

CRIMINAL LAW (SENTENCING) (MANDATORY IMPRISONMENT OF CHILD SEX OFFENDERS) AMENDMENT BILL

The Hon. A. BRESSINGTON (16:02): Earlier this year, I spoke on FIVEaa about the mandatory imprisonment of child sex offenders. The then attorney-general was not supportive of the move and he actually stated, 'Imagine how many people we would have in prison if we were to do this.' The calls came in thick and fast, stating that we need to get these perverts out of circulation for as long as possible and that, if there are that many, we need more prisons.

The public are sick and tired of having the safety and security of their children threatened. While it is the common view that parents are overreacting to the threat, as a parent, I can tell you that the one thought that stays with a parent who may well be considered to be overprotective is, 'What if this should happen to my child?'

I am often amused with the opinions of various psychologists whose children have grown up and who advise parents to loosen up with younger children. I have a grown family and I also have an eight year old, and I do parent my youngest child differently to the older ones who have left home and are making their own lives. We are not the only parents who have become more protective over time.

I talk with other parents at school and their anxiety levels are just as high as ours. The feedback is that their anxiety is justified because it seems that those who do harm to our children rarely get what they deserve, and a suspended sentence or home detention for such crimes is unacceptable to all those in our community who want to see justice done.

Another aspect of dissatisfaction is the plea down to less serious offences. These deals should not be done when a child has been sexually assaulted—a crime which will change a child's life forever and which ensures a loss of innocence and the loss of their childhood. When we are talking about serious sexual crimes against children, I am all for an 'eye for an eye' approach.

Child protection and every aspect of it, from Families SA to drug cultivation, manufacture and distribution, are a high priority for me. Changing a dysfunctional culture requires a strong and unwavering approach in order to deal with those who see our children as nothing more than objects to gratify their sick and perverted appetites. These people do not deserve to walk in our community; they are beings of a subhuman category, in my view. In fact, they would not even hold a place in the animal kingdom, because animals protect their young at any cost.

Let me be very clear that I am always supportive of people being able to access rehabilitation programs rather than being criminalised for conduct that may be the result of life experiences or trauma that has happened in their life. However, we know that child sex offenders are the least rehabilitatable people, and Professor Freda Briggs has stated openly and publicly that a child sex offender has probably committed 300 to 400 crimes against children before being caught. So, it is with that information and research in mind that I approach this particular topic.

The Rann Labor government boasts a tough on crime approach and, as I recall, it makes no apologies for this stance. So, I am asking the government to support a bill that will put true criminals, who are known to have a small chance of rehabilitation, behind bars with no

chance of parole and with no chance of the judiciary misunderstanding or misinterpreting the intent of this bill for these offences.

As the short title states, this bill seeks to introduce mandatory minimum sentencing for those who commit the most heinous of crimes—sexual offences against children. It does so by requiring that a minimum of one-third of the maximum penalty for prescribed offences be served as a nonparole period, except where the maximum penalty is life, for which the minimum of 10 years must be served.

The offences prescribed include all those that one would expect, including rape, unlawful sexual intercourse, incest, procuring a child to commit an indecent act, use of a child in commercial sexual services, and the production and dissemination of child pornography, amongst others. So that members can gain a clear understanding of the ambit of this bill, I seek leave to insert a statistical table in *Hansard* that lists the prescribed offences and mandatory minimum sentences for each.

Leave granted.

Section of the Criminal Law Consolidation Act 1953	Offence	Minimum Penalty
48	Rape	10 years
48A	Compelled sexual manipulation	5 years
49	Unlawful sexual intercourse	3 years and 4 months
50	Persistent sexual exploitation of a child	10 years
56	Indecent assault	10 years
58	Acts of gross indecency	1 year for first offence and 1 year and 8 months for a subsequent offence
59	Abduction of a male or female person	6 years
60	Procuring sexual intercourse	3 years and 4 months
63	Production or dissemination of child pornography	4 years
63B	Procuring a child to commit an indecent act	4 years
66(1)	Compelling a child to provide commercial sexual services	10 years
66(2)	Unduly influencing a child to provide commercial sexual services	10 years
67	Deceptive recruiting for commercial sexual services	4 years
68(1)	Use of a child in commercial sexual services	10 years
68(2)	Asking a child to commit commercial sexual services	3 years
68(3)	Profiting from a child's commercial sexual services	1 year and 8 months
72	Incest	3 years and 4 months

In addition to these offences, the bill prescribes corresponding offences that were previously in force, meaning that where a defendant faces charges for a crime committed prior to the enactment of the tabled offence they, too, will be subject to a minimum. This is of particular importance given the relatively recent deletion of the limitation of action provisions on such offences by a former member of this place, the Hon. Andrew Evans. Additionally, as is consistent with section 267 of the Criminal Law Consolidation Act 1953, a person who aids, abets, counsels or procures the commission of a prescribed offence will be subject to a minimum mandatory sentence.

I seek to make it clear at the outset that I appreciate that mandatory sentences make many in the judiciary, the legal profession, and perhaps even politics, a little uneasy. This is evident from the legal profession's criticisms of attempts at mandatory sentencing in other states for property offences, drink driving and assaults on police. However, the bill I introduce today is restricted to only one category of offender: those who prey on children. While minimum sentencing in relation to other types of offending may well produce unintended consequences, and many of the criticisms may be well founded, few are relevant to child sex offenders and, where they are, I have included several safeguards in the bill to ensure that it only applies to those intended.

Firstly, and most importantly, the bill will only apply to offenders who committed the offence when over the age of 18 and offended against a child who was, at the time of the offence, aged 13 years or younger. This is intended to prevent the bill capturing cases, known colloquially as 'young love', between, say, a 14 year old and a 15 year old.

The latter requirement is consistent with the Criminal Law Consolidation Act 1953, which already treats sexual offences against a victim under the age of 14 as an aggravating circumstance. The law rightly recognises that children aged 13 years and younger are at their most vulnerable and that to offend against a child so young is repulsive and deserving of a lengthier sentence.

My bill expands upon this by ensuring that such offenders serve, as a minimum, a term of imprisonment that reflects the severity of the crime. As an additional safeguard, the bill also provides that, where the Director of Public Prosecutions agrees that the imposition of such a sentence is inappropriate given the circumstances of the case, the court will not be bound by the requirement to impose a mandatory minimum sentence.

While the bill does not set out the process by which agreement may be sought, it is presumed that the prosecution, defendant or even the presiding judge or magistrate may request the Director of Public Prosecutions to review the case. Additionally, by establishing a mandatory minimum sentence, the bill simply shifts the sentencing scale so that it commences at one-third of the maximum, meaning that the usual sentencing considerations, such as the seriousness of the offending, an early guilty plea and the prospects of rehabilitation, will still apply in determining the actual sentence imposed.

I introduce this bill because it is my belief, and that of many of my constituents, that current sentencing practices simply do not reflect the severity and monstrous nature of sexual offences against our children. We have all read newspaper articles decrying lenient sentences in which they quote victims who, I would argue, rightly state that justice has not been done. While I do not propose to parade victims or name and shame all offenders whom I am aware have received lenient sentences, I will mention a few publicised cases as examples.

On 21 January 2007, Mr Simon Boxall, a former youth leader in a small Baptist church, was sentenced to a 12 month nonparole period after pleading guilty to two counts of inciting or procuring the commission of an indecent act, one count of indecent assault and one count of

gross indecency against a young girl aged only six years. Despite describing his offending as a gross breach of trust, the judge suspended Mr Boxall's sentence on the condition that he enter into a \$500 good behaviour bond, reportedly due to his rehabilitation prospects.

The mother of the victim was later quoted in *The Advertiser* as saying, 'It's too light. He has gotten away with it,' and adding, 'It's like my child's innocence was worth a \$500 bond but not payable unless he stuffs up again.' She was also quoted as saying that her daughter 'has panic attacks, she wets the bed, she picks at herself, but hopefully the counselling starts to help'. The mother of the victim, clearly exasperated and disempowered by the sentence, took to the streets and letterboxed her community with flyers warning of Mr Boxall's offending so that 'this does not happen to any other family and they don't have to go through what we've been through'.

Another example is that of David Mills (also known as Mr Bubbles after his character when performing his busking act) who was sentenced in 2001 to 10 months' imprisonment for the indecent assault of a nine year old girl. Again, the sentence was suspended on the condition that he be of good behaviour, do community service and participate in a rehabilitation program. However, Mr Mills absconded to the Northern Territory, where he again performed his busking act until he was extradited in 2005 to serve his sentence.

Between 2004 and 2005, Neil Thomas Spurr repeatedly abused two young boys after befriending their parents, resulting in his conviction for eight counts of indecent assault. Despite having prior convictions for similar offences in 1991 for which he received a suspended sentence on condition he enter into a bond, showing no contrition and Justice White stating that he could not extend him any leniency, Mr Spurr was sentenced to a head sentence of six years and a nonparole period of only three.

Mark Marshall, who is presently indefinitely incarcerated under section 23 of the Criminal Law Consolidation Act 1953, is another. In 1996 he received a three month suspended sentence for 13 counts of indecent assault. This was the start of over a decade of offending by Mr Marshall which he promptly resumed after his sentence.

With examples such as these, is it any wonder that the community holds the perception that paedophiles too often receive nothing more than a slap on the wrist? While these are admittedly extreme examples, and sentences have to my understanding increased slightly in recent years, child sex offenders are still receiving sentences well out of proportion to the gravity of their offences; by this, I mean three year nonparole periods for offences for which this parliament has imposed a maximum sentence of life imprisonment.

As stated, my primary motivation in moving this bill is to ensure that child sexual predators, when convicted, firstly serve a time of imprisonment and, secondly, serve a duration that fits with community expectations. However, in taking paedophiles out of circulation, this bill may also serve to prevent reoffending. It would seem that there is a consensus among some treating professionals, lawyers, and most certainly more broadly in the community, that child sex offenders are a category of offender for whom recidivism is common, if not expected. While there is some evidence to suggest that this fear is overinflated, reading through the court histories of numerous offenders, it is clear to me that many were afforded too great an opportunity to reoffend and unfortunately did so.

One such example is Mark Trevor Marshall who has a long history of child sex offending as detailed in the 2009 judgment of the Hon. Justice Nyland in *R v Marshall*. On 15 June 1987 Mr Marshall was sentenced for 13 counts of indecent assault, all of which involved children, to a three-month suspended sentence. In just over two years, Mr Marshall was back before the courts for seven counts of indecent assault against girls between the ages of five and seven for which he received a 16 month nonparole period on 4 April 1990. He was again

convicted of three counts of indecent assault against a girl aged 11 and a boy aged six in 1992 and again in 1996 to one count of indecent assault and one charge of procuring a child to expose her body for which he received nonparole periods of four years.

If this bill were to pass, Mr Marshall would have been convicted for a minimum of 10 years in 1987, preventing the subsequent offences mentioned and more. While this will understandably come at a great cost, if it saves just one child from being molested or raped, then it is money well spent. I have no compassion for child sex offenders and, while I have no desire for them to be harmed, neither do I wish to see them set free to reoffend, and I believe the community supports that view.

It is also interesting that, when I did a slot with Leon Byner on FIVEaa on mandatory minimum sentencing for child sex offenders, a person who had just been released from prison actually rang in. He stated in that interview that we are kidding ourselves if we think that, while these people are in prison, they are not every day thinking and planning for the day that they get released to reoffend. He said that people would be shocked to know exactly what their thought processes were and the lengths that they would go to plot and plan this for their day of release and that it does not matter how long they have been incarcerated, this is the one thing that is on their mind while they are in there.

He spoke from firsthand knowledge and firsthand contact with child sex offenders, and he believed that mandatory minimum sentencing should not just be one-third of the sentence: it should be the whole sentence. That has come from somebody who has spent time in prison with people who have offended against children, and he said it was quite sickening to hear them talking among themselves when they were outside doing whatever they do outside in prison but it was quite sickening to people who were not involved in those sorts of crimes to hear how they would still be fascinated about their offences against some of these children.

With that, I commend the bill to the council and ask all members to consider all of those children who have seen the absolute worst of human nature firsthand and who then saw their offenders receive what many agree is the minimum punishment. What message does this send to those children and the value of their life and, more importantly, what message does it send to child sex offenders?

Debate adjourned on motion of Hon. J.M. Gazzola.