

JUSTICE REINVESTMENT STRATEGY

Motion

MR P. PAPALIA (Warnbro) [4.00 pm]: I move —

That this house calls on the Barnett government to implement a “justice reinvestment” strategy to lower the rate of reoffending and to make our communities safer.

For generations, politicians in Western Australia from both ends of the political spectrum have engaged in a juvenile debate about who is toughest. Invariably it involves paunchy greying late-middle-aged men jumping in front of the media, beating their chests and telling us all how tough they are. The Labor Party today chooses to draw a line under this debate and calls on the government to do something positive; to engage in a mature debate and to elevate the level of debate about law and order generally, but specifically about corrective services and how we deal with that in this state. By doing this, we extend an opportunity that I must say was not offered to us by the now government when it was in opposition.

Mr C.C. Porter: Is that why you do it?

Mr P. PAPALIA: That is a fair question. The very next line I had intended to state was, “I am sure that the members for Hillarys and Bateman are asking: why are we doing this?” Why on earth? Because they would assume that the goal to pursue the tough-on-crime debate was to get endless boundless amounts of free positive feedback from the media and positive support for their populist line from the vast majority of Western Australians. I understand that. Therefore, I am obviously not doing this to somehow garner populist support. I am not doing it to somehow improve my standing politically. What I and what we as an opposition are doing is trying to engage in an elevation of this debate for the betterment of Western Australia. We are trying to do the right thing. The reason we are giving the government this opportunity is that we believe it is the right thing to do. What has been done to Western Australia has been wrong; Western Australians deserve better. We are offering the government of the day the opportunity to do better. We are not doing it because in the first 18 months of this government the prison muster has increased by 27 per cent—900 additional people into the prisons. That is not why we are doing it. We are not motivated to do it because those 900 individuals in the prison system drove up the recurrent expenditure for our prison system—just the operating costs—by \$90 million. That is not why we are doing it. We are not doing it because the government happily announced yesterday that it spent \$56 million on cramming even more bunks into the current prison system. That is not why we are doing it. We are not doing it because of the \$655 million that the government has put in the budget for the next three years towards building new prisons. That is not why we are doing it. We are not even doing it because the Inspector of Custodial Services demonstrated in his report, which was tabled yesterday, just how chaotic and dangerous our prisons have become and just how desperate the situation has become at Hakea, as clearly demonstrated by the fact that new prisoners are forced to recycle former prisoners’ underwear and socks. That is how harsh conditions are in our prison system. That is how desperate and overcrowded the prisons are and how desperately under-resourced the prison system is. However, that is not the reason we are doing it. I am glad that the minister asked why because the best reason—it is not the only reason; all those other reasons would be good enough, but this is the best reason and the reason that the Labor Party and I have chosen—to do this is the minister’s response during estimates to a question about how much the prison population will grow in the next 12 months. That was concerning because in response to that question the minister said that he has projected—I commend the minister for finally getting the department to a place whereby it can project; that is a wonderful achievement and I do not denigrate the minister in any way for that—between 200 and 900 prisoners as the additional growth in the prison muster in the next 12 months. That is effectively an additional 200 to 900 prisoners to the 4 820-something or thereabouts. That is a significant number. That is concerning. However, what I found most concerning and is the reason that I came into this place today and garnered the support of my colleagues to expose us to criticism as being somehow soft on crime or whatever members want to call it, is the budget. It is not necessarily the minister’s budget, it concerns his part of it, but it is the Treasurer’s budget. In budget paper No 2 on page 684 there is a table of outcomes and key effectiveness indicators for the corrective services department. The second line from the bottom is “Imprisonment rate per 100,000 adult population”. The budget target column for Western Australia this year states that the target is 295 per 100 000 adults. On the face of that if someone does not know about these sorts of things, it may not be necessarily very concerning. Let us try to put that 295 per 100 000 into context. We already have the highest imprisonment rate of any state in Australia. I discount the Northern Territory because it is a small population and it distorts —

Mr C.C. Porter: How come? There are similarities if you —

Mr P. PAPALIA: If the minister wants to hide behind the Northern Territory, go for it! Fill your boots! I exclude it because I am talking about serious states and serious populations. We are 10 per cent of the Australian

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population and we have a target imprisonment rate of 295 per 100 000 adults. That concerns me. If the minister wants to put that into context in the rest of Australia, eliminating the Northern Territory which is the distorting —

Mr C.C. Porter: It is unhelpful to your argument!

Mr P. PAPALIA: It is also distorting because it has such a small population—the minister knows that. What is helpful to my argument? New South Wales' target is about 100 per 100 000, which is fewer than us, South Australia has half of what our target rate is and Victoria has one-third. That is helpful for my argument. That supports my argument and that is concerning. That tells me to be concerned and tells everyone in Western Australia that the government has an imprisonment rate three times that of Victoria. If the minister then wants to expand it out a little more widely to draw on something that might be a bit more helpful to our argument, let us look at where we lie in relation to other countries. The government's target is three times the imprisonment rate of Canada, three times the imprisonment rate of Italy, and three times the imprisonment rate of China—that paragon of progressive justice!

Mr C.C. Porter: Where did the member get that figure for the Chinese imprisonment? Does the member realise that is highly disputed?

Mr P. PAPALIA: I got it from the Inspector of Custodial Services' document.

Beyond that, we have seven times the imprisonment rate of those other progressive countries—Indonesia and India. Not to in any way denigrate those countries or their justice systems, but if the minister asked the average Western Australian whether they thought our imprisonment rate was seven times that of Indonesia, what does the minister reckon they would say? I think they might be concerned about that. I think they might be surprised about that. I think they might want us to come into this place and try to lift the level of debate beyond name calling, beyond chest thumping and beyond useless catchphrases, and into the realms of a mature and positive contribution. That is what I think.

Mr C.C. Porter: I am waiting!

Mr P. PAPALIA: The minister will get it. I am just drawing the minister's attention to those facts, in the hope that it will elicit some sort of different response from the standard routine of name calling and attempting to garner populist support for some regressive law that is unproved and unnecessary, and that is usually introduced in response to some outrageous crime for which the person who committed that crime should go to prison. I always pre-empt any of these comments, statements and suggestions by saying that there are bad people in the community who need to be in prison. But that is not what this is about. This is about whether a significant number of people in our prisons are people who might be dealt with more effectively in the community. The minister has denied that in previous debates, and he also denied that in estimates. That is another reason for us to raise this motion. Beyond that, this is about whether what we are doing right now is the right thing to do, or whether there may be an alternative practice, an alternative view or an alternative approach that might be more effective. Those are the things that we should try to grasp.

The government has a target of cramming more and more people into already overcrowded prisons. The minister has acknowledged that. He has enshrined it in the budget. That is effectively what the government is doing. The government's prison building program, much lauded and necessary as it is, will not be completed in time to avoid that overcrowding. The prisons are overcrowded. The Hakea Prison report confirms that; but we knew that anyway. The prisons are barely getting by. As confirmed by the Inspector of Custodial Services, Hakea is getting by solely because it is relying upon the goodwill of the prison officers and other people who work in the prison. That is how the prisons are getting by.

Mr C.C. Porter: That is not what he said.

Mr P. PAPALIA: That is exactly what he said.

Mr C.C. Porter: It is not. That is ridiculous.

Mr P. PAPALIA: It relies on those people doing extra overtime so that they can get the job done. It relies on them covering for people who are sick. There are not enough people to do the job, because Hakea is massively overcrowded. That is what that report says.

Mr C.C. Porter: Where does it say that?

Mr P. PAPALIA: When we engage in this juvenile debate, and in this negative resistant response to the question of whether there might be an alternative, we are actually making matters worse. The more people we cram into overcrowded prisons, the more those people will reoffend when they get out. That is what is happening. Beyond that, the more people we cram into our overcrowded prisons, the more costly it will be.

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Billions of dollars in the next three years will go towards nothing else than operating the current prisons and building new prisons. That money might to some extent be expended in the fields of health, education, policing, mental health and child protection, and other services that might prevent people from committing offences in the first place and getting into the prison system. More importantly in the context of this particular debate, it might prevent people from re-entering prison once they have exited the prison system after their first incarceration.

We are proposing today that we adopt a strategy of justice reinvestment. When I say that, I need to be very clear. I am not talking about a particular example that has been used in some program in some state in America or some state in Australia, or in Western Australia. There is a danger in thinking that just because a program may use funds from proceeds of crime or something like that, it is a justice reinvestment framework. It may in all likelihood be a component of a justice reinvestment framework. However, that is not what I am calling for. I am calling for a framework by which we can look at how we can logically do business in a different manner and how we can elevate the objective of reducing reoffending and give it a far higher priority. That is what we need to do. In my opinion piece in *The West Australian* and in the discussion paper that I have written, I have used examples from the United States. But if the minister then gets his 20 or so personal assistants and the whole department and targets Texas and determines that all these flaws exist in the Texas system, that does not mean that justice reinvestment is a failed concept. That would be just as juvenile as the minister beating his chest and saying how tough he is.

Mr C.C. Porter: But you have to propose something.

Mr P. PAPALIA: The minister will get his turn. Let me go through this. I am proposing a structure whereby we bring some science to the table. The first step should be to get an appropriately qualified independent authority outside of politics, bring that authority into Western Australia, give it all the resources that it needs, and all the access to departmental records and all the access to different agencies that it requires, and get it to do an analysis of where the costs in our prison system are being generated, where the people who are going into the prison system are coming from, and where they are going back to. I am firmly of the belief, minister, from what I have been able to garner from the research that I have done, that what we will find is that a minority of communities and a minority of suburbs in the metropolitan area are contributing a disproportionate majority of the costs. I am certain of that. I may be wrong, and perhaps the minister will be able to refute me if he does get that independent scientific analysis done. But the minister should not just go to the department and come up with some other argument for why that is the case. The department is already demonstrably failing to do its job. I am not criticising the individuals in the department. But they are failing to prevent reoffending. We have a 40 per cent recidivism rate—or 70 per cent for Indigenous people. That is after only two years. We know that if we extend that out to five years, we will capture a lot more people. If the minister just asks his department to do this analysis, sure, it will give the minister an answer, and it will be a defensive answer and it will reassure the minister that he is doing the right thing and he does not need to worry about it. The minister should get an independent authority to do that proper analysis. When that independent authority does that analysis, and when it identifies the minority of suburbs in the city and the minority of communities in the state that are contributing to the prison system, the minister should ask it to further check and identify the causes for that. Invariably, it will be things like a reduction in mental health services in the community, which various governments have done in recent decades. It will be things like inadequate support and treatment for people in the community with addictions. It will be things like not enough resourcing and support and funding for community corrections activities. It will be things like not enough alternatives to incarceration for juveniles. But those things need to be determined by an independent authority—not by the department, not by the minister who has a political interest, and not by me who has a political interest. That is how it needs to be done. That is the first step.

The second step is the creation of an interagency steering committee. That committee should be chaired at the top level, as high as we can get—I am talking about the Under Treasurer, Tim Marney. That committee should be given some clout. It should be given the appropriate pull. It should be made as wide as possible. It should bring in the directors general of the appropriate agencies, and as many interested parties as possible. That steering committee should then go into each of the identified communities. I am sure there will be a minority of identified communities. It should then engage with the federal government, with local government, with non-government organisations, with service providers and with businesses, and, most of all, with the leadership of the individual communities, and determine actions that may be taken to reduce the rate of reoffending in those communities. The committee should make that its priority and determine a whole range of potential alternatives, and it should do it in conjunction with the community so that it has ownership of the end result.

In the third step, I have suggested that we go to the Economic and Expenditure Reform Committee and get it to analyse and add up all the costs associated with the whole range of interventions, programs and services—whatever has been identified by the interagency steering committee—see what the total is and then cost out the alternative. The alternative is what we are doing now. The alternative is throwing people in prison. The

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alternative is \$100 000 a year; that is what the Chief Justice and the Inspector of Custodial Services have pegged it at. I am absolutely certain that when those two costs are compared, there will be a gap. Evidence-based reports from places such as the United Kingdom show that the community alternative will be more effective, but, most importantly, it will be far cheaper. That gap is where the essence of justice reinvestment comes from. The allocation in the future—or in never-never land—should be moved into the real world at the front end to beef up all those services. I know that this government is doing things right now, as we did when we were in government, that are in accord with what I am advocating—justice investment and targeting a reduction in recidivism. The Attorney General knows that. Boronia Pre-release Centre for Women is the best example, and there is also the prison employment program and youth justice centres. The Attorney General supports them; he is rolling them out.

Mr C.C. Porter: Of course.

Mr P. PAPALIA: Of course. Can members imagine how much better we could do if we had a coordinated strategy that abandoned the tough-on-crime rhetoric at the start and identified a funding stream beyond the current funding stream? The government can still cover its back; it can still ensure that it is ready to build the prisons if it does not work. That was done in different states in the United States. Those states had the allocation necessary to continue to build prisons if what they did did not achieve the success that they hoped for. That is still possible. If it does not succeed, the fourth step of the process, the evaluation, should come into play. We need to be far more rigorous in evaluating what we do. What I hope to do by suggesting justice reinvestment is achieve a funding stream that ensures that we can do that evaluation, determine what works, drop what does not work, and expand the search and keep on looking. Ultimately, the evidence suggests that the greatest potential lies in reducing the rate of reoffending. That is what international studies have demonstrated; that is what studies in Australia have demonstrated. One very recent study in New South Wales suggested—I am sure the Attorney General has seen it—that as many as 800 prisoners could be taken out of the prison system if the recidivism rate was reduced by 10 per cent. That was a national study but it was based at the New South Wales Bureau of Crime Statistics and Research. The report also holds, I think, one of the greatest hopes for Western Australia. The report identified that the return for Indigenous prisoners is even higher. It is even more disproportionate. For the same level of reduction in Indigenous reoffending, 50 per cent of that 800 level is achieved; there is a reduction of about 376 in the number of prisoners. Forty-three per cent of adult prisoners in Western Australia are Indigenous. If we consider that all we have to do to have a significant impact on the rate of crime in the community is to reduce the rate of reoffending of only a small proportion of those people, it will reduce the rate of reoffending, it will reduce the number of victims and it will make communities safer. For a small gain in the reoffending rate, we would have a disproportionate outcome. This is a positive suggestion. It will not garner support at 6PR. It will not get people rallying on the front steps of Parliament House in support of it. But it is the right thing to do. It is my fervent hope that the Attorney General, the Premier and government backbenchers grasp hold of the opportunity that is being extended, because there is no political angst in this suggestion for them. We on this side of the house have taken that step. We have enabled the government to step out of the line of fire and we have stepped into it. We are giving the government the opportunity to let all the political hurt fall on our heads if we are wrong.

I can tell the Attorney General that when Labor first took office and Geoff Gallop was Premier, that magnificent, world-class, cutting-edge initiative of Boronia was being developed. Does the Attorney General know what Matt Birney did? Matt Birney went down to the building site, which had a fence around it, and climbed halfway up the fence and had a photo taken so that he could tell the people in the suburbs around that facility that their world was going to collapse, that the Labor Party was throwing a whole bunch of criminals into their community and that they should be very, very afraid. I know that the Attorney General is incredibly supportive of that facility. I know that because he has been there a lot of times and he has taken his wife there. He has seen that it is positive. No-one can go there and not be impressed. It is probably the best thing being done in Australia to reduce the reoffending rate of women. It is a fantastic facility. Can members imagine what might have been achieved had Matt Birney come into this place instead of doing that and said, “Well done; why don’t you roll out some other positive initiatives”? I reckon that deep down Matt Birney knew that was a positive thing. I think he knew it was a good thing. He was just playing shallow politics. Matt is not a bad person. He would have liked to see a reduction in reoffending rates. All I am saying to the Attorney General today is that he has an opportunity. I dearly hope that he grasps that opportunity and takes advantage of it and that, for the sake of Western Australia, we at least, if nothing else comes out of this, cease to engage in this childish debate about who is toughest. The conga line of middle-aged, greying, paunchy men in suits needs to end. Blokes beating their chests and telling people how tough they are on the six o’clock news does not rate.

Mr J.M. Francis interjected.

Mr P. PAPALIA: I will be grey and paunchy one day—maybe!

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Mr J.R. Quigley: Never paunchy; maybe grey!

Mr P. PAPALIA: If nothing else, what we are doing today is establishing a base line. I hope that the next time that some middle-aged bloke beats his chest and tells us how tough he is, journalists and, hopefully, the people who read their articles in the newspapers, watch them on television and listen to them on the radio think about a few things. I hope the first thing they think is: does this work? They know that the more people who are crammed into overcrowded prisons, the worse those people will be when they come out, so that is just making things worse. Secondly, they know that this is costing us billions of dollars just to warehouse people. They know that a lot of these people are non-violent mentally ill people, non-violent drug addicts and alcoholics, and fine defaulters. They know that there are people who should not be there. They know that there are people who could be far more cheaply dealt with in a far more effective fashion in the community. The other thing they might think is that if more people are crammed into the prison system, that will make it more dangerous for prisoner officers and the staff who work in our prisons and that we should respect the risk and consider alternatives that might have a positive impact. That is what I am hoping for out of this. I hope that, from today, if some befuddled fool steps into the public limelight and says that he is tough, everyone in Western Australia will laugh, that they will know that that is nothing more than a populist grab for a cheap stunt on the evening news, and that they will condemn that individual.

MR J.R. QUIGLEY (Mindarie) [4.30 pm]: As the Attorney General would appreciate, being a man learned in the law, what is said to be the golden thread of criminal law is that everything in crime is based upon proof beyond reasonable doubt. What we know beyond all reasonable doubt is that Western Australia has the worst penal policies in the commonwealth of Australia. What we also know beyond a reasonable doubt is that Western Australia has the worst penal policies of most Western countries. I want to turn to two different approaches to penal policy. I would perhaps like to ask my leader to answer this question, or any other member in the house who would like to be of assistance to me. The first approach is based upon this —

We are taking more serious offenders off the street for longer and that means that fewer criminals are posing a threat to the community and there are fewer opportunities to commit crime ...

The second approach is this —

I would like to change the present emphasis on harsh punishment to seeking to turn these people around so that our homes and streets are safe ...

Can any member suggest who might be responsible for the first approach?

Mr C.C. Porter: It sounds sensible. Can I claim it?

Mr J.R. QUIGLEY: The Liberal Attorney General wants to claim it. That is the quote of the Labor Attorney General for New South Wales, Mr Hatzistergos, who the Attorney General and the Liberal Party would say had very little time left in that office and would not be sitting on the Standing Committee of Attorneys-General for many more weeks. I come to the next, which is —

I would like to change the present emphasis on harsh punishment to seeking to turn these people around so that our homes and streets are safe ...

Who might say that?

Mr C.C. Porter: Greg Smith.

Mr J.R. QUIGLEY: Greg Smith said that. He is the shadow Liberal Attorney General for New South Wales. He was Deputy Director of Public Prosecutions and, without putting the Attorney General down, not a junior prosecutor. He was deputy DPP of the biggest state in the commonwealth and will soon be, on the Attorney General's expectation, the Attorney General of the biggest state in the commonwealth. He will be sitting with this Attorney General in SCAG, saying, "Buster boy, you have got it wrong."

I move from those two illuminating quotes to go back to where all this debate started. Where did all this law and order debate start? It really started with the most successful political spin. It started out in the office of the Leader of the Opposition of the day, Mr Bob Carr, who started this spin of tough on crime in New South Wales. It put him into power and he kept on ratcheting it up over the years. That debate has never stopped. The auction has never stopped. Some members in this chamber looked discursively towards the member for Warnbro when he said he was making an offer to the government, that Labor is out of the law and order auction and that Labor has put its cards on the table and said game over and that we have got to go down a scientifically based path. Ours is beyond reasonable doubt the worst jurisdiction in the commonwealth of Australia. The member for Warnbro, the shadow Minister for Corrective Services, says that we are out. This started right back in the early

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1990s when Mr Carr was the Premier of New South Wales. Now the Liberal shadow Attorney General in New South Wales, Mr Greg Smith, that very senior prosecutor, has said —

I would like to change the present emphasis on harsh punishment to seeking to turn these people around so that our homes and streets are safe ...

That echoes exactly what the member for Warnbro has said. If I may bring it into a local context for a moment, this is not a bleeding heart judge or magistrate that Liberals say they do not trust in sentencing. They said it in the mandatory sentencing debate. In response to an interjection when I said that he did not trust the judges, yes, the Attorney General did in fact say that, no, he did not, and that was why we must have mandatory sentencing. This is not one of those judges. The Honourable Christine Wheeler, QC, was a senior state crown counsel, about fifteen and a half levels in the civil service above where the Attorney General used to be when he was in there. She was a constitutional lawyer of Australian renown before her appointment as one of the youngest judges appointed to the Western Australia Supreme Court, from which she has recently retired. She is no bleeding heart. She sat in the Court of Appeal reviewing judgements of all the judiciary of Western Australia. She said —

However, what bothers me increasingly is this combination of things that all of us here who have ever taken an interest in criminal law know to be true. We know that as a broad generalisation the prospect of imprisonment does not deter anyone from committing a crime, and in particular, there is no apparent connection between any particular length of sentence or average sentence and any deterrent effect. We know that average sentences and crime rates appear to move independently of each other. Yet, if I had a dollar for every time I have used the word “deterrence” in a judgment in connection with fixing a sentence ... I would be flying first class return to London.

This is her retirement speech, so this is the speech she could not be lambasted for and the one in which she could speak from her conscience because the next day she would not be a judge. She went on to say —

The takeaway message of course is that, in short, imprisonment does little to deter crime and may even increase it, and that people in the community do not seem to be as keen on it as some headlines might suggest.

She knows that legislation comes out of this Parliament requiring those judges to go further and further in their duty and imprison people for longer and longer, so she offers this as one of her reasons for retirement. She went on to say —

I know all of my colleagues struggle with these issues, as I do.

That is the whole of the Supreme Court struggling with these issues that this government and, I must say, the previous government have thrown up. The game is over for Labor. She said —

I know we are not Law Reform Commissions and I know we are not legislators and it is imperative that we remember that.

In other words, the judge is not to change the law. She said gravely —

So I can only say for myself that the disconnection to a degree between what I do, as I see my duty to do it, and what empirical evidence suggests —

I interpolate that that is longer sentences do not reduce crime —

it would be better to do is one reason—not the sole reason, but one reason that maybe it is time to give it away.

There they disconnect what this Parliament is forcing the judges to do and what they know, based on the science, the laws we are passing are in effect doing. We know that New South Wales is performing twice as well as Western Australia. That must be a circumstance of shame for the Attorney General every time he attends SCAG. It is performing twice as well and Victoria is performing three times as well. Those lousy rats in Victoria have actually got the game right!

The Judicial Commission of New South Wales commissioned a review paper to look at these matters. The judicial commission is independent of politics and the sort of body that my friend from Warnbro was proposing might look at these things. It concluded that New South Wales jails people at vast expense with little public benefit. The Judicial Commission of New South Wales asked, and we ask, what is building this prison population; what is building these enormous numbers?

Mr C.C. Porter: Good question!

Mr J.R. QUIGLEY: The Judicial Commission noted—this is not from politics and not from the people who have to get voted in, but from the independent Judicial Commission of New South Wales—that the features in

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common of a person before the court that emerged in more than 70 per cent of criminal cases were these: the person was male; he was under 35 years of age; he was unemployed; he had relatively low intelligence; he had a history of mental illness; he had an addiction to drugs or alcohol; he had a dysfunctional childhood family; his current domestic situation was dysfunctional; he had a poor education; and he had a bad driving record. This is what the Judicial Commission found as the typical prisoner in this 70 per cent cohort. Seventy per cent of cases involved these features. In other words, the commission went on, the reason the alleged offender was before the court was rarely due to some isolated or aberrant behaviour, which is the way it is frequently portrayed in the media; rather the trouble was part and parcel of the circumstances of the offender's entire life.

Picking up on that, retired Supreme Court justice, the Honourable Harold Sperling, QC, noted in his Crime and Justice Reform Committee's investigation that the growth in imprisonment in New South Wales in 2008 appeared to play some role in reducing the level of property crime; but the dominant factors appeared to be a reduction in heroin use, rising average weekly earnings and falling long-term unemployment. However, he found, typically, that a 10 per cent increase in the imprisonment rate—we all know what that means to the budget bottom line—delivered a mere three per cent reduction in crime. The government is spending all these bucks for nothing; whereas, as the member for Warnbro said, any reduction in the recidivism rate reaps massive benefits.

Bearing in mind what the independent Judicial Commission of NSW said about the cohort—that is, it is under 35 years of age, male, of relatively low intelligence, has a history of mental illness, has addiction problems, had a dysfunctional childhood, has current domestic dysfunction problems, has had a poor education and has a bad driving record—what does, not a junior prosecutor but one of Australia's most senior prosecutors, Mr Greg Smith, say? Mr Greg Smith is the Liberal Party's solution in the biggest state, New South Wales; a Liberal Party that expects to be governing a state massively larger than Western Australia and functioning twice as well as Western Australia. What does Mr Greg Smith, the expected Attorney General, say is the answer? Mr Smith says that the Liberal Party will offer what Labor is promising in Western Australia. He has hooked onto it. Mr Smith says that the answer is an expansion of mental health services connected to local courts, so that fewer people will go to jail and there will be a significant improvement in parole services to help with employment, accommodation and other health problems.

These comments at the law and order conference at the University of Notre Dame Australia were, I am sure, not echoed by the Commissioner of Police, Dr Karl O'Callaghan, but simply sympathetic to him. That conference was attended by five or six members of this chamber, but not one member of the government bothered to go along and listen to academics speak on the subject. Dr Karl O'Callaghan took to the stage and said that he was being offered 500 extra police but the community was being offered 500 street sweepers. They were his words: we are being offered 500 extra street sweepers; this is not going to reduce crime; they are only out there in Northbridge to sweep up the problem. Dr Karl O'Callaghan wanted to know, while he was being offered 500 extra police, how many extra Department for Child Protection officers were being provided to that agency; how many probation and parole officers were being added to the Department of Corrective Services; and how many mental health workers were being added to the Clarkson—or whatever—mental health service. In other words, Dr Karl O'Callaghan, in his comments, without probably having ever read Mr Greg Smith's comments, was echoing them precisely. Mr Greg Smith had said that he would have more mental health services connected to local courts so that fewer went there, and a significant increase in parole services to assist with employment, accommodation and other health problems.

Therefore, Dr Karl O'Callaghan, our commissioner, and Greg Smith are both lined up. What we all know beyond a reasonable doubt is that Western Australia has the worst penal system in Australia. The President of the Children's Court, Mr Denis Reynolds, was also at the conference—a judge I have appeared before many times.

Mr E.S. Ripper: As an advocate?

Mr J.R. QUIGLEY: I am sorry?

Mr J.M. Francis: As an advocate. You appeared before that judge as an advocate.

Mr J.R. QUIGLEY: Absolutely!

Mr J.M. Francis: I just wanted to clarify that.

Mr J.R. QUIGLEY: Now that the member for Jandakot has provoked me—I hope modesty does not forbid it—as a successful advocate!

Mirth aside, what did the President of the Children's Court say? I quote from the President of the Children's Court —

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The court is confronted by damaged children, we get the train wreck. It's all happened by the time we get it and what there needs to be is a greater focus on prevention and diversion to prevent criminal behaviour ...

The judge therefore agrees with the police commissioner, who agrees with the Liberal shadow Attorney General of New South Wales. And what we all agree is that Western Australia has the worst penal system in Australia. This is a matter of national shame. Chief Justice Martin went to the same conference and he asked all the people there to bear in mind that as they went home to bed that Saturday evening, one in 12 Aboriginal men would be spending the evening in custody. What a national disgrace!

As the Chief Justice reminded us, if we look at Indigenous populations around the world, we see that Western Australia has almost the highest rate of imprisonment of Indigenous people. We are not only dunces in Australia, but also the worst in the world because we have hooked onto a policy that started as a law and order option and we have taken government right back to the 1990s. That policy has now proven to be a failed policy.

We do not expect to change the Attorney General's mind today, because government members have set their course, and they are people of the 1950s. I know them culturally; their mindset is in the 1950s and 1960s. If they thought they could get away with hanging, they would bring that back too.

Several members interjected.

Mr J.R. QUIGLEY: I have been critical of the performance of the previous government as well; I have not ducked it. It is now time to stop covering up and face up to what is happening. This situation of Western Australia having the worst penal system in Australia cannot continue. The Attorney General and the Premier are unlikely to change their minds, but my making this speech today can mark out for all Western Australians that the Attorney General and the Premier are charging down the wrong course.

[Member's time extended.]

Mr J.R. QUIGLEY: They can charge down that course with a smile on their face and beat their chest while they are doing it. But every Attorney General in Australia will know at the Standing Committee of Attorneys-General when they look at Mr Porter that they are looking at the minister for the worst penal system in Australia. That is how they will have to mark his card: the minister for the worst penal system in Australia and the worst Indigenous system in the world. They can all feel good about themselves, especially Mr Greg Smith, the New South Wales Liberal shadow Attorney General—that is, if he becomes Attorney General, and the newspapers all tell us he is likely to—can look at Mr Porter and say, “What a goose!”

MR C.C. PORTER (Bateman — Attorney General) [4.49 pm]: It is a very complicated area and I want to engage the member for Warnbro in a serious discussion about these issues. The member for Warnbro raised a number of points that I happen to agree with; there is no doubt about that. He raised some points that I disagree with, and he will have to do very well to convince me out of my view on those. I will try to put my view here as succinctly as I can so that the member for Warnbro is afforded every opportunity as we go forward in this adventure together to convince me out of those things. The member for Mindarie also wants to convince me, but starts out by abusing my record as a lawyer. That is not all that helpful, but I will let him have his time. It seems that what the member for Mindarie has basically done is to pluck out a range of people who have a view and show there is an alternative view to that which this government offers. It seems that everyone agrees, except for those charged with making the very difficult decisions about balancing rates of criminality and crime and the rate of imprisonment. Ultimately, that is the decision which governments, through a range of policy initiatives, have some control over. If we have an extra 500 police on the streets, we will undoubtedly increase our prison population, whilst we will also undoubtedly detect more crime and prevent more crime. These are the difficult decisions a government is faced with. It does not surprise me that oppositions have a tendency to suggest things that are easy to suggest from opposition but very difficult to institute from government.

I want to clearly state my position and try to point out where it differs from the member's position and to look at the different policy options that are available. I will start off with, respectfully, member for Warnbro, the things that we do agree on. From what I can distil from what the member has presented to us, he advocates an idea, other than a process, that we should do something positive, and what we should do are things that work and we should do more of them, particularly those things in the member's words that “reduce reoffending to a higher level than we are able to affect at the moment”. Of course, I do not disagree with that. What precisely are those things? The member says that we should have an independent analysis, an interagency steering committee, an evaluation by the Economic and Expenditure Reform Committee, and then we should fund those answers—should that process provide us with the answers—by taking the money out of the prison build and moving it back in time while still quarantining some for what presumably would be a very quick prison build if we got it wrong. I accept that is an alternative of sorts, although it is very broad, I would respectfully say.

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Let me, first of all, state that there is one thing that we know absolutely works to reduce reoffending, and that is delivering programs to people in prison. To give this government its due—if no-one else will, I will—we have had some significant success in that regard. Interestingly, for the first time ever, we have statistics on recidivism and on how that works. We have calculated a two-year period from 1 July 2006 to 30 June 2007. We looked at the people in prison during that period. The recidivism rate overall for people in prison who had no offender base program delivered to them was 41 per cent; those that did have an offender base program delivered to them was 31 per cent. That is absolutely consistent with the best international academic data on recidivism rates. To my knowledge—it is an area I obviously take an interest in and read widely on—without the need to have recourse to so-called experts, and what almost everyone agrees, it is also the absolute best way of decreasing recidivism for people who have been caught and captured.

Mr P. Papalia: That is not true. There have been evidence-based studies of in-community treatments comparing them to prison programs, and they are much cheaper and more effective.

Mr C.C. PORTER: They are cheaper but whether they have the same levels of effectiveness is debatable.

Mr P. Papalia: That is not true, minister.

Mr C.C. PORTER: The member will need to show me the literature and I will go through it. The member will find that he will get about a 10 per cent difference —

Mr P. Papalia: Has the Attorney seen that report?

Mr C.C. PORTER: I know the document that the member is talking about. The member will get about a 10 per cent difference, but, importantly, the completion rates for prison programs are up in the high nineties—about 98 per cent. The best we have at the moment in community completions is less than 50 per cent. There are reasons for that. If I can add this: here is something that we know works and in two years we have done 110 per cent better than the previous government did.

Mr P. Papalia: Well done, Attorney General!

Mr C.C. PORTER: We had 45 per cent more programs in the first year and 65 per cent more in the second year. We know this works.

Mr P. Papalia: Have you compared it with a residential drug treatment program in the community? This report indicates that is much cheaper and far more effective.

Mr C.C. PORTER: I dispute that, but I will look at that. There are some good community-based programs, no doubt. The member has proposed a structure of an independent analysis, an interagency steering committee and another committee, an EERC evaluation and then some kind of funding stream. The member's motion reads —

That this house calls on the Barnett government to implement a “justice reinvestment” strategy to lower the rate of reoffending and to make our community safer.

It is incumbent on the member, when he proposes a motion like that, to tell us what is a justice reinvestment strategy. I am not expecting a detailed plan from the opposition or even the member saying he wants to do what is done in Texas or in California in the 1960s, which is when justice reinvestment was first introduced —

Mr P. Papalia: Or in Michigan or in Kansas.

Mr C.C. PORTER: — but at least the member has to nominate what a justice reinvestment strategy is, and then he has to argue, once it is implemented, how it will do the two things the motion says should be done—lower the rate of reoffending, which is about recidivism; and, then, make our community safer, which I presume means having measurably lower rates of crime on some agreed measure.

Mr P. Papalia: This type of debate is not really very helpful.

Mr C.C. PORTER: If we are measuring input from the last hour or so on helpful, the member gave us some facts at the beginning about rates of incarceration and then the only other thing that the member suggested is that we do better at things we know work.

Mr P. Papalia: Does the minister think that he's hunky-dory and there is no need to get any independent authority to look at what he is doing?

Mr C.C. PORTER: Member for Warnbro, with respect, I am six minutes into my speech, and I gave the member pretty much a free range. The member did not take his hour and he had a lot of time, so let me put the position. I want to say to the member that before any sane government embarked on a strategy like the member is suggesting, it would want to know what it is, how it works in the mechanics of how the member expects it to

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achieve his two outcomes, which are lower rates of recidivism and lower rates of reported crime, and what evidence there is to suggest that that could occur.

I want to do five things in the time that I have available. I want to put to the member for Warnbro in very broad terms what justice reinvestment actually means. The second thing I want to do is look at the present position in the criminal justice system in Western Australia; that is, what is the state of affairs as we presently find them? The third thing I want to do is to look at the severity of sentencing, which is a matter that in his own way the member for Mindarie touched on: how punitive are we in this jurisdiction? The fourth thing that I want to do is outline what is driving prison population growth, which is the critical issue here. The fifth thing I want to do is to look at justice reinvestment and what parts of it, I would contend, are already in place in this jurisdiction, and what other parts we could look at and what parts we would reject.

What is justice reinvestment? Again, I know that the member for Warnbro was not willing to nail his colours to the mast in setting out precisely what it was or pinning a jurisdiction as a representative example of justice reinvestment. However, I would say that three core things make a justice reinvestment strategy. Justice reinvestment is a label that applies to a suite of policies that will vary from jurisdiction to jurisdiction. There are three core elements. If the member wants justice reinvestment, this is what we are talking about. Number one, the member must take some significant portion of the future custodial infrastructure budget and redirect that in this year's budget towards community-based programs designed to reduce offending. Number two is the redirect, as I say, to community-based programs. They might be offending prevention programs, drug and alcohol programs, diversion programs or employment programs, but they self-evidently must be community based. The third thing—this is where the rub comes in and is something that needs consideration—is that the member must have some legislative or administrative change that he is prepared to effect immediately to achieve an immediate, significant and ongoing decrease in the prison population. The point is if the member takes money out of the prison build and redirects it, he has to have some mechanism for dampening the growth in the prison population. Let me put it to the member for Warnbro that there is not a single jurisdiction that institutes justice reinvestment that has not had to do that in one way, shape or form.

Mr P. Papalia: What you are saying is that in three years this money that exists in never-never land, according to the Premier, cannot be touched to do something this financial year, even though it has already been done in this budget. You have undermined your own argument. You can do it in other portfolios, but not in corrective services.

Mr C.C. PORTER: Not at all. We set aside \$656 million to build in excess of 2 500 beds. If we redirect some of that funding from the out years into the present year for something other than a capital infrastructure build, beds will not be built.

Mr P. Papalia: In your media release, where did you say you got the money to do the expansions for the double bunking?

Mr C.C. PORTER: We saved some money in the Acacia build.

Mr P. Papalia: You said you saved it out of the Acacia build.

Mr C.C. PORTER: We did.

Mr P. Papalia: It was not even supposed to start for two years.

Mr C.C. PORTER: I have found the savings and at the moment I cannot find anymore. The fact is that we must have some legislative or administrative change to dampen the prison population.

Mr P. Papalia: You took \$60 million out of the Acacia project in 2012 and you have spent it this year to double-bunk.

Mr C.C. PORTER: I thought the member wanted a sensible debate. I am giving the member an alternative point of view. The member can accept or reject it.

Mr P. Papalia: I am disputing your third point.

Mr C.C. PORTER: Okay. I think it was Leader of the Opposition who, in the budget debate, quoted from a great article by Alan Wolfe about the nature of conservatism. Mr Wolfe criticised conservatives, particularly American conservatives, who, when conservatism failed under Bush, were saying, "Well this isn't real conservatism." Mr Wolfe said —

But the real flaw in their argument —

That is, the conservative argument —

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is akin to that of Trotskyites who, when confronted with the failures of communism in Cuba, China and the Soviet Union, would claim that real communism had never been tried. If leaders consistently depart in disastrous ways from their underlying political ideology, there comes a point where one has to stop just blaming the leaders and start questioning the ideology.

I suspect one of the reasons why few people who advanced the justice reinvestment agenda actually want to stipulate with any degree of specificity what it is they are proposing is that there have been some remarkable failures with justice reinvestment that any sane government would have to be very cautious about. The answer might be, “That wasn’t really what I meant”, or “That’s not true justice reinvestment.” We have to be careful to actually understand what justice reinvestment is. I have argued that it is three core things.

The second thing I want to look at is what is the present position in criminal justice in Western Australia. Most of the debate turns on this issue. There is a polarity of views about criminal justice in this state and other jurisdictions. The member for Mindarie highlighted how those views can become very polar. Two basic views exist in Western Australia and they are mirrored in other jurisdictions. They are, for argument sake, the public view and, alternatively, the academic view. I do not mean any disrespect to academics, because I was one of those lovely people. The two views are, and perhaps I will read a quote—we have had a few read to us—that states —

There is a public perception that crime is like a tidal wave sweeping over our community which is not being adequately addressed by our courts, who respond insipidly, giving offenders a hug and a kiss, and a pat on the head and sending them on their way. Neither of those things are true.

That is from someone I would classify as being in the academic view criticising the public view. The public view is a view that there are large amounts of crime, larger than we have had before, and it is impacting negatively on lives in a way that demands strong government responses.

The academic view starts from this proposition. It starts from a proposition that, firstly, sentencing has got tougher. These people also argue that that has contributed to the increase in the prison population. The academic view holds that this idea of a crime wave, or increased crime, is a nonsense and that people are being led on by an errant media and are believing the hype and something that simply is not there. It is what criminology called in the 1820s a moral panic. Here we have the two different views about criminal justice. I suspect that the member for Warnbro sits inside the academic view largely.

Mr P. Papalia: You know that that view is reflected by the Chief Justice.

Mr C.C. PORTER: That was his quote actually.

Mr P. Papalia: That aside, there is another obvious component that you are overlooking—that is, political leadership that engenders that fear in the community of the tidal wave of crime. That can play a part.

Mr C.C. PORTER: I will go for the entire 46 minutes remaining to me, so the member has a lot to listen to, but I will get there.

Let me describe what I think the public view on crime is. I think the academic view sees the public view as being within an argumentative range. The public takes these positions. It takes the view that there is more crime overall than there has been historically. People are making a comparison about crime they have experienced, not only recent crime in the past three, four, five or 10 years but also going back into the decades and to what their parents remember. This is what people are doing.

Mr P. Papalia: How do you reconcile your claim that crime went down by 8.5 per cent last year?

Mr C.C. PORTER: The member wants an answer in 15 minutes. His tendency to think that it is that easy is what leads him astray. Let us go to the end of this debate and then we will have a coffee and talk about it.

That is the first thing in the public view. The second thing in the public view is that people are feeling the negative effects of crime as individuals and a community in a way that is unacceptable. It is an unacceptable burden on their lives. A third component to the public view is related to the first two points. There is a public view that punishment is too lenient. That public view exists. Members would experience it in their electorate offices, and I experience it in mine. I am not making any judgement about the accuracy of those three components of the public view, but that is a view that I think exists. There is an alternative view to that, but that view is real. It exists whatever members think about it.

I will give another quote to start to analyse the academic view, which is as follows —

A general impression seems to exist that WA is drowning under a crime wave of tsunami proportions that is being encouraged by pathetic sentences imposed by the judiciary. Nothing could be further from the truth.

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We have a public view about the increasing levels of crime, increasing effects of crime and weak sentencing and there is an academic view, indeed held by the member for Warnbro, our Chief Justice and others, that that public view is 100 per cent wrong. Nothing could be further from the truth. I am always cautious when I hear educated, academic views completely dismiss a public view.

Mr P. Papalia: You are slipping into political mode.

Mr C.C. PORTER: The member should listen. I sit somewhere in between these two views. I do not subscribe to either of them forcibly. I will tell members what I think is the academic view of the state of play in criminal justice. The academic view is that the public view of increasing crime rates is completely inaccurate and that the actual state of affairs in criminal justice, in recent times, is that overall rates of reported crime have decreased. Secondly, the academic view is that the public view of punishment decreasing—that is, “becoming weaker” in common parlance—is highly inaccurate and that sentencing has actually become stronger and more punitive, and that can be measured. The third aspect of the academic view is that —

Mr J.R. Quigley: That is the Chief Justice’s view.

Mr C.C. PORTER: Indeed. As a corollary to that, the third aspect is that there should be a normative policy response that recognises that there is too much punishment; that is, that Western Australian society and judicial sentencing has become too punitive. I repeat that I am very cautious about being overly dismissive of what is clearly a view held by people in our electorates, people who I think, by and large, have commonsense. They do not read reports that we read or delve into the data. Certainly there is a view out there. Of course, at the beginning of this year I made claim to the fact that in a year overall reported crime decreased by 8.5 per cent. I know there was some dispute over that figure. I still stand by that.

Mr P. Papalia: Do you think that anyone in the public believed you?

Mr C.C. PORTER: It is difficult to say. That is why I sit somewhere in between these two views. It is the case that crime is very difficult to measure. We have to try to apply that basic rule of comparing apples with apples and trying to compare data over time. Probably the best measures of crime are measures of overall or total reported crime. They are not measures of every single reported crime. What that 8.5 per cent figure represents is a cluster of five or six of the key offences which drive people’s perceptions of crime, but which also are amenable to measurement on reported crime. A range of crimes happen and go unreported. A range of crimes happen and go uncharged. The 8.5 per cent figure represents a cluster of an accepted measure of overall reported crime. It is not a perfect measure of the level of criminal activity. If we consider those things, from 1999 to 2008 murder was down 34 per cent, manslaughter was down 12.5 per cent, attempted murder was down 16.7 per cent, assaults were up 48 per cent, sexual assaults were up 15.6 per cent, robbery was down 19.7 per cent, burglaries were down 32 per cent and motor vehicle theft was down 39 per cent. What drives the overall reduction of reported crime on that measure is basically what we would describe as in situ offences—murders, armed robberies, car thefts and burglaries. That drives down an overall measure of reported crime. Therefore, when it is a case that holders of the academic view say that people are dumb, stupid or ignorant of the fact that that measure is going down —

Mr P. Papalia: I never heard the Chief Justice say that.

Mr C.C. PORTER: I am paraphrasing, but what the Chief Justice —

Mr P. Papalia: I never heard him say that.

Mr C.C. PORTER: What he has said —

Mr P. Papalia: I have never said it.

Mr C.C. PORTER: No, but let us go back —

Mr T.G. Stephens: You’re not paraphrasing; you’re caricaturising.

Mr C.C. PORTER: Of course, I am characterising a view.

Mr T.G. Stephens: Caricaturising.

Mr C.C. PORTER: There is no doubt that I am doing that, but let us go back to that quote that I gave members from the Chief Justice —

A general impression seems to exist that WA is drowning under a crime wave of tsunami proportions that is being encouraged by pathetic sentences imposed by the judiciary. Nothing could be further from the truth.

I think that demonstrates that there is a severe polarity of views and that is a view —

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Mr P. Papalia: You extracted that from a full analysis where he took the data and he showed that that was not the case.

Mr C.C. PORTER: I am going to go into that data because I actually do not think that the data quite shows what people who hold the academic view hope that it shows or think that it shows. However, let me say that the academic view is a rejection of the public view as being factually and empirically wrong. The academic view says that members of the public have got it wrong when they say, "There is more crime and I am feeling the effects of crime and I want a policy response."

Mr J.R. Quigley: Instead of putting it as the academic view, this is the view being propagated in the community by the Chief Justice of Western Australia.

Mr C.C. PORTER: David Indermaur is another, the member for Warnbro is another —

Mr J.R. Quigley: The Chief Justice is the foremost protagonist of that view.

Mr C.C. PORTER: He has put the view very strongly, yes.

Mr J.R. Quigley: With which you disagree.

Mr C.C. PORTER: As I say, I do not subscribe to either the academic or the public view with perfect correlation. The point that I am trying to make —

Mr J.R. Quigley: I do not know how we ended up with the worst system in Australia!

The ACTING SPEAKER (Mrs L.M. Harvey): Order, members!

Mr C.C. PORTER: The point that I am trying to make is that holding a view that says the public is misconceived about increasing rates of crime —

Mr P. Papalia: But the Chief Justice has never said that!

The ACTING SPEAKER: Member for Warnbro!

Mr C.C. PORTER: Let us put the two views at polar opposites so that we are at least discussing something. The public says that there is a tsunami of crime; the academic view says it is completely wrong about that. Right? What I would say is that the truth lies somewhere in between. When people take a view that there are increasing rates of crime, it is not made a weak, uninformed or misconceived view by virtue of the fact that in some areas of criminal offending, there has been significant decreases in the overall rates of reported crime, because equally there are other areas, some of which I have mentioned—assaults, sexual assaults—where there are increasing levels of criminal behaviour. What is perhaps most interesting is that when we look at the areas of increasing criminal behaviour, and these are measures of charges finalised in the Magistrates Court, so of course, this is not reported crime—this is charged crime, apprehended crime; it is a less perfect measure than reported crime, but it is showing us something—traffic and vehicle offences were up 146 per cent between 2000 and 2008. Public order offences were up 73 per cent, property damage was up 60 per cent, acts intended to cause injury were up 60 per cent, dangerous or negligent acts endangering people were up 80 per cent. The reason why people in the community take a view of the tsunami wave of increasing rates of criminality is that there is a whole range of categories of crime that successive governments have been finding very difficult to control, and they are the types of crime that impact on individuals' everyday lives.

Mr P. Papalia: The population grew during that period.

Mr C.C. PORTER: All I am saying, member for Warnbro, is that it is wise to try to be empathetic and understand why the masses take a particular view on crime even though an academic view might differ from that.

I will move on to that next issue about the severity of sentencing. Are we a punitive jurisdiction? Is sentencing getting tougher, is it getting weaker or are the differences marginal? Again, I have some quotes. Here is the key proposition that I think needs analysis under this second point. I quote —

... the significant increase in prison numbers over that last 10 years in WA is most likely due to an increasingly punitive judiciary, and not to changes in the law, or to significant increases in the severity of offending.

That is a very specific statement that the increase in prison numbers that occurred under the previous government and are occurring under our government are "most likely due to an increasingly punitive judiciary". I absolutely acknowledge that a large part of that 29 per cent increase that the member is talking about has been driven by decisions of the chair of the Prisoners Review Board —

Mr P. Papalia: Sixty per cent.

Mr Paul Papalia; Mr John Quigley; Mr Christian Porter; Acting Speaker; Mr Joe Francis; Mr Albert Jacob; Ms Lisa Baker; Mr Tom Stephens; Ms Alannah MacTiernan; Mr Peter Abetz

Mr C.C. PORTER: Indeed. It may be open to argument as to whether that represents a punitive judiciary or a punitive executive that chooses the officer—that is open to argument. I want to look at this idea that over the past 10 years in Australia sentencing is getting tougher and that is driving the growth in the prison population, because this is the fundamental tenet of the academic view. I must say that it is not one that I agree with at all. How do we measure whether sentencing is getting tougher or weaker? We can do that in two ways: we can come up with some aggregate average of individual maximum sentence lengths and determine whether they are becoming longer or shorter over time, or we can look at the overall number of offenders being convicted and decide whether a greater proportion of the overall number are being given prison or something else.

Mr J.M. Francis: In certain categories of offences, to compare apples with apples.

Mr C.C. PORTER: It is in all of them over time. They are the two measures. I think it is a very important point because a fundamental tenet of the academic view is that tougher sentencing is driving our growing prison population and that we should wind back that punitive sentencing. I think that is a view that the member shares.

Mr P. Papalia: No; that is not at all what I have said. Maybe a component of the first part, but the legislation that we pass has a part to play and that is what the Chief Justice identified as well. It was not just the sentencing; it was the legislation that enabled tougher sentencing.

Mr C.C. PORTER: The thing is that the member can debate a proposition. I am trying to be careful not to paraphrase or characterise the propositions too much. The proposition is fairly straightforward that over the past 10 years in Western Australia the increase in prison numbers is —

... most likely due to an increasingly punitive judiciary, and not to changes in the law, or to significant increases in the severity of offending.

That is a straightforward proposition.

Mr P. Papalia: Is that the speech from November?

Mr C.C. PORTER: It is from the Australian and New Zealand Society of Criminology Conference.

Therefore, I would measure that against mean maximum sentence length, the overall number of people over a 10-year period, what percentage of them are incarcerated and what percentage are not incarcerated. When it is tested against those two measures, I do not think that is true. It is simply not true, in my view. If we look at the average aggregate actual sentences imposed by the courts—that is, the maximum time to be served—it did not increase in the years from 1996 to 2006. The mean maximum sentence imposed actually reduced from 39.3 months in 1996 to 37.1 months in 2006. Therefore, we actually had a reduction in the mean maximum sentence length over that 10-year period. That was for an entry cohort of prisoners, so they measured all the people going into prison and what was the mean maximum sentence length.

Mr P. Papalia: Minister, is that for the whole nation or —

Mr C.C. PORTER: It is just Western Australia; these are WA figures. When the exit cohort was measured, there was a slight increase from 35.7 months to 37.9 months over that same period—that is, 1996 to 2006.

We can also look at the percentage of people actually imprisoned as opposed to the total. Looking at that figure, we also find that the percentage of imprisonment is absolutely constant in the superior courts—the District and Supreme Court. I will find that figure for the house —

Dr M.D. Nahan: Is that a share of population?

Mr C.C. PORTER: As a share of all the offenders. The percentage of people receiving sentences of actual imprisonment, thereby being sent to jail, remains perfectly constant in the Western Australian superior courts over a 10-year period, with 52 per cent in 1999 and 53 per cent in 2009 going to prison. It is actually a great credit to our judiciary that there is such consistency in sentencing.

Mr P. Papalia: Has the length of sentence been assessed? Is that what you are doing?

Mr C.C. PORTER: No. Based on the data that I have, the length of sentence is also very, very constant. The percentage of people being imprisoned is also very, very constant. That was for the superior courts. In the Magistrates Court, interestingly, in 1999, there was a 64 per cent rate of imprisonment. In 2009, there was a 49 per cent rate of imprisonment. The percentage rate of imprisonment in the Magistrates Court has actually gone down. What I take from that is that the concept that we have an increasing prison population, driven by tougher sentencing, at least as that concept applies to Western Australia, is a nonsense.

Mr P. Papalia: Does that mean that your rhetoric, and the Premier's rhetoric in the Premier's Speech at the start of the year, in which he said that he is tougher than us, is hollow?

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Mr C.C. PORTER: Well, this is about the judiciary. There are ways in which government can be tougher. That brings me to my next point. What is very interesting is that we have had the first data back from the truth-in-sentencing legislation. What we looked at was the first day that the truth-in-sentencing legislation became law, the 16 months after that, and the 16 months before that. That legislation did cause an increase in the mean maximum length of imprisonment for the most serious offence. From recollection, it was 2.1 years over the 16-month period prior to the truth-in-sentencing legislation, and 2.4 years over the 16-month period after the truth-in-sentencing legislation. The member for Warnbro will recall that I said that there would be bracket creep by virtue of the truth-in-sentencing legislation. The early data suggests that that is the case. But let me say this: what we know over the past 10 years is that punitive sentencing by the courts is not driving the growth in the prison population. It is nothing even like it. The statement that it is driving the prison population is, with respect, in Western Australia just not true. That leads me to the question: what is driving the rate of growth in the prison population? I think this comes down to some key elements of this justice reinvestment debate that the member for Warnbro and the member for Mindarie have raised. What is driving it? There is an answer to that. That answer is volume, volume, volume. What is driving the increase in the prison population is volume—volume policing, finding more people, charging more people and driving more people through the courts.

Mr P. Papalia: You have already conceded that 60 per cent of the recent growth is because of the actions of the Prisoner Review Board.

Mr C.C. PORTER: I do not resile from that at all. There is no question about that. But I am talking about prior to that, over a 10-year period —

Mr P. Papalia: That may be the case.

Mr C.C. PORTER: Okay, *ceteris paribus*, taking away that feature, over a 10-year period, what is driving the prison population is growth. It is obvious how that works. If we take a single year, and there are 500 reported crimes that have been committed by 500 individuals, and 100 people are caught and charged for a 12-month period of imprisonment, the prison population will be 50. If in the same year the overall rate of reported crime is constant, and the sentencing practice is constant, but the number of offenders caught is doubled to 200, the prison population will be 100. If we drive volume through the court system, we will have increased percentage rates of imprisonment and an increased prison population.

Mr J.R. Quigley: That all sounds very academic!

Mr P. Papalia: Yes!

Mr C.C. PORTER: I apologise, member for Mindarie, for actually wanting to base government policy on empirical evidence rather than —

Mr J.R. Quigley: We know that we are the worst in Australia, and you are meeting the argument that we are the worst in Australia with an academic denunciation of that proposition. It does not wash.

Mr C.C. PORTER: The member's basis for asserting that is that the only measure we should take into account when it comes to the health of the criminal justice system is the 1 000 rate per capita of prison population. Our recidivism rate is not dissimilar to the rate in other jurisdictions when it is broken down per cohort of prisoners. The Northern Territory rate is 658 per 1 000 of population.

Mr P. Papalia: Why do you keep going to the Northern Territory?

Mr C.C. PORTER: One of the reasons I do that is because the problems in the Northern Territory criminal justice system in terms of offending are similar to the problems that we have here.

Mr P. Papalia: So what you are saying is that you are quite comfortable with what we are doing. Ultimately, that is what you are saying. You are refuting the suggestion that it might be worth considering an alternative.

Mr C.C. PORTER: I am going to get to the alternative. But I am still unsure what it is. At the moment, the member for Warnbro's alternative is to try to better identify the things that we know do work, and do more of that. That is not a policy.

Mr P. Papalia: How about that as a starting point you concede that you and the Minister for Police and the Premier will not go out and say how tough you are?

Mr C.C. PORTER: The member needs to understand that I have a particular view about this. This is not theatre. This is a view based on facts, and I will keep going through a few of them. If the member looks at what has happened in Western Australia over the past 10 years, in 1998, 53 310 people went through our court system. That is the Magistrates Court, the District Court and the Supreme Court. Of those people, 3 600 were given

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terms of imprisonment. So that is 6.7 per cent. In 2008—10 years later—106 000 people went through our prison system.

Mr T.G. Stephens: How many of those were ex-prisoners?

Mr C.C. PORTER: I do not have that data. Of those people, 3.73 per cent received a term of imprisonment. So, over a 10-year period, we have doubled the traffic that is going through our court system. That is what is driving prison population growth. If the member wants to take money out of prison infrastructure and invest it somewhere else, we have to somehow dampen or reverse that trend. More police, better technology and better techniques, including the principal and priority offender techniques that are being used, mean that more criminal behaviour is being detected and pushed through the court system once a person is charged. Irrespective of whether the pool of criminal behaviour—based on whatever data we have—is expanding or contracting or remaining the same, of those three options, what is undisputed is that we are finding more of it, we are charging more people with it, and more people are being driven through our court system as a percentage of whatever level of criminal behaviour exists in the community. So, what does that say about the composition of the prison system? This is, I think, where the member for Warnbro and I have a bit of a divergence in our views. Some of the comments that have been made by the member for Warnbro are that the Western Australian prison system is flooded with mentally ill, poor and Indigenous people; more than half of the new prisoners in Western Australian jails are behind bars for minor offences—we can ask any prison officer and they will tell us that there are plenty of people in prison for minor offences; more than 34 per cent of the people in prison are there for no other reason than they did not have enough money to pay a fine; and we are locking up the most vulnerable people in the community.

I have some difficulties with those propositions. This is not to deny that there are people in jail who have mental health problems, there are people in jail who are poor, and there are people in jail because they are paying off fines. But what do we define as a “minor” offence? I think that this idea of who the prison population is composed of is a very, very important one in the context of this debate. Let me start with the idea of fines. One of the great things that the former government did while it was in office is ensure that there are very few people in our prison system at any one point in time who are there simply because they are paying off fines. But what happens when people issue press releases about how prisons are flooded with the poor, and about how 34 per cent of the people in prison are there for no other reason than to pay off fines—which is statistically not correct in any event—is that they deliberately seek to create the impression that people who are in prison to pay off a fine are people who should not be in prison. Ultimately, prison will always have to be a recourse for a hardcore group of individuals who do not pay their fines. When we look at those individuals in our prison system, as at last count on 20 May 2010, there are 18 people in our prison system who are paying off fines. That is not 34 per cent. It is not even one per cent.

Mr P. Papalia: Minister, let me tell you where those statistics came from.

Mr C.C. PORTER: The member got those.

Mr P. Papalia: They came from your department! You answered a question on notice, and that was the response!

Mr C.C. PORTER: In the member’s enthusiastic but lack of detailed analytical way, he read something and saw something that was not there. What that information said was —

Mr P. Papalia: So you are absolutely comfortable that the statistics from your department regarding mentally ill people in our prisons are accurate?

Mr C.C. PORTER: I am.

Mr P. Papalia: It is lower than in the normal community.

Mr C.C. PORTER: I will go on to that in a moment. Let us look at the 18 people in prison who are paying off fines.

Mr T.G. Stephens: What are you quoting from?

Mr C.C. PORTER: I am quoting from a document entitled “Fine defaulters without current remand warrant by most serious fine default offence as at 20 May 2010”. It is a document that is produced for me on a monthly basis by my department.

Mr T.G. Stephens: Do you mind tabling it?

Mr C.C. PORTER: I have no problem whatsoever with that. These are the people in prison who are paying off fines. This is what the fines were originally levied for: assault of public officer; breach of bail; burglary; damage; damage property; dangerous driving; excess .08; extortion; misleading police; no MDL—suspended; possess

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specified drug; stealing as a servant; threaten to cause detriment; and unlawful common assault, of which there were four. These were people who could not be encouraged to enter into time-to-pay agreements, notwithstanding that they got their fine for a serious offence. The idea that these people should not be in jail is not correct.

Mr P. Papalia: Do you seriously believe that the number of mentally ill people in our prisons is lower than the rate in the normal community?

Mr C.C. PORTER: I am going to move on to that.

Mr P. Papalia: You're honestly saying that to us in Parliament.

Mr C.C. PORTER: I will go on to each of them. The other one is the idea that somehow people in prison are minor offenders. I invite the member to sit in the Joondalup Magistrates Court for a day and see the sentencing of individuals in our system. People actually have to do something pretty bad and/or need to have a very bad record to end up in jail in Western Australia. The member may disagree —

Mr P. Papalia: Denis Reynolds doesn't think so.

Mr C.C. PORTER: No. I think that the member misquoted the president. I will read a quote from the President of the Children's Court. He said that he must point out that the reason that such a high and grossly disproportionate number —

Mr P. Papalia: I know. You read that every time. We can read you another quote from him that is a completely contradictory statement.

Mr C.C. PORTER: I have heard the member's quote. I know it exists and I accept it, but it needs to be put in context.

Mr P. Papalia: So does yours.

Mr C.C. PORTER: I am giving the member context. The President of the Children's Court said that he must point out that the reason that such a high and grossly disproportionate number of Aboriginal children are sentenced to detention is simply and sadly that, as a matter of fact, they commit a high and grossly disproportionate number of the serious offences committed by children, which requires the court, when applying the law to the facts of the case, to impose the sentence of last resort. The point is that people who are serving a sentence of less than two years are not minor offenders. I saw a very interesting article in *The West Australian* and I think I raised it with the member during estimates. It was headed "Jail term for king-hit on woman". The member may recall that a woman who tried to break up a fight outside a Carnarvon hotel was badly injured, and the offender got 12 months' jail. That is the face of minor offending in Western Australia. We must be very careful with the concept that there is a cohort inside the prisons that can simply be moved out, and that community expectations, however illegitimate the member might think they are—I happen to think they are quite legitimate—will accept that cohort being moved out.

As to the mentally ill, there is a whole range of ways that mental illness can be measured. There is co-morbidity in terms of different mental illnesses. We maintain standard measures of mental illnesses. One is a psychiatric flag. As at 31 January this year, there was a prison population of 4 840, and 650 of them were psychiatrically flagged. That is comparative with the rates of mental illness in the general community. We can argue endlessly about that because of the different definitions, but it is, I think, comparative. We must also keep in mind for this idea about mentally ill people in prison that if a person is mentally unfit to stand trial and that is shown in court, the person will not stand trial. If a person is unable to know the difference between right and wrong at the time of his offending, that person will have a good defence. As I have said, many of the people in our prison system who are medicated for mental illnesses are medicated for depression.

Mr P. Papalia: How do you know that, because when I ask you how many people are medicated with a certain type of medication, your department is incapable of responding?

Mr C.C. PORTER: My department does have that information. It is information that I asked for recently, because I wanted to understand more about this point. I will get that information to the member. I do not know which previous request the member is talking about. I am very fair in ensuring that my department is as open as possible. The point I am trying to make is that sentencing in this jurisdiction has been relatively constant for 10 years. There is not one group of people out of the 4 800-odd people in prison who could be easily shifted out of prison or who should not be there in the first place by way of sentencing, administrative techniques or parole that the community will not legitimately expect should be in prison. I think that that is an important point to consider.

Mr P. Papalia: I would have to dispute that. I actually suspect that a lot of people in the community would think it is not right that non-violent mentally ill people are in prison.

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Mr C.C. PORTER: The member and I can differ about community views. Maybe he has a better pulse than I have. I am saying that if the member can come to me with 20 examples of people who have been sentenced to prison who should not be there and can show that a reasonable-minded person in the community thinks that those people should not be there, I will look at them.

Mr P. Papalia: In that study that you are familiar with, why do you think they chose as one of the categories programs designed to divert non-violent drug-addicted offenders into community-based facilities?

Mr C.C. PORTER: We do not have very many non-violent drug offenders in our prison system.

Mr P. Papalia: How do we know?

Mr C.C. PORTER: Can I tell the member for a start —

Mr P. Papalia: Are you completely comfortable with that?

Mr C.C. PORTER: I will give a snapshot of the adult prison population by the most serious offence: 42 per cent are offences of violence against the person; 12 per cent are robbery—extortion; 18 per cent are break and enter and steal; 7.6 per cent are justice and good order; 6.43 per cent are traffic; two per cent are immigration; and nine per cent are possession of or possession with intent to sell or supply a drug. Yes, we have people in prisons, but all those categories, other than drugs, involve some level of harm to other people. We do not arrest people and put them in jail because they are addicted to drugs. It is fantasy.

Mr P. Papalia: Until you drill down beyond what your department just presents you with in those statistics, you won't know.

Mr C.C. PORTER: At least I drill that far.

I turn now to prison composition. Why are people in prison and what is the effect of prison? The member for Mindarie made much of the view, which he says is a commonly held view, that prison does not work and does not achieve anything. I would say that there is an alternative view amongst criminologists, academics and scholars that prison is a vital part of any criminal justice system.

Mr J.R. Quigley: Of course it is. Serious crime should get serious time.

Mr C.C. PORTER: This is the point I am trying to make. Of the 4 800 people in our prison system at the moment, what is it that is not serious crime? What is it?

Mr P. Papalia: No. You append the attribute of a serious criminal to every single one of those 4 800 or so.

Mr C.C. PORTER: Precisely I do.

Mr P. Papalia: So you would contend that there is no cohort in there that you could possibly take out of the prison system and deal with more appropriately in an appropriately funded and resourced facility or program?

Mr C.C. PORTER: I think that the member is mistaking two issues. Is it conceivable that, through government investment in community-based programs, education, health and schools, we can stop some people from doing the things that make them part of the prison system? Yes. Are there people inside the prison system at the moment whom the community would reasonably accept could be moved out of prison and given some other form of disposition? No.

Mr P. Papalia: I would contend that people would consider that non-violent mentally ill people and non-violent drug addicts should not be there.

Mr C.C. PORTER: We do not jail non-violent mentally ill people. The member has spent too much time under water. He does not understand what sentencing is about.

Mr P. Papalia: So you haven't read Colleen Egan's book?

The ACTING SPEAKER: Member for Warnbro!

Mr C.C. PORTER: What the member needs to do is spend a day at the Joondalup Magistrates Court and just watch.

Mr P. Papalia: What you need to do is consider whether or not what we are doing is best practice and whether there might be an alternative.

Mr C.C. PORTER: I will just go through a couple of alternative academic versions of the effect of imprisonment. Don Weatherburn, who is not noted as a right-wing criminologist—some might even say that he is the other side of being a right-wing criminologist —

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Mr P. Papalia: He would say that more than 17 per cent of people in our prisons are mentally ill, because he did say that in his study this year.

Mr C.C. PORTER: He said —

The first point to emerge from the foregoing analysis is that, notwithstanding occasional suggestions to the contrary, at least so far as burglary is concerned, prison does seem to be an effective crime control tool. Our best estimate of the incapacitation effect of prison on burglary (based on the assumption that burglars commit an average of 38 burglaries per year when free) is 26 per cent. This estimate does not appear to be overly sensitive to the value of offending frequency we assume. If the true rate at which burglars commit burglary is 32 offences per year, for example, the incapacitation effect of prison falls to 23 per cent. If the true rate is 44 offences per year, the incapacitation effect rises to 28 per cent. These percentage effects might not seem large but in absolute terms an incapacitation effect of 26 per cent is equivalent to preventing over 44,700 burglaries per annum.

What the member for Wambro has recently said is that the idea that the overall rates of reported crime in areas such as burglary had been decreasing while the prison population has been increasing is a paradox. It is not a paradox; it is commonsense, and it is commonsense that a range of academic analysis engages in. Weatherburn goes on to say —

It might be objected that \$26 million is a small price to pay when weighed against the cost of burglary.

That is the cost of imprisoning people, which the member for Mindarie went on to. Weatherburn continues —

It might be objected that \$26 million is a small price to pay when weighed against the cost of burglary. The annual burglary insurance claim in New South Wales is somewhere between \$3,500 and \$3,800. If we take the lower of these two figures and multiply it by the estimated number of burglaries prevented as result of imprisonment we arrive at a figure of \$156 million as the net dollar savings obtained as a result of imprisoning 1,135 burglars.

The idea that there is not a net positive monetary effect for Western Australian society by achieving an 8.5 per cent decrease in the rate of overall reported crime in a year is nonsense.

Mr J.R. Quigley: It is what causes that reduction in crime. As the independent judicial commission in New South Wales identified, it is the prosperous times or a reduction in long-term unemployment or a reduction in heroin addiction.

Mr C.C. PORTER: Mr Weatherburn argues that it is an economic empirical analysis. He argues that that is an incapacitation effect. On the member's point —

Mr P. Papalia: Do you want to know how many people he reckons are mentally ill in the prison system?

Mr J.R. Quigley: No, he does not.

Mr C.C. PORTER: I am aware of his views on that. Again, I think the measure that he uses is not an unfair one, but there are alternative measures. Another fascinating study is by a fellow called Steven D. Levitt in the *Journal of Economic Perspectives*. It is called "Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not". He is an economist who has a good go at criminologists because he says that they do not engage enough in economic analysis. It is in the United States but it is academically relevant. Four factors explain the decline in crime: one, increases in the number of police; two, the rising prison population; three, the receding crack epidemic —

Mr J.R. Quigley: That is American.

Mr C.C. PORTER: I said that.

Mr J.R. Quigley: But when you compare Victoria, Victoria spends less and has less crime than New South Wales, which spends more on jails.

Mr C.C. PORTER: He also interestingly identifies as the fourth factor the legalisation of abortion. These are economic analyses. Crime is complicated, but what I can say is that undoubtedly the incapacitation effect of prison is a big driver of the decreasing crime rates.

Mr P. Papalia: No, it is not; that is you disagreeing —

Mr C.C. PORTER: We agree to disagree. Here is another one by Peter Saunders and Nicole Billante from the Centre of Independent Studies. These people are right-wingers.

Mr J.R. Quigley: The Chief Justice disagrees with you and former Justice Wheeler disagrees with you.

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The ACTING SPEAKER (Mrs L.M. Harvey): Members, all interjections are disorderly. It is getting a bit tiresome not being able to hear the Attorney General finish a sentence.

Mr C.C. PORTER: Thank you, madam Acting Speaker. If the member can win a debate by saying that he can find four people who disagree with me, the member will win, but there are alternative points of view equally as numerous as the ones that the member cites. The unwillingness to see that is what I think leads the debate into precisely the simplistic terms that the member objects to.

Mr P. Papalia: You have come to the point where we are philosophically opposed. As you said at the outset, that is going to be a problem.

Mr C.C. PORTER: This last study states —

Conclusion

The evidence reviewed here is consistent with Charles Murray's view that a weakening in the willingness to use prison as a punishment has been strongly associated with an explosion of crime rates. All the countries we have reviewed saw their crime rates rise dramatically as they eased off on imprisonment. Those countries (notably the US) that subsequently increased their use of imprisonment have seen their postwar rise in crime rates stopped, and then reversed.

Mr J.R. Quigley: That happened in Victoria.

Mr C.C. PORTER: What I want to impress on members present is that incapacitating people in prison is an important way of crime control.

Mr J.R. Quigley interjected.

The ACTING SPEAKER: Member for Mindarie!

Mr C.C. PORTER: The reason we were able to —

Several members interjected.

Mr C.C. PORTER: For people who want sensible debate, let us then finish up with justice reinvestment, because all of that sets the picture. If we are going to have an alternative suggestion, it has to be more than a process. The question time criticism of us is that we did not get rid of enough committees. The member's solution to crime is another committee.

Mr P. Papalia: That is an easy response from a government that does not want to do anything.

Mr J.R. Quigley: That is what I said from the start.

Mr C.C. PORTER: The fact is that in terms of doing things, which is what the member wants—he wants investment in the community—I read the member a list of the budgetary investment this year and he got bored with it after the third item. There is no genuine recognition that we are actually investing more in the areas that he is concerned about than his government did. What I say to the member is this: it is not a mutually exclusive choice between taking money out of the prison infrastructure program and investing it in the community. When we spend money on support and protection services for children and on juvenile justice teams in the north of the state—this is money in advance of what the previous government spent—they contribute to that long reach of trying to reduce rates of recidivism, but the member gives them no credit. What he considers is that there is an easy way to take money set aside for the prison bill and bring it down and buttress this. It is already a substantial amount of money.

Let me make this final point: when we do look at where justice reinvestment has been tried, they had to do what I suggested at the very beginning of this analysis. They had to immediately, dramatically and permanently decrease the prison population. In the long run that is hard enough, but they had to do it straightaway. The way that they did that in Texas was to change the legislative and administrative rules relating to parole and probation. They immediately made it easier legislatively to be eligible for parole. They changed the administrative rules so that parole was harder to breach. Between 2006 and 2008 there was a 25 per cent decrease in people being returned to prison for breach of parole.

Mr P. Papalia: I am happily critical of the way that the Prisoners Review Board is applying it in this process.

Mr C.C. PORTER: This is where we differ.

Mr P. Papalia: What the alternative is —

Mr C.C. PORTER: The alternative is this: if we are about to build 2 500 beds, the member has to tell us which beds are not going to be built and he has to tell us how to stop people coming into the prison system, because if

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we do not build the beds and the prison growth is as it has always traditionally been, people will be in worse conditions, which I know the member does not want. If the member is not willing to have that, he needs to point to a way that will cause an immediate dampening in the prison growth. The way they did that in Texas was to change the parole laws. People who would otherwise be in prison in Texas effectively were not returned. That might work in a jurisdiction where the per capita rate of imprisonment is 957 per 100 000, but the member does not like our per capita rate of imprisonment.

Mr P. PAPALIA: There is a 25 per cent slide, 60 per cent of which —

Mr C.C. PORTER: For the member's suggestion he would need to reverse that down —

Mr P. Papalia: Not necessarily.

Mr C.C. PORTER: This is why I will contend that the member is not necessarily living in the real world if we are not going to build and the member does not want people in worse conditions. We know historically that despite the best efforts of his government and our government, with increased policing and increased population the prison population grows. How do we stop that growth so that we can bring forward funding and not build the beds? In Texas they did it by changing the rules around parole. Maybe another option is what Premier Keneally is doing in New South Wales. She has just announced a scheme whereby every prisoner who would have been sentenced to two years or fewer imprisonment will now be eligible to serve their sentence at home, and only a portion of those will be electronically monitored. In New South Wales she is substituting terms of imprisonment of less than two years with what we would call an intensive supervision order. That is the way in which she is dampening the growth in her prison population. I think that the suggestions of the member for Warnbro are not terrible, but it surely must be incumbent upon him, if he accepts my proposition, that to not build beds means we need to slow down the growth in the prison population, which means we need to have fewer people entering prison. The member needs to nominate a way in which he thinks that can occur. Is it the Texas way? Is it the New South Wales way? Is it a way that we would consider appropriate and just? Is it in line with community expectations? At the moment what we have is, yes, an increasing prison population, which is driving rates of offending down. It is no coincidence that we had an 8.5 per cent decrease in overall reported crime at the same time that we had a 29 per cent increase in the prison population. That translates into significant benefits for the Western Australian population. Members opposite say we should do more of the things that work. We are spending millions of dollars, which the previous government did not spend, on things that we know work, and we are doing better at those things.

MR J.M. FRANCIS (Jandakot) [5.49 pm]: I start by saying that I pay a lot of attention to the things that the member for Warnbro says in this chamber, as he knows. I think he is one of the more intelligent contributors to debate on his side of the house.

Mr P. Papalia: We are not going to have warm showers again!

Mr J.M. FRANCIS: No submarine showers here!

The member for Warnbro makes a lot of very valid points in his speeches. However, there are a few matters on which I disagree with him. There are lots of matters on which I agree with him and there are a few matters on which I do not agree with him. I will start by saying what I think is the biggest criticism of the debate. The member for Warnbro walked into this chamber and said that he was extending the olive branch. I think his words were that government members would stand in the firing line and take the government out of it. Unfortunately the member for Mindarie, on the member for Warnbro's side of the chamber, did not do that. The most notable thing about the member for Mindarie's speech was that he went straight in and played the man and not the ball, harping on about which grade the Attorney General was on in the public service when he was with the Director of Public Prosecutions. I was thoroughly disappointed with the member for Mindarie's contribution, as I took the member for Warnbro at his word when he walked into this place and said that he wanted to have a clean game of ball. The member for Mindarie kind of ruined it for his side. I will therefore direct my comments at the member for Warnbro on the other side of the chamber and, hopefully, have a small conversation with him in the 10 minutes that are left before the dinner break.

I will make one small political point on this matter: The cynic in me tells me that one reason the member for Warnbro is clearing the field is that he cannot win on the issue of which side of the chamber is tougher on crime. In the previous government's term in office the biggest hindrance that members opposite had to their argument was the introduction of truth in sentencing discounts. If ever there was an issue that cost the Labor Party government in 2008, it was that. I would love to see the member for Armadale in the chamber, because I reckon she would tell members opposite right now—like she is now when she is out doorknocking and talking to her constituents—that law and order, even in the federal election —

Mrs C.A. Martin: She is in her office. She is not out doorknocking; just for the record; okay?

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Mr J.M. FRANCIS: Not right now. I am talking about —

Mrs C.A. Martin: Thank you. Just for the record.

Mr J.M. FRANCIS: I am not saying that the member for Armadale is out there right now. When the member for Armadale is out there —

Mrs C.A. Martin: For the record.

Mr J.M. FRANCIS: For the record. I would say when the member for Armadale is out there on weekends, obviously in her own time, she would agree that perhaps, other than the mining tax, the single biggest issue in Western Australia going into the federal election is still law and order.

I heard the Attorney General's contribution and the member for Warnbro's contribution on the balance between, I guess, the academics' position and, I guess, the popular community position. Our job as legislators, I would like to think, is to listen very closely to the will of the community. We have seen our own government on this side make concessions on certain issues in the past 18 months—from fishing fees to a number of things—because clearly the will of the community was different to some extent from the objective the government was pursuing. Part of being mature in a debate is being able to stand and say, "Look, I've got some of this wrong and I've got some of this right." But the overwhelming feeling I get from my electorate is that law and order is something that has not been dealt with properly for many years in Western Australia. Not sentencing people to the standard that is expected within the community is certainly not the answer, and I will go into some of that issue shortly.

As I said, I think the biggest problem on the side of politics of members opposite is their legacy from the truth in sentencing discounts. That legislation had to be repealed and was one of the first things we did when we won government; and I congratulate the government for doing it. I am also glad the member for Kimberley is in the chamber, as I want to make some comments on an issue that I understand she knows far more about than I do. However, I do want to give her my observations. The member for Warnbro—or perhaps it was the member for Mindarie—quoted the police commissioner as saying that one in 12 Aboriginals are in jail in Western Australia.

Mr P. Papalia: Males.

Mr J.M. FRANCIS: One in 12 Aboriginal males. I go back to a comment I made in my first speech to this house.

Mrs C.A. Martin: The point is they make up only two per cent of the population, so that's why there's that very wide disproportion.

Mr J.M. FRANCIS: There is a disproportionate number of Aboriginals in jail in Western Australia. Even if I take the gender out of this issue, it is a disproportionately high number considering the percentage of the population.

Mrs C.A. Martin: Yes; there's not many women there.

Mr J.M. FRANCIS: I want to make the point that in my first speech to this house I spoke about how in 2003 I was driving with my wife through New Mexico and Arizona, which is Navaho country. We pulled into a small town.

Mrs C.A. Martin: A casino?

Mr J.M. FRANCIS: No, it was not.

Mrs C.A. Martin: I was just checking!

Mr J.M. FRANCIS: Actually it was a gambling-free part of that part of the United States. A guy came out to pump the gasoline into my car; he was a Navaho Indian. I went into the station to pay for the petrol and the guy behind the counter was a Navaho. The whole town—hotel, restaurants, tourist shops, every single business—was run by Navaho Indians.

Mr T.G. Stephens interjected.

Mr J.M. FRANCIS: I will be able to look at a map and tell the member, but it was only a small town; it would have had only 20 businesses.

However, I made the observation to my wife at the time that we would never see this in Australia. Underwater in submarines I pondered for years about why we would never see this in Australia. It is because these people have a stronger sense of purpose.

Mrs C.A. Martin: They have native title too and have had it a lot longer.

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Mr J.M. FRANCIS: But they have a little spirit in them. I am not saying that Aboriginal people do not have a spirit in them, by the way. All I am saying is that the Navaho Indians have a little spirit in them.

Mrs C.A. Martin: They have native title.

Mr J.M. FRANCIS: It makes them take ownership of their lives.

Mrs C.A. Martin: They have had it a bit longer than Aboriginal people.

Mr J.M. FRANCIS: That may be part of the reason why it is so, and I accept that.

Mrs C.A. Martin: We've had it since 1992.

Mr J.M. FRANCIS: The Navaho Indians have that little spirit in them that makes them get out of bed, do things, achieve, benefit and better their lives. I am not saying that Aboriginal people do not have it. I am just saying that it was very clearly evident that there was something very different about these people.

Mr P.B. Watson: There is still a large proportion of them who are on a lower economic level.

Mr J.M. FRANCIS: Absolutely! And they have alcohol problems and they have gambling problems.

Mrs C.A. Martin: Addiction problems.

Mr J.M. FRANCIS: I am not saying that they do not have similar issues; I am just pointing out that we would not see a town like that in Western Australia or Australia.

Mrs C.A. Martin: I haven't been to America yet. I've been too busy in my electorate.

Mr J.M. FRANCIS: When I was a candidate before the election, I raised the issue of the number of Aboriginal people incarcerated in Western Australia. Another thing that struck me was that as much as it was all about education, I asked myself, as I am sure the community asked itself: if someone, regardless of race or background, commits an offence and it is a serious offence, be it assault, murder or armed robbery, does that person know that what he or she was doing at the time was wrong? I think the overwhelming answer is, regardless of race or background, yes. If someone punches a cop in the face, it does not matter what that person's background is; that person knows it was wrong.

Mrs C.A. Martin: You can go to jail in Western Australia.

Mr J.M. FRANCIS: That is right.

Mr P. PAPALIA: You do understand that when the Attorney General suggests that everyone in prison has punched a cop in the face, he is actually stretching the truth?

Mr J.M. FRANCIS: No. Whatever the offence is, for serious offences people know that what they are doing at the time is wrong. The reason I make this point is because I do not think anyone could argue that the reason we have a high level of incarceration of a certain demographic is because they did not know that what they were doing was wrong, and therefore they were not educated properly.

Mr W.J. Johnston: Can I ask a question?

Mr J.M. FRANCIS: Yes.

Mr W.J. Johnston: You spoke to the Navaho community, you said.

Mr J.M. FRANCIS: Yes.

Mr W.J. Johnston: Do you think the fact that they have land rights and weren't dispossessed may be relevant? Do you think that is an issue that we should deal with?

Mr J.M. FRANCIS: Absolutely!

Mrs C.A. Martin interjected.

Mr J.M. FRANCIS: This brings me on to this very point: the problem is not that they did not know whether what they were doing was right or wrong. The problem is that they probably did not care much whether they got caught, or they probably did not care about the consequences. That might be a better way of saying it.

Several members interjected.

Mr J.M. FRANCIS: I know, member for Warnbro, that I am probably generalising.

Mr P. PAPALIA: They are not considering the consequences.

Extract from Hansard

[ASSEMBLY - Wednesday, 16 June 2010]

p3930b-3961a

Mr Paul Papalia; Mr John Quigley; Mr Christian Porter; Acting Speaker; Mr Joe Francis; Mr Albert Jacob; Ms Lisa Baker; Mr Tom Stephens; Ms Alannah MacTiernan; Mr Peter Abetz

Mr J.M. FRANCIS: I have only got a minute or two left before the dinner break. The point I made in my maiden speech is that people such as Andrew Forrest are doing far more to help people in this situation in Western Australia than almost any government program—by giving Aboriginal people jobs.

Mrs C.A. Martin: But have you talked to him?

Mr J.M. FRANCIS: I have. I honestly would say to members opposite right now that if they really wanted to do something about the level of incarceration in Western Australian jails, they should ring the Prime Minister and say, “Axe the tax. Axe the tax.”

Several members interjected.

Mr J.M. FRANCIS: They should say, “Axe the tax”, because as Andrew Forrest said last week when he was in Mandurah with the Prime Minister, “Look, you should be doing something.” So, I leave that with members opposite: tell him to axe the tax. Andrew Forrest is doing far more to help Aboriginals than anyone else.

Sitting suspended from 6.00 to 7.00 pm

MR A.P. JACOB (Ocean Reef) [7.00 pm]: In speaking to the motion before us it is probably useful for me to start with the motion itself, which reads —

That this house calls on the Barnett government —

Mr T.G. Stephens: We had an agreement with your Whip.

The ACTING SPEAKER (Mr J.M. Francis): Member, I am not going to call you.

Mr T.G. Stephens: You were part of it!

The ACTING SPEAKER: I am going to call the member for that, because I was not.

Mr P. Papalia: You were. That is why —

The ACTING SPEAKER: Member for Warnbro, no I was not. I was unaware of any agreement. The member for Ocean Reef caught my eye first. I ask the member for Ocean Reef to continue. I call the member for Warnbro and the member for Pilbara to order for the first time.

Mr T.G. Stephens: Just for your information, there was an agreement before the dinner suspension that the then occupant of the chair would get the call for us, by our agreement, so that our speaker could be the next person to speak in this debate.

The ACTING SPEAKER: Okay.

Mr T.G. Stephens: An arrangement has been breached.

Mr D.A. Templeman: We will remember you, now. We will find someone very good to stand against you next time.

Mr A.P. JACOB: Is the member for Mandurah saying that the previous candidate who stood against me was not very good? Will the Labor Party find somebody even better? Was she second grade?

The ACTING SPEAKER: That will do, members!

Mr A.P. JACOB: Thank you, Mr Acting Speaker. I wanted to start by looking at the motion before us, which states —

That this house calls on the Barnett government to implement a “justice reinvestment” strategy to lower the rate of re-offending and to make our communities safer.

A lot of the debate has strayed fairly far afield from that. I was listening quite closely to what other members considered justice reinvestment to be, but my question was generally unanswered. In researching this matter, I went to the “Access to Justice” report of the Legal and Constitutional Affairs References Committee of the Australian Senate of December 2009. The committee delved into the idea of justice reinvestment and defined it as —

Mr P. Papalia: Which report?

Mr A.P. JACOB: It was the Australian Senate’s Legal and Constitutional Affairs References Committee report of December 2009 titled “Access to Justice”. Is the member familiar with it? It delves into the idea of justice reinvestment. It was a convenient report from which to pull a definition of justice reinvestment. I think that has been lost in the debate so far, because I am not entirely sure that we have always been debating or discussing the same thing. The committee defined justice reinvestment as —

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... a criminal justice policy approach that diverts a portion of the funds spent on imprisonment to the local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested in programs and services that address the underlying causes of crime in these communities. It is not just about tinkering around the edges of the justice system — it is about trying to prevent people from getting there in the first place.

That is what that committee considered justice reinvestment to be. I am keen to discuss justice reinvestment and the possibilities or value it may add to Western Australia's corrective services industry. I think to actually implement a program, as the motion calls for in such an off-the-cuff manner, would probably be unwise, but it is a policy and a concept that is definitely worth exploring. I believe there may be opportunities to do that in other ways down the road. It is certainly a step up on the level of debate that often surrounds the issue of justice and prisons.

When introducing this topic, the member for Warnbro told us how keen he was to elevate the level of debate on the topic of prisons. I only hope that actions continue to follow this statement. I do not think a lot of the debate up until now has done that. Unfortunately, some of the speeches we have sat through have missed the mark on that score. However, the member for Warnbro did wish to distinguish himself —

Mr D.A. Templeman: This is a good example.

Mr A.P. JACOB: I will, member.

Mr P. Papalia: How about you get on with it?

Mr A.P. JACOB: Absolutely; I will. The member for Warnbro said that he wished to distinguish himself from what he termed the often juvenile debate about who is the toughest. That is a fair comment.

Mr P. Papalia: I would win that one hands down if it were real!

Mr A.P. JACOB: However, while the member for Warnbro kept saying that he wanted to raise the level of debate, in between every one of those statements were lots of little cheap shots along the way. That being said, if I take the member at his word when he said that he wants to dispense with the politics and I ignore the subsequent debate contributions, I think that the intent of the motion, which is to further examine justice reinvestment, has a lot of merit. However, as I said, I do not think it is something that we would just throw out and engage as a policy after a couple of hours of debate in private members' business. Much was made by the member for Warnbro about comparative imprisonment rates internationally.

Mr P. Papalia: Do you know what concerned me more? Not the current rate but our target.

Mr A.P. JACOB: Either way, one country that is a bit of a standout and would probably have a lot more for us to compare with is Singapore, which was missing from those comparisons. Singapore is a country in which I have quite an interest. When comparing our regional neighbours, Singapore is possibly a standout place. I am not saying that we would necessarily adopt everything that is done in Singapore, but a lot that is being done there on this issue is actually quite groundbreaking. Singapore would be a logical place to start. It is one of our regional neighbours, it is a commonwealth nation, and it is a South East Asian nation that is absolutely renowned for its low level of crime. As I said, in many ways it would be a very relevant regional country to compare with Western Australia.

Mrs L.M. Harvey: They all feel safe there.

Mr A.P. JACOB: Absolutely. I had the privilege to go to Singapore recently and to visit Changi prison. I got a much better insight into its justice programs. When we talk about progressive approaches or new ways to do things, Singapore is a standout example. It is possibly not so much involved in justice reinvestment specifically, but a lot of things are being done there that really stand out. In Singapore, there is a clear separation between the corrections sphere, where people are in prison, and the rehabilitation, work and education programs. They are two distinct bodies. What was very apparent to me when visiting Singapore was the complete change in the approach of inmates and their attitude to their time in prison. Those I saw in education and rehabilitation programs had such a level of ownership of those programs and a genuine desire to turn their lives around. When we take away all the debate and politics of this issue, all members would want to see that; we would all like to see every person in our prisons given every opportunity to turn their lives around and to become full, productive and active members of our society. I think we all want to find ways to do that better. The debate really centres on the best way to do that and the evidence or statistics that should be used when looking at that. The Attorney General said in his contribution to this debate that for those prisoners who undertake programs in our prisons—he made a very good comparison—the recidivism rate is much lower at only 31 per cent, which is far more competitive internationally.

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Mr T.G. Stephens: Would you like to tell the house about access to programs in prison?

Mr A.P. JACOB: I am trying to be very careful here. I do not want to stray into areas that are not yet appropriate for me to comment on.

Mr T.G. Stephens: I understand; I will not provoke you.

Mr P. Papalia: It is in the public domain.

Mr A.P. JACOB: No, the member for Pilbara knows what I am saying.

Mr P. Papalia: I know what you are saying, too. I have actually elicited that information from the minister.

Mr A.P. JACOB: I will debate that when the time comes—or not even debate it; I will be happy to discuss it when the time comes. I thank the member for Warnbro.

As I was saying, those prisoners who undertake our programs, as the Attorney General said, have a recidivism rate of only 31 per cent, which, on an international level, is very low. I read out the definition of justice reinvestment —

Mr P. Papalia: No, he was referring to an inquiry. That report is coming next week.

Mr A.P. JACOB: I would rather be on the side of caution in that issue, and it does not need to be gone into right now anyway.

I read out from that Senate report. A lot of the justice reinvestment concept has come from the United States. The whole concept, I guess, originated there. It is stated in this Senate report that it was initially developed by the Open Society Institute, and has since been taken up by 10 states in the United States. The standout model, according to this committee report, is considered to be the state of Kansas. Interestingly, among the offenders in this state who do our programs, there is a recidivism rate of 31 per cent, which is almost a 10 per cent reduction on what would be an average recidivism rate, which is about 40 per cent. Yet in Kansas, which is considered to be the standout model for justice reinvestment, there is, at best, a 7.5 per cent reduction in the recidivism rate of its prison population, as opposed to a 10 per cent reduction difference when our education programs were implemented. The recidivism rate in Kansas since bringing in justice reinvestment has dropped to 35 per cent. Of course, any decrease is something that we want to aim for.

Mr P. Papalia: It is our motion, so I would like some of our members to speak to it.

Mr A.P. JACOB: That is not a problem. It is probably best if the member does not overly interject. That rate has dropped to 35 per cent, whereas our own is getting as low as 31 per cent. I am sure that we can discuss a lot of issues at a later point.

Coming back to justice reinvestment, it is still very theoretical in the Australian context, or even in our regional context, for that matter. The opening sentence in chapter 6.48 of the Senate report states that justice reinvestment is a new concept in the Australian justice system. I do not think that that means it is without merit. But it was only in December 2009 that it was being flagged as a new concept. It is certainly something that we can explore into the future. However, as I said, the report goes on to outline where we have gone with the US concept, and there is probably some merit in comparing some of the parts.

On paper, I think that justice reinvestment is definitely a concept worth exploring. It has the potential to produce the sorts of results that, as I said, I believe we all want to see in this area. There is certainly merit in considering this as part of a mixed bag. We talked about—this came up in the debate a number of times—taking the higher ground on this or taking the politics out of it. I do not think that has necessarily happened during the debate, but certainly it would be of benefit in this area. I do not think for a second that any of us have differing goals in what we would like to see come out of this. I believe that all of us want to see the best possible results for all inmates who go into our prisons. I think that all of us want every citizen in Western Australia to have the maximum potential to be a productive part of our society and to live as fulfilled a life, and as fulfilled a lifestyle, as they can in Western Australia. That is a big part of why I started with that definition of justice reinvestment. I also wanted to use my opportunity to bring us back to what the motion is. We are debating specifically this justice reinvestment program, which has been tried in the United States and which is something that we are considering bringing to this state.

As I said at the start of my speech, I broadly support the intent behind the motion. I am picking up on opposition members' comments, and there are a range of other things that I could have weighed into on this issue. However, I believe that the opposition has another two speakers, so I do not want to talk for too long.

I will come back to the key point that I have been raising, which is that it is about results at the end of the day. In introducing this notion, I believe that members opposite are interested in the results. I genuinely think that they are chasing the best possible result, and certainly that is my interest in this. I absolutely believe that justice

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reinvestment may well help to yield a result. However, when we look at the numbers, we see that the government is doing many things that are also yielding results. I think we need to give credit where credit is due. There will always be things that we can do better. I believe it is a fantastic topic to have a full and frank discussion about.

MS L.L. BAKER (Maylands) [7.14 pm]: I agree with the member for Ocean Reef's contribution to this debate. It has been nearly two years since I first came into this house, and it has also been two years that the Attorney General has been doing his job. This is the greatest opportunity for a debate that is outside business as usual, that is outside name calling and insults, and that is outside opposition versus government. I am proud that the member for Warnbro got this issue onto the agenda and that it is starting to be discussed. I am aware that it has been discussed in the justice department and within the halls of government for some time, either in the context of therapeutic communities or in the greater context of how we manage offenders and crime and justice in this state. I am aware that an extensive amount of work has also been done within government departments over recent years on this subject; therefore, I am quite sure that the Attorney General and others who are interested in this issue have a good grounding in why members on this side of the house consider this to be something worth pursuing.

I have worked in prisons; I have worked in the justice system; I have been in Banksia Hill Detention Centre and Rangeview Remand Centre running shifts; I have trained in prisons—I even worked in Fremantle prison a long time ago. I am very familiar with the environment and clientele and what it is like to be incarcerated in high-security, minimum-security and medium-security prisons in this state.

Dr M.D. Nahan: In what capacity?

Ms L.L. BAKER: I was employed by the former Ministry of Justice most recently to work on the split into private–public prisons and to bring a case on board.

Dr M.D. Nahan interjected.

Ms L.L. BAKER: No; I am a psychologist, but it was not in that context at all—it was as a corporate development person, who is someone who is experienced in the funder–purchaser–provider model of corporatisation, or whatever one likes to call it. I did the preparatory work with Alan Piper, who was the director general of the day. During that time I was asked to shadow officers, because it was important that I understood how the prisons worked, how prisoners felt and how it felt to be in the system.

Mr C.C. Porter: More privatisation, member?

Ms L.L. BAKER: As the Attorney General knows, I am opposed to privatisation, and I particularly disagree with the notion of privatising prisons, which is something that I would love to talk to the Attorney General about at some other time. But I did what I was paid to do at the time. I was a public servant, so that is what I did.

I want to talk specifically tonight about the issue of a more vulnerable target group within prisons, and quite a high population group within prisons as well. I heard the Attorney General provide some statistics about the number of mental health clients or people suffering from mental illnesses within our prison base at the moment. That seems to me to be very different from eight or nine years ago when I was involved in this area. I want to talk about what I know about the figures nationally for prisoners with mental illnesses and the rates of mental illness. I think we agree with the government's opinions on this issue. The government has shown that it is committed to working on mental health issues and is trying to address the associated problems. I know from my experience that some members on the other side of the house share goals similar to those of members on this side of the house about the impact of co-morbidity issues, the antisocial behaviour that that brings with it and how to manage it. I am aware that in the 2009 Australian Institute of Health and Welfare report, the figure for prisoners who suffer from diagnosed mental illness was 37 per cent nationally. The Attorney General may remember that the figure he gave last year was 17 per cent.

Mr C.C. Porter: That is those who have a psychiatric flag on admission to the prison system based on Department of Corrective Services data.

Ms L.L. BAKER: That is possibly a different —

Mr C.C. Porter: It is a different admission.

Mr P. Papalia: That was in response to the question about how many mentally ill people there were.

Mr C.C. Porter: I do not dispute that. There is also a figure about who is being medicated for psychotic and depressive illnesses, which is between those two figures.

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Ms L.L. BAKER: I understand what the Attorney General is saying. It would be of great benefit to him if he had more of an in-depth look at the mental illness issues within the prison system —

Mr C.C. Porter: I have read that report.

Ms L.L. BAKER: — and try to nut out a more realistic figure on mental illness. There is plenty of work around. I have the New South Wales study here, which I am sure members on the other side of the house are familiar with. It is entitled “Mental disorders in Australian prisoners: a comparison with a community sample”. The results from that research, which was done in 2006, show that the 12-month prevalence of any psychiatric illness in the past year was 80 per cent in prisoners versus 31 per cent in the general community. There are a number of statistical assumptions in this piece of research. It has normalised the data to try to get a comparative figure that makes statistical sense around the demographics of the groups. If members want to look at that in more detail, I recommend it as it is a very good paper and worth having a look at. It is a very interesting way of analysing the data. This study was done by the *Australian and New Zealand Journal of Psychiatry* in 2006. The pages I referred to are pages 272 to 276. That same study mentioned that the mentally ill too often revolve through prison doors with periods of incarceration interspersed with spells in the community. I have heard the Attorney General mention this. I know that the health goals for incarceration in our state include trying to ensure that if we intend to let people out of prison, we ensure that they are given some support so they come out better than when they went in. My ideology about prisons is that if we lock someone up and we ever intend to let them out, we have an ethical responsibility to ensure that they come out better than when they were locked up.

Prison represents an opportunity for intervention and treatment and, in some cases, it is often the only time that someone with a mental illness, which is generally linked to an illicit drug problem and/or alcohol problem, can be offered treatment. Co-morbidity issues are very highly correlated. I completely understand that tragic fact. Notwithstanding that that might be the only chance we have to get hold of them, I think that is the point of difference that I would have with the Attorney, and I welcome his response. According to the psychiatric journals, it is pretty unlikely that prison is the best therapeutic environment for people suffering from a mental illness. In other words, to wait until we have locked someone up before they are given treatment for an alcohol or drug addiction or a mental illness is not really the best way for a civil society to progress cures or treatments for mental illness. The link into reinvestment, as was succinctly put by the member for Ocean Reef, is to try to find ways of intervening and directing funds to stop people going to prison in the first place. How do we put the various supports in place in the community? I return to the figures. I know that the Western Australian Networks of Alcohol and Other Drug Agencies estimated that 62 per cent is a more likely figure of the number of prisoners who suffer from a mental illness in Western Australian prisons. I am sure that the Attorney General is aware of its observations around this matter.

The other thing that tends to impress not necessarily the Attorney General but economic rationalists and the like is the notion that the justice reinvestment model appeals to people who are very concerned about cost-benefit analysis and the macroeconomics that go with offender management and the correctional system in general. When I looked for ways of making a case for why this is a good thing to do—that is, putting in place community interventions and the dollar figures that might ring bells with people who are not on the same wavelength that we are—I came across the paper that the Matrix Knowledge Group put together, which I am sure the Attorney General is aware of. I think it has been referred to a couple of times tonight. It put out an update paper in November 2008, looking for answers to the question of whether prison sentences are a cost-beneficial way to reduce offending in populations that are at risk of further offending. It is quite specific in its target. I refer to what it calls adult community interventions. I will be quite specific about what it means by that. It could be an intensive supervision program with drug treatment or it could be house arrest with electronic monitoring and drug treatments. These are people who have serious problems. The evidence base that is quoted in this paper is very clear about the studies meeting selection criteria and the number of individuals involved in the research. Its research shows that the cost of that particular intervention—surveillance with drug treatment—is \$14 741.66 per offender per year. It shows the value for money compared to prisoner per offender. It shows the cost to society and the cost to the taxpayer of not having this option available. It states —

The following figures show the estimated net benefit from using this intervention instead of prison. They are based on the reduced chance of re-offending (taking into account the cost of the intervention) over an offender’s post release lifetime.

It is quite a sophisticated analysis. The intervention that costs around \$14 000 a year saves the taxpayer \$70 974. It saves society \$105 433 over the lifetime of that offender.

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Mr C.C. Porter: I have read that report. Do they make some assumptions about the rate of successful completion of the home detention order?

Ms L.L. BAKER: Yes, it does at the beginning. This is not related to a home detention order specifically. It has a couple of options.

Mr C.C. Porter: But of the type of order, they make some assumptions about the success rate of abiding by the terms of the electronic detection.

Ms L.L. BAKER: Absolutely.

Mr C.C. Porter: Do you recall what those are?

Ms L.L. BAKER: I assume it will be listed in this document. I read it when I went through it.

Mr P. Papalia: You are referring specifically to an intervention that is not based —

Ms L.L. BAKER: It refers to drug treatment or house arrest with electronic monitoring.

Mr C.C. Porter: Those financials have to be predicated upon some assumption that X number of people complete that order successfully.

Mr P. Papalia: That study analysed the outcome. They looked at two specific studies. I do not know the number of individuals concerned. They did the comparative analysis of the success rate. That is what they are actually costing.

Mr C.C. Porter: I will look at that one. In this jurisdiction the absolute best we have been able to manage on a successful completion of any community-based order is about 50 per cent.

Ms L.L. BAKER: I agree with the point that the Attorney General is making. If there is a problem with the process, I think we need to address that. There are clearly some good outcomes in terms of the economics that we can achieve from doing these things. This is not the only piece of research available; we can search the net and find a bunch of information. The assumptions in this paper were far more statistically valid and reliable and I was more prepared to cite it than some of the others. The other one is the residential drug treatment program as distinct from prison for drug offenders. Again, the evidence base is cited clearly. The cost of that intervention works out at \$9 080 a year. That would make sense, considering other information that I have recently read about the cost of drug interventions. There is value for money, compared with imprisonment, for each offender. The saving to the taxpayer for that particular residential drug treatment is \$151 721 over the prisoner's lifetime. The saving to society is a somewhat remarkable \$348 000. I wanted to mention those because there is always a certain amount of seduction in being able to quote statistics to people who have an economic mindset about the world. We are increasingly being driven by concepts like "human capital" when we refer to people and how they operate in a community or a society—whether I agree with that is another story.

The Attorney General also mentioned that we already run some really good programs that could form part of justice reinvestment. I would be very supportive of seeing more investment in such programs as Outcare's community re-entry link service. I am sure the Attorney General would be familiar with that program. He has already quoted some of the things that happen when someone is in prison. The percentage of prisoners who return to prison after participating in Outcare's community re-entry link service is 17.5 per cent, as distinct from the number of offenders who do not attend that service. Their recidivism rate is more like 41 per cent, which is similar to the figures that the Attorney General has quoted.

What used to be called the Prison to Parole program is now called the Drug and Alcohol Transition program, which is run by Holyoake. The success rates are again pretty impressive. Only 32 per cent of people who have completed that program are likely to reoffend, as distinct from 60 per cent of non-participants. These are impressive figures and we know that these things work, but for some stubborn reason there is a real problem getting past the debate on whether we are being too soft and gentle with people by offering them treatment and having preventive services in place, or whether we are making a genuine attempt to reframe the debate on justice and the management of justice in our communities. I am pretty sure that for Indigenous people, women, young offenders and people with a mental illness, there is a really strong argument that we should look very closely at the advantages of a justice reinvestment program such as the one that is being discussed tonight.

MR T.G. STEPHENS (Pilbara) [7.32 pm]: I appreciate the fact that the Attorney General has been listening to the debate and the spirit in which he generally conducted the earlier debate. However, I take exception to the way in which he has involved himself in the debate by setting up the false dichotomy between repetition of the "public view" on one hand and the views of "academics" on the other, and then throwing the views of the Chief

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Justice into that false dichotomy. That, to me, is not a real dichotomy. In one breath he has tried to dismiss one side of that discussion—the “academic” side, as the Attorney General has caricatured it—but has then tried to draw on the academic argument in support of some of his propositions. That false dichotomy is not something I can easily relate to, although I suppose I have, at times during my political career, also created similar dichotomies for the purposes of cheap political point-scoring, and I feel that that is what the Attorney General has done during this debate.

Mr C.C. Porter: Don’t you think those two polar views exist in the debate?

Mr T.G. STEPHENS: I am of the view that the academic world has been drawn upon and utilised quite heavily in places like Fitzroy Crossing and other parts of the Kimberley region to extract knowledge about the experiences of Indigenous communities. That evidence has been presented to government through the academic filter, but it is not a filter that should be attacked. That academic world is a voice for the communities that I represent, and it creates opportunities for those of us involved in public debate to do what I hope I have always done in politics, which is to engage in robust dialogue with the communities of which we are part. I do not accept that I just take the lead from my community on issues; I accept the opportunity to listen creatively and be involved in robust discussion, to learn from the community viewpoint and then to utilise all the other experiences I have had to shape that community discussion in the world in which I have walked. I have been part—by no means the major part—of the contribution towards softening some of the discussions about issues of Indigenous involvement in the law and order debate, and I have tried to make that a better-informed debate in the world I have the responsibility to represent.

It is also our responsibility to do what the Attorney General should have done, which is to defend and champion the voice of the Chief Justice and the judiciary in this Parliament. That is one of the traditional roles of the Attorney General. I put it to the house that we are very blessed to have a Chief Justice and judicial members of the general calibre we have in this state. Their contribution to public debate was traditionally championed by the Attorney General, and still should be. I want to champion the voice of the Chief Justice in this chamber and the contribution he made, in the company of the Commissioner of Police and the South Australian Commissioner for Social Inclusion, Monsignor David Cappo, at the law and order forum held at the University of Notre Dame in Fremantle on 9 May. Their combined contributions were extraordinary, and it is a pity, as other members have mentioned, that more members of the house were not present, particularly government members, at that forum.

I turn to some statistics from the field of Indigenous affairs that should alarm the Attorney General and the house. I refer to the statistics for Aboriginal imprisonment rates taken from the Australian Bureau of Statistics’ corrective services series for the December quarter of 2009. These show that the imprisonment rate for Aboriginal adults in Western Australia was 4 400 per 100 000, which is double the rate for the Northern Territory, which is 2 200 per 100 000. It is also more than double the rate for Queensland, which is 1 750 per 100 000, and Victoria, which is 1 350 per 100 000. The next highest rate of Aboriginal incarceration in Australia is a little over half that of Western Australia; that is New South Wales, with 2 500 per 100 000. The incarceration figure for Aboriginal men in Western Australia is 8 000 per 100 000, which means that one in every 12.5 Aboriginal men is in custody.

That means that at any one moment, one in every 12 adult Aboriginal males in Western Australia is in prison. The impact that has on families, children, partners and communities from which those men have been taken is absolutely profound. Is there any wonder we have a tsunami of a problem developing in the Aboriginal world when we have incarceration statistics like that? The incarceration statistics for Aboriginal juveniles from the Australian Institute of Health and Welfare series, “Juvenile Justice in Australia 2007–08”, show the rate in Western Australia to be 811 per 100 000. An Aboriginal juvenile in Western Australia is 43 times more likely to be in custody than a non-Aboriginal juvenile. This is a higher disproportion than is the case for adult Aboriginal males, who are 26 times more likely to be incarcerated than non-Aboriginal males.

The rates at which Aboriginal juveniles are detained in Western Australia is significantly higher than any other jurisdiction in the country—it is more than 2.5 times the rate at which juveniles are detained in the Northern Territory. I am drawing heavily on notes that were taken in reference to the contribution made by the Chief Justice at the Notre Dame forum. Monsignor Cappo is the Commissioner for Social Inclusion in South Australia. In his contribution, he rattles off that 56 per cent of people in Australian prisons have been imprisoned before. The reference is from the publication by the Australian Bureau of Statistics called “Prisoners in Australia 2009”. Fifty-six per cent of prisoners have been in adult prisons before, 25 per cent of whom are Aboriginal—this is Australia-wide; 41 per cent have a mental illness; around two-thirds have a substance dependency; many have experienced homelessness in their lives; and we know that many suffer from physical and intellectual disabilities. There are footnotes in this publication, which is now on the South Australian government’s Social Inclusion Initiative website.

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The member for Ocean Reef has indicated that we are members of a committee that is looking at the issues of imprisonment and that will be reporting to the house next week. I will restrict my comments for another time when I will develop some of these themes.

Mr C.C. Porter: I thought you were reporting in October.

Mr T.G. STEPHENS: We will have the opportunity to provide an interim report next week.

Mr C.C. Porter: Six months early—that is interesting.

Mr T.G. STEPHENS: I will leave it there.

I have had the opportunity to go into the prisons of Western Australia as not only part of that committee work, but also, from time to time, as a parliamentarian and, prior to that, in another capacity altogether. The awful experience of prisoners is that people have created for themselves a situation that is perpetuating the problem. One of the causal factors of the recidivism rate is the prison experience itself. It is driving and compounding the problem. There are parts of remote and regional areas of Western Australia that are delivering more prisoners per head of population into the prison system than any other part of the country. I understand that the Balgo area now produces more prisoners per head of population into the prison population of Western Australia than is the case in any part of the state. That is a clear argument for the proposition in the motion that is before the chamber today. What one needs to do to save the financial cost as well as the social cost and human tragedy of this experience is to reallocate our resources intelligently and cleverly in response to the reality that we are experiencing. We are delivering people into the prison system. In that case, it is people from Balgo. By and large, those people are impacting upon their own families and community members. The crimes committed are generally against one another. Balgo people are mainly delivering harm to each other. An investment in that population is needed to start them on a different trajectory altogether. Governments and Parliaments that I have been part of for a long time—I was critical of my predecessors and I will be damned if I will lower the tempo now that the Liberal–National government is in office—must invest in places like that either up-front or down the track. One way or another, an investment will have to be made. Either we must spend money on the jails, at the end of the system—that is a \$100 000 investment for each prisoner—or we must make an up-front investment in a place like Balgo that is producing these disproportionate numbers —

Mr A.P. Jacob: Stop polarising the debate. There is a balance between the two.

Mr T.G. STEPHENS: I will not respond to the member. I did not interject on him.

Mr A.P. Jacob: You did, actually, a number of times.

Mr T.G. STEPHENS: That was only at the start of the member's speech.

Mr C.C. Porter: What about the Indigenous victims in that area? If there is a choice between imprisoning the perpetrator—as you pointed out, many of the victims are Indigenous people—what should the government do about that?

Mr T.G. STEPHENS: The government should invest in where they are living. They are not getting the wraparound response that is needed from the whole armoury of government in all spheres to put those communities on a different trajectory. That is what justice reinvestment should be about. It should be about positioning within those communities effort that changes the movement of individuals. My son happens to be a volunteer in the Balgo community. He has been there for the past eight months and I am getting fresh insights from him as he describes the challenges of the circumstances that are delivering the worst statistics for this state. My son is an economics graduate and is interested in social policy. He can see the failure of government policies and programs to respond to the challenges of the population. Instead, we are investing in the justice system, which is eating up vast quantities of cash at the wrong end of the process. Regrettably—I will talk about this another time—the prison system fails to provide the prisoners with access to the education and training programs that are needed.

Mr C.C. Porter: That is not fair. They are getting education and programs in greater numbers than when you were in government.

Mr T.G. STEPHENS: The numbers of programs are increasing but not in proportion to the number of prisoners who are in there.

Mr C.C. Porter: That is actually not correct either.

Mr T.G. STEPHENS: We will have another opportunity to discuss this. I accept that when people get access to education and training programs, things improve. Regrettably, the policies that are being applied are making things much worse. We will speak about this later. They are much worse in terms of the actual numbers getting access to —

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Mr C.C. Porter: That is not true.

Mr T.G. STEPHENS: I am referring to per head of the prison population.

Mr C.C. Porter: We have increased the programs by 110 per cent in two years. The prison population has not increased by 110 per cent in two years. The prison population has increased by 29 per cent and there has been a 110 per cent increase in prisoner offender programs. Do the math.

Mr T.G. STEPHENS: It is extraordinary—the Attorney General is not an unintelligent man, yet he is defending the atrocious status quo.

Mr C.C. Porter: You give no credit for improvement. You had eight years to do something about the problem you are describing and you have given us no credit for improving it.

Mr T.G. STEPHENS: Do not jump at false figures. The Attorney General is suggesting that access to rehabilitative programs is widespread. They are more limited than they ever have been as a direct consequence of the government's policies.

Mr C.C. Porter: That is a factual untruth.

Mr T.G. STEPHENS: We will have that debate later.

Mr C.C. Porter: Let us have it now. You give me the statistics.

Mr T.G. STEPHENS: We will have another opportunity to have that debate.

Mr C.C. Porter: Give me the statistics. Tell me something other than a view; any kind of figure or anything that is factual rather than a view.

Mr T.G. STEPHENS: The Attorney General knows the situation I face and I will have a chance of doing exactly that very soon.

I am very proud to be part of a team that has endeavoured to offer to the Western Australian community and the Western Australian government an alternative to the failures of the past, of which our team has been a part. We never had the opportunity that has been offered to this government.

Mr C.C. Porter: Have you never been in government?

Mr T.G. STEPHENS: The difference is that the Attorney General is being offered the opportunity to take the politics out of this discussion.

Mr C.C. Porter: You have not suggested anything concrete.

Mr T.G. STEPHENS: The Attorney General has been offered that opportunity but he is looking a gift horse in the mouth. In more than 25 years in this Parliament, I have never seen an offer like this on this matter delivered across the chamber. The Attorney General has it, yet he seems to be intent on throwing it in the dirt at the expense of the Western Australian community and at the expense of delivering to future governments of Western Australia the task of getting this whole area back on track. He is doing Western Australia a grave disservice by the approach he has adopted—the false dichotomy, misconstruction of the experience in the prisons, ignoring the reality of those prisons. In many cases they are people who should not be in those prisons; they are not benefiting from the prison experience. They are in a situation in which there could be benefit and there are other jurisdictions from which we could learn—but he is not.

MS A.J.G. MacTIERNAN (Armadale) [7.50 pm]: I know this is an incredibly difficult area. I come from an electorate in which there is a high incidence of crime. I absolutely understand people's anger when they are victims of crime. We deal on a daily basis with people who are being subjected to crime. We also understand the trajectory of that crime. We see the babies born and the families they are born into. When we go doorknocking in our electorates, we see the households they are born into and where they are being raised. We know there is very little chance for these children unless we take active intervention. It is all very well for us to rail against these people when they are 18 years of age. But when we have seen them from the ages of one, two and three and have watched their trajectory, we recognise that we must do more than vent spleen against their appalling conduct. We have to know that we have to get in there and deal with this problem. I say to the Attorney General —

Mr C.C. Porter: I don't disagree with you.

Ms A.J.G. MacTIERNAN: That is wonderful. I say tonight that what was said by the member for Warnbro and the member for Mindarie from this side of politics is a seriously genuine offer to work together to achieve something in this extraordinarily difficult area.

I refer members to the federal area—not that I am supposed to be looking at federal matters from my position now—and the bipartisanship that was adopted in Australia at a federal level, probably between about 1946 and 1992, on all the issues associated with immigration, when we were able to put in place a very rational policy. We

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are saying to the Attorney General today that we now have an opportunity to work together; I seriously mean this. I know all the platitudes of politics and all the realities of our being in an adversarial system, but tonight an offer has been made in this place via the member for Warnbro to move outside the adversarial on this very difficult area. We will still play—there will still be adversarial politics on all the other issues such as industrial relations, planning and public transport. We can still do the normal “biffo” that slowly makes progress for our society. Here, now, we have an opportunity to say on corrections that we will not play off against each other; we will try to get some intelligent, rational policy that guides how we deal with people who offend.

Mr C.C. Porter: You say, “Let’s do something on a bipartisan basis.” What do you suggest we should do on a bipartisan basis?

Ms A.J.G. MacTIERNAN: Possibly next week I will have an opportunity to come into this Parliament and present a report that will give one aspect of something I think we can do. I want the Attorney General now to remember when the Vietnam boat people first started coming into Australia. I think it was a Labor member—can someone help me with the names?—and a Liberal member —

Mr J.E. McGrath: Al Grassby?

Ms A.J.G. MacTIERNAN: No; it was a bit later than Al Grassby’s time. Malcolm Fraser was the Prime Minister. It was recognised that the issue of those refugees was an issue that we could not split the community on. Those two members travelled around Australia and built up support for our accepting the Vietnam boat people into Australia. What a great success that has been for the Australian community. Who would not say today that the Vietnamese have been anything other than a great boon for our society? They are very hardworking, future focused, wonderful people. That was achieved. We could have played off against each other and achieved nothing but we did something that was great. We can get bipartisanship when Labor comes on side with a conservative opposition. We are saying to the government that we want to work with the government.

Mr C.C. Porter: To do what?

Ms A.J.G. MacTIERNAN: As I say, there is a raft of initiatives, including those we will talk about next week when we present our report. Let me say to the Attorney General that it cannot be the case, as he is claiming, that nothing can be done other than that what we are already doing. We have some of the highest recidivism rates in the world. That cannot be best practice. We are saying to the Attorney General that if he wants to do something progressive and creative, we will not snipe at him from the sidelines. We want to say, “Let’s work together.” Why not try something really innovative? When the member for Balcatta was Minister for Road Safety, he tried to bring members together from both sides to come up with a united strategy. The Attorney General can reject it if he wants and have business as usual.

Mr C.C. Porter: Reject what?

Ms A.J.G. MacTIERNAN: If he wants business as usual, he can have business as usual. But if he wants an environment in which we move forward in a bipartisan way, in the way the Liberals and Labor did in the 1980s to build community consensus about accepting Vietnamese refugees, we can do as well as that. Let us work together to develop a consensus for improving the outcomes from our prison system. They are very inglorious outcomes at the moment. We are putting to the government that there is the potential to do better and we want to work with the Attorney General. Pure and simple, that is what the debate is about.

MR P. ABETZ (Southern River) [7.57 pm]: I would like to contribute to this debate in the three minutes I have. I am cautious about the whole concept of justice reinvestment, because it was initially developed by the Open Society Institute in 2003. That institute is the front for George Soros’s drug legalisation movement. Basically, that institute is saying that we should reduce some of the funding to our prison system and put it into community programs. I put it to members opposite that I am 100 per cent in favour of supporting community programs that will keep people out of prison. There is no question about that. It is the same as saying let us slash the hospital budget and put money into preventive health. I put it to members opposite that we cannot do that because we need to invest more in health. If we invest in preventive health, in the long term we will save money on hospitals. In the short term we need to increase our investment in the prison system because we need a fully functioning prison system with all the rehabilitation programs working. We must not take money out of the prison system for the community work. That should be funded separately.

Mr P. Papalia: You increased the cost of running them by \$90 million a year.

Mr P. ABETZ: We all, I think, agree that every prisoner is actually a tragedy; they are someone’s son or someone’s daughter or have some connection with someone. Anything that we can do to keep people out of the prison system is to be commended. That is why I am delighted that in the last budget we as a government put in an extra \$49.7 million to help young kids get access to occupational therapy, speech therapy and physiotherapy. If kids are engaged in school, their chance of getting involved in the justice system later on is so much less.

Extract from *Hansard*

[ASSEMBLY - Wednesday, 16 June 2010]

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These kinds of programs are absolutely essential. Kids who get disengaged from education are so much more likely to end up in the judicial system. We really want to address the high incarceration rate. It is not just a case of what can we do to lessen the number of people going into prison.

Debate adjourned, pursuant to standing orders.