

CRIMINAL CODE AMENDMENT BILL 2008

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Simon O'Brien (Minister for Transport)**, read a first time.

Second Reading

HON SIMON O'BRIEN (South Metropolitan — Minister for Transport) [10.01 pm]: I move —

That the bill be now read a second time.

As members will be aware, this state has witnessed numerous serious attacks on the men and women of the WA Police in recent times. In many instances such attacks, particularly those on Constables Shane Markham and Christine Johnston in March 2006, resulted in severe injury. The assault on Constable Matthew Butcher resulted in his partial paralysis. Such attacks have exacted an emotional as well as a physical toll on the police men and women, and their families, who provide such a vital service to our community.

The promise to properly protect our police officers was a major platform this government took to the September 2008 state election. However, our commitment to protect WA police officers did not begin with the calling of that election. Rather, today's legislation has its genesis in a private member's bill introduced by the member for Hillarys. This was the Acts Amendment (Assaults on Police Officers) Bill 2008, introduced in February last year.

At that time, the now government—the then opposition—argued that legislative change was needed to deal with the prevalence of assaults on police. Change is required because our society has changed. Fifteen to 20 years ago, not only were police officers respected but also their safety was near sacrosanct. Society has at some point moved into a state of sad indifference towards the authority of anyone in a police uniform.

Before I proceed, it may be instructive to consider some of the legislative history that precedes this bill. Two offences defined in the Criminal Code that are of relevance to this discussion are grievous bodily harm, as defined in section 297, and serious assault, as defined in section 318. Prior to the introduction of the former government's amending act—the Criminal Law and Evidence Amendment Act 2008—an increased penalty for grievous bodily harm offences was not mandated by section 297 when the victim was a public officer. At that time, depending on the severity of the injuries sustained, assaults perpetrated upon public officers could be dealt with as either a "normal" section 297 offence, or via section 318, which mandated penalties of up to 10 years for assaults upon certain categories of victim: public officers performing a function of their office or employment or on account of their performance of their role; persons performing a function of a public nature or on account of their performance of their role; persons acting in aid of a person who falls within either of the first two categories; and drivers or persons operating trains, ferries, buses or taxis.

The former Labor government's amending legislation was drafted to set out further categories of people for whom an increased penalty in section 297 would operate. It set out additional penalties for section 297 assaults, being a maximum imprisonment for a term of 14 years. Those penalties applied to grievous bodily harm perpetrated upon: public officers performing a function of their office or employment or on account of their performance of their role; drivers or persons operating trains, ferries, buses or taxis; ambulance officers, and members of the fire and emergency services, state emergency services or volunteer marine rescue services; and persons working in a hospital, prison officers, or court security service workers. The description of "persons performing a function of a public nature"—which was used in section 318—was not included in the amendments to section 297. Section 318 was amended to add ambulance officers, members of the fire and emergency services, state emergency services or volunteer marine rescue services, persons working in a hospital, prison officers and court security service workers to the list of people covered by the section. The maximum penalty for offences not in circumstances of aggravation was increased from three years to seven years. I shall speak further on the former government's legislation shortly, save to say here that although it had its limitations, it was good legislation.

The private member's bill I have already mentioned attempted to introduce changes to the Criminal Code as it existed prior to Labor's 2008 amending act. It sought to apply under section 297 increased penalties for: assaults on public officers performing a function of their office or employment or on account of their performance of their role; persons performing a function of a public nature or on account of their performance of their role; and persons acting in aid of a person who falls into either of those two categories. Assaults of this nature were to be liable for a maximum sentence of 14 years and a mandatory minimum sentence of 12 months. No new definitions were to be inserted in section 318, and mandatory minimum sentences of three months for assaults occasioning bodily harm when the offending was dealt with as a summary offence, and nine months for assaults occasioning bodily harm in all other circumstances, were to be imposed.

That short history of this issue brings us to the present bill, the Criminal Code Amendment Bill 2008. This bill implements our commitment to police officers and certain other officers who have a duty to enforce law and order for the people of Western Australia. Legislation to protect our police was not only an election commitment, but also something we undertook to introduce within the thirty-eighth Parliament's first sitting. The present bill differs in form from the private member's bill I have referred to in that it limits mandatory sentencing to offences against police officers as a discrete category of victim. The victims to be covered by the bill are: police officers; prison officers as defined in section 3 of the Prisons Act 1981, Western Australia; security officers as defined in section 3 of the Public Transport Authority Act 2003, Western Australia; ambulance officers; contract workers within the meaning given to that term by the Court Security and Custodial Services Act 1999, Western Australia; and contract workers within the meaning given to that term by section 15A of the Prisons Act 1981, Western Australia.

It was considered that extension of mandatory sentencing to the definition of "public officer" contained in section 1 of the Criminal Code could result in mandatory minimum sentences being imposed even for an assault on a great number of persons who are not in the "frontline", which was undesirable. This legislation providing for mandatory sentencing has been carefully considered by the government. Mandatory sentencing is a tool of criminal law that should be used very cautiously. Only in situations in which there are problems of undeniably crucial public significance, and in which other alternatives are or would be ineffective, should mandatory sentences be contemplated. However, this government considers this legislation to be the only way to ensure that the sentencing in this area reflects the expectations of the Parliament and our community.

This bill will amend the Criminal Code to provide that when a person assaults one of the persons I have listed who is performing his or her duties and causes the person bodily harm or grievous bodily harm, that person must be sentenced to a minimum term of imprisonment; that is, imprisonment is mandatory when such a person is assaulted and injured. To accomplish this, the bill amends sections 297 and 318 of the Criminal Code. Section 297 deals with the offence of grievous bodily harm and section 318 with serious assault. Currently, the maximum sentence for grievous bodily harm without any aggravating circumstances is 10 years' imprisonment. If the offence is committed in aggravating circumstances—for example, when the offender is in a family or domestic relationship with the victim, a child is present at the time of the offence, or the victim is 60 years of age or older—the maximum penalty is 14 years' imprisonment.

Section 318 of the code currently provides penalties for offenders who assault any of the persons in the categories nominated in that section; generally those performing functions of a public nature, who are listed in section 318(1)(d) to (k). Included in this list are public officers, as well as taxidrivars, ambulance officers, firefighters and hospital employees. Such an offence is termed a "serious offence". The base maximum term of imprisonment under section 318 is seven years. However, if the offence is committed while the offender is armed or in company—the aggravating circumstances for section 318's purposes—the maximum penalty is imprisonment for 10 years. If the offender is convicted in the Magistrates Court, the maximum penalty is imprisonment for three years and a fine of \$36 000. Importantly, neither section 297 nor 318 stipulates a minimum penalty.

I have already mentioned the recent nature and prevalence of assaults on our police officers. They have been violently assaulted by offenders, and those assaults have had very detrimental effects on the officers, their families and the police service as a whole. When this physical and emotional damage is endured by officers, on top of the already demanding and difficult nature of their role, it is incumbent upon parliamentarians, as the people's elected representatives, to take strong and decisive action to ensure that offenders are severely punished. This will also clearly indicate to others who may contemplate such crimes that the law's response will be firm and swift. Deterrence must be recognised as a prominent feature of our criminal system. Far too frequently offenders charged under the existing terms of section 318 have received minimal sentences for assaulting the officers I have listed and have avoided imprisonment when general community sentiment would require that this occur. This bill will impose mandatory minimum sentences of imprisonment when offenders assault and injure the officers I have listed.

Section 297 will be amended to provide that when grievous bodily harm is caused by an adult offender to a police officer performing his or her duties, the offender must be sentenced by the court to imprisonment for a minimum of 12 months. Similarly, the bill amends section 318 of the Criminal Code to impose a mandatory sentence of imprisonment. An offender will be sentenced to imprisonment for a minimum of six months for an assault occasioning bodily harm to a police officer performing his or her duties. The term "bodily harm" is defined in section 1 of the code to mean any bodily injury that interferes with health or comfort. If there are aggravating circumstances involved in the assault, such as the offender being armed or in company, the offender must be sentenced to imprisonment for a minimum of nine months. If the offender is a juvenile, he or she must be sentenced to detention for a minimum of three months in any case in which the charge is pursuant to either section 297 or section 318 and involves a police officer. The bill also ensures that when a sentence of

imprisonment is imposed under these new provisions, a conviction must be recorded; that is, these convictions cannot immediately be spent under the Sentencing Act 1995 and cannot be suspended. The conviction may be spent only after a period of 10 years has elapsed under the terms of the Spent Convictions Act 1988.

Police officers and the other front-line officers I have listed serve and protect our community. Consequently, the state government is committed to protecting those who protect us. This bill sends a clear message to the community of Western Australia, to the police who protect them, to the courts and to offenders: the state now has a government that treats the safety of its police officers as a matter of the utmost importance and seriousness. Simply put, if one of these officers is assaulted and sustains bodily harm, the perpetrator of that offence will go to prison.

I commend the bill to the house.

Debate adjourned, pursuant to standing orders.