

STATUTES AMENDMENT (MINIMUM SENTENCES) BILL

18 June 2008

The Hon. D.G.E. HOOD: Obtained leave and introduced a bill for an act to amend the Criminal Law Consolidation Act 1935 and the Controlled Substances Act 1984. Read a first time.

The Hon. D.G.E. HOOD: I move:

That this bill be now read a second time.

I will explain why this bill has been on the *Notice Paper* for some time. This bill and the other one I introduced earlier today were both to be introduced some weeks ago but, unfortunately, there were drafting delays and some amendments had to be made before they were filed, so my apologies for the slight delay.

The bill provides for mandatory minimum sentencing to be rolled out in South Australia. Family First believes that victims of injustice need justice from our courts, and we insist that the government ensures families and children feel safe in their homes. I strongly believe that our system of justice is, in some instances, failing the people of this state. As this parliament continually increases the maximum penalties for a wide range of offences, the judiciary has failed to put that will for tougher penalties into practice.

Sentences imposed in a number of recent cases are wildly out of step with community expectations and, indeed, with the will of this parliament. Instead of continually setting a maximum penalty bar higher and higher, this bill proposes a new minimum sentencing bar for a range of serious drug and driving offences. Minimum sentences will ensure that offenders are adequately punished by the judiciary, ensuring that imprisonment will follow a conviction for certain serious offending.

The Family First bill will impose mandatory minimum periods of imprisonment for the major indictable manufacture and cultivation, sale, supply and

possession for sale of illicit drugs. Given the appalling initial decision in the Dundovic case, this bill also proposes mandatory minimum periods of imprisonment for the offence of aggravated dangerous driving causing death and serious injury.

Minimum sentencing is nothing new for South Australia. The offence of driving with a prescribed concentration of alcohol (that is, drink-driving) already has a minimum period of disqualification no matter what the offender's reasons for offending or their personal circumstances. Illegal use of a motor vehicle on a second offence (section 86A of the Motor Vehicles Act) carries a minimum term of imprisonment of three months and a maximum of four years. Mandatory minimum sentences are nothing new in South Australia and this measure is not revolutionary.

Courts in this state are already constrained to impose minimum sentences for some offences, as I have stated. If someone is caught driving dangerously on two occasions they face a minimum of three years licence disqualification. If they are driving a stolen car on both occasions they already face a minimum of three months' imprisonment. This is already the law in South Australia.

This bill proposes that, if the same driver also kills a member of the public while driving dangerously in circumstances that amount to aggravated dangerous driving causing death or serious harm, they should face a minimum of 10 years' imprisonment. It will be up to the judicial officer whether that sentence is suspended or a nonparole period is set below that. However, it will constrain the judiciary to impose a sentence of a length demanded by the public.

Earlier this year the horrific case involving the defendant Denis Dundovic came before the District Court. The defendant was a drug addict high on meth who slammed into and tragically killed the newly-wed Peter Godfrey during a police chase. He was already on parole for two previous and very serious police chases. It was an horrific and unjustifiable crime. Despite all that, he was initially sentenced to just five years and two months' imprisonment with a

nonparole period of only four years and two months. He will be out of prison in just over four years. Thankfully, an appeal later increased the sentence.

Of course, I criticised the initial decision—and it is my democratic right to do so—and so did Mavis Godfrey, the victim's mother, who called the decision 'terribly sad'. She also added a question asking, 'This is to Mr Rann and Mr Atkinson: what is it going to take—a politician's child or a judge's child to die in an accident like this before a judge has the guts to give a longer sentence?'

Peter Godfrey's wife, Michelle, quite rightly said the sentence was not enough and said in the media:

'I think that for killing someone you should get more than five years, especially with these new laws...There's got to be something done because otherwise some other family is going to have to go through the same thing we have to go through and it's not right, it's not fair.'

Quite right. I have a personal view that when we see victims or their families leaving the courtroom in tears then clearly the courts have not done their job.

The above quote from Mr Godfrey's wife Michelle outlines her absolute disappointment with the outcome, and she has spoken publicly in support of both my and the Hon. Mr Xenophon's calls for minimum mandatory sentences for the worst examples of killer drivers. I am grateful for her support, and I introduce this bill with the memory of her horrific tragedy in mind.

Mandatory minimum sentencing is a very old principle of our criminal law. During the 18th and 19th centuries mandatory sentencing was used for a wide variety of offending. It was introduced again in the Northern Territory in 1997 and I must say, and I want to make this absolutely clear, that I believe the method of mandatory minimum sentencing there was quite inappropriate. I say this because I believe that the Northern Territory mandatory minimum sentencing imposed imprisonment for even relatively minor first-time property offences, which is quite inappropriate. There was a quite ridiculous case there

where an Aboriginal man was imprisoned for a year for stealing a towel. I certainly do not support anything like that.

Indeed, that is similar to a case in California where, under its draconian sentencing scheme, a man was imprisoned for 25 years for stealing a slice of pepperoni pizza. I am not making this up. That actually happened, and I want to make it clear that that is not what I am talking about. I am talking about very, very serious crimes where people have an absolute disregard for public safety. I am not proposing anything like that.

The implementation of the idea was poorly done in the Northern Territory. I prefer the Western Australian implementation of 1996, that saw people convicted for home burglary on a third occasion facing a minimum 12-month imprisonment. Like Western Australia, my proposal targets only very serious criminal activity—serious drug dealing and aggravated dangerous driving causing death and serious injury, to be specific.

In this regard I have been led by the research contained in the Australian Institute of Criminology report into mandatory sentencing, report No. 138. I do not pretend that the report recommends a roll-out of mandatory sentencing, but it does put forward arguments for both sides of the debate. Nevertheless, the report concludes that mandatory minimum sentencing should not target minor offending, and I totally agree with that. The report recommends that mandatory minimum sentencing should be 'targeting serious offences, which should attract mandatory sentencing with more specificity so that only dangerous offenders are incapacitated.' I believe that by focusing on a range of serious, specific offences I have complied with that recommendation.

I am presently in the middle of a debate in *The Advertiser* with Mr Grant Feary, president of the Law Society, over suspended sentences and mandatory minimum sentencing. The point he made most recently, in his opinion piece published on Monday, was that my proposals reduced the discretion of the judiciary. In his words, each case should be decided on its merits and therefore judges must have absolute discretion. Judges should not make decisions without carefully considering all the implications, and I am

sure they do not. Discretion is often vital in weighing the human factors in each case; however, human judgment should also be tempered with some boundaries to ensure parity in sentencing and ensure that the will of this parliament—which, in effect, is the will of the people—is enforced. Sentences should also match community expectations.

There is a fiction that judges are basically comparable when it comes to sentencing; that is, the sentences they hand out are basically comparable. Indeed, the reason for the wig and gown the judges wear is to present an impersonal image, that is, an image of impartiality in terms of being a cog, if you like, in the machine of justice, and choosing an individual court to hear a case (a practice known as forum shopping) is prohibited—and rightly so. However, the facts speak of judges somewhat in need of sentencing guidelines and boundaries in many cases offering substantially different outcomes for similar charges put before them.

One case in point is the frequency of imprisonment for the fairly usual offence of theft. Last year, research conducted by Family First found that one magistrate, who had presided over 174 theft cases in 2006, sent just one thief to prison, while another imposed prison sentences in 90 of the 282 theft cases he dealt with. Another judge sent nine to prison from 190 theft cases while another sent 34 to prison from 157 cases. Weighing all that up means that, for the same offence with the same legislative penalties, there is a less than 1 per cent chance of imprisonment before one magistrate and a 31 per cent chance of imprisonment before another. Clearly, inconsistency is the rule.

While each case may have different facts and circumstances, the aggregate numbers do not lie. There is a clear need for parity in sentencing within our judicial system. It would be one thing if all our judges were hard on criminals or they were all soft, but an immense unfairness is done when you are up to 55 times more likely to go to prison if you appear before one court than if you appear before another for exactly the same offence with the same legislation requiring the same penalty. Clearly, inconsistency rules.

For this reason, New South Wales recently implemented what are termed 'standard non-parole periods' for a series of offences. That is, judges can deviate from these periods only in rare circumstances, and I will run through the list. In New South Wales the Crime (Sentencing Procedure) Amendment Bill is similar in some respects to the bill I propose today. However, and specifically, if you commit murder, for example, in New South Wales you will automatically receive a 20 year standard non-parole period; if you are convicted of assaulting a police officer you will receive a standard three year non-parole period; sexual assault has a seven year standard non-parole period; and serious criminal trespass has a five year standard non-parole period. This is regardless of the judge before whom one appears. In New South Wales if one produces a large commercial quantity of cannabis one immediately faces a standard 10 year non-parole period. These sentencing guidelines do more than ensure that the will of the parliament for a tough stance on law and order is enforced; they also ensure that each defendant is provided with parity in sentencing, so it is also fair to the defendant.

Drug penalties need to be reviewed. Sentencing for drug dealers is generally light, because there is no apparent victim jumping up and down for justice; however, the fact is that drugs fuel other crime and have a detrimental effect on communities as a whole.

A recent check my office did of the Courts Administration Authority website found that only one of the 11 drug judgments published by the Courts Administration Authority involved a period of actual imprisonment. In every other reported case, the defendant escaped without an actual term of imprisonment. I believe that this is substantially out of step with community expectations and, frankly, I do believe the Premier when he says he wants to be tough on crime. We have seen in this place time and again a series of tough law and order measures introduced by this government. However, continually raising the maximum penalty is of no value when the maximum is never given.

The facts are that mandatory sentencing works. Despite the commonly argued position that it does not work, studies routinely show its effectiveness.

Following on from Western Australia's laws, we saw downward trends in car theft and youth convictions. Studies were done on this. The Loftin, McDowall and Wiersema study of 1992 also demonstrated a clear link between mandatory sentencing for firearms offences and a reduction in gun-related homicides in the US.

The previously mentioned study by the Australian Institute of Criminology quoted one criminologist as saying:

As long as offenders are incarcerated they clearly cannot commit crimes outside of prison.

The report concluded:

'There is some evidence incapacitation works...[and] a recent authoritative report on crime prevention concluded that 'incapacitating offenders who continue to commit crimes...is effective in reducing crime.'

That report, referred to by the Institute of Criminology, entitled 'Preventing Crime: What Works, what doesn't, what's promising: A Report to the United States Congress' was dated 1998, if members wish to access it.

I submit that this bill is a proportional response to the issues I have listed. It is not heavy handed, it does not call for imprisonment for minor offending—in fact I would oppose that—but it is focused on very serious crime and appropriate responses to it. The judiciary, under this bill, will retain significant discretion, except on the imposition of a minimum penalty. They will retain discretion as to whether that sentence is suspended, or whether a nonparole period is set and at what level. However, it will constrain the judiciary to impose a sentence of a length demanded by the public. I commend the bill to members.