SENTENCING AMENDMENT BILL 2014

Second Reading

Resumed from 14 May.

DR A.D. BUTI (Armadale) [9.35 pm]: I rise to make some brief comments in regards to the Sentencing Amendment Bill 2014, which is quite an interesting bill that has had to be brought to this house to rectify a problem with the legislation and the assumption that authorities have been working under for a period of time. Basically, the situation this bill seeks to correct is that of prisoners who have been transferred to WA out of welfare concerns, often because their families live in Western Australia. It was always the practice under the Prisoners (Interstate Transfer) Act that when they came to Western Australia, they would serve the time as they would have served had they been in the original jurisdiction of the offence and sentencing. However, the Diano case went to the Supreme Court of Western Australia. Mr Diano had been sentenced in Queensland to seven years' imprisonment and was to be made eligible for parole on 12 May 2013. In early 2013 he was transferred to WA under the Prisoners (Interstate Transfer) Act and he was released on 15 May 2013, as the minister mentions in his second reading speech. The problem was that under the Sentencing Act a prisoner could not be released if they had more than two years' parole, so the two-year parole period was a maximum period. The interesting thing is that until this case came to the Supreme Court in March 2014, Western Australian authorities had been working under the assumption that people would be eligible for parole as if they were in their original jurisdictions, but as a result of this decision that was not the case. I must say I have to particularly commend the Minister for Corrective Services, and also the Attorney General and the Minister for Police.

I want to relay the chronology. A constituent of mine came to see me whose son was in prison in Western Australia, having been transferred from another jurisdiction. Her son received a letter from James McMahon, the Commissioner of Corrective Services. The letter states —

> I am writing to advise you about a Supreme Court decision (*Diano V Cock* … which has impacted the date of your eligibility for release.
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> The decision by Hon. Justice Beech clarified that when prisoners are received in Western Australia … they are subject to the maximum parole term of two years as provided in the *Sentencing Act 1995 (WA)* and the *Sentence Administration Act 2003 (WA)*, This means that prisoners sentenced in other States cannot be considered eligible for parole in WA until two years prior to their maximum date.
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> In the case of your sentence, this means that you will be eligible for parole consideration in WA on 25 March 2018.

The problem with that is if he had been working under the custom we believed was the law, he would be eligible for parole now; he would be out. It is also very harsh because he has a job to go to et cetera. I wrote to the Minister for Corrective Services on 26 August about this person and the minister responded in a prompt fashion to inform me that he had written to Hon Michael Mischin in regards to this matter and that legislation was to be drafted and introduced into the other place, and now it is here before us. As I said, I commend the Minister for Corrective Services for the speedy introduction of this bill and hopefully it will be passed sooner rather than later so people such as my constituent's son can be released from prison just as they would have been had they served their sentence in the original jurisdiction.

The Leeth case that came before the High Court in the early 1990s is interesting. In that case, the appellant had been sentenced to a term of imprisonment due to a drug conviction. Leeth had been charged under commonwealth legislation and that legislation imported what the state sentence was. He was in Queensland but the sentence in Queensland was of a greater length than in New South Wales. Although he was convicted under commonwealth legislation, the commonwealth legislation stated he was to serve the term as he would have if it was a state conviction. The appellant's argument was that he was not being treated equally in another jurisdiction and that there was an implied right to equality in the Constitution. The High Court held 4–3 that the legislation was not invalid because the implied right to equality before the law was a procedural right rather than substantive. It raised some important issues.

The Sentencing Amendment Bill 2014 is a rather simple bill. It seeks to correct a discrepancy in the legislation that successive governments did not think was there but the Diano case surely brought that to the fore. Prisoners who have been transferred for welfare consideration under the Prisoners (Interstate Transfer) Act 1983 will not be penalised in Western Australia, so I commend the bill to the house.

MR J.M. FRANCIS (Jandakot — Minister for Corrective Services) [9.41 pm] — in reply: I will not take too long; it is a simple amendment bill. I appreciate the support of the member for Armadale and the opposition on the Sentencing Amendment Bill 2014. At the end of the day, this is not about anyone being soft on prisoners, but it is certainly not about being unfairly harsh either. We have a very simple understanding that just as it would be

wrong for a prisoner who was transferred to another jurisdiction to be given a benefit of some type outside the original intentions of the sentencing judge, it is also wrong to punish a prisoner unfairly or unjustly by incarcerating them longer than they would have had they stayed in the original jurisdiction.

The Prisoners (Interstate Transfer) Act 1983 enables prisoners to be transferred to and from Western Australia and other jurisdictions. That is done from time to time. I could not tell members the numbers, but maybe around one a month. A number of different factors are taken into consideration when determining whether I grant a request to transfer out of Western Australia to another state, and certainly I get requests from other ministers in other jurisdictions on a regular basis requesting transfers of prisoners into Western Australia. That is predominantly for one of two reasons—firstly, the rehabilitation of the prisoner. If the prisoner has completed most of their rehabilitation course and all their family, friends or support network are in another jurisdiction, it makes sense to try to set them up for success when they are released by putting them back into the jurisdiction where their family and friends come from. Secondly, sometimes for the welfare of family members, such as a prisoner's mother, father or someone very close to them, say a sole relative who is gravely ill, it is only fair that we have a system that makes available a prisoner's family for whatever welfare reasons so it is therefore easy to see that prisoner.

Under section 93 of the Sentencing Act, a prisoner released on parole in Western Australia can serve only a maximum of two years on parole unless they are serving a life or indefinite term. If a prisoner has a four-year sentence, their non-parole period would be two years at the most. If a sentence was imposed in Western Australia of longer than four years, say seven years, the prisoner would have to serve five years with two years non-parole. Two years is the key thing. Effectively, we have an unfair system affecting only a handful of prisoners—I will go through them briefly—who have transferred to Western Australia, and unfortunately Western Australia cannot honour the intention of the original sentencing judge or magistrate because Western Australian parole laws apply. No doubt this amending bill will correct that oversight. It will not give a prisoner any unfair benefit and it certainly will not punish them. There are three prisoners in custody today, that we are aware of, who are affected by this issue. I will name them intentionally. Mr Peter Castle would have been eligible to be considered for a parole period of 1 096 days, or three years, had he remained in New South Wales. Mr Peter John Taber would have been eligible to be considered for a parole period of 1 644 days, or four and a half years, if he had remained in New South Wales. Mr Dennis Ashweirth would have been eligible to be considered for a parole period of 2 192 days, or six and a half years, if he had remained in Victoria. Another prisoner, who is currently in Victoria, has applied for transfer to Western Australia but would be caught out by this because he was given a parole period of three years in Victoria. As the member for Armadale pointed out, this stemmed from the Diano case in 2013. Mr Diano had previously been sentenced in Queensland to seven years' imprisonment, which comprised the minimum term of three years' imprisonment and a parole period of four years—that is three years non-parole and four years parole. Because Mr Diano was released and then had to be re-incarcerated following that particular court case, he can be given a non-parole period of only two years. I understand that Mr Diano was released from custody in Western Australia in May, so only about five months ago.

I thank the opposition for its cooperation with this bill. It is not about being soft on prisoners and it is not about being harsh; it is just about being fair. At the end of the day it is not fair to expect the Prisoners Review Board of Western Australia to take into consideration things that it does not know about, such as the intentions behind the original sentencing by a judge or a magistrate in a different jurisdiction. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Mr J.M. Francis (Minister for Corrective Services)**, and passed.