

CRIMINAL INVESTIGATION AMENDMENT BILL 2014

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Attorney General)**, read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [12.42 pm]: I move —

That the bill be now read a second time.

The Criminal Investigation Amendment Bill 2014 amends the Criminal Investigation Act 2006 to address unintended consequences caused by section 139(3) that were not contemplated at the time the Criminal Investigation Act 2006 was introduced.

Currently, section 139(3) of the Criminal Investigation Act requires that a person arrested on suspicion of committing an offence and held pending a charge being laid must be held in the close company of a police officer, unless it is impracticable to do so. Close company does not extend to an arrested suspect being held in a lockup or other place of confinement in close proximity to a police officer. The definition of “unless impracticable to do so” is somewhat ambiguous and not defined in legislation. As a result, whenever a police officer decides to hold an arrested suspect in a lockup or other place of confinement, the officer risks having a court decide that they have breached the legislation and ruling that any evidence obtained from the suspect is inadmissible. It is estimated that because of the requirements of section 139(3), up to 46 000 front-line police hours are being spent each year guarding arrested suspects. This is equivalent to approximately 24 police officers who are not available to perform front-line police tasking duties because they are required to personally guard arrested suspects for what can be protracted periods of time. This is especially problematic in regional areas of Western Australia where police stations operate with a limited number of officers on duty, sometimes as few as two. If one of the available officers is required to guard an arrested suspect, that officer is therefore generally unavailable to assist in the investigation of the offence or attend to other front-line policing duties that may require immediate attention.

The requirement to guard arrested suspects also poses security risks. Arrested suspects often have to be detained in inappropriate or unsuitable areas of a police station, such as detectives’ offices, the general work areas of the station and video interview rooms. Having unrestrained arrested suspects in general areas of a police station creates a risk that the arrested suspect may cause injury to officers or themselves if attempting to escape custody. There is also a risk that the arrested suspect may hear or read confidential policing information while they are being held in operational areas of a police station.

A further problem is that arrested suspects do not have exclusive access to appropriate facilities such as toilets and bedding. The lack of access to bedding is especially difficult in situations in which a person has been arrested and is being held through the night. Investigations into the alleged offence may be continuing and the arrested suspect has to be held in a police officer’s company, often in a place not conducive to rest or sleep such as an office or interview room. Anecdotally, there have been instances in which available bedding is removed from a police station lockup, at the arrested suspect’s request for somewhere to sleep, and placed in the office or room where the arrested suspect is being held. This allows the arrested suspect to rest while ensuring compliance with section 139(3) of the Criminal Investigation Act, but this is not an ideal or practical way of operating.

It should be noted that the amendments do not mean that police will be placing arrested suspects in lockups on all occasions. The use of the more general term “custody” will allow a determination to be made as to where an arrested suspect is held, dependent on the risk they pose. Other options such as holding pods or rooms where the door can be shut or locked can also be utilised, particularly when the arrested suspect may be in police custody for only a short period.

Further, it should be noted that this issue has recently been considered as part of the Community Development and Justice Standing Committee’s report entitled “In Safe Custody: Inquiry into Custodial Arrangements in Police Lock-ups”. Recommendation 11 of the committee’s report states —

That the Minister for Police reviews section 139(3) of the *Criminal Investigation Act 2006* and considers how it might be amended to better reflect current police facilities and police preferences for holding arrested suspects.

The amendments proposed in this bill meet this recommendation.

Section 139(3) is clearly hindering the work of Western Australia Police and is a substantial impost on front-line police availability. Accordingly, to resolve these problems by allowing arrested suspects to be detained by police

in lockups or other places of confinement, such as custody suites if implemented in the future, this bill will repeal section 139(3) of the Criminal Investigation Act in its entirety; amend section 139(2) to make it clear that a police officer may hold an arrested suspect in custody; amend section 142(7) to remove a superseded reference to “in a lockup or other place of confinement”; and make consequential amendments to section 142(4), (5) and (6).

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 1848.]

Debate adjourned, pursuant to standing orders.