CRIMINAL LAW AMENDMENT (HOME BURGLARY AND OTHER OFFENCES) BILL 2014

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 3: Act amended —

Debate was interrupted after the clause had been partly considered.

Mr W.J. JOHNSTON: Just before the debate was interrupted for question time, the minister talked about a 17-year-old who had committed 117 offences and had not been sanctioned until he had committed the fifteenth offence. I think that is what the minister said. How many of those 117 offences were for home burglary; and, of those home burglary offences, how many were for stealing food?

Mrs L.M. HARVEY: Member, I would need to take this question on notice as to the specifics of that. My understanding, though, from conversations with police is that when a person has broken into a dwelling and their intent was to procure food, generally other initiatives would be employed rather than taking those people through the court process and charging them with an offence. I would ask the member to put the question on notice as to the specific number of offenders who have been charged with a dwelling burglary when their intention was to procure food, and that was all that they stole, because that would take some considerable amount of resourcing and research to find out, and I would need some more time to find that specific answer.

The ACTING SPEAKER (Ms L.L. Baker): Before members ask any more questions, I draw their attention to the clause that we are talking about. It is headed "Act amended", and it states —

> This Part amends *The Criminal Code*.

There is no general debate.

Mr W.J. JOHNSTON: Thank you very much, Madam Acting Speaker. I am just seeking clarification of the example that the minister gave. I appreciate what the minister said about putting on notice a question about how many times an individual who has stolen food has been charged with a home burglary offence. But that is not what I was raising. The minister raised, in support of the passage of this provision, the example of a juvenile who had, from memory, committed 117 offences and had not been sanctioned until he had committed 15 offences. I am asking, in respect of the example that the minister gave—not one that I know about, but one that the minister knows about—how many of those 117 offences were for home burglary; and, of those home burglary offences, how many were for stealing food. It is not a particularly complex question. We want to know how that case relates to the provisions of this bill. The minister is the one who raised this case with us, as justification for the need to pass this bill. The minister—not me, not the member for Butler, not the member for Warnbro, and not any other member—raised this case in the context of supporting the provision that we are debating. It cannot possibly be a difficult question to answer. How many of those 117 offences were for home burglary; and, of those home burglary offences, how many related to stealing food? If the minister cannot answer that question, why did the minister raise that as an example of the matters that need to be dealt under this legislation?

Mrs L.M. HARVEY: I would like to correct the member for Cannington. It was actually a 17-year-old offender who had committed 114 offences, of which 25 were burglaries—23 of them in dwellings—and 12 were aggravated burglaries, and that was over a six-year period. The first period of detention was imposed upon sentencing for the fifteenth offence. The system does not actually differentiate as to what is stolen in the course of a dwelling burglary. The way the offence is constructed is whether there is a prima facie case to determine that a burglary was committed. The offence is not necessarily predicated on a person stealing a thing; it is whether there was an intent to commit the offence, and a range of other things. I would need to go back and investigate that specific case and determine whether it was recorded if that offender was stealing food. But I would put to the member for Cannington that often one of the excuses that people use to try to get out of having an offence recorded or being charged with an offence is to say that they were just after food.

Mr P. Papalia: How do you know that?

The ACTING SPEAKER: Member for Warnbro!

Mrs L.M. HARVEY: Sometimes looking for food may be the issue that causes someone to break into a home. But with respect to that offender, when we look at that offending history, with 114 offences, I expect it would be highly unlikely that those offences would be —

Mr P. Papalia: So you do not think he was stealing any food at all at any time?

Mrs L.M. HARVEY: I did not say that, member for Warnbro. I said that I would need to go back and investigate that and determine whether it was recorded what, if anything, was stolen.

Mr W.J. JOHNSTON: I wonder, minister, whether we should postpone the debate on this clause to enable the minister to return with the information. It does not seem fair on the Parliament for us to be partly informed. It was not the member for Butler and it was not the member for Warnbro who raised this issue; it was the minister. Apparently, the minister does not have all the facts in front of her. I do not know why the minister would raise a case when she does not have all the facts in front of her. But the minister is the one who chose to do that; no-one else did. Minister, would it be better for us to postpone the debate on clause 3 and return to this clause after we have dealt with all the other provisions? That is the system that is used in this house. We are not the ones who raised this matter. The minister raised this matter. When I say "this matter", I mean the case that the minister has brought to our attention of this young man who between the ages of 11 and 17 offended apparently 114 times and was sanctioned only after the fifteenth offence. Would the minister prefer that we postpone consideration of clause 3 until the minister has the facts in front of her, or is the minister happy to proceed in ignorance?

The ACTING SPEAKER: The question is that clause 3 do stand as printed.

Mr J.R. QUIGLEY: Madam Acting Speaker, a question was asked, and I was waiting for the answer.

The ACTING SPEAKER: The minister did not stand up, so I put the question. If the member for Butler wants to say something, go ahead. The member for Cannington.

Mr W.J. JOHNSTON: The problem is that the minister comes into this place and says things and then does not defend them, and she then asks us, in ignorance, to support her bill. I have never heard of somebody who comes into this place and gives evidence that they do not have any knowledge of. It is just extraordinary. Imagine if the minister had appeared in a court as an expert witness and had raised something in answer to a question from the bar table and then was not able to answer the question—the minister would be dismissed as a witness and her evidence would be adversely reflected upon by the presiding magistrate, judge or commissioner. That is what happens. If people come to a court and they do not know what they are talking about, it is inevitable that adverse reflections are made about their integrity. The minister is here in the court of public opinion. The minister raised a matter that she says is justification for her actions, yet she does not know anything about that matter. The minister then says that many people raise the idea that they are stealing food as a defence. How many? In what percentage of cases that go to trial has the person used the excuse—as the minister described it—of stealing food? Will a person who has stolen food be covered by the provisions of this bill? As I understand it, they will be covered by the provisions of this bill. I am not saying that stealing food is an excuse. I simply want to know what the answer to that question is. I do not understand. I am quite surprised not that the minister did not know the answer to the question that I asked, but that the minister did not know the information that she provided to the chamber. I understand that the minister has her mandate. But I cannot believe that the Minister for Police—on a salary of a quarter of a million dollars—can come into the Parliament and say that she is acting to stamp down on things that are unfair in the community, yet on something as simple as telling us the full facts of the matter that she raised as evidence to support this bill, she cannot answer questions.

MR W.J. JOHNSTON: I move —

> That clause 3 be postponed until the end of consideration in detail.

I am not sure I have to write that out, but I am doing so.

The ACTING SPEAKER (Ms L.L. Baker): Yes; member, I think you should.

Mr W.J. JOHNSTON: I do not intend to speak to the motion because I think all members know what we are dealing with. That way the minister has the opportunity to return and inform us of the facts surrounding the case. This is not a case I have raised or an unknown question that I have asked. For example, the minister invited me to ask a question about the number of people who claimed that they were stealing food. I am not asking that question. I am just asking about the matter that the minister raised—not a matter that I raised. Given that circumstance, I think that it is only appropriate that we allow for the minister not to be embarrassed, as she is at the moment. We do not want to put the minister on the spot and have her unable to answer a question about information that she brought to the chamber. We want to save her from that embarrassment, so we will just delay the consideration of clause 3 until the end of consideration in detail on this bill. That way the minister does not have to look stupid. It would be terrible; I hate the idea of coming into this chamber and raising something and then knowing nothing about it. That would be deeply embarrassing. A minister who did that would look stupid. The last thing I am seeking is to make the Minister for Police look stupid. I do not have to help her do that. I do not want to do that. I invite the minister to accept delay of consideration of this clause so she can come back into the chamber and provide the information not that I asked for, but that she provided. The full details of this matter can be provided so we can make a proper decision, instead of embarrassing the minister the way that is

happening at the moment. I do not want to embarrass the minister; I want to ensure that she knows what she is talking about.

The ACTING SPEAKER: Member, we understand that you have put the motion that consideration of clause 3 be postponed.

Division

Question put and a division taken, the Acting Speaker (Ms L.L. Baker) casting her vote with the ayes, with the following result —

Ayes (17)

Ms L.L. Baker	Mr D.J. Kelly	Ms M.M. Quirk	Mr P.B. Watson
Dr A.D. Buti	Mr M. McGowan	Mrs M.H. Roberts	Mr D.A. Templeman *(Teller)*
Mr R.H. Cook	Mr M.P. Murray	Ms R. Saffioti	
Ms J. Farrer	Mr P. Papalia	Mr C.J. Tallentire	
Mr W.J. Johnston	Mr J.R. Quigley	Mr P.C. Tinley	

Noes (35)

Mr P. Abetz	Mr J.H.D. Day	Mr R.F. Johnson	Dr M.D. Nahan
Mr F.A. Alban	Ms W.M. Duncan	Mr S.K. L'Estrange	Mr D.C. Nalder
Mr C.J. Barnett	Ms E. Evangel	Mr R.S. Love	Mr J. Norberger
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr D.T. Redman
Mr I.M. Britza	Mr B.J. Grylls	Mr J.E. McGrath	Mr A.J. Simpson
Mr G.M. Castrilli	Dr K.D. Hames	Ms L. Mettam	Mr M.H. Taylor
Mr V.A. Catania	Mrs L.M. Harvey	Mr P.T. Miles	Mr T.K. Waldron
Mr M.J. Cowper	Mr A.P. Jacob	Ms A.R. Mitchell	Mr A. Krsticevic *(Teller)*
Ms M.J. Davies	Dr G.G. Jacobs	Mr N.W. Morton	

Pairs

Mr F.M. Logan	Mr C.D. Hatton
Mr B.S. Wyatt	Mr J.M. Francis

Question thus negatived.

Mr W.J. JOHNSTON: I wonder with respect to the case the minister quoted, was the person a ward of the state during the time he committed the series of offences that she referred to? During the six years, when this person was between the ages of 11 and 17 years, and apparently committed 114 offences, was that person a ward of the state?

Mrs L.M. HARVEY: If the member for Cannington wants to know the exact specifics of everything to do with that case, I would need to go through every single case file. I request that the member put that question on notice.

The ACTING SPEAKER: Members, I need to say that you have laboured this point and have been given a fair bit of latitude to do so. At this point, it is very hard to see the relevance of that, and I encourage members to move on. Clearly, the minister is not going to answer.

Mr W.J. JOHNSTON: Madam Acting Speaker, I agree that it is very hard to see the relevance of the matter that the minister raised, but, of course, it was the minister who raised the irrelevant matter.

The ACTING SPEAKER: That does not change my comment, member.

Mr W.J. JOHNSTON: I agree. I understand exactly what the Acting Speaker is saying. I do not understand how the minister can come into this chamber, on clause 3, and raise an irrelevant matter. I agree with the Acting Speaker. I cannot put on notice a question about this matter, because it would be a question about an individual case. I do not believe it would even be a matter that is under the control of the Minister for Police. I think it would more likely be a matter for the Minister for Child Protection, particularly if the person was a ward of the state. The point I keep making is that it was not me who raised any of these matters; the Minister for Police raised them. The Minister for Police came into the chamber and said: in respect of clause 3, one of the reasons you should vote for this is that there is this guy, who for six years, between the ages of 11 and 17 years, committed 114 offences. All I want to do is clarify matters the Minister for Police raised. These are not matters that I raised in any way in any part of this debate. These matters were raised by the Minister for Police. If the Minister for Police wants to sit in the chamber and say, "I don't know the answer to any of the questions about this person", that is great; that is not a problem for me. I understand that is exactly what the minister said in respect of my last question.

That then goes to the heart of the problem. Why did the minister raise a matter that she does not know anything about, in asking the opposition to support clause 3?

The ACTING SPEAKER: That is not relevant to clause 3. The member needs to ask a question that is relevant to clause 3.

Mr W.J. JOHNSTON: Okay. The question is: can the minister name any example—any case, in any court of Western Australia—that is relevant to the matters that are raised in clause 3?

Mr P. PAPALIA: This clause reads —

> This Part amends *The Criminal Code.*

The government is changing the Criminal Code, the minister's justification for which was presented in the second reading speech and in numerous assertions in the public domain. I want to ask the minister, specifically, because she has spoken on quite a few occasions today about the need to reflect community concern as being part of the minister's justification. However, she said in her second reading speech —

> In making these amendments, the government is determined to ensure that burglars who commit numerous home invasions, which can involve serious violent offences, are incarcerated for longer periods; to deter such offenders; to ensure that such offenders are kept out of circulation longer; and to reflect community abhorrence of such offending.

We have heard the minister refer repeatedly to the last component of the reasoning. I want to go to the first component and I want to know: does the minister have any evidence gathered in the course of preparing this legislation that confirms or indicates that this legislation will deter such offenders?

Mrs L.M. HARVEY: As I have mentioned previously, it is very difficult to determine the impact of legislation and its deterrence effect on criminal offending. I referred to that earlier when I was speaking about the difficulty in predicting the impact that this legislation would have on prisoner bed numbers required in our detention facilities, which is why I put a caveat over that information, with a view that it was based on current people incarcerated in our institutions and an extrapolation, if you like, of the sentencing profiles to fit with the sentencing regime should they be subject to it. It is very difficult to determine when legislation and penalties would act as a deterrent, but our intention is that this legislation will. Certainly, when we look at assaults against police officers and the mandatory penalties that have been imposed since that legislation has been implemented, we have started to see a reduction in those serious assaults against police officers.

Mr P. PAPALIA: I am pursuing the same line of questioning. In the course of preparing this legislation, was any research paper, academic study or independent analysis by any authority found that dealt with the three-strikes legislation that indicated that this legislation will deter offenders if the government amended the act in the way that is proposed?

Mrs L.M. Harvey: I have previously answered the question.

Mr P. Papalia: Can you say just yes or no?

Mrs L.M. HARVEY: As I have said previously, there has not been a report or an inquiry or anything of that nature that I could table to satisfy the member for Warnbro. Indeed, I do not think that there is a way to satisfy the member for Warnbro in getting past clause 3 of the act amended "This Part amends the Criminal Code." That said, with respect to pulling together the drafting instructions for this legislation already, I articulated the way that we have done the research; it is on the record and I believe the member was in the house when I spoke to it earlier.

Mr P. PAPALIA: What the minister is saying is that the minister's department has spent a lot of time, and I imagine a lot of money in kind, in an effort to not even bother looking at the one referenced document that exists in the world—the most specific, the most credible analysis of this legislation, which the minister is currently amending—which was done by two esteemed Western Australian professors, one of whom is the current Inspector of Custodial Services, the other one who is currently at the University of Western Australia. The minister is telling me that in all of the research and time and effort and money and hours that were dedicated to preparing this legislation, which makes a fundamental change to the law—to deprive the judiciary of discretion in these matters, and change the three-strikes legislation—the minister did not even bother looking at the "Mandatory Sentencing in Western Australia & the Impact on Aboriginal Youth" paper, prepared by Professors Neil Morgan and Harry Blagg in December 2001. Will the minister just say, "No, we didn't bother. No, we didn't do it. Sorry, it didn't occur to us to look at a study of the legislation which is currently enforced and which we are amending and which, amongst other things, actually identified that there is no evidence to suggest that it works"? Is the minister saying that she did not even look at the report before recommending this approach that the government is actually pursuing and changing to become even more draconian and which approach will have more of a negative detrimental impact on a minority? Did the people who did the research on the minister's behalf not look at the report?

Mrs L.M. HARVEY: No, that is not what I am saying. I said that we considered a range of reports, we went into a range of cases and we looked at sentencing outcomes for specific offences. I have already canvassed the research effort previously.

Mr P. Papalia: Did your researchers read that report?

Mrs L.M. HARVEY: That report is being considered as part of putting together this legislation, yes, along with a range of other reports, including reports on sentencing outcomes and reports available on the Department of the Attorney General's website. We have —

Mr P. Papalia interjected.

Mrs L.M. HARVEY: I am sorry, am I on my feet?

The ACTING SPEAKER: Member for Warnbro!

Mrs L.M. HARVEY: I am trying to articulate that we put a lot of effort across WA Police, the State Solicitor's Office, the Department of the Attorney General, the office of the Minister for Corrective Services and the Department of Corrective Services in formulating and putting together the policy around this piece of legislation. It is a policy and legislation that I have carriage of. The legislation is here and we believe that this is the way to address part of the problem of recidivist home burglars and violent home invaders; that is why it is here.

Mr P. PAPALIA: I just want to read into the record, from page 6 of the report to which I refer, the "Mandatory Sentencing in Western Australia & the Impact on Aboriginal Youth." One of the key findings was —

- There is no valid evidence to sustain claims that the mandatory three strikes home burglary laws have served to reduce recidivism rates.

If the minister had said that she had assessed that, that it was taken into account and the minister had applied changes based on her own evidence that suggested there will be a change for the better in reducing recidivism as a consequence of those changes, I would have accepted what the minister said. I do not think the minister has read the report. I do not see any suggestion from anybody conducting the research that they have read the report either, otherwise they would not have made these suggestions to the minister.

Mrs L.M. HARVEY: I think it has been made really clear that the reason that we have introduced the legislation to change the counting rules is that mandatory penalties for recidivist home burglars was not working at the time that that report was made. In 2001, the "three-strikes, you are in" supposed mandatory penalty system that was being assessed in the report that the member is referring to was not working as a deterrent. It was not working with respect to sentencing people consistent with community expectations. Now here we are 14 years down the track, and we are correcting the counting mechanism for mandatory penalties for recidivist home burglars because the previous regime was not working. The member for Warnbro is quite right: that report says that it does not act as a deterrent and it does not work, and that is why we are fixing it.

Mrs M.H. ROBERTS: I was very interested in the questions put by the member for Cannington a short while ago. Without repeating those questions, because I know Madam Acting Speaker (Ms L.L. Baker) would like us to expedite matters, it was quite clear from the minister's response that despite citing a particular case as an example of why this legislation was necessary, she was unable to answer any of the member for Cannington's questions about the case that she had cited. We had a division because we thought that since the minister could not answer the questions about a case that she had introduced into the discussion, the appropriate thing to do would be to postpone the clause so that the minister could acquaint herself properly with the case and answer the questions put by the member for Cannington. As the house knows, we do not have the numbers in here so we cannot force the minister to postpone the clause and provide answers in this house. If she does not know the answers, the minister said that she would need to look up all the details and fully acquaint herself with it and whatever. I would have thought that was something that she might have done before now. But given that she has not, the minister suggested that the member for Cannington put his questions on notice and she would then, presumably, answer them. I want the minister to clarify whether the member for Cannington should direct those questions on notice to the Minister for Police—I will encourage him to put them on notice because I, too, would like to see the answers—or to the minister representing the Attorney General.

Mrs L.M. HARVEY: If the member for Cannington chose to put those questions on notice, he would need to put them on notice to the Attorney General in the other place because the detail that is being requested as to what had been stolen et cetera could be found only by going through the specific judgements in each specific offence that had been brought up. That would presumably be recorded in the DOTAG system. If the member thinks it is relevant, bearing in mind —

Mrs M.H. Roberts: Is the minister saying that the statement of facts would not be in the police records?

Mrs L.M. HARVEY: The statement of facts could be in police records. The member for Cannington could put it to me as Minister for Police if he chose to. Given that this offender had his first period of detention on the fifteenth offence, I suggest that it is quite likely that previous appearances before the magistrate that had not resulted in a custodial sentence would likely be recorded by the court. That is quite often where we find that other diversionary tactics have been instituted because there are other factors at play in that young person's life. I hasten to add, member for Midland, that for juvenile offenders who have not yet reached the age of 16, all the normal diversionary tactics that could be applied by the court would apply and be available to the Children's Court in assessing young offenders, regardless.

Mrs M.H. ROBERTS: By way of clarification: in response to my specific question on whether the member for Cannington's questions should be directed to the Minister for Police or the minister representing the Attorney General in this place, the minister's advice was that the member for Cannington should address his questions to the Attorney General in the other place. The minister has advised the house that she is now the minister representing the Attorney General in this place. If that is the case, I put it to the minister that the questions are appropriately addressed in this house to the minister representing the Attorney General. If the minister is unable to answer those questions, she would get advice from the Attorney General to provide the answer.

Mrs L.M. HARVEY: I think the member for Midland well knows that questions are ordinarily put to the minister who has responsibility for a portfolio. I would suggest that if the member for Cannington wants to get the information contained in the police briefing files, that question be put to me as Minister for Police because I can expedite sourcing an answer to that, or to the Attorney General. It depends on how full and robust an answer he would prefer. That is how it is traditionally done.

Mrs M.H. Roberts: You are the minister representing the Attorney General.

Mrs L.M. Harvey: You know how it works.

Mrs M.H. ROBERTS: I am not going to put up with that answer. The minister keeps saying to me, "You know how it works." That is the only true thing that she has said—I do know how it works. The minister has got it wrong. The minister has never sat in opposition; she clearly does not know what goes on. When representing a minister in this house, the questions are in the format, "My question is to the minister representing the Attorney General." It is the Minister for Police who provides the answer in this house.

Mr J.R. QUIGLEY: I have a number of questions relating to case law. I will just ask them because I want to short-circuit this. I could do it in each individual clause, but we would be here until Wednesday week. My proposed amendment is bundled up into one. I will come to that in a moment —

The ACTING SPEAKER: Member, before you start: if you choose to go down this path, that is fine, but we need to move off clause 3, eventually. If you want to bring up those cases in other sections, that is fine, too.

Mr J.R. QUIGLEY: Good. I will do it now because this goes to the policy behind changing the act.

I am not confronting the minister. I want to quickly dispose of this case, if I can. The minister cited an example to illustrate the need for this legislation—correct me if I am wrong, minister—of a person who had 14 offences and was not taken into custody or did not receive a custodial term until after the fifteenth offence; is that correct?

Mrs L.M. Harvey: Yes, and it was over a six-year period.

Mr J.R. QUIGLEY: Does the minister know the age of the offender at the time, up until the fifteenth offence? Does the minister know his age at the time that he committed the fourteenth offence?

Mrs L.M. Harvey: I think the member understands what I have said about that. I am not sure what the member is getting at. I do not know his age at every single specific offence and every charge that was brought before the court. As I said, no, I have not got his detailed offender history in front of me, just a summary of his case and the outcome, which is what is relevant to the legislation.

Mr J.R. QUIGLEY: I appreciate that. So that I can move on, at the time of the fourteenth offence—I am not criticising the minister and I will not probe her—does the minister know for sure how old the offender was?

Mrs L.M. Harvey: No, I do not have that information.

Mr J.R. QUIGLEY: The new legislation does not kick in until an offender is 16 years of age; is that correct?

Mrs L.M. Harvey: That is correct, yes.

Mr J.R. QUIGLEY: This case that is now raised—I am not being critical—might be irrelevant. Up until the offender received his first custodial term, if a lot of the offences were committed while he was under the age of 16, this case might be irrelevant because the 14 offences would not even kick in under the new legislation; is that not right?

Mrs L.M. Harvey: It has been included as an example, member for Butler, because it is relevant.

Mr J.R. QUIGLEY: How is it relevant if the fourteenth offence was committed when he was 15 and a half? Under the new legislation, he still would not be incarcerated at the fourteenth offence, if the fourteenth offence was committed under the age of 16, would he?

Mrs L.M. Harvey: No, it does not apply to children under the age of 16.

Mr J.R. QUIGLEY: If the offender the minister cited was under the age of 16 at the time of his fourteenth offence, there would have been no complaint because, under the new legislation, he still would not be incarcerated; is that correct? I am postulating: if the offender was 15 and a half at the time of the fourteenth offence, under the amending bill he still would not be incarcerated, would he?

Mrs L.M. HARVEY: Once we get past clause 3 we can go into this in more detail, but this amendment bill makes it pretty clear that the three-year period of detention for certain offences committed in the course of a burglary or the custodial sentence for recidivist home burglars kicks in for young offenders who have reached the age of 16, but not 18.

Mr J.R. QUIGLEY: So if this offender to whom the minister has referred, at the time of this fourteenth offence—that is the last offence before the court eventually incarcerates him—had not yet attained the age of 16, he would not be incarcerated even under the new legislation? There is no trick. That is correct, is it not?

Mrs L.M. Harvey: He would not be subject to the penalties under the new legislation, but previous legislation with respect to these matters would still apply.

Mr J.R. QUIGLEY: Yes, but he would not necessarily be incarcerated under that legislation or under the new legislation because he had not attained the age of 16.

Mrs L.M. Harvey: It is hypothetical. The example is when he is 17, and under our legislation, as a 17-year-old, he would be looking at a mandatory penalty for his offences.

Mr J.R. QUIGLEY: But the minister is not saying he was 17 at the time of the fourteenth offence, is she?

Mrs L.M. Harvey: I am saying he is a 17-year-old offender with 114 offences behind him: 25 of them for burglary; 23 for home burglary—12 of them aggravated. He falls into our remit, member for Butler.

Mr J.R. QUIGLEY: But he does not fall in until after he turns 16; correct?

Mrs L.M. Harvey: Correct.

Mr J.R. QUIGLEY: If his 114 offences occurred before he was 16—we do not know, but I am postulating—even under the new legislation he would not be incarcerated necessarily?

Mrs L.M. Harvey: If he was 17, he would be subject to our legislation.

Mr J.R. QUIGLEY: Was he 17?

Mrs L.M. Harvey: As I said, I do not have the entire offending profile of this offender to discuss the ins and outs of it with the member.

Mr J.R. QUIGLEY: So the minister does not know. We could say that that case —

Mrs L.M. Harvey: The member can speculate as he sees fit.

Mr J.R. QUIGLEY: Now can I turn to another case, please?

Mrs L.M. Harvey: Apparently.

Mr J.R. QUIGLEY: On 23 April 2012 an opinion piece was published in *The West Australian* under the by-line of Karl O'Callaghan, and he wrote "Loopholes let young offenders off the hook". I will just wait until the minister's assistant gets the article.

Mrs L.M. Harvey: She is not looking for that article; we are waiting for you to finish your question on clause 3.

Mr J.R. QUIGLEY: This is on clause 3, and there are quite a few more questions, thank you. I quote Dr O'Callaghan —

> The documents provided to me referred to juvenile offenders—some as young as 14—who had between 50 and 114 court charges, many for serious offences. These include multiple aggravated burglaries,

> robberies, assault, vehicle theft and serious driving offences. In many cases actual detention has not been imposed before the child has committed 50 or 60 offences.

My question is relevant to clause 3 because it goes to the policy of the need to amend the Criminal Code. Under the Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014 that person would not necessarily be incarcerated either, unless they had attained the age of 16. That is correct, is it not?

Mrs L.M. Harvey: I believe so. Perhaps the member should finish the question, so that I understand the context of what he is actually asking.

Mr J.R. QUIGLEY: Sure; I am sorry, it is just me, and I apologise. Dr O'Callaghan wrote an opinion piece that reads —

> The documents provided to me referred to juvenile offenders—some as young as 14—who had between 50 and —

Coincidentally —

> 114 court charges, many for serious offences. These include multiple aggravated burglaries, robberies, assault, vehicle theft and serious driving offences. In many cases actual detention has not been imposed before the child has committed 50 or 60 offences.

Mr P. PAPALIA: I am enthralled.

The ACTING SPEAKER: I can see that.

Mr P. PAPALIA: I would very much like to hear some more from the member for Butler.

Mr J.R. QUIGLEY: My question is: it is true, is it not, that under the new bill there will not be a necessity to impose offences necessarily for those children as young as 14 until they hit 16? Is that not correct?

Mrs L.M. HARVEY: There are still mandatory penalties in the existing regime for offenders under the age of 16. This amendment does not propose to change the counting laws for that cohort of offenders; it only changes the counting rules for the offenders who are between 16 and 18 years old and for adult offenders. In concert with the amendment bill before the chamber now is a review of the Young Offenders Act, which the Minister for Corrective Services has the carriage of. I expect that some of those anomalous scenarios in the Young Offenders Act will be addressed as part of his legislative reform.

Mr J.R. QUIGLEY: I am sorry to persevere, but I must.

The ACTING SPEAKER: Go ahead, member for Butler.

Mr J.R. QUIGLEY: Thank you, Madam Acting Speaker.

Nonetheless, the loophole to which the commissioner was referring was the counting laws; that is, that people could aggregate charges onto one appearance day and not be incarcerated. That is still the case when a person is under the age of 16, is it not?

Mrs L.M. HARVEY: It sounds like the member for Butler is angling towards wanting us to change the counting rules that sit within the existing Young Offenders Act. I put to the member that he should put that view in a letter to the Minister for Corrective Services, who has carriage of dealing with the Young Offenders Act and how the counting rules and mandatory penalties apply within that regime.

Mr J.R. QUIGLEY: The minister has been unable to answer that question about those counting laws. Instead of answering the question, the minister just went on to make an assumption about what I might think. The minister has been unable to answer that. Now we will go on to the next matter about which the Commissioner of Police wrote. I hope the commissioner is on the other end of that text message; he might be able to help the minister.

Mrs L.M. Harvey: I am reading the article.

Mr J.R. QUIGLEY: The Commissioner of Police wrote —

> As I write I am looking at the record of a 15-year-old who has 13 aggravated burglary convictions. In each case he has been sentenced to an intensive youth supervision order. It is not until much later in his offending that the court imposes a conditional release order.

That can still be the case under the new bill, can it not? This bill does not change what the commissioner identifies as a loophole, does it?

Mrs L.M. Harvey: I think I have already been very clear that this amending legislation applies only to 16 to 18-year-olds.

Mr J.R. QUIGLEY: The minister said that part of the policy considerations behind bringing in amendments to the Criminal Code, clause 3, was the deterrents and asserted that since the amendments were made to sections

297 and 318 of the Criminal Code, there has been a reduction in the number of assaults on public officers. I am now reading from table 5 of the 2013 report of the Western Australia Police Union of Workers, which the minister has no doubt read. She would have had the advantage of reading that.

Mrs L.M. Harvey: Absolutely.

Mr J.R. QUIGLEY: It states that in 2010, the number of assaults on public officers statewide was 698; in 2011, there was a reduction to 627; in the next year, 2012, there was an increase to 736. Extrapolating that into percentages, in the first year after the imposition of mandatory sentencing laws, the police union reported a 10 per cent decrease in assaults on public officers, which is what the government was trying to achieve. However, by the second year, there had been a 17.4 per cent increase in the number of assaults on public officers, and by the third year a further 5.4 per cent increase in the number of assaults on public officers. How does the minister assert this afternoon that those mandatory sentencing laws have seen a reduction in the number of assaults on public officers or does she say that the police union's chart is wrong?

Mrs L.M. HARVEY: Member for Butler, the Director of Public Prosecutions has made some comments on those figures in an analysis of the police union report. The claim was based on a slight increase in the total number of assaults. There were 892 in the third year following the passage of the mandatory sentencing amendments as compared with the second year when 850 were recorded. There has, however, been an overall 33 per cent reduction in the number of assaults on public officers, not limited to police officers, over four years from 1 032 per annum to 892. That is the basis upon which we have said the number of assaults on public officers has reduced as a result of that legislative reform and the mandatory penalties.

Mr J.R. QUIGLEY: Are those figures published by the department? Are they available for scrutiny? May I see them?

Mrs L.M. Harvey: It is in the "Statutory Review: Operation and Effectiveness of the 2009 Amendments to Sections 297 and 318 *Criminal Code*".

Mr J.R. QUIGLEY: I have that before me. The statutory review concluded —

> With the exception of WA Police and the ODPP, the submissions were generally lacking in detail, reflecting the relatively short time since the amendments commenced operation, and this has constrained the review. It is important to bear in mind that correlation is not causation and it should be noted that stakeholders expressed divergent views on the effectiveness of the 2009 amendments. As noted above, the statistics gathered by the Department —

That is, the Department of the Attorney General —

> would tend to support the proposition that assaults on public officers have decreased as a result of the 2009 amendments, yet they do not prove that this is the case.

The review notes —

> ... the Police Commissioner's suggestion that '[t]o determine if the legislation is achieving its intended objectives and meeting community expectations, it is likely that a formal longer term study and evaluation will be required' has considerable merit.

The Commissioner of Police's submission was that a longer-term study was required to determine whether any fluctuations in the number were as a result of the legislation. Does the minister accept the commissioner's submission?

Mrs L.M. HARVEY: I am pleased that the member for Butler has raised this issue, because when implementing a new legislative regime such as this we need to give it time to bed down so that we can examine trends. One of the important aspects of that mandatory penalty for assaulting public officers was that prior to that legislation being introduced into Parliament, there was an assault public officer offence, but we introduced the offence of assaulting a public officer in prescribed circumstances. We need to look at the trends in those two offences over time given that a new offence was created when that legislation was proclaimed. We need to look at the longer-term trend and I am very interested to examine that data. Obviously, we are a bit off topic here, but it is about mandatory penalties.

Mr J.R. QUIGLEY: I agree with both the minister and the Commissioner of Police that a longer-term study is required. The minister understands that we will not be opposing this legislation.

Mrs L.M. Harvey: I understand that the member is talking against it and he has talked about being ideologically opposed to it but he will not vote against it.

Mr J.R. QUIGLEY: The Leader of the Government in the house said that it is proper that the opposition properly scrutinise such important legislation. I have not spoken against the legislation. I am just scrutinising it as I was invoked to do by no less authority than the manager of government business in the chamber.

The ACTING SPEAKER: I am not hearing the minister say anything else, member for Butler, but you need to ask a question that relates to clause 3, not make statements about the house.

Mr J.R. QUIGLEY: It is just that a statement was made that said I was speaking against the bill, and I would not like that to be on the record. I was doing no more than my sworn duty as an opposition member, which is to scrutinise and not necessarily to oppose.

I have a question that goes to the very policy of the legislation. On 2 March 2014, under a headline "Judge slams mandatory sentencing", the then District Court Chief Judge Peter Martino—I pause. We all celebrate that last week he was elevated to Supreme Court judge. That is why I said he is the former Chief Judge of the District Court; it was not because any ill has befallen him, but because good fortune has come his way. The former Chief Judge of the District Court —

Mrs L.M. Harvey: I think he is still in there to mid-April, but he is expecting a promotion in the near future.

Mr J.R. QUIGLEY: It has been announced and approved by cabinet.

Mrs L.M. Harvey: It has been announced but he is still in the role he was in when that article was written.

Mr J.R. QUIGLEY: I thank the minister. I am glad that she is so particular as to accuracy because I would like her to help me with this, given that she said that she is representing the Attorney General. The articles states —

> District Court Chief Judge Peter Martino told a recent Law Society of WA event that any reduction in sentencing discretion "increases injustice, rather than decreases".
>
> …
>
> "Experience has shown rigidity increases, rather than decreases, injustice."
>
> …
>
> "Mandatory sentencing applied that way can mean the law is not applied equally and transparently to all members ...

He was referring to when the police had the discretion. I come to the point of my question. The article continues —

> Attorney-General Michael Mischin acknowledged that "the risk of injustice is increased by rigidity" ...

As the minister is the spokeswoman for the Attorney General, I ask: What are the injustices that we risk increasing by this bill? What are the injustices that the Attorney General was referring to when he said "the risk of injustice is increased by rigidity"? What are those injustices as the minister or the Attorney General sees them that are increasing?

Mrs L.M. HARVEY: I think the problem with that article is that the injustices were not articulated. I have not specifically been told what those injustices may be. Perhaps the member needs to ask the authors of the article what the perceived injustices are because they have not been articulated to me.

Mr J.R. QUIGLEY: I was not quoting the author of the article; I was quoting the Attorney General for Western Australia with whom the minister said she collaborated closely during the preparation of this bill. Not the author of the article, not Chief Judge Peter Martino but Hon Michael Mischin, the Attorney General for Western Australia, said that the risk of injustice is increased by the rigidity of mandatory sentencing. What risks of injustice does the minister see will be increased?

Mrs L.M. HARVEY: The member for Butler is quite right. My understanding is that many members of Parliament and pre-eminent people address many collectives—young lawyers, for example, and the Law Society of Western Australia—and make a range of comments on mandatory penalties. I do not think this is the place to necessarily go into the specific circumstances of what gets said in those forums. I think the member for Butler will find in the article that he is referring to that the Attorney General goes on to say that he stands by the state government's legislation and the state government's policy on mandatory penalties. I think that is the important sentence to note in that article. The Attorney General, while having a considered opinion on these matters, supports the legislation and stands by it.

Mr J.R. QUIGLEY: As does the Labor Party, but that is not the point. The Attorney General goes on to say that he stands by the current mandatory sentencing laws. We are all at one on that. We are just trying to identify what injustices we risk with this legislation. I might be a bit short-sighted and not see all of the injustices. The Attorney General says, "Yes, we are risking some injustices. We are going to support the legislation despite

some injustice." This is not the author of the article. This is not a speech to a law society. This is the Attorney General's public comment, saying, "Community, I am standing by this legislation but I recognise it might cause injustice." I just want to find out from the government and the minister as the spokesperson for the person who said this, what are those injustices we are risking? I want some examples of it.

Mrs L.M. HARVEY: I think the member for Butler needs to put the Attorney General's comments in that article in context because he goes on to say —

> "There is a role for such sentences in appropriate circumstances, particularly if the trend of sentencing by the courts fails to reflect community expectations and the courts do not respond to Parliament's attempts to change sentencing practices by way of the few strategies available to it, such as increasing maximum terms", he said.

The member needs to look at his comments and quote him in context. It was a relatively long article. He made several comments. He stands by the legislation; he is the co-author of it.

Mr J.R. QUIGLEY: Yes, I understand that he is the co-author of it and I understand that he supports it but there is a price to be paid and he acknowledges that. I do not want to raise the ire of Madam Acting Speaker but, equally, on the Yin and the Yang, I do not want to be seen to be quoting the Attorney General out of context so let us go through exactly what he said.

Point of Order

Mr J.H.D. DAY: I think the house has been very tolerant. We are debating clause 3, which is simply making a statement about which act of Parliament is amended. We had the opportunity for a wideranging debate during the second reading stage. I also point out to the member for Butler that we are yet to get to the substance of the bill and the clauses that have the real operative effect. I would have thought that some of the issues that he is raising, while they are important, could be much better raised at a later stage of consideration in detail.

The ACTING SPEAKER (Ms L.L. Baker): Leader of the House, you are quite right in your comments. However, the member for Butler did canvas that with me when he started and suggested that we either deal with them now or deal with them later in consideration in detail. I somewhat hopefully let him go ahead.

Debate Resumed

Mr J.R. QUIGLEY: Otherwise, I would have to go through each one of these time and again. That is what I want to avoid.

Let us go right through this. The Attorney General said that —

> "the risk of injustice is increased by rigidity", and high-profile campaigns based on particular cases did not enable a measured consideration of sentencing.

But Hon Michael Mischin stood by the state's current mandatory sentencing laws. He said —

> "There is a role for such sentences in appropriate circumstances, particularly if the trend of sentencing by the courts fails to reflect community expectations and the courts do not respond to Parliament's attempts to change sentencing practices by way of a few strategies available to it, such as increasing maximum terms," …
>
> "As to its effectiveness, there has been a one-third reduction in the number of assaults on police following the introduction of mandatory minimum terms of imprisonment for doing them bodily harm.
>
> "There appears to have been a positive change in the way potential troublemakers deal with police."
>
> Mr Mischin said the Government planned to introduce stronger penalties for violent home invasions and burglars "very soon" but "no other categories of offences are presently being considered" for mandatory sentencing.

I did not want the minister to think that I was trying to take our esteemed Attorney General out of context but he says there is a price to be paid; that is, by imposing a mandatory regime, we increase the risk of injustice. Does the minister agree with that?

Mrs L.M. HARVEY: The reason we are introducing this legislation is that the victims of crime in these circumstances, their relatives and their communities feel that injustice has been perpetrated on them by the fact that offenders are not receiving the appropriate consequence for their actions. That is what this legislation and this policy are designed to address and that is why the government has brought it to this place. It is a balance, and our balance errs on the side of victims and ensuring there are harsh consequences for offenders. That is the policy initiative.

Mr J.R. QUIGLEY: Is there a risk of injustice in a rigid system, as the Attorney General suggests?

Mrs L.M. HARVEY: The Attorney General's words are his words. I support this legislation. There is a risk with any new legislative framework, member for Butler, but it is a risk the government is clearly willing to take.

Debate interrupted, pursuant to standing orders.

[Continued on page 1072.]