

CRIMINAL LAW AMENDMENT BILL 2001

Consideration in Detail

Resumed from 2 August.

New clause 12 -

Debate was adjourned after new clause 12 had been partly considered.

Mrs EDWARDES: When we were dealing with this legislation on the last occasion, I moved this amendment to add a minimum sentence of 12 months to any sentence to be imposed to ensure that the flexibility of the courts and their discretionary powers would be retained. That major concern is often raised when minimum sentences are imposed. Another aspect of the amendment is that a sentence of at least 12 months would be imposed if the court originally intended not to impose a custodial sentence. Specific references were made to a young person under the Young Offenders Act.

Mandatory sentencing is not a new invention. Our State has mandatory sentencing, as do most States in Australia. Most States have mandatory sentencing for murder and wilful murder. In most States a conviction for driving under the influence of alcohol carries a mandatory loss of a motor vehicle drivers licence and a mandatory fine. In Queensland a third conviction for drink-driving results in a mandatory prison sentence. In New South Wales mandatory life imprisonment is the sentence for some drug traffickers. Mandatory sentencing is not new in this State. Western Australia had the three strikes law enacted in response to strong public concern about the high incidence of home burglaries, the low clear-up rate and the distress and lasting impact it has on householders whose homes have been invaded. Such offences impact on elderly people who are frail and living in their own homes, and those who are not necessarily frail and aged but are regarded as senior citizens of our community and live in their own homes. Members may imagine how such people feel when their homes are invaded and when they are faced with a level of violence that is not seen by many members of this House and certainly is not condoned by them.

We are talking about offences of a serious nature. The Government would not contemplate this legislation unless it knew the acts of violence against senior members of our community are regarded very seriously by members of the community. The three strikes law came into operation on 14 November 1996. I know that members opposite have divergent views about the three strikes legislation and mandatory sentencing. Some members opposite are totally opposed. I think the Attorney General was similarly opposed when in opposition. However, in government when the federal Leader of the Opposition started to make noises about what he would do to Western Australia's three strikes legislation, the Attorney General certainly defended and protected our state laws.

Basically members on this side of the House want an indication to be given to the courts that we regard acts of violence against our seniors as very serious. We have talked about people who have been impacted upon. Seniors who have given so much to our community should not be subject to horrific and violent acts. We want the courts to take some notice. One of the ways in which we can do that is through the minimum sentences to be imposed as a result of the amendment.

Mr MCGINTY: For a range of reasons, the Government does not accept the member for Kingsley's amendment. The Liberal Party was in government in this State for the past eight years. It did not see fit when it was in power and responsible for the administration of the Criminal Code, the justice system and the jails of this State, to insert a provision of this nature into the Criminal Code. However, now, with the wisdom of opposition, this seems like a very good idea! It is a thoughtless amendment and one that will be destructive of the principles that underpin our criminal justice system and the Criminal Code in this State.

I am advised by the Department of Justice that the implementation of a mandatory term of imprisonment of 12 months for every offence committed against a senior as proposed by this amendment will affect the following sections of the Criminal Code: section 297 - grievous bodily harm; section 301 - wounding and similar acts; section 313 - common assaults; section 317 - assaults occasioning bodily harm; section 317A - assaults with intent; section 391 - definition of "robbery"; section 394 - assault with intent to commit robbery; and section 409 - fraud. Anyone found guilty on one occasion of committing an offence against a senior will face a mandatory term of imprisonment of 12 months. Alternatively, if the person is being sentenced for an offence at the more serious end of the scale, he will receive an additional 12 months imprisonment to his sentence.

The Department of Justice has calculated that it will require an additional 227 beds each year. The State will need a new prison to accommodate this senseless provision. It would cost a minimum of \$15 million to build a

Mrs Cheryl Edwardes; Mr Jim McGinty; Mr Paul Omodei; Mr Colin Barnett; Mr John Quigley; Mr Max
Trenorden; Deputy Speaker; Mr Mark McGowan; Mr Matt Birney

227-bed prison; however, I suspect it would cost more than that. The recurrent current costs for 227 prisoners would be about \$15 million. Under the mandatory sentencing regime, prisoners would be sentenced for 12 months more than their normal sentence. In the first year of operation there is a need for a commitment of \$30 million of taxpayers' funds for this provision. Congratulations; this is sound economic management! If the Opposition thinks that a provision of this nature is worth the expenditure of \$30 million of taxpayers' funds, it will be in opposition for a very long time. We should be endeavouring to get minor offenders out of jail.

I will tell the House of the nature of the offences that are being affected. Section 313 covers common assaults. One can think of a vast array of examples, but I will give the House only one: a couple is in an old people's home. The woman picks up her walking stick and hits her 78-year-old husband on the head because she is sick of him. No real damage is done, but it is a simple assault. The woman will be locked up for 12 months because the judge or magistrate hearing the case has no option.

Mrs Edwardes: In reality, is she likely to be charged?

Mr McGINTY: The woman has committed the criminal offence of a simple assault. I tell the member - as she is going to be in opposition for quite a while - that when she makes something a criminal offence punishable by a mandatory term in jail she should make sure that the legislation does not catch people it is not intended to catch. It is a very important principle. The woman is an example of someone who will be sentenced to a year in jail. We should be trying to get those sorts of offenders out of jail and not introducing mandatory sentencing that puts them in jail.

Mr OMODEI: How does the Attorney General reconcile his argument about the so-called costs of this amendment when the Government has introduced the new Animal Welfare Bill, which quadruples the penalties for cruelty to animals. The Bill was introduced with great fanfare. Every member of the public is concerned about preventing cruelty to animals. Talk about hitting someone over the head with a walking stick! If someone hits a dog on the head with a walking stick, he will get a minimum fine of \$2 000. The potential maximum penalty is a fine of \$50 000 and imprisonment for five years. How many more new jails will the Government have to build to accommodate people who have offended against an animal?

The Government has things mixed up. It has a more serious penalty for an act of cruelty against an animal than that for wounding an elderly person. I cannot believe what I am hearing in this place! Do the members on the back bench understand what is happening?

Government members: Yes!

Mr OMODEI: Absolutely! They believe that penalties for an act of cruelty against animals should be higher than penalties for a crime against an old person? Even if it is found that those penalties are not applied in that way, it seems that the Government has distorted the whole issue. I watch with interest. The penalties in the animal welfare legislation have been quadrupled since the original discussion paper was sent out to the community more than 12 month ago. The community wanted higher penalties, but it did not want them quadrupled; it certainly did not want the penalties to be higher than those for an act against an elderly person.

Mr BARNETT: The whole thrust of the amendment moved by the member for Kingsley is that if the Government is in any way serious about increasing penalties for crimes against the elderly and seniors in this State, surely the Government should increase the minimum, not the maximum. It is as simple as that. The Attorney General has raised some objections to the way in which this amendment is worded. We are happy to talk about that. However, that is not the point. The point is that the Government's increasing maximum penalties is a sham. It put out its press release and got a bit of publicity about how it would protect elderly people. It is a sham; everyone in this Chamber knows it is a sham! Increasing maximum penalties will have no real effect at all.

The argument the Attorney General uses is that if this amendment, as moved by the member for Kingsley, were implemented, it would cost 227 more beds in jail. By his own statistic, he admits that it would have an effect. It would increase penalties.

Mr McGinty: With mandatory minimum sentences, of course it would.

Mr BARNETT: If the Attorney General has had the government department do some analysis of this, what is the impact of his proposed amendment to the law on the numbers of beds required in the jail system?

Mr McGinty: Seven.

Mrs Cheryl Edwardes; Mr Jim McGinty; Mr Paul Omodei; Mr Colin Barnett; Mr John Quigley; Mr Max
Trenorden; Deputy Speaker; Mr Mark McGowan; Mr Matt Birney

Mr BARNETT: Seven; that is it! What are we doing? We are mucking around in this Parliament for seven beds! The totality of the Government's legislation will increase the amount of imprisonment by the equivalent of seven beds out of how many beds in the jail system today?

Mr McGinty: About 3 000.

Mr BARNETT: We are talking about seven beds out of a total bed population of 3 000, which would work out, if my maths are correct, at less than 0.2 per cent - less than one-fifth of one per cent. The totality of the impact of the Attorney General's legislation on the jail population will be one-fifth of one per cent. In other words, it will have no effect at all. It is a sham!

Mr QUIGLEY: I oppose the amendment as moved by the member for Kingsley for a number of reasons, not the least of which is that it appears to be written on the back of a beer mat. It is an expression of emotion; it is certainly not good drafting.

Mrs Edwardes: You are an expert in this, being a criminal defence lawyer!

Mr QUIGLEY: The amendment proposes a new clause 12 to the Bill. It does not propose to amend any particular legislation. Where is it meant to be inserted - into the Sentencing Act or the Criminal Code? I am glad the member for Nedlands has come back into the Chamber. The amendment just says "Minimum Sentence to be imposed". Then, rather than seeking to amend each section of the Criminal Code, because obviously there were not enough dry beer mats to write on when this amendment was dreamt up. It had to be written on only one then it was fitted into one paragraph, which states -

- (1) If a person is convicted of an offence against sections 297, 301, 313, 317, 317A, . . . a person who at the time of the offence is of or over the age of 60 years, the court sentencing the person shall sentence the offender to a term of imprisonment which is 12 months greater than the sentence that the court would have imposed had that circumstance not existed . . .

Where is that clause meant to go in the law? I suppose that the prosecutor - and the member for Nedlands if she returns to that occupation some time in the future - hands up a sheet of paper and says, "I don't know what legislation this is to go into; it does not insert a new section in the Criminal Code." Currently, the prescribed penalty under section 297 of the Criminal Code for grievous bodily harm is 10 years. As it stands, the Government's amendment to clause 3 of the Bill imposes an aggravated penalty if the person harmed is of or over the age of 60 years, and the offender is liable to imprisonment for 14 years. That is an increase of four years on the maximum penalty.

Let us consider the Opposition's amendment, if we can find somewhere to shuffle it into the deck. In addition to the Bill's amendment to section 297 of the Criminal Code there would be another provision somewhere to read that the court sentencing the person shall sentence the offender to a term of imprisonment that is 12 months greater than the sentence that the court would have imposed had that circumstance not existed. The sentencing judge would read section 297 of the Criminal Code and wonder what the term of imprisonment would be if that circumstance did not exist. In this case, the term of imprisonment would be 10 years; therefore, under the member for Kingsley's amendment, it would be increased to a maximum of 11 years. That is three years less than the period the Labor Government and the Attorney General have proposed. The Government wishes to increase the maximum penalties for these types of offenders, not decrease them by three years. This amendment would have that effect - if we could work out where it fitted into the scheme of Western Australian law.

The amendment becomes more muddled. It suggests that the offender should be imprisoned for 12 months longer than the sentence that the court would have imposed had that circumstance not existed and, in any event, the court should sentence the offender to at least 12 months imprisonment. Where does that 12 months imprisonment fit into the Criminal Code of Western Australia? That is a minimum term required to be imposed upon anybody having committed that offence, and the offender will also be sentenced to 12 months of top of that as a statutory minimum. A person who had committed the offence of common assault -

Mr Barnett: You have lost yourself in your own argument.

Mr QUIGLEY: I have not lost myself in my own argument, I am battling with this amendment, as would any court that had to deal with it. I invite the member for Nedlands to get to her feet and explain where this amendment fits into the statute law of Western Australia. Does this amendment mean that the court must impose a statutory minimum of 12 months imprisonment for any common assault, and then impose a further term of imprisonment of 12 months if the victim is over 60 years of age? It is muddled thinking. The difficulty with the argument about imposing a 12-month minimum sentence as a mandatory principle, when it is analysed and not taken as an expression of emotion, is that it does not make sense. It does not make sense when one considers the proposed clause, where it fits into the law and how it is to be interpreted in the Criminal Code.

Mrs Cheryl Edwardes; Mr Jim McGinty; Mr Paul Omodei; Mr Colin Barnett; Mr John Quigley; Mr Max
Trenorden; Deputy Speaker; Mr Mark McGowan; Mr Matt Birney

Mr TRENORDEN: I have been swayed by the argument of the Attorney General, and I agree with the amendment. The last time we were in this House, the minister debated at some length the great benefits that this Bill would bring to the people of Western Australia. However, tonight he says that it will result in seven extra prison beds as against - what did the minister say the other figure was?

Mr McGinty: As against what this amendment would do? That would be 227 beds.

Mr TRENORDEN: That is what the Attorney General promised the public. During the course of this debate, and today during debate on the previous Bill dealt with by the Minister for Planning and Infrastructure, the Government has argued that it has a mandate. Will the Attorney General create a mandate for this? With only 37 per cent of the vote, I do not think that the Government has a mandate.

Mr McGinty: Your primary vote was less than that, wasn't it?

Mr TRENORDEN: My primary vote was about the same. I am happy to talk about that as long and as hard as members opposite like.

Several members interjected.

Mr TRENORDEN: I have all night. Who wants to talk about it?

Several members interjected.

Mr TRENORDEN: Members opposite want to talk to me about it, so I am waiting.

Several members interjected.

Mr TRENORDEN: I am happy to talk about it. This Government won on One Nation preferences.

Several members interjected.

Mr TRENORDEN: They still got One Nation preferences.

Several members interjected.

Mr TRENORDEN: A number of members opposite got One Nation preferences. Do they know how many I got? None. The National Party is the only party in this House that can say its members are here without the help of One Nation preferences.

Several members interjected.

Mr TRENORDEN: No, some members opposite did.

Several members interjected.

Mr TRENORDEN: The members for Albany, Geraldton, Collie and Bunbury.

Several members interjected.

Mr TRENORDEN: I was last on the party's how-to-vote card.

Several members interjected.

Mr TRENORDEN: I did not get directed preferences. The Deputy Speaker might like me to talk about this Bill.

The DEPUTY SPEAKER (Ms Guise): Indeed I would.

Mr TRENORDEN: I am happy to talk about my seat and the vote as long as members opposite want to do so.

Several members interjected.

Mr TRENORDEN: That is a good issue. I am happy to talk about that as well.

The DEPUTY SPEAKER: Members on my right might like to consider the time and let the Leader of the National Party get on with it.

Mr TRENORDEN: The Government told the public that it would deal with the issue of elderly people being bashed. We have been told tonight that its legislation will provide seven prison beds for 12 months. That is a joke. The National Party will support the amendment.

Mrs Cheryl Edwardes; Mr Jim McGinty; Mr Paul Omodei; Mr Colin Barnett; Mr John Quigley; Mr Max
Trenorden; Deputy Speaker; Mr Mark McGowan; Mr Matt Birney

Mr McGOWAN: I find it amazing that we are sitting here at 11.00 pm debating an amendment that the Leader of the Opposition -

Several members interjected.

Mr McGOWAN: The Leader of the Opposition cannot be serious about this amendment. The member for Innaloo has pointed out how convoluted and strange it is. Its central purpose is to impose a 12-month minimum sentence for the offence of common assault. Does the Leader of the Opposition believe that is appropriate? Last week we discussed examples of common assault, which involves causing apprehension or fear in someone's mind. If two people are in an argument and one feels a degree of fear, that is assault. The Attorney General referred to someone who emits an offensive odour.

Mr McGinty: I referred to a gas or odour.

Mrs Edwardes: You were both being flippant.

Mr McGOWAN: I realise the Attorney General was being flippant. However, on occasion such odours might upset people. The central point is that a person can be charged for committing an extremely minor assault. Members can watch such cases dealt with in the Magistrate's Court every day.

Several members interjected.

Mr McGOWAN: The Leader of the Opposition is suggesting that a person who had not been convicted in 50 years, but who committed a minor offence because he pushed another individual and the police were called, as often happens in domestic and other disputes, should go to prison for 12 months. The Leader of the Opposition should tell the Chamber whether he really believes that.

Mr Barnett: We are happy to entertain improvements to the amendment. If you were genuine about preventing serious crimes against elderly people, you would increase minimum penalties, not maximum penalties. If the Attorney General can use his resources to improve the drafting, we will not have a problem.

Mr McGOWAN: Do you support this amendment?

Mr Barnett: No.

Mr McGOWAN: No, he does not!

Mr Barnett: Don't be silly. Get a little maturity.

Mr McGOWAN: He thinks this amendment is ridiculous.

Mr Barnett: Stop making jokes about people breaking wind and the like. If you were serious about crimes against elderly people, you would support the drift of this amendment, which is to increase minimum penalties. If you can draft it more effectively and overcome any imperfections, fine; we will be happy with that. The thrust is that you protect elderly people by increasing minimum, not maximum, penalties. Don't be flippant. Don't make jokes about it. Elderly people will be totally unimpressed with what you are doing.

Mr McGOWAN: The Leader of the Opposition had eight years in which to put in place the type of penalty that he is talking about.

Several members interjected.

The DEPUTY SPEAKER: Order, members!

Mr McGOWAN: The Leader of the Opposition had eight long years in which to do something about it. He has presented this ridiculous amendment to Parliament just a few months into the term of the new Government and carries on like this. He will not even back it in the Parliament. He will not say that he supports it. When asked the question, he said that no, he does not support it. The Opposition does not even support its own amendment.

Mr Omodei: We should move to adjourn the House and fix it. Why don't you do that?

Mr McGOWAN: It is inappropriate. The Attorney General has put forward a Bill that complies with the Labor Party's policy prior to the election. That is what the Government is doing.

Mr Omodei interjected.

Mrs Cheryl Edwardes; Mr Jim McGinty; Mr Paul Omodei; Mr Colin Barnett; Mr John Quigley; Mr Max
Trenorden; Deputy Speaker; Mr Mark McGowan; Mr Matt Birney

Mr McGOWAN: The member for Warren-Blackwood was in government for eight years and did nothing about it. Coalition members did nothing about it. They should not come in here with this rubbish and tell the Government that it should pass this amendment.

Mr Omodei interjected.

The DEPUTY SPEAKER: Order, please!

Mr McGOWAN: Members should vote for a Bill that had the imprimatur of the public at the election. The Bill will do something about sentences. The Opposition's provisions are ridiculous and the Leader of the Opposition does not support them. If the Opposition divides on this, the Leader of the Opposition will vote for something that he does not even support. The Leader of the Opposition should have a good, hard look at himself and consider what the hell he is doing bringing this sort of rubbish into the Parliament.

Mr BIRNEY: I will take a look at this issue for 15 or 16 seconds. It is interesting that the member for Rockingham was the last speaker, because I had a brief look through his Animal Welfare Bill 2001. I intend to have a better look through it, because I too am a bit of an animal lover. That Bill includes a minimum penalty of some \$2 000 for an offence of cruelty to animals. I was drawn to the analogy that if a person is cruel to an animal, he gets a minimum penalty of \$2 000, but if he bashes a granny, there is no minimum penalty. What a funny little mob government members are.

Mr McGOWAN: The member for Kalgoorlie is new to this place and exhibits a lot of youth and inexperience. Members learn as they go along in this place. Perhaps after a few years, the member for Kalgoorlie will start making some valid contributions.

Several members interjected.

The DEPUTY SPEAKER: Order, members!

Mr McGOWAN: The member for Kalgoorlie is welcome to vote against the Animal Welfare Bill. I am glad that he mentioned the Bill, because I meant to raise it when the former Minister for Local Government was talking. The member for Warren-Blackwood promised a Bill for animal welfare in 1995, 1996, 1997, 1998, 1999 and 2000! For six years he promised to introduce a Bill. Despite an opposition commitment to cooperate in passing that Bill through the upper House at that time, he failed to introduce it. It will be up to this Government to do that. The Labor Party took a policy on animal welfare to the election and has a mandate for it.

Several members interjected.

The DEPUTY SPEAKER: Order, members! I draw members' attention to the fact that I am standing. I ask for a little courtesy, so that both I and Hansard can hear what is going on.

Mr McGOWAN: I am happy to deal with that Bill when it comes on. I have offered the member for Warren-Blackwood and all opposition members a briefing on that Bill. However, in effect it delivers an Australian Labor Party election commitment. The Bill introduced by the previous Government contained a minimum penalty for those offences that have been increased in the same way that the Attorney General is increasing the penalties for people who commit assaults. Despite all the attempts to obfuscate this issue, this amendment could send people who have no previous convictions to jail for 12 months for pushing another individual. It would be a bad law and we should not be passing bad laws in this place.

Mr QUIGLEY: I want to deal with the convoluted drafting of this amendment.

Mrs Edwardes: Have you worked it out now?

Mr QUIGLEY: I have not worked out the Opposition's amendment and no-one passing sentence would be able to work it out. The last time I was on my feet dealing with a drafting problem, and the Attorney General was explaining some of the trivial matters that could be prosecuted and could receive a mandatory sentence, I heard an interjection from the member for Kingsley and the Leader of the Opposition that the police will not make charges. After 26 years in practice, I am very aware that citizens regularly bring private prosecutions for assaults.

Mrs Edwardes: How many have been brought in the past 10 years?

Mr QUIGLEY: We could have taken a private prosecution against the Leader of the Opposition for what he did to the Minister for Education in the ABC Radio studios, as was shown on television. It probably would have done us all a favour if he had copped the mandatory minimum. Come to think of it the Leader of the Opposition is the best argument in favour of it. He is probably the Opposition's strongest argument.

Mrs Cheryl Edwardes; Mr Jim McGinty; Mr Paul Omodei; Mr Colin Barnett; Mr John Quigley; Mr Max
Trenorden; Deputy Speaker; Mr Mark McGowan; Mr Matt Birney

I recall that on 31 July when the member for Nedlands spoke about the Government's Bill and when she spoke on the last occasion, she was confident that the legislation would be a deterrent and that, from her experience as a senior prosecutor with the Office of the Director of Public Prosecutions, the judiciary would take notice and that her conscientious former colleagues at the DPP office would use this Bill and raise these arguments during the sentencing process with the judiciary, which would take notice and inflict higher penalties. She concluded by saying that she supported the Government's Bill and commended it to this Chamber as a measure that would protect the elderly from serious assaults. I agree with her.

Mr McGINTY: I will explain to the House why, even if the wording were amended, we would not accept the proposition that mandatory sentencing be introduced for common assaults. The area of some controversy already referred to is the issue of -

Mr Omodei: You had better hope some old lady does not kick a dog.

Mr McGINTY: I thank the member for Warren-Blackwood for that very intelligent contribution to this debate! Mandatory sentencing as introduced in 1996 applies to the very serious offence under the Criminal Code of home burglary. Its seriousness is reflected in the fact that it attracts a maximum penalty of 18 years imprisonment. It is one of the most serious offences under the Criminal Code. When dealing with a serious offence such as that, it is the third strike that attracts the mandatory sentencing component; it is not the first strike. Generally speaking, the third strike is not the third time someone comes before a court on these matters. A host of safeguards are built into mandatory sentencing for home burglary.

I am sure that all members are aware that when a juvenile comes before the court, having been charged with home burglary, and is diverted to a juvenile justice team or something of that nature, that does not count as a strike and does not trigger the third strike provisions in the code. Even when a juvenile comes before the court on his third strike, there is still an option for the court, depending upon the circumstances of the case, to place that young person under an intensive youth supervision order, rather than send him to jail. For an extremely serious offence under the Criminal Code, imprisonment must be the third strike. When it is the third strike, this person may be on multiple charges, and in many cases it will be the tenth or fifteenth time that he has been before the court for breaking into other people's homes and stealing their property.

That is the reality of the situation, but this amendment proposes "one strike and you are in", for what can be a very minor offence, the sort of thing for which, if it is a first offence, the court might currently record no conviction. It is often the sort of offence that will result in a court imposing a fine or a community service order. If this amendment were carried, those offences would result in 12 months mandatory imprisonment for a first offence.

Mr Barnett: If the court imposed a prison sentence, would the Attorney General object to having that sentence increased by 12 months?

Mr McGINTY: I would because, again, it completely removes the discretion. That would certainly be a positive step -

Mrs Edwardes: That does not remove discretion at all.

Mr McGINTY: Yes it does. The member for Kingsley is aware of the circumstances that can arise. I use the charge of common assault as the example, because it is, in the context of the Criminal Code, the least serious of all the offences we are now talking about. A magistrate might give someone a three-month sentence. We are all aware of the reasons for a magistrate giving a short, sharp, shock sentence. I do not happen to agree with that as a sentencing practice, but it exists. That was the reason, in the last Labor Government, for Hon Joe Berinson legislating to ban sentences of less than three months: to prevent magistrates imprisoning people, particularly Aboriginal people in the country, for short periods.

Mrs Edwardes: Who moved that?

Mr McGINTY: Hon Joe Berinson instituted the three-month minimum sentence.

Mrs Edwardes: Is the Attorney General sure about that?

Mr McGINTY: Yes. It was done for that purpose. The Opposition is now asking me whether it would be more acceptable to provide that the minimum must be 12 months if the magistrate or judge were to determine that imprisonment was the only possible sentence. The difficulty is that it would not be a minimum of 12 months. It would in fact be a minimum of 15 months, because if the magistrate imposed a sentence of three months, under the Opposition's amendment, a further 12 months would be added to that.

Mrs Cheryl Edwardes; Mr Jim McGinty; Mr Paul Omodei; Mr Colin Barnett; Mr John Quigley; Mr Max
Trenorden; Deputy Speaker; Mr Mark McGowan; Mr Matt Birney

Mr Barnett: It can be scaled, then. If, for example, the sentence were less than a year, could three months be added, and if it were over two years, then could 12 months be added?

Mr McGINTY: The problem is that the Opposition did not propose that.

Mr Barnett: The Opposition is saying that, if the Government is serious about this issue, it should make it a minimum mandatory penalty.

Mr McGINTY: If the most serious offences are targeted -

Mr BARNETT: The Opposition bows to the wisdom of the Attorney General. The Government has all the resources of Crown Law to advise it. The point of the amendment by the member for Kingsley is to say that, if the Government is serious about doing something strong in the courts about crimes against the elderly, it should not talk not about maximum penalties, but about minimum penalties.

I take the Attorney General's point. For a relatively minor offence, for which the penalty might only be three months, the Opposition is happy to discuss whether three months should be increased to 15 months, and the Attorney General might be right. Why then, does the Government not say that the sentence, if less than a year, would be doubled, or three months added on and the amount scaled up? For more serious offences, for which the original penalty might be three years, the penalty could go to four years. If the penalty were three months, it may be increased to six months; and if the original penalty were six months, it might be increased to 12 months. A schedule could be developed - the Opposition does not mind that.

If the Government is serious about this issue, and not just intent on staging a publicity stunt, it should increase minimum penalties. If the judge decides the penalty will be imprisonment, a penalty will be added to that imprisonment, on whatever scale is required, for crimes against seniors. Be serious about the issues; otherwise do not waste the time of the Parliament.

Mr McGOWAN: I take the point that the Leader of the Opposition raised about adding a 12-month period onto the sentence. However, will it not be the case that a judge or magistrate who imposes a penalty on an individual for some offence will take into account the 12-month period to which the Leader of the Opposition referred and that the likely outcome will be fewer people in prison? If the penalty must be 13 months instead of one month, the magistrate will instead impose a fine or a community-based order. It is human nature. In some jurisdictions in the United States, juries are far less likely to convict people if they will get the death penalty. They want to be really sure before they convict someone. The argument I am putting is that when a court imposes a penalty, it will take into account the fact that 12 months will be added to the sentence, so it will reduce the penalty and the result will be less imprisonment rather than more. It will be self-defeating.

Mr McGINTY: I agree completely with the comments of the member for Rockingham. We have before us an amendment to the Criminal Code. As can be seen by the contributions of the member for Innaloo and the member for Rockingham, and the comments I made, no-one in this Chamber could seriously support the amendment. We are talking about an amendment to the Criminal Code. The Criminal Code is what criminalises behaviour - that was not meant to sound particularly profound. When this place talks about putting people in jail, it must get it right. This amendment is unsupportable.

Mrs EDWARDES: The member for Innaloo raised the issue of drafting. I do not think he has a correct understanding of the amendment. He probably thought he was having a go at me and my attempts at drafting. However, the former Attorney General drafted this amendment, and I would back his drafting skills and expertise against those of the member for Innaloo any day. The amendment to establish a minimum sentence for crimes against persons over the age of 60, particularly violent acts, has two limbs.

The member for Rockingham and the Attorney General said that during our time in government we did not bring forward minimum-sentence legislation. Where was the member for Rockingham when the coalition brought in the matrix legislation? Was he once again not listening, or has he conveniently forgotten about the matrix legislation, even though I raised it during the second reading debate?

As the Labor Government has indicated that it will not proclaim sections 1 and 2 of the matrix legislation, and as the third part of the matrix did not get through either Chamber, it is second-best legislation. I agree it is a second-best option for restoring confidence among the elderly community. The member for Ballajura was right in his description of the violent attacks on members of his community: they are abhorrent. If we are serious about sending a message to the judiciary that it needs to take these matters more seriously and impose far heavier sentences, we must put in place a mandatory minimum sentence.

Extract from Hansard
[ASSEMBLY - Tuesday, 7 August 2001]
p2132b-2140a

Mrs Cheryl Edwardes; Mr Jim McGinty; Mr Paul Omodei; Mr Colin Barnett; Mr John Quigley; Mr Max Trenorden; Deputy Speaker; Mr Mark McGowan; Mr Matt Birney

Members opposite may pooh-pooch our amendment to impose a minimum sentence, but we have replicated it from sections of their legislation. Our amendment would have an impact on 227 people. The Government should ask the seniors in the street what they think. The result of our amendment is that 227 more people who commit violent acts against the elderly will be put in prison. It would cost more and might result in a need for a new prison, but it would put in prison 227 more people who commit acts of violence against seniors. The surveys that have been carried out indicate that the community would agree with our amendment every single time.

The Government is including in its debate the issue of minor offences and is ranking them with more serious offences. Its points are possibly valid in terms of section 313 and common assaults. When drafting the amendment, we gave serious consideration to whether we should incorporate section 313, but we thought it would be better to pick up all the sections amended by the Government's Bill and draft a new clause that would provide for an increased minimum sentence for all the offences referred to in the Government's Bill. The Government's amendments will not give confidence back to the community. They are a sham, particularly when one considers that our amendment would be 30 times more effective than the Government's amendments. The community would support our amendment every single time.

New clause put and a division taken with the following result -

Ayes (17)

| | | | |
|--------------|-------------------|--------------|-------------------------------|
| Mr Ainsworth | Mr Day | Mr Omodei | Ms Sue Walker |
| Mr Barnett | Mrs Edwardes | Mr Sullivan | Mr Bradshaw (<i>Teller</i>) |
| Mr Birney | Mrs Hodson-Thomas | Mr Sweetman | |
| Mr Board | Mr Johnson | Mr Trenorden | |
| Mr Cowan | Mr Masters | Mr Waldron | |

Noes (29)

| | | | |
|--------------|------------|----------------|----------------------------|
| Mr Andrews | Mr Hill | Mr McRae | Mrs Roberts |
| Mr Bowler | Mr Hyde | Mr Marlborough | Mr Templeman |
| Mr Brown | Mr Kobelke | Ms Martin | Mr Watson |
| Mr Carpenter | Mr Kucera | Mr Murray | Mr Whitely |
| Mr Dean | Mr Logan | Mr O'Gorman | Ms Quirk (<i>Teller</i>) |
| Mr D'Orazio | Mr McGinty | Mr Quigley | |
| Dr Edwards | Mr McGowan | Ms Radisich | |
| Ms Guise | Ms McHale | Mr Ripper | |

Pairs

| | |
|-------------|---------------|
| Mr Marshall | Dr Gallop |
| Mr McNee | Ms MacTiernan |

Independent

Dr Woollard

New clause thus negatived.

Clause 12: Section 6 amended -

Mrs EDWARDES: The Opposition supports this amendment of the Sentencing Act. Members opposite probably have not read this for a little while; I remind them that the Sentencing Act is to be amended by inserting after "offence" the words "including the vulnerability of any victim of the offence". That picks up some of the comments made during the second reading debate. The concern was that persons who are vulnerable are not necessarily those who are over the age of 60 years, and, as such, they needed to be incorporated into the legislation. I am aware that, in sentencing, judges already take into account the vulnerability of any victim of the offence. This is basically putting in words what the court is already doing in practice. That is strongly supported by the Opposition.

Clause put and passed.

Title put and passed.