

**SENTENCE ADMINISTRATION (INTERSTATE TRANSFER OF
COMMUNITY BASED SENTENCES) BILL 2007**

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Jon Ford (Minister for Employment Protection)**, read a first time.

Second Reading

HON JON FORD (Mining and Pastoral — Minister for Employment Protection) [12.18 pm]: I move —

That the bill be now read a second time.

This bill provides for Western Australia's participation in the formal transfer and enforcement of community-based sentences between Australian jurisdictions. Community-based sentences, imposed as an alternative to imprisonment, are sentences that are served within the community and can be supervised and administered in the local jurisdiction. Community-based sentences in Western Australia are defined as community-based orders, intensive supervision orders, conditional release orders and conditional suspended imprisonment orders. Currently, if an offender breaches a community-based sentence while in a new jurisdiction, he or she remains accountable to the original sentencing jurisdiction. This situation is less than ideal because it limits the opportunities for enforcement action in the case of offenders who do not comply with their sentence, and extradition procedures are required to return offenders to their original jurisdictions if they do not return of their own volition, which can involve the expenditure of significant time, money and effort.

In 2000 the Australian Capital Territory Corrective Services was given the task of drafting model legislation for this purpose and the Community Based Sentences (Transfer) Act 2003 was passed by the Australian Capital Territory Legislative Assembly on 20 February 2003. This act provides model legislation for implementation in all Australian states and territories. It was trialled between New South Wales and the Australian Capital Territory to establish suitable administrative processes for the efficient running of the formal arrangements. Following an evaluation of the new arrangements and subsequent discussion and agreement by the jurisdictions, similar legislation is now being enacted in each Australian state and territory.

I move now to the detail of the bill. The provisions in the bill will apply to sentences imposed on adults. This is because many jurisdictions, including Western Australia, have separate legislative, administrative and judicial regimes for adults and juveniles. To provide for a single piece of legislation covering both distinct regimes would be administratively inefficient. Under the formal arrangements created by the bill, an offender with a community-based sentence in Western Australia will be able to transfer the supervision and administration of the sentence to a new jurisdiction on a voluntary basis, provided certain requirements are satisfied. The offender will then be managed in the new jurisdiction as though a court of the new jurisdiction had imposed the sentence, except for the purposes of appeal or review, which will remain the responsibility of the originating jurisdiction.

The formal arrangements will operate in much the same way as those established by the Prisoners (Interstate Transfer) Act 1983 and related interstate legislation. The bill will not apply to certain types of sentences that may be served in the community—namely, parole orders; sentences to the extent that they impose fines or other financial penalties; and sentences to the extent that they require the making of reparations. The bill also does not apply to orders that have no requirement for supervision, such as good behaviour orders. Interstate authorities that will administer the legislation will have a designated local authority for that jurisdiction. Having one local authority for each jurisdiction will ensure that there is a single communication point between an offender and the supervising authority, establishing clear communication procedures and practices. The bill provides that the local authority is to be the Commissioner of Corrective Services, who will process requests for transfer of sentences into and out of Western Australia. Details of the transferred sentences will be recorded and maintained on a register.

The local authority will make decisions on the basis of information sent by the relevant interstate authority regarding the offender and sentence, provided specific criteria are satisfied. The criteria that the local authority will apply when deciding whether to accept a request for transfer are that the offender has consented to the order and has not withdrawn that consent; there is a sentence in Western Australia that corresponds to the sentence imposed in the interstate jurisdiction; the offender can comply with the sentence in Western Australia; and the sentence can be safely, efficiently, and effectively administered in Western Australia. The local authority will be able to refuse a request for transfer if the criteria are not met, or otherwise at the local authority's discretion. This will be particularly relevant in a case when the local authority becomes aware of concerns expressed by an individual for his or her safety if the offender were to reside in Western Australia. Discretion may also be exercised in a case when an offender poses an unacceptable administrative burden to Western Australia because the offender has a history of not complying with directions issued by a supervising officer.

If deciding to accept a request for transfer, the local authority may choose to register the sentence, decline to register the sentence or require the offender to meet certain preconditions before registering the sentence. Imposing preconditions provides a means for the local authority to confirm the offender's ability and willingness to comply with the sentence in Western Australia before registration and formal transfer occurs. A precondition may include the offender satisfying the local authority before a stated time that the offender is living in Western Australia, or that the offender is reporting to a stated person in Western Australia at a stated time and place. If the local authority decides to accept the request for transfer and registers the sentence, the offender will be supervised and administered by Community Justice Services, as though the sentence had been imposed in Western Australia.

The administration of a sentence includes administering a breach of the sentence. Therefore, if the offender does not comply with the conditions of a transfer order, he or she may be re-sentenced by a Western Australian court according to the laws of this state. The Western Australian court may, however, refer to the penalty range and type that would have been applicable in the original jurisdiction, so as to ensure that the transfer does not serve to avoid the sentencing intentions of the original jurisdiction.

Registration of the sentence does not affect an offender's right to seek an appeal or review of the conviction or finding of guilt, or the imposition of a sentence, in the original jurisdiction. As a matter of practicality, if the offender seeks an appeal or amendment of the conviction or sentence, or the sentence relating to the conviction, the appeal will be made in the original jurisdiction and not to a Western Australian court, even though Western Australia is the jurisdiction supervising and administering the transferred sentence. In the case that an appeal or request for amendment of sentence is successful, the amended sentence will be administered and supervised in Western Australia as though a Western Australian court had upheld the appeal or made the amendment. It would be contrary to natural justice to prevent an offender from seeking an appeal or review of their conviction or sentence by virtue of registration in a jurisdiction other than the original jurisdiction.

There are many reasons why offenders may wish to transfer to a new jurisdiction. Notable reasons may be proximity to improved family and community support, or the prospect of increased choice of employment or study opportunities. Allowing a transfer to a jurisdiction in which the offender has good support will increase the probability of the offender fulfilling the order, being positively re-integrated back into the community and being diverted from returning to the prison system.

The government encourages the early passage of the bill to ensure the prompt and efficient implementation of the formal arrangements in Western Australia. I commend the bill to the house.

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.