want a much heavier fine or punishment imposed on those who stoop to that level.

I accept that many relatives and friends of prisoners often do what prisoners ask them to do. They may not want to bring them illegal substances, but husbands, wives, partners or good friends may be under great pressure to do so. However, they create a worse problem for prisoners in general. Feeding the habit of a prisoner does not help that prisoner to achieve a sensible and constructive rehabilitation. I totally support the insertion of a clause in the regulations to ban such a person from visiting a prison. I would go further and extend the ban. I am probably more of a hardliner than the minister; I am not as soft as he is on some of these people.

Mrs Edwardes: I don't know; he is getting to be a bit of a hardliner.

Mr JOHNSON: He is learning.

Mrs Edwardes: I don't want to spoil his reputation.

Mr JOHNSON: No. The minister has my support for that part of the Bill. I will refer to the areas of the Bill about which I have concerns, and I may move a motion later if it becomes necessary.

This Bill is a classic case in which not enough thought has gone into the repercussions of some clauses, particularly the provision for biometric identification - which may be needed for very good reason - of certain individuals visiting a prison. I am not referring to relatives or friends, although the identity of those people must be established. If biometric identification is the best system to do that, that is fine. However, even a member of Parliament visiting a prison will have to undergo the same biometric identification as a relative of a criminal. Did the minister nod in agreement?

Mr McGinty: That issue was essentially raised by your lead speaker, the member for Nedlands. I want to cover it in some detail rather than give piecemeal answers.

Mr JOHNSON: That is fair enough.

Mr McGinty: We will do that in the consideration in detail stage.

Mr JOHNSON: Yes, but I would like an early indication about whether the minister will accept some sensible and responsible amendments.

Mr McGinty: Always.

Mr JOHNSON: Never! That would be an absolute first.

A few members of the Opposition have a problem with the biometric identification of certain people. I believe that provision in the Bill is to apply even to police officers. The Opposition is concerned not so much about the personal identification of people but more about the storage of that information. Every member of this House is aware of the recent discovery of the release to outlaw organisations of personal details of members of Parliament and other people. I do not know for how long that has been going on but I am sure the minister is aware of the situation I referred to. I am not saying that members of Parliament will be vulnerable, but they could be, particularly those who hold a position in government, and even shadow ministers. However, I am more concerned about the release of details of other people of standing, such as local councillors, and prison visitors who ensure that prisoners are treated properly and humanely and that prisons are run in accordance with current legislation. The personal details of many police officers are withheld from all sorts of records because of possible retribution, threats or harm that they or their families may experience; therefore, that aspect of the Bill concerns me. I am constantly dubious about the storage of personal information. Governments always say, "Trust me. I am the Government. This will never be leaked. It will be secure and there will be no problems in the future." That was not the case with the matter I referred to earlier in which details of members of Parliament and other individuals were leaked to an outlaw organisation.

I do not support the clause on biometric identification, mainly because of the piddling penalty for anybody who leaks that sort of sensitive and personal information to an individual or criminal organisation. It is logical to draw the conclusion that if information about prisons and prison visitors were leaked, it would be to somebody within the criminal fraternity. It would not be leaked out of interest to a local parents and citizens association or anybody visiting a prison. It would have serious consequences.

My colleague the shadow minister and member for Nedlands will move to amend the penalty to the penalty that the Opposition believes should be imposed. I hope the minister will be receptive. That penalty may frighten the minister. However, it is a serious action for anybody working in the public service to leak personal, confidential and sensitive information about individuals, whether those individuals are politicians, policemen, councillors or other prison visitors. Often one criminal is inside prison and another criminal is outside prison, and the criminal outside wants to know for a criminal reason who is visiting the criminal inside prison. That is a serious issue. It could start gang wars and all sorts of things. Crime could increase by the release of personal and intimate information to somebody outside the prison authority. There must be a large monetary penalty and a prison term for such an offence. The minister knows that prisoners often are not sentenced for the maximum penalty. They may be sentenced for only three months or six months of a maximum penalty of 12 months imprisonment.

Mr McGinty: Not when we pass our sentencing amendments.

Mr JOHNSON: That is another big worry.

Another area of concern is that power will be given to the director general to increase the time off for good behaviour from 10 days to 30 days, and to the superintendent of a prison to increase the time off for good behaviour from three days to 10 days. If I were a cynical person, and I am not, I would say that this is just an attempt by the Government to try to cut the cost of keeping people in prison. It is a budgetary issue and not a justice or law and order issue. If I were a cynical person, I would have the same view on the legislation that the Government intends to bring in to abolish prison sentences of six months and less. When I was the shadow Minister for Justice and Legal Affairs, I asked the minister a question about the abolition of six-month prison sentences.

Mr McGinty: I think that was about four months before the last question I got.

Mr JOHNSON: No, I do not think so. I have always received a quick response from the Minister for Justice and Legal Affairs. I wish his colleague the Minister for Planning and Infrastructure would do the same. She took six months to respond to a letter I sent to her.

Mr McGinty: I think she has your measure.

Mr JOHNSON: I hope she has, because I am concerned about her. She was given a petition containing 5 000-odd signatures two months ago, but she will not present it to Parliament. It is a worry when a minister does not perform his or her duties. The Minister for Justice competently performs his duties.

Mr McGinty: Don't say that in front of my colleagues.

Mr JOHNSON: We think the Minister for Justice will move two seats along at some stage, because he is considered to have a lot of respect within the Labor Party. That may well be the case.

Mr McGinty: Hopefully on your side as well.

Mr JOHNSON: We will reserve our judgment on that. We do not want to build up the minister too much. We prefer Labor Party members to have fights in their Caucus room; we do not want to be involved in those fights.

I return to the important Bill that we are discussing. The Opposition is concerned about the extension of the early discharge powers from 10 days to 30 days and from three days to 10 days, because we cannot find any criteria that determine good behaviour. Good behaviour could simply mean that a person must sit on a seat while a course is being held, which is what the minister said to me when I asked a previous question on this issue. That is not good enough. The criteria that determine good behaviour must be a lot stricter than that; it must be exemplary behaviour and it must involve people who have not been imprisoned for offences that would cause concern to the public. Most people who are sentenced these days do not get the maximum sentence. Some get less than the minimum sentence, depending on who is presiding over the case. Many members of the public would be concerned about the Government letting those people out onto the streets 30 days earlier, without our knowing in finite detail what constitutes good behaviour.

The Opposition's other concern is about the legislation that will be introduced in May to abolish six-month sentences. When I previously asked the Minister for Justice a question on this issue, he was not aware that two people who had been caught trafficking in drugs had been sentenced to six months imprisonment. The minister was astonished and said that it could not be true. However, that information had been provided on the previous day in an answer to a question asked in the other place. That information came from the minister's department. The minister obviously signed off on it, but did not read it closely enough, because it clearly said that two offenders had been sentenced to six months imprisonment for trafficking in drugs. The minister tried to get out of it by saying that it had probably involved only a small quantity of drugs or the offenders had been caught trying to sell the drugs only to one other person. I do not give a hoot about that. If somebody sells drugs, he is trafficking in drugs. Six months imprisonment is probably not long enough when the damage that drugs can do to the individual who buys that abominable substance is considered. Drugs can ruin not only that person's life but also many other lives. The Opposition has a few problems with the legislation. That is being cynical, and, as I say, I am not a cynical person.

[Leave granted for the member's time to be extended.]

Mr JOHNSON: If I were cynical, I would consider the legislation to be a way for the Government to save money. There will be a massive saving, but that is not what the public of Western Australia wants. I am not talking about offenders who have committed minor traffic or fine default offences. However, if those people are repeat offenders or an offence involves a number of defaults, there must be an avenue for the Government to say enough is enough and to put away a person for six months. The Opposition has a few problems with the legislation. The Government will need to supply information during the consideration in detail stage to convince us that the legislation will act in the best interests of the law-abiding citizens of Western Australia.

People are in prison because they have done something wrong. Many people have concerns about the parole system. I understand that under this system, the offenders would be released to freedom - I think that is the term. If a person is released on parole, he is not being released to freedom. Would it apply to people who are not given parole?

Mr McGinty: Yes. In other words, it will apply to people who are sentenced to a term of imprisonment of less than 12 months. No parole applies to a person who is imprisoned for less than 12 months. It obviously will not apply in the case of someone who has been given a long sentence for a heinous crime. Jack van Tongeren is an example of someone who is due to be released later this year. He has put in for early release. I have indicated that if an application comes to me from Jack van Tongeren, I will knock it back.

Mr JOHNSON: Is the minister saying that this will apply only to sentences of 12 months and under?

Mr McGinty: Yes; that is when it will apply.

Mr JOHNSON: Notwithstanding that point, some people who have committed dreadful crimes are for some reason sentenced to imprisonment of 12 months or less. In some cases, these people have attacked others or have broken into 20 or 30 homes. Those offenders are often sentenced to 12 months or less. I gasp with disgust when I read that an offender has received a sentence of 12 months or less for that sort of crime. The general public would not be happy about a person being let out of prison early just because he had behaved in an exemplary manner while in prison. Prison wardens report on whether an offender has behaved. It would be like cutting a person's sentence short by one month. I do not think that the public of Western Australia would be very pleased about that. The Government must clearly define which offences this clause will relate to. I am foreshadowing a warning that that needs to be clarified.

The Opposition is concerned about the following provisions: the extension of time in which people can be given freedom, biometric identification and penalties for releasing personal information. Some of my colleagues have concerns about other aspects of the Bill. In general, the Opposition supports many of the provisions of the Bill, but unless the Government agrees to amend some areas, I will have to oppose the Bill. For that reason, this Bill should be referred to a standing committee. The Community Development and Justice Standing Committee is the ideal committee to scrutinise the Bill. That committee has four members from the government side of the House and the shadow minister. It could look in more detail at the areas of genuine concern that members on this side of the House have with the Bill. We do not want to waste time, but some of us have legitimate concerns about the Bill. Unless those concerns are addressed in the consideration in detail stage, I will have to vote against the Bill.

However, this Bill could be sent to a committee, and the committee could be asked to examine the Bill as a matter of urgency. I suggest that within about four to six weeks the committee could look at the areas of concern that the Opposition has. Some government members may even have concerns. The Opposition and the Minister for Justice and Legal Affairs know that many government members will not even have examined the Bill in detail, and they may not know its implications. However, during the second reading contributions and the consideration in detail stage, some government members may think that the Opposition has a point and perhaps the penalty is not harsh enough to deter somebody from giving personal and intimate information to a third party. I hope they will think that. At the end of the day, if the Government does not agree to an amendment, government members will vote along party lines, and the Bill will go through the consideration in detail stage as the Government wants it to. However, I urge the Government to think seriously about sending the Bill to the Community Development and Justice Standing Committee. For the sake of six weeks, it is better to get something right than to rush it through and get things wrong.

Perhaps I should not be saying this, but at the end of the day, unless this legislation is changed, the minister will not look very good. He will look as though he is weakening and leaning towards those people who are doing things that are wrong, particularly those who may leak personal information. The penalty for leaking personal information is $2 000 or imprisonment for 12 months. To many people, $2 000 is a lot of money. However, to some people in the criminal fraternity, two grand is peanuts; it is like a pebble on the beach and means absolutely nothing to them. That penalty is not strong enough. If a bribe is involved, people can be charged with bribery and corruption. However, the bribery and corruption charge must be proved. I suggest that it would be much easier to prove that somebody had leaked information illegally from the justice system computers than to prove bribery and corruption in that instance. Therefore, that penalty should be much tougher. If it is not, the minister will be viewed as showing weakness. I am probably doing the minister a favour. I am trying to help him get some public esteem and standing in the Western Australian community.

Mr McGinty: That is very kind of you.

Mr JOHNSON: I do my best to help the minister and to make him look as though he is tough and will not stand any nonsense from those criminals who do heinous things in our society. The minister could make a name for himself and come out looking really good. However, he needs to do it with the Opposition's help. Obviously, he had not thought of that originally.

Mr Brown: I can see how you got into the Cabinet: "Mr Premier, have I got a deal for you!"

Mr JOHNSON: No, I try to persuade people with logic and commonsense.

Mrs Edwardes: The Minister for State Development has not heard the debate. It is very good.

Mr Brown: I have been listening.

Mr JOHNSON: I hope the Minister for State Development has been listening, because he may have serious concerns about the minimal penalty that will be imposed on anybody who leaks personal information within that system.

Ms Sue Walker: Unique personal information.

Mr JOHNSON: Yes, it is unique personal information because of the different areas of biometric identification. We must assume 100 per cent that that information will be leaked to the criminal fraternity. I referred earlier to the information that had been leaked to an outlaw gang, as the minister knows. That type of behaviour is intolerable and puts people's lives at risk. I thought the minister would be concerned that the fine is a measly two grand or 12 months imprisonment. That is not enough for anybody who leaks that sort of information. To help out the minister, I am saying that he should take in good spirit the amendments that the Opposition will move. Let us make it a bipartisan Bill. I do not have a problem with that. The Opposition is pretty tough on law

and order. However, the minister will come out looking tough on law and order only if he accepts the Opposition's amendments. Otherwise, people will see him as weak. They will also see him as weak if he lets out some of the criminals serving a sentence of 12 months or less a month earlier than they are supposed to be let out, particularly in the areas that I have highlighted, such as house burglary. Somebody may have committed 30 crimes and broken into 30 different houses, and served only one sentence of 12 months or less.

My recommendation to the Minister for Justice and Legal Affairs at this time is to send this Bill to the Community Development and Justice Standing Committee. I have not moved that motion; I am just suggesting that that would be the most appropriate way to proceed, so that that committee could examine the Bill in detail. It could take evidence from the experts to consider all the areas of concern that the Opposition has brought forward. There are not a lot of concerns, but they are significant.

[Quorum formed.]

Mr JOHNSON: I am in the dying throes of my second reading contribution. I have highlighted the areas of concern to the Opposition and the recommendations to the Minister for Justice and Legal Affairs. I notice that many more members are now present in the House. I know that many of them were having afternoon tea, which is a bit of a shame. I recommend that all members opposite have a good look at this legislation. I know that many of them have not done so. I know what it is like in government. Very often it is left to the minister, and members are told that they are not to speak on a Bill but to just come in and vote. Therefore, many members do not bother to look at the Bill in detail. At the end of the day, we must protect the people of Western Australia from criminals and the threat of any violence or hurt that those criminals may inflict on their fellow human beings. My main concern in that area is about the people who leak information within the public service system, which could put the lives of Western Australians in jeopardy and their health at risk. I have suggested to the minister that this Bill go to the Community Development and Justice Standing Committee, which is a very good committee. I am sure that it could deal with the Bill very quickly, in four to six weeks. We would then have a much better Bill to debate and, hopefully, pass.

MRS EDWARDES (Kingsley) [4.08 pm]: This legislation ostensibly deals with improving the security of prisons, and attempts to restrict or prevent the entry of illegal items and substances into prisons. The amendments constitute three pages; yet those three pages underestimate the full impact of those amendments on the Prisons Act. The impact will be on those people who visit prisoners in prison. When attending court, the people for whom I feel most sorry are the victims, because in some way there has been an impact on their lives, their home or the lives of their family members. Also, a crime often has an impact on the parents, the spouse, the partner or the children of the person who is charged, subsequently convicted and sent to prison. Often these people are absolutely distraught, and they are victims in their own right. They have not been involved in the crime that is under the court's consideration. They do not have an understanding about what is taking place, and they experience a level of fear. They fear for their son - generally the offender is a male - husband, or partner. They also experience a sense of fear because they do not know how they and their children will cope, and they do not know how to explain the situation to their children.

A visitor's first visit to prison is not a nice experience. When members and ministers visit prisons, it is a totally different experience. We visit prisons to learn about prison life, and to view the programs and arrangements that are in place. We do so with the comfort and knowledge of an escort. A prisoner's family and/or friends may not have previously been to a prison, and therefore, have to learn the process. This legislation provides that a prisoner's family members must identify who they are, and reveal their relationship to the prisoner. They then move into a specific area which, depending upon the size of the prison, is often a lot smaller than this Chamber. This area is equipped with chairs and little tables, and prisoners and their visitors gather in little groups. They have only a short time in which to visit, and they try to use that time wisely. At low-security prisons, prisoners and their visitors often gather in an outdoors area, and have the opportunity to sit under the trees and on the lawns. It is my contention that the prisoner's family members are also victims, and that this legislation will victimise them even further. Family members have not been involved in a crime, and they have not been charged with a crime. However, they will still be required to give identifying information that is not even sought for suspects or criminals. An innocent mother, father, wife, husband, son or daughter will be put through a process to which not even a criminal is subjected.

As Attorney General during the term of the previous Government, I had the pleasure of visiting many of the out-care centres at prisons. I talked to many of the families, particularly children, of prisoners. I talked to them about their life, how they were coping, and so on. Most of them were experiencing a sense of fear because they had never been exposed to a prison environment. The number of offenders who repeat a crime a second, third or fourth time is minimal. The majority of people in prison are first-time offenders. Therefore, the majority of families visiting prisoners do so for a first time. A prisoner may be in prison for anywhere between six months and eight or 10 years. No matter how long the term, as long as the conditions attached to visitations are met, a

prisoner has the right to receive visitors. It is well recognised that visits by family members are an important contribution to the rehabilitation of a prisoner. One of the reasons we have sought to have Australians who are serving time overseas returned to Australia to serve their time is so that they can have contact with family and friends. Contact with family and friends is good not only for prisoners' rehabilitation during their prison term, but also in modifying their behaviour. Visits are good; they should be encouraged, and they are encouraged. The impact of this legislation will be felt by a large number of people, and by people upon whom it should not have any impact at all. This legislation will increase the sense of fear about an environment with which family members have only just come into contact. The family members and friends who will be required to provide the identifying information are innocent victims. They are not criminals. They have not been charged, and they are not suspects. Moreover, once given, they have no idea what will happen to that information. There is nothing in the Prisons Amendment Bill 2002 that states how a request will take place. There is nothing in the Bill to deal with a refusal by a family member to provide that information. What are the rights of the family members? Can they be refused entry? What will be the consequential impact upon the prisoner? It may be that visitors' sense of fear has nothing to do with illegal contraband that they could be carrying in their pockets, or elsewhere. As such, they will be doubly penalised because not only is their partner, husband, son, or daughter in prison, but also they are restricted from the visits to which they look forward. Visits are necessary for the well-being of not only the prisoner, but also the family member.

Nothing in this legislation deals with the request of information or the storage of that information. Proposed section 60A states -

> **"proof of identity"** means a fingerprint, palm print, eye print, voiceprint or other physical or personal characteristic provided or used to prove the identify of a visitor to prison.

Who will have control of this information? A section exists to deal with the misuse of the information. However, this information must be better protected.

What about the destruction of the identifying information? When will that take place? The DNA legislation better protects those who are in remand or in prison, than it does the visitors of the prisoners. This legislation is totally deficient in providing protection for those who are required to give identifying information. If we accept that family members who visit prisoners are innocent, and not involved in contraband or other illegal activity, why are we putting them through an identifying process? Further, why are we doing this without providing any reassurance about who will have control of the information that is provided?

The Criminal Investigation (Identifying People) Bill is an extensive piece of legislation. Part 5 deals with identifying particulars of victims and witnesses. In many ways, the victims and witnesses catered for under that legislation are similar to the people affected by this Bill; they are not suspects of a crime but their identifying information may help with the identification of a crime. The criminal investigation Bill sets out the identifying procedure. It requires that the authority must request the adult to undergo an identifying procedure. I do not know what protection the Prisons Amendment Bill will give to minors. What will happen if a member of the prisoner's family has a disability? Large parts of the DNA legislation deal with people with disabilities. Greater protections apply to the identifying information of those people. The part of the DNA legislation dealing with identifying particulars of victims and witnesses defines a series of requirements. The authority must at the time inform the person of matters about the offence that is suspected. Will the superintendent of the prison be required to tell a prisoner's family that identifying information is needed because the prison authorities believe that the family is bringing in contraband, or because the prisoner is using contraband and his relatives have been the only visitors he has received in the previous couple of weeks? The DNA legislation requires that the victim or witness must be told the purpose of the procedure and how it will be conducted. The procedure will be done subject to the person's decision to proceed. The person must also be told that information derived from the procedure may be compared with other information or included in a forensic database.

The substance of the Prisons Amendment Bill is three pages long, and gives us no information about any of these matters. It does not offer any protection. It says nothing about the circumstances in which destruction of the information may be requested. Will the prisoner's family be able to ask for that information to be destroyed? What if the members of the family go their separate ways while the prisoner is in prison? That has been known to happen. Will the family members be able to request the destruction of their identifying information? None of that is contained in this legislation. It contains no advice about the storage or destruction of the information. Under the DNA legislation, a victim can determine the limits on the use of his information, and he can withdraw his consent at any time. The Prisons Amendment Bill does not give the prisoner's family any rights. Many of the families visiting prisoners are innocent. Nothing in the Bill protects people with disabilities, and we do not know whether it will affect minors.

This legislation raises some real issues. The aim is to stop drugs getting into prisons, and this will be done by tightening the security of prisons by ensuring that every person who visits a prisoner provides more identifying information than that contained in a drivers licence. I do not have a problem with ensuring that those who are suspected of a particular offence face tighter controls. However, this legislation does not even state how that would be dealt with. These things cannot be left to regulations. The last paragraph of the Bill adds to the regulation-making power -

> requiring a visitor to a prison to prove his or her identity in a specified manner, including by means of a fingerprint, palm print, eye print, voiceprint or other physical or personal characteristic;

It is a disgraceful piece of legislation. It does not contain for people who are innocent the sorts of protections contained in the other Bill being debated in this Parliament. That Bill will accord prisoners a greater level of security and confidence than this legislation will accord to innocent people. Two major breaches of government departmental records have occurred in the past month. There was an allegation relating to the handover of Department of Justice records to inappropriate people, and last week a breach occurred in the Department of Transport. In addition to determining how that occurred and how the system can be improved, we must also consider the level of comfort that can be given to the community. Who would want to provide private information, particularly private identifying information, to a government department? We do not have the explanations for those two major breaches. Although this legislation will require visitors of prisoners to not only identify themselves and their relationship with the prisoner but also provide identifying information, it does not contain any advice about how that identifying information will be protected. That is a major and serious flaw in this legislation.

I am not even convinced that requiring a greater level of identifying information is the right way to go. The second reading speech does not identify whether the legislation will, in the words of the Minister for Justice and Legal Affairs, "contribute towards preventing the entry of illegal items and substances into prisons". How will identifying information do that?

[Leave granted for the member's time to be extended.]

Mrs EDWARDES: The second reading speech does not tell us how the provision of a greater level of identifying information will stop drugs or other illegal contraband entering prisons. As a former Attorney General and minister in charge of the prisons, I totally support the application of restrictions and limitations in an effort to prevent contraband entering prisons. Contraband can include dangerous material. We are talking about not only drugs but also dangerous material, the use of which can lead to hazardous behaviour. There was a story last year about a prisoner who used a mobile phone to organise a hit on someone outside prison. I do not have an issue with working towards the prevention of contraband and other prohibited items entering prisons, but I am not convinced that this legislation is the way to go. Further, if it is the way to go, I am not convinced that sufficient safeguards and security procedures are in place to protect the people who are providing the identifying information. The Government wants to look after the security of the prison system; however, this legislation will breach the privacy of people who are often themselves victims of the situation. I regard this legislation as totally inadequate in its attempts to deal with that information. We say to the Minister for Justice, and the Government, that we will not support this legislation unless a greater level of comfort about the protection, safeguard and security of that identifying information is provided. The Opposition supports efforts to prevent contraband entering prisons and improve the security of the prison system, but this legislation will not achieve that. Further, it will create a greater intrusion in the lives of people who are themselves victims. The Opposition will not support this legislation unless the Minister for Justice introduces amendments. He cannot get away with a Bill that is three pages long.

When we compare this Bill with the Criminal Investigation (Identifying People) Bill that is before the Legislative Council, particularly the clauses that deal with identifying information and the protection of victims, witnesses and people with disabilities, then this legislation is seriously deficient. Therefore, unless those amendments come forward, we will not support this legislation. I support the very good suggestion by the member for Hillarys that this Bill be referred to a standing committee to examine whether it provides adequate protection for all the people who need it, especially the people whom I refer to also as victims.

MR MARSHALL (Dawesville) [4.30 pm]: The Prisons Amendment Bill has a lot of merit. However, three matters concern me greatly. The first matter is the proposed biometric identification of visitors. Proposed section 60A states that -

> **"proof of identity"** means a fingerprint, palm print, eye print, voiceprint or other physical or personal characteristic provided or used to prove the identity of a visitor to a prison.

On paper, that is a logical and good provision. However, the Prisons Act provides for eight categories of visitors to a prison; namely, special prison visitors, who are government-approved people; justices of the peace; judges of the Supreme or District Courts; lawyers; officials; representatives of the Police Force, who can range from detectives to superintendents; public officers such as mayors, councillors and members of Parliament; and friends and relatives. I am concerned that the proposed biometric identification of visitors provides no safeguard for community leaders.

Recently I went to Casuarina Prison with two of my constituents, a husband and wife, to visit their son. That was the first time I had ever visited a jail, and I found it eerily moving. I felt very uncomfortable. I had not realised that I had to check in and leave behind all my valuables. However, I thought that was a good idea, because naturally no smuggling is allowed in a prison. I then lined up with all the visitors to the jail. However, I stood out like an Eskimo in the Sahara desert, because I was dressed in a suit and tie and the 60 or 80 other visitors in the line, who were people from all walks of life, were dressed casually in jeans and the like. I thought if I had known I would have dressed more casually. I realise that drugs are the most prevalent form of contraband that visitors bring into prisons, and although we may say that should not happen, it does happen. I noticed from one of the research papers that I read that visitors have also been caught attempting to bring into prisons mobile phones, computer components, credit cards, knives, ammunition, alcohol, syringes, money, jewellery, pornographic material and the like. Most people in the community never get to visit a prison. We need this Bill. However, the rules should not be so stringent that everyone is categorised in the same way.

While I was visiting this youth in jail and his family and I were sitting opposite him at the table waiting for the conversation to begin, I happened to look at a prisoner who was passing by, and I was told not to look at him. I asked why not, and I was told in a low tone that he was in prison for bashing and murder, and if I was caught looking at him he would take it out on the youth later. That immediately made me sit up and get a feeling of insecurity about what jail is all about. At the end of the day when we were driving home, I said to the parents, "I hope I did not hog all the conversation, because I seemed to be the only one asking questions." They said, "No. That is why we brought you along. After visiting our son two days a week for the past three years we have run out of questions and do not know what to talk to him about. We wanted you to see the situation and to help us out." I was pleased as a so-called community leader to be able to help that family out and to have the experience of visiting a jail with the rank and file. However, I am not sure that I would have been pleased had I been asked to provide a fingerprint, palm print, eye print, voiceprint or other physical or personal characteristic. I went to that prison in good faith. I left all my valuables behind. I am a justice of the peace, a member of Parliament and a leader in the community. I think I set a high example. However, even though I have nothing to hide, I would have felt a little uncomfortable and would probably be reluctant to ever help a family like that again if I had been asked to provide that type of identification. Therefore, I challenge the Minister for Justice and Legal Affairs to change the identification procedure so that it is no longer a bulk-billing type situation. We are all born the same and we all die the same. However, people who work hard and have prestige in the community have certain advantages over other people. When we are in that situation and look at the visitors to a jail, the thought that goes through our minds is we know why those people are in jail. I am concerned that the classification of visitors is too broad and does not adequately safeguard community leaders.

Another part of the Bill that I find upsetting is that it will give the chief executive officer the power to ban visitors to a prison for an indefinite period. This power could be abused. In all walks of life, no matter where we are, there are personality clashes. The Opposition and the Government mingle. Some members of the Government think that some members of the Opposition are fantastic people, yet there are other people whom they cannot be bothered with. That is what happens in life. How many times do local governments have to deal with arguments between neighbours about a dividing fence? Those neighbours may have to live next door to each other forever, yet they have a personality clash. We should not give one person - the CEO - the unfettered right to ban visitors for some reason or another. I wonder what the reasons may be. People who have played professional football at the highest level know that some umpires will be negative to their club yet other umpires will give them an even break. The Minister for Justice is generalising by saying that community leaders should be equal to all the other visitors to a jail. Why does he not also generalise in the case of the CEO, rather than say that he is the sole person who will have authority to ban a person from visiting a jail? What repercussions could it have? I thought at the time of reading the clause that it was not right and that a panel should make that decision, not the chief executive officer. People can be biased, and their bias can unjustly affect people's lives, notwithstanding that people in those positions are supposed to be fair.

I have contact with some of the Aboriginal lads in our area through the group talks I attend, which are held in an effort to set higher objectives. I believe Peel Thunder Football Club has helped in that regard. Owing to some of the players being Aboriginal, it has a tremendous following of Aboriginal youth. Their involvement is good for them because it lifts their self-esteem.

At the same time, an enormous number of young Aboriginal people are in jail, many of whom are, nonetheless, family oriented. Supposing an Aboriginal mother trying to visit her son became abusive at the gates and would not toe the line and consequently was told by the CEO that she could not visit her son. The lady's behaviour might be justified because the CEO might be prejudiced towards her. What could his mother's absence do to the lad in jail who would be expecting love and support from her during her two permitted weekly visits? He would be expecting her visit so that he could describe his experience in prison and whether he was having an easy time or was being abused. He would need someone in whom he could confide. The chief executive officer, who is to have the sole right to ban people, could jeopardise his mother's visit.

I am considering this issue from a male perspective because I have never been inside a women's prison. What if a mentally handicapped person in prison needed a visit from his boss - someone who had helped him in his life - yet on the day of the visit the boss was irritable and abused the gateman and criticised the bureaucratic system, and was therefore expelled by the CEO, the only man with the authority to do so? The prospect of people who run prisons being given power is something we should be concerned about. I have been told that the worst of the prison attendants are those who are given power for the first time in their life. The power the Bill will confer on prison CEOs to ban people from visiting prisons is of grave concern.

We are well aware that a high percentage of people in prison suffer from attention deficit disorder. Who knows best about their medical situation? I have known a prison doctor for the past 20 years. He has told me about the need for prisoners to receive medication and how sometimes the medication runs out and they must wait for new supplies. A prisoner could be waiting for someone in whom he can confide, but for some reason the chief executive officer could tell that visitor that he cannot visit on that day and will be prohibited from entering the prison for two or three months. No-one should have that power. I therefore reject that clause and, during consideration in detail, will seek to amend it so that it is less stringent and requires that a decision to ban visitors be approved by a panel.

I refer thirdly to the provision to increase the period of early release that the Director General of the Department of Justice or a prison superintendent can grant. Early releases for good behaviour should be encouraged. On the other hand, the Bill contains no description or categories of the conditions that will lead to an early release. At which point in the sentence will an early release be granted? How will it be assessed? The clause is too general. These decisions should not be left to only a few people. The clause contains no guidelines for why an early release should be established.

As I said earlier, the Bill has much merit and probably should have been introduced much sooner. However, I like to think that the Minister for Justice has not rushed into it. As the member for Kingsley said, the second reading speech fills less than two pages. A second reading speech attached to a Bill as important as this should contain more explanation. Although it was easy reading, I found it somewhat shallow.

I remind the minister that the three areas of grave concern to me are, first, the changes to the identification procedure to involve a biometric identification process. The Bill contains no protection against discrimination of the eight categories of visitors, although I may be wrong about this. The second area of concern is the ability for the chief executive officer to ban visitors for an indefinite period. I reiterate that a panel should have that responsibility rather than one person, who could be involved in a personality clash or be biased and adamant in his opinion. That is not right. The third issue is the ability for the Director General of the Department of Justice and a superintendent to grant releases earlier than they can now. Early releases are a good idea for people who deserve to be released early. However, guidelines and clear categories of conditions should be clearly spelt out to determine who should be given an early release.

DR WOOLLARD (Alfred Cove) [4.46 pm]: I support the Bill. As indicated in the media, something needs to be done to improve the management of our prisons. The three key amendments in this Bill are, first, a mechanism to ban some people from entering a prison. I take on board the comments by the Liberal Opposition and look forward to hearing from the minister how people to be banned will be identified. Will the provisions apply to everyone who visits a prisoner? How will that process be conducted? I believe that biometric identification of prison visitors is carried out in other States. The Bill provides for the use of methods such as eye scans and fingerprints. That is modern technology, although judging from films such as *Charlies Angels*, hardened criminals can get around even those techniques. The amendments pertaining to early discharge of prisoners is a good thing if it encourages better cooperation with prisoners and better prisoner behaviour. I look forward to hearing the minister's response to the concerns raised by the Liberal Opposition.

MR McGINTY (Fremantle - Minister for Justice and Legal Affairs) [4.48 pm]: I thank members for their contribution to this debate. It was unfortunate that I could not respond to the member for Nedlands' question during questions without notice today after she had waited a long time to ask her question. I hoped she would ask me an easier question. However, I have since found the answer to her question.

Ms Sue Walker: You could not answer the question.

Mr McGINTY: I was incapable of handling it. I have since found the answer. Parliamentary counsel have been instructed to increase the penalty from six months to nine months for a breach of a 72-hour restraining order. As I said, hundreds of statutory provisions have penalties of six months or less. Although a number of issues in the legislation must be resolved, we must make a decision whether to convert penalties of less than six months to a fine or in some cases increase the penalties to greater than six months. Obviously, penalties on the six-month mark will be increased, such as for a breach of a 72-hour restraining order mentioned by the member for Nedlands, particularly in domestic violence cases. There will be cases involving a penalty of six months that are outmoded and cases with no obvious benefit in retaining that penalty, particularly if the penalty has never been used. However, we will not take steps to water down the penalties for domestic violence, which is an endemic problem in the community. We have, in fact, increased that penalty to nine months. I am sorry that I was unable to answer the member's question more definitively, but I am also grateful for your indulgence, Mr Acting Speaker (Mr Andrews), in allowing me to answer that question now.

One of my experiences in the past 14 months since the state election has been the intellectual challenge presented by the prisons of the Department of Justice. Western Australia has the most expensive prison system per capita in the nation, as indicated earlier this year in the report of the Council of Australian Governments on the relative costs of different government services. In addition to that, we imprison more of our citizens than any other State in Australia. Only the Northern Territory had a higher rate of imprisonment than Western Australia. In the very difficult issue of Aboriginal imprisonment, our rate even exceeded that of the Northern Territory. Our prison system therefore has a number of chronic problems. I have already indicated that our system is the most expensive in the country, and I know that taxpayers want their taxes spent on hospitals, schools and the Police Force rather than on more prisons. I know where the public wants its dollars spent.

Mr Bradshaw: It depends on whether you have had your house broken into or whether you have just been bashed up.

Mr McGINTY: No, I have no doubt whatsoever that the public wants crime prevention to prevent crimes occurring in the first place, rather than simply filling our jails, draining taxpayers' dollars and diverting them away from much-needed resources in those other areas.

Mr Johnson: Do you think you will be able to achieve crime prevention?

Mr McGINTY: Absolutely.

Mr Johnson: Many have tried.

Mr McGINTY: I know. Late last year in Perth I addressed an international conference on prison populations. The conference comprised people associated with running prison systems throughout a host of countries in the world, and they were amazed when I told them that we had an imprisonment rate in Western Australia of 220 per 100 000 population. Most of those countries had an imprisonment rate of 80 per 100 000 population. We have almost three times the accepted imprisonment rate in most comparable countries. The Australian average is about 140 per 100 000 population. The rate at which we lock people up in prison is nearly double the Australian average. Something right is not happening when the costs are the highest in the country, the rates are the highest of all the States and the rate of Aboriginal imprisonment is the highest in the country.

I have spent a lot of time on this issue because it is a challenging, political problem, given the extent of the "lock 'em up" mentality abroad in the community. The other side of the equation in that "lock 'em up" mentality is that it must be paid for. That means cutting back in other very important areas of government expenditure. It has been an extremely rewarding challenge to me to come to grips with balancing what the community wants and at the same time punishing those people who commit serious offences by locking them up and more effectively punishing people who commit minor offences. From my personal view of policy over the past 14 months, prisons have presented the real challenge. Western Australia also has an incredibly high recidivism rate. From memory, about 43 per cent of people return to prison again within two years of their release. Our prison system, from that point of view, is failing. There is something wrong happening in our prisons if nearly half the prison population is back inside again within two years.

I urge members who have not been to Bandyup Women's Prison to have a look at it. The way in which we treat our women prisoners is a disgrace. They are a discrete section of the prison population who need prisons designed to cater for their uniqueness. Governments on both sides in the past have built small, male prisons because women were traditionally four per cent of the prison population overall. The obvious differences between men and women in prisons is that women are generally there following abuse of a sexual, physical or emotional nature, are of low education and have low employment skills. Many women in prison also have

mental health problems. Most women in prison have children who live outside the prison for whom they are responsible and for whom they remain the primary caregiver. All of those factors mark out women in prison as different from the average male prisoner but they have traditionally been treated as the same. It is no wonder that we have run into grave problems with a high recidivism rate in female offenders who have been incarcerated. There is only one test of a successful prison system; that is, the recidivism rate - whether people return to the system in a short time.

Mrs Edwardes: How many of that 43 per cent re-offend for a third time?

Mr McGINTY: I am not sure, off the top of my head. I recall seeing the number of offenders who return to prison within two years. As the member for Kingsley would recall from her time in office, the number of people who have been in prison habitually is high, but I cannot put a figure on it off the top of my head.

Ms Sue Walker: Another problem is that Bandyup is a maximum security prison and all women prisoners, regardless of the offence they have committed, must go there and must spend time with maximum security prisoners, such as Catherine Birnie.

Mr McGINTY: Yes.

Ms Sue Walker: I find that obscene. I have been to Bandyup and it is my view that the system should have been dealt with a long time ago. I am interested to hear about how the minister will deal with that issue. He appears to be sympathetic to the problem.

Mr McGINTY: Hopefully, with construction starting in about January next year, the new low-security women's facility in Bentley will be built by the end of next year. There is an excellent group of women in the Department of Justice who also have input from people outside the department working on it. I am delighted with the work they are doing in developing a philosophy attuned to the needs of women prisoners. That philosophy will guide the construction brief so that the prison's design will reflect the peculiar needs of women rather than a traditional male prison. That same philosophy will then guide the management regime within the prison. I am keen to achieve world's best practice in the construction of the new women's prison, on which work has commenced already. The women in the Department of Justice - I think it is an all-women team that has been working on it - have done an excellent job. It is inspirational to see their ideas reflected in the way in which the buildings are designed and the way in which the facilities will be run. The prison will be on the ground in bricks and mortar form very soon and, hopefully, designed to overcome some of the problems of women prisoners that have been apparent for some time. The other problem with women prisoners is that traditionally they formed about four per cent of the prison population and their crimes were somewhat different from those committed by men -

Ms Sue Walker interjected.

Mr McGINTY: Yes, and those sorts of things that were done in the past. The proportion of women in the prison population has grown dramatically in recent years and now forms about seven per cent of the overall prison population.

Mrs Edwardes: Their pattern of criminal behaviour has also changed.

Mr McGINTY: Yes it has and it is becoming more like that of men. That is a result of the influence of drugs. More women are now being locked up for, in particular, armed robbery. Women are now involved in offences of that nature that were traditionally carried out by men. Twenty years ago no women would have been convicted of armed robbery.

Mrs Edwardes: What about Patty Hearst?

Mr McGINTY: Not in this country; it would have been very rare. All of these important changes have taken place within the system, and on top of that there are the sentencing provisions. There were a lot of loose ends as a result of the change of government on 10 February last year. Hopefully, during this session we will be introducing into Parliament fairly comprehensive sentencing laws that will not seek to rewrite and do radical things but will abolish sentences for less than six months and pick up the truth in sentencing part of the legislation, for which the previous Government was responsible. However, we will be jettisoning the matrix sentencing provision. Hopefully, all that will be done through Parliament this year, and a sentencing regime will then be in place that is compatible with what we are trying to do with the rest of the prison population.

I make those general observations about prisons because they are consuming more and more of my time and interest in trying to achieve changes. One of the remarkable things that has happened as a result of sending out a different message to the community to that sent by my predecessor, or the member for Kingsley's successor, is that the prison population has fallen dramatically. That is apart from the number of prisoners transferred to Acacia Prison that I still include as part of the overall figure. We have managed to reduce the prison population by about 15 per cent by not sending minor offenders to prison. There has been a response from the judiciary in

its sentencing patterns, even though there has been no statutory change, and it is no longer sending the same number of people to prison for short-term sentences.

Mrs Edwardes: That used to happen when you started to run out of beds.

Mr McGINTY: The member is right, but the message that went out before was one of no tolerance and if people breached the privilege of parole they should be put back inside. It was tough rhetoric. I have said that we should try to keep people out of prison, unless they are serious offenders in which case we should lock them up and throw away the key. It does not matter if people have committed offences at the serious end of the scale, they should still be punished in prison. However, many people should not be punished by going to prison. The judiciary has been responding in its sentencing patterns and its effects are already demonstrable. However, officials from the Department of Justice and the community-based officials such as parole officers are now adopting a different behavioural pattern to breaches of parole. We now have an overall, more systematic approach that has seen the prison population at its peak. Our total state prison population about two years ago hit about 3 200. We have managed to reduce the population to fewer than 2 800 without statutory change or anything else being done, apart from talking about the problem of minor offenders being in prison. That has not in any way affected the serious offenders like the paedophile Hough, for instance, who the Court of Criminal Appeal sentenced to eight years imprisonment. The courts are still toughening up the sentencing regime for serious offenders, and that pattern has been evident for a number of years now. A different approach has been adopted for minor offenders, and we have seen a dramatic reduction in the prison population.

Interestingly, the chronic problem in Western Australia relates to Aboriginal imprisonment. The major beneficiaries - if I can put it that way - of the changed sentencing and administrative patterns are Aborigines, with a greater reduction in the number of Aborigines in prison than other prisoners. I am quite pleased that that is where the change has been felt the most. Traditionally, Aboriginal people are in prison for shorter terms given the general nature of their offending.

Ms Sue Walker: How many prisoners are involved in the drop of 15 per cent to the prison population, which you mainly attribute to the responses of the judiciary and the parole officers?

Mr McGINTY: It has reduced from about 3 200 to less than 2 800.

Ms Sue Walker: Is that about 480 prisoners? I want to know how many prisoners that 15 per cent drop involves.

Mr McGINTY: It is over 400 prisoners. There are over 400 fewer people in prison today than were there two years ago.

Ms Sue Walker: When the member for Kingsley brought her sentencing Bill through Parliament, which was excellent and which restructured sentencing in Western Australia in 1995, she abolished prison sentences of three months and less. You are following on from that in one sense. However, an analysis was carried out in a survey from 1993 to 1994 on how many prisoners that would affect. It was found to be approximately 134. In relation to your proposed abolition of six-month sentences, have you done a survey on the success of dropping three-month sentences to see whether it will work? Your abolition of six-month sentences will include prison sentences from three to six months. Given that we have only had a small percentage rise, have you surveyed how many prisoners that change will affect?

Mr McGINTY: Yes. Last year, when we developed the policy to reduce the prison population, we were hoping that a combination of all the measures to be undertaken would see a reduction in the prison population of about 300. The major proportion of that reduction was for the people with three and six-month sentences whom we hoped would no longer be sent to prison. There might be some people in the upper range of sentencing who will be given a sentence of six months and one day but who might previously have been given a five-month sentence, so a few people at the top of the range might need to go into prison -

Ms Sue Walker: Did you say it would be 400 prisoners?

Mr McGINTY: At that stage we projected that a combination of the change in early release administrative procedures for parole officers and the abolition of three to six-months sentences would have a net effect on 300 prisoners. I am rather pleased with the results because, prior to implementing these changes, there has already been a greater reduction in prison population than first forecast. I would expect that the bulk of the impact that we were hoping to achieve as a result of this new legislation, has already been achieved. In fact, the impact has been greater than we had hoped for. The effect of the new legislation, when it is brought in, will be less, because we have already achieved a benefit by reducing the prison population.

Ms Sue Walker: The effect might be that of increasing the prison population, because you may have to increase some sentences such as restraining order offences. Many Acts will need to be amended and it may be found that the prison population will increase once again.

Mr McGINTY: We are talking about the net effect. We factored in that some people who would normally be sentenced to about six months might now get a marginally longer sentence, and we removed the number of people with sentences of fewer than six-months who could not be imprisoned. That, coupled with the breaching practices, provided the overall net effect. The reduction in the prison population was over 400. That does not include the shift of prisoners to Acacia Prison; we are still treating those people as part of the prison population. The reduction to the prison population has been dramatic. If we then consider the prison population with all its overheads, prison officers and the capital invested in the prisons, and on top of that take account of the 700 people who were taken to Acacia Prison, it means that the prison population has fallen from over 3 000 to about 2 000.

Ms Sue Walker: 2 000?

Mr McGINTY: Yes, because 700 went to Acacia Prison and about 400 went out of the prison system. Overall, more than 1 000 people were taken out of the government prison system. Some went into the community and others went to Acacia Prison. Members can imagine that it is an expensive system. However, all the costs that are associated with running prisons, such as the employment of prison officers and the programs that are conducted, are being cut by more than a third. The management of that has been a major issue for the Government over the past 12 months. So far, it has fortuitously been a smooth process. I am pleased with the way in which that has been done. All that adds to the challenge.

I will be forthright in saying that my hope for Western Australia is that it ends up with imprisonment rates that approximate the national average. That will result in a significant cultural shift in imprisonment practices in Western Australia. I hope that we will find more effective ways to punish members of our Aboriginal population in their own communities. Members are aware of some of the programs started by the previous Government, such as work camps, bail hostels and things of that nature.

Ms Sue Walker: We also brought in a new range of community-based orders - intensive supervision orders and that sort of thing.

Mr McGINTY: I am more interested in the way in which people can be dealt with in a hands-on, on-the-ground way, rather than by putting them in prison.

Ms Sue Walker: That is an intensive supervision order. That is in the community.

Mr McGINTY: That is part of it. Altogether, they constitute a great challenge. This legislation is part of that. We will end up with prisons that cater for the more serious offenders, because we are trying to get the less serious offenders out of prison. That means that things like prison security, the restriction of drugs entering prison and the identification of prison visitors will need to be more intense, because we will be dealing with a prison population that has a higher proportion of serious offenders, because minor offenders will not be there to even it out. It makes legislation like this all the more important.

A number of issues were raised during the course of this debate, such as the new form of identification for people who visit prisons. That will be covered during the consideration in detail stage. The issue of security was also raised, as was the penalty that will attach to people who make an unauthorised disclosure of the information held on the identity of visitors to prisons. Questions were also asked about the storage of that information. A range of issues will need to be covered in some detail.

I thank all members for their contributions to this debate. This is a challenging area of government policy. Demonstrated achievements are being made on a regular basis on big issues such as recidivism, new prison design, imprisonment rates and the cost of imprisonment. Those issues present major difficulties for any Government. I am pleased with the progress we are making on them at this stage. I commend the second reading of this Bill to the House.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Section 31 amended -

Ms SUE WALKER: This clause seeks to amend section 31(1) of the Prisons Act by deleting the reference to "10" and substituting "30", and section 31(2) by deleting the reference to "3" and substituting "10". I have some difficulty with this amendment. Section 31 currently applies to every prisoner, except those who are imprisoned for default of payment of fines. Nothing in the Bill says that that has changed in any way. However, in his second reading speech the Minister for Justice and Legal Affairs said that it would not apply to prisoners serving

terms for serious crimes against a person or for acts of violence of a serious nature, such as sexual assault or grievous bodily harm. Therefore, a person who was, for instance, charged with break and enter or who was a multiple offender would be eligible to make an application for early release. Nothing in this Bill mirrors what the minister said in his second reading speech. We do not know what sorts of serious crimes the minister was talking about. We know that acts of violence extend only to sexual assault or grievous bodily harm. Unlawful wounding and other violent offences were not mentioned. Why have they not been included in the Bill?

In his second reading speech, the minister said that an offender must show exemplary behaviour. That is not provided for in the Bill. The Bill does not outline what an offender must do to gain this increase in early release. It does not say that it must be exemplary behaviour or what is meant by exemplary behaviour.

The minister said that the legislation would apply only to prisoners who were being released to freedom. Therefore, it would not apply to prisoners who were released on parole or on home release or home detention. From my days as a prosecutor, I know that there are only a few cases in which people are not granted parole. Has a survey been conducted to determine how many prisoners this legislation will apply to? It will not be many. That matter was outlined in the second reading speech but it is not provided for in the Bill. Why is none of that in the Bill? Will the minister introduce regulations reflecting what he said in his second reading speech? How will members of the public know that the amendments, as they currently stand, will not still apply to every prisoner?

Mr McGINTY: Section 31(1) of the Prisons Act is being amended by increasing the period for which the chief executive officer may authorise the early discharge of a prisoner. Currently, it is for periods up to 10 days, and it is proposed that the period be extended to 30 days. The section states -

> . . . may authorise the discharge from custody of a prisoner at any time during the period of 10 days immediately before the day when his sentence is due to expire.

People who are released on parole are still serving their sentence, so anyone eligible for parole or who is granted parole will not be eligible for the early release. I want that on the record so it is understood.

Ms Sue Walker: That is in the second reading speech.

Mr McGINTY: Yes. Anyone who has a sentence of more than 12 months will in most circumstances have parole eligibility and therefore will not be eligible for this provision. It is also then intended to insert into the policy directive from the Director General of the Department of Justice on this question a provision that a person who has been eligible for parole but denied it will not be eligible for this provision either. The only people who will be eligible for these provisions are those serving sentences - assuming the Government's changes to the Sentencing Act are passed - of between six and 12 months. As to the hierarchy of the issue, the Government is not including sentences of less than six months. No-one in that category will apply, because prison sentences should not be for periods of less than six months and the judiciary should not impose sentences of that nature. Those people can be effectively punished in the community. This provision is targeted at people who are sentenced to prison terms of between six and 12 months. Once the sentence is for more than 12 months, this legislation will have no effect because of the way in which the sentencing provisions apply.

Some work has been done on the draft policy directives that will accompany this provision. This is a draft policy only at this stage and there will obviously be some changes.

Ms Sue Walker: What does the minister mean by "draft policy"?

Mr McGINTY: The prisons area of the Department of Justice operates pursuant to policy directives, which are made pursuant to the legislation and which also need to be consistent with the legislation. That then directs people in the Prisons Department on how they should operate in respect of particular prisoners or in respect of particular provisions of the Prisons Act where there is a discretion.

This document summarises some of the draft provisions that are intended to be written. They are in the nature of delegated legislation or regulations, although I do not think they are technically of that nature. Paragraph 5.2.2 states -

> Prisoners serving a normal finite term . . . may be eligible for up to 30 days early discharge. Factors that will be taken into account in determining any eligible prisoner's application include:
>
> . The length of sentence a prisoner has served;
>
> . That the prisoner does not present a perceived risk to the community or any victim(s);

- That a prisoner who is serving a term of imprisonment for serious crimes against the person or acts of violence that are of a particularly serious nature (such as sexual assault, grievous bodily harm, armed robbery etc), would not be granted more than 10 days early discharge).

The Chief Executive Officer (or delegate) may authorise up to 30 days early discharge of an eligible prisoner for any one or more of the following reasons:

- When the prisoner's conduct and work have been of an exemplary nature;
- Where because of any personal health, compassionate or other welfare related reasons, it appears reasonable to grant an early discharge.

Those guiding principles will be implemented in the prison system.

Ms SUE WALKER: First, in answer to my four questions, is the minister saying he cannot advance any examples of what he means by "exemplary nature" and that there is no definition contained in the policy? Secondly, in relation to my question concerning the category of offences, the minister does not in his draft policy provide a list of offences, just the vague ambit of acts of violence, armed robbery and sexual assault. Thirdly, I understood that parole could not be given for offences that attract sentences below a certain term of imprisonment. Section 89(3) of the Sentencing Act states -

> A parole eligibility order must not be made if the fixed term or the aggregate of the fixed terms is less than 12 months . . .

Mr McGinty: That is right.

Ms SUE WALKER: There we are. This cannot apply to anyone. The minister is abolishing terms below six months - between three months and six months - and a parole order cannot be fixed if the term is less than 12 months.

Mr McGinty: Yes. We are saying that people who have sentences of between six and 12 months will be eligible for this provision. When a parole order has been denied for a serious offender given a sentence of greater than 12 months, that person will not be eligible. However, we are now targeting offenders not eligible for parole who have sentences of between six and 12 months. We are targeting those lower order offenders only, not the more serious offenders.

Ms SUE WALKER: Has the minister done a survey of how many prisoners that would affect?

Mr McGINTY: I am told that a survey was done based on the prison population as it stood last year, which showed 1 300 people were in prison and were potentially eligible; in other words, they had sentences of less than 12 months during the course of that year.

Mrs Edwardes interjected.

Mr McGINTY: That is why I made the point. They would need to be excluded.

Ms Sue Walker: I did not hear that.

Mr McGINTY: People could also be in for breach of parole and things of that nature. The estimate is that there might now be 600 people in the prison system who could be eligible for this provision.

Ms SUE WALKER: Those 600 are eligible only on the basis of their length of sentence and the fact that they have no parole. The Opposition still has a problem with the type of offence for which that person is in prison. The minister has not provided a list of offences. The minister is not, for example, excluding the multiple offender in that category. Has the minister done a survey of the type of offences for which those eligible offenders are in prison?

Mr McGINTY: I read from the draft document - and the member should not take it as anything more than a draft because it will change - to give an idea of the flavour of the intention in this area. If we commence on the basis that 600 prisoners could potentially benefit from this provision, we then need to reduce that, depending on the factors I have mentioned - the length of the sentence the prisoner has served, whether that person represents a perceived risk to the community or to any victim, and whether that person is in prison for serious crimes against the person or acts of violence that are of a particularly serious nature.

Examples are then given such as sexual assault, grievous bodily harm, armed robbery and so on. The 600 prisoners who may be eligible would be pared back again, so we would then be left with a figure less than the 600. I do not want to put a precise figure on it, because we have not carried out that exercise. However, it would be significantly less than 600 by the time we counted out those people, because we would come back to the prisoners whose behaviour during their time in prison had been of an exemplary nature, whose offence had not been violence against the person, and from whom there would be no perceived threat. That is what the

Government intends to have written into the policy directives that will come from the director general in the implementation of this provision. Several hundred people will become beneficiaries, but I cannot be more specific.

Mrs Edwardes: On the outside that is an enormous number of days. If we took the 600 and multiplied that by the number of days of early release, we are talking about 160 000 days.

Mr McGINTY: Yes, and on this matter some members opposite levelled criticism during the second reading debate. Western Australia imprisons dramatically more of its citizens than do the other States and Territories in Australia. The Government makes no apology for the fact that it wants to bring that number back to a figure that approximates with the national average. Having said that, we are not interested in showing any compassion, mercy, lightness or leniency towards serious offenders such as paedophiles, armed robbers, murderers, rapists and so on. They will be treated harshly, as they should be. Under the new scheme, only those people who have committed a low-level offence, and who have been given sentences of between six and 12 months, will be eligible. This will have a significant effect on Aboriginal prisoners. Having visited a number of regional prisons in Western Australia that are Aboriginal prisons, the member for Kingsley would know -

Mrs Edwardes: I thought I closed the last one down in the Kimberley.

Mr McGINTY: That may be so. However, a number of them have sprung up since her benevolent reign ended. There are many prisoners in the Broome Regional Prison who are serving sentences of less than 12 months.

Mrs Edwardes: That gets the Government out of building a new prison in Broome - that is why Kalgoorlie will get your tick!

Mr McGINTY: Well, we never know.

The inspirational magistrate in the Kimberley region, Antoine Bloemen, is tackling the problem of Aboriginal offending in a most innovative way. I compliment him for what he is doing. A couple of weeks ago in Broome he told me that alcohol was the main problem with most of the prisoners in the Broome Regional Prison, and not their behaviour. Often when such prisoners are sober and in their own communities, we do not meet more delightful people.

Mrs Edwardes: It is the same in Wyndham.

Mr McGINTY: I am sure it is same in the eastern goldfields. Such people are sentenced to a term of imprisonment of between six and 12 months for horrible behaviour that took place when they were intoxicated. If we can remove such people from their lifestyle -

Mrs Edwardes: Did the alcohol diversion program in Wyndham work?

Mr McGINTY: I am not sure. However, they are the people who will be the beneficiaries. As a result of this measure, I hope we will see a significant reduction in the overall rate of Aboriginal imprisonment. This measure is not targeted towards them. However, disproportionately, they will be its beneficiaries.

Ms SUE WALKER: I appreciate that the national average of imprisonment is 150 people for every 100 000 and that Western Australia's average is 218 people for every 100 000. That figure will be significantly lowered given the minister's comments about the judiciary and the parole officers -

Mr McGinty: I recently spoke to my Queensland counterpart, who told me that his State now has the worst imprisonment rate in Australia. If that is true, I am delighted to have lost that crown.

Ms SUE WALKER: I have experienced cases in which people have come before the courts after committing heinous crimes and multiple offences, and because of these factors they have not been eligible for parole. Such offences would not necessarily fall within the categories of armed robbery, sexual assault or grievous bodily harm. They would fall into another category. Will the no-risk provision be used? For example, some young people have committed acts of car stealing and dangerous driving on many occasions, and they have been sent to prison, and not been granted parole. How will such offenders be dealt with under this legislation?

Mr McGINTY: That would come under the category of risk to the community of a serious recidivist. Although this is a measure to try to alleviate the prison population - therefore, there is an economic imperative behind this measure - there is also the aspect to it that we are looking at the minor offenders in the prison system, and they will be given an additional incentive to address their offending behaviour and to conduct themselves well while in prison. If they have a criminal record that suggests that they will continue their criminal behaviour when they are released, they should not be eligible for this benefit. That is a detail that will be addressed when we work out the policy, the draft of which I have referred to during the course of this debate.

Ms SUE WALKER: How is "exemplary behaviour" defined, given that the provisions have already been applied to "good behaviour"? What is the difference between "good behaviour" and "exemplary behaviour"?

Mr JOHNSON: I have concerns about this clause. I have been listening to the minister's responses to the shadow minister. What the minister considers a minor offence and what I consider a minor offence are probably two different things. Some people in the community commit what I consider to be serious offences even though they may not necessarily be armed robbery, grievous bodily harm or paedophilia, which are very serious offences. I consider breaking into and entering a person's home and the theft of all their goods as a serious offence. Thank goodness I have not had my home broken into -

Mr McGinty: You have never experienced it?

Mr JOHNSON: No, but my son has, so I have experienced it in a second-hand way. I witnessed the trauma that he and my daughter-in-law -

Mr McGinty: My place was done over twice in the one week! If the member has never been a victim of that crime, he should not be telling me -

Mr JOHNSON: I have had business premises broken into, but I have never had my home broken into.

Mr McGinty: I have, and twice in one week.

Mr JOHNSON: Obviously, the minister does not have good security. As a minister, and particularly because of the ministry for which he is responsible, he should have an excellent home security system. He needs it. I know that the minister is entitled to an excellent security system; if he has not already done so, he should have one installed. Maybe the minister did not switch on his security system. Certainly, there is no excuse for a person in the minister's position to have his home broken into -

Mr McGinty: Twice.

Mr JOHNSON: Does the minister have a home security system?

Mr McGinty: Yes.

Mr JOHNSON: Was there a security system in place on both occasions?

Mr McGinty: The circumstances are such that I cannot go into them now.

Mr JOHNSON: Well, it is important, because breaking and entering is a serious offence. As I said, the minister and I have the wherewithal to replace the stolen or damaged items and we have insurance. However, many people in society cannot afford to pay insurance premiums. If a thief breaks into somebody's home and steals a person's worldly goods, the victim is left with nothing. People whose homes have been violated by a criminal consider burglary to be a very serious crime. If a person had been caught only once for stealing, chances are that he would not go to prison. A first offender would probably receive a community service order or probation; he would not be sent to prison. When a person breaks into 10, 15 or 20 homes, the home owners' grief and sense of violation are multiplied 10, 15 or 20 times. The minister might be more charitable than I am.

Mr McGinty: That would not surprise me.

Mr JOHNSON: The overwhelming majority of people whose homes have been broken into would say that burglary is a very serious offence and that the offender should go to prison for at least a year. However, an offender would not be sent to prison for a year even if he had committed 10 break and enter offences on people's homes. The offender would probably be sentenced to six or nine months imprisonment. Such an offender might be sentenced to a year, but he would not be sentenced to much longer than that under our present system. The Minister for Justice and Legal Affairs is saying that the offences committed by offenders of that nature are considered to be minor and that the offenders will get a month off for good behaviour. I am sorry minister, but the general public and the people in my electorate will not wear that. They want to see offenders serve their full terms of imprisonment if they have committed those types of crimes. It would be a serious issue if a person who rents his home had his greatest possession, a $500 car, stolen and wrecked, if he did not have the wherewithal to insure it. That person would challenge the minister's definition of serious crime. The seriousness of the crime depends on the situation of the victim. It is not for us to decide that one crime is serious and another is minor. The people of Western Australia should be asked to decide that. Therefore, I have suggested that this Bill go to a standing committee so that the public can submit some suggestions.

Mr McGINTY: First, I will deal with the question the member for Nedlands raised. The meaning of "exemplary behaviour", or eligibility for 30 days early release from prison, which is currently 10 days, will be based on reports on offenders while they are in prison. Obviously, if a person were charged with insubordination or misbehaved in some other way while in prison, his behaviour would not be exemplary. It would also depend on the person's work reports while in prison. They would need to indicate cooperative behaviour and a willingness to get on with tasks. The person would also need an aptitude for the tasks allocated and he would have to demonstrate that he willingly and effectively participated in any programs in which he was involved. A

combination of those reports during a person's term of imprisonment may indicate that nothing untoward had happened and that his attitude and behaviour was positive. Any blemish on any of those reports and any adverse reports would render an offender ineligible for these provisions.

Mrs Edwardes: You are not making that decision though.

Mr McGINTY: They are the criteria that the superintendent will apply under these provisions. That is the best answer I can give. We are talking about a person who has a spotless record while in prison; that is, there are no adverse reports about anything he has done during his time in prison.

The member for Hillarys asked for a definition of crime of a minor nature. It is easy to agree on those categories of offences that include murder, wilful murder, rape, armed robbery, paedophilia etc.

Mr Johnson: They are very serious crimes.

Mr McGINTY: They could be put in a category about which there is no dispute. Equally, we could categorise another group of offences that people in the community at large would describe as lesser offences and for which people are currently serving time in prison. They include driving without a motor vehicle licence, defaulting on payment of fines and things of that nature. There would not be much argument about those offences.

Mr Johnson: They are not the types of offences that attract six months detention.

Mr McGINTY: Over the past six or nine months I have said that currently people are in prison for those offences alone, and they should not be there. The Government will take into account the response it received from the judiciary and the bureaucracy. When we have legislated on this issue, obviously we will move to another layer of offending that is not of the minor nature of the offences to which I have just referred. Those offences are somewhat more serious, but they are not in the same category as the most serious offences. It will become important for the Department of Justice and the prison authorities to be more rigorous when dealing with those matters.

An example of a great shortcoming in the prison system is the escape of Mr Schwarz from Bunbury Regional Prison. He was in prison on serious drug importation charges. Mr Schwarz is a German who lived in Bali. He was convicted and sentenced to quite a long term of imprisonment and was to be deported when it expired. The Department of Justice made a bad mistake. It classified him as a minimum security prisoner and transferred him to Bunbury Regional Prison. Before he escaped, he was about to give evidence against other people on serious matters. He escaped because officers in the Department of Justice made a human error and put him in minimum security, which they should never have done.

Mrs Edwardes: I bet the Director of Public Prosecutions is impressed!

Mr McGINTY: I do not wish to defend the Department of Justice because it made the mistake and should wear the consequences. However, part of the difficulty on this occasion was that the matters on which Mr Schwarz was to give evidence were federal charges and the federal police had not informed the state Department of Justice that he was going to give evidence. Therefore, culpability must be shared. However, Mr Schwarz escaped from the Department of Justice, which is unacceptable. There is a human element involved whereby officers in the department make errors of judgment from time to time. That is the most recent example that had very unfortunate consequences.

Mr JOHNSON: The minister has just hit the nail on the head. Members on this side of the House and I are concerned that all of these things can be put down to human error. I cannot understand for one moment how anybody worth his salt in the Department of Justice could keep his job after putting that gentleman in Bunbury Regional Prison as a minimum-risk prisoner. I guarantee that the person responsible still has his job and will draw a pension when he retires. People in the Department of Justice make errors that not only affect the department and the operation of the justice system in Western Australia, but also put many people at risk.

My concern with this clause is that the Government will elongate the amount of time on which people can be released for good behaviour. If a prisoner has really behaved himself, being released 10 days early is a good amount of time. I do not believe that, at the whim of the director general, the period for early release for good behaviour should be extended to 30 days. A prisoner's early release should not be extended from three to 10 days at the whim of the superintendent on the recommendation of one or two warders who might have got on particularly well with the prisoner.

The minister and I have different views about what is or is not a serious offence. Earlier, the minister referred to offences that he considered to be minor, including driving without a licence. However, that is a serious offence if other circumstances are involved. For example, the offence is more serious if someone stole a car and drove it without a licence. The chances are that that offender would not be sentenced to more than 12 months imprisonment. Even if it were the offender's second offence, he would probably be sentenced to only six or nine

months imprisonment, although I doubt whether the offender would receive a sentence of even that length. He would probably be given a community work order and then be put on probation. A lot of not quite so serious offences - I am trying to choose my words carefully because -

Mrs Edwardes: There are serious implications and consequences.

Mr JOHNSON: That is right. Anybody can rattle off a list of serious offences. The minister and I have done that during the debate on this clause. My concern is the area below that, which includes the people who steal cars.

Mrs Edwardes: Those who go through a red light.

Mr JOHNSON: Yes. If they knock somebody over or kill somebody, that would probably be considered more serious.

Mrs Edwardes: Let us say seriously injured, but not killed.

Mr JOHNSON: Exactly. That is a classic case. They are banned for two years from driving and fined $1 500. The minister's explanation has not satisfied me. The minister said that if somebody had committed perhaps four offences and was in prison for 12 months, serious consideration would be given to whether 30 days could be given for good behaviour. I am sorry, but a repeat offender must do the time. Most people in Western Australia feel that if people commit the crime, they must do the time. They have indicated that at every election. The Labor Party was very tough on law and order before the last election, almost as tough as we were, but since coming into government its position has weakened. We are now seeing the truth.

Mr Sweetman: Julian Grill said that the Labor Party would do that.

Mr JOHNSON: That is right.

Mr McGinty: We have introduced organised crime legislation, upholding mandatory sentences, and sentences against people who beat up senior citizens.

Mrs Edwardes: That was not strong enough.

Mr JOHNSON: It was not. We would be much tougher than that.

Mr McGinty: It was too tough for you people when you were in government.

Mr JOHNSON: Not at all; we would be much tougher than that. Now the Labor Party is in government, it has let go of the reins and the horse is tending to run a little slower. I would admire the minister if he were to retain his tough stance on crime and criminals, but that is not what we are seeing today. It is proposed that criminals be given time off for being good boys or girls. We expect them to be good boys or girls anyway. My suggestion to the minister is that if they do not behave in an exemplary manner, their sentence should be added to. Maybe we should move such an amendment.

Ms SUE WALKER: How can the Opposition access information of offences committed in prisons? I wrote to the minister a couple of weeks ago asking whether a prisoner had committed any offences while he was in prison. The minister wrote back saying that he was unable to give that information. How are we to check whether an offence has been committed? Under what policy or legislation is the minister unable to let me, as the shadow Minister for Justice and Legal Affairs, or a member of the public, know whether an offence has been committed in prison?

Mr McGINTY: I will answer the question from the member for Nedlands in a minute. At the moment my adviser is looking up the provisions relating to confidentiality of prisoners' records. In response to the question from the member for Hillarys, I will give an illustration of one of our current problems. As at 30 April 2001 the total prison population was 3 106 of whom 2 609 were sentenced and the balance were on remand. The greatest offence of approximately 10 per cent of those sentenced, or 264 prisoners, was a traffic offence under the Road Traffic Act. They had not killed, maimed or injured anybody but overwhelmingly had driven without a licence.

Ms Sue Walker: They could have killed someone.

Mr McGINTY: It was not their most serious offence, because in those circumstances they would be charged with manslaughter or something of that nature.

Ms Sue Walker: They could be charged with dangerous driving.

Mr McGINTY: Yes, but that is a Criminal Code offence; not a Road Traffic Act offence, as I understand it.

Ms Sue Walker: It is a road traffic offence.

Mr Johnson: Causing grievous bodily harm by driving is not a criminal offence.

Ms Sue Walker: The relevant section of the Criminal Code refers to the Road Traffic Act.

Mr Johnson: A Criminal Code offence relates to dangerous driving.

Mrs Edwardes: That is elsewhere.

Mr McGINTY: Yes, but let me make the point that 10 per cent of sentenced prisoners in jail were there for Road Traffic Act offences, the overwhelming bulk of whom would be there for driving without a licence. Of that 10 per cent, which is an enormous number, 55 per cent were Aboriginal people. That gives a snapshot of the reason for embarking on our policy. It spells out quite significantly the area that we are targeting.

The question of confidentiality is contained in the Prisons Regulations. Regulation 39 of the Prisons Regulations 1982 refers to confidentiality of records. Subregulation (3) provides that except for the permission of the chief executive officer, no copy of the records referred to in regulation 38 or subregulation (2), shall be shown or made available in any form to a person other than a person whose public duty it is to receive it or to use it for purposes of identification. That expresses a requirement for confidentiality over those records. Having said that, records relating to prison offences are regularly published. If people want to know the records of any category of prisoners, I am sure that they can be made available. The member for Nedlands wanted information about a particular prisoner in order to assist the family. I understood that. A general requirement is that those sorts of particulars should not be disclosed.

Mrs Edwardes: Why is that?

Mr McGINTY: I do not know.

Mrs Edwardes: Can we reflect on the reason? If a person committed an offence outside the prison wall, it would be made public. If a person committed an offence inside the prison wall, it would not be made public. The provision has probably been in the regulations for years. I am trying to think of the rationale for it.

Mr McGINTY: I do not know is the simple answer. I cannot think why it would apply, particularly to prison charges. It is what is required.

Ms Sue Walker: If you do not know, on what basis did you refuse me access to such information?

Mr McGINTY: I was asked what was the rationale for the provision. I said that I did not know the rationale. I certainly know the provision. A serious offence would go to an outside body for determination.

Mr JOHNSON: The minister has quoted the annual figures that we can obtain for offences committed by prisoners, but I do not believe that the figures show whether people are repeat offenders. I believe that all we have access to is a list of people who are serving their time in prison and their offences. The minister is drawing a line somewhere on that list and saying that the people below the line have committed predominantly motoring offences, such as driving without a licence, and should not be spending time in prison. My argument is that the minister does not intend to confine this provision to people who have committed traffic offences, but intends to draw the line much higher on the list and include offences which he is yet to announce.

Debate interrupted, pursuant to standing orders.

Sitting suspended from 6.00 to 7.30 pm