CRIMINAL CODE AMENDMENT BILL (NO. 2) 2013

Second Reading

Resumed from an earlier stage of the sitting.

MR C.J. TALLENTIRE (Gosnells) [7.01 pm]: I rise to speak to the Criminal Code Amendment Bill (No. 2) 2013. I listened to the other speeches on this bill with interest. Members talked about the issue of violence in our community. Naturally, all of us want to do everything we possibly can to strike out violence from our community. That is a worthy objective and is one that we all want to achieve. It strikes me, though, that violence is something that is often encountered in circumstances in which deterrence processes may not necessarily work. I understand that the point of this bill is to expand the provisions such that an act of violence against a person appointed under the Young Offenders Act will necessitate mandatory sentencing of the offender. I want to consider the sorts of circumstances that lead to acts of violence. One of the major causes of people behaving in a violent fashion is mental health problems. People who are suffering in some way with a mental health condition may be the perpetrators of violence. Another category is those who are suffering from some sort of blind anger and are unable to control their tempers, so they act in a violent manner. We could say that that is a form of mental health problem as well, if those people are unable to contain their anger. Another category is those who suffer from alcohol or substance abuse. That is another category of people who are inclined to behave in a violent manner. Another category could be described as those people who are just plain evil; however, I do not think there are many of those people in the community. It strikes me that those are the broad groupings involved in violence in the community.

I want to recount to the house a case faced by a constituent of mine who works as a mental health nurse. He has been a nurse in the Murchison ward at Graylands Hospital, which is a lock-down mental health ward with the strictest level of security. My constituent, Timothy M'Intyre, suffered greatly as a consequence of the actions of a patient whom he was charged to look after, and whom he was determined to look after in fact. This goes back to February 2011 when Tim was at the hospital on a Saturday evening. At about 11.00 pm he was on the ward. This is something we need to look at when we talk about this kind of legislation, which has a dissuasive value. We need to ask ourselves what else we need to do to stamp out violence in our society. Investment in things like good mental health practices strikes me as a way of avoiding the sorts of problem that Tim had to encounter. Before going into any detail about what Tim faced, I should say that the consequences of the events of Saturday, 12 February 2011, left him with 24 per cent disability. He is still suffering from that, of course; he has a 24 per cent disability. This bill will extend protection to those who are appointed under the Young Offenders Act. It will enable them to have a certain protection. We have debated in the past about who else could be protected. I am concerned for those who work as mental health nurses; there is a need for them to have some form of protection as well. That leads us into a broader consideration of the dissuasive value of the notion of mandatory sentencing.

I will go into the detail of the situation that Tim faced. I will read briefly from his report, in which he states —

> At around 11.45pm, I was suddenly attacked by a patient. This attack was both unprovoked, and I had no prior knowledge of it coming. The patient launched his attack upon me from 2-3 metres away … while my attention was elsewhere. He used this momentum and his full weight, to "king-hit" me with a "round house" punch to the temple/eye area of the left hand side of my face. The force of the punch was sufficient to spin me around 270 degrees. The punch both concussed and blinded me, and caused me to bleed profusely from the resulting laceration. The effect of this knockout punch rendered my recollection of this attack as a series of vignettes burned into my mind, and rendered me ineffective to take action. At the time I remember the patient yelling and screaming that he wanted to kill me, and I had no doubt that this was his intention, as the supporting reports confirm.

This is the situation that a mental health nurse, a constituent of mine, faced. I will read a little more of his report —

> Before the patient could recover and continue his attack to finish me off, my colleague was able to intervene and distract him. In a matter of moments, from the noises and screams I could now hear from behind me, I realised my colleague was being rapidly overpowered. From these sounds I knew I had to act and do something. Concussed and blinded, I staggered to rescue my colleague. By sound and feel alone, I was able to fight back and restrain the patient who was in the process of overpowering my colleague. Struggling blind against the patient, I was terrified for my life, and went in to protect my colleague who was screaming for help.

There is no doubt that the actions of Tim M'Intyre were those of great bravery as he sought to protect his colleague. The issue raised here was the investment in our mental health services and the problems with staffing

on that particular night. While we want dissuasive measures through mandatory sentencing provisions, we also need to make sure that people who work in responsible positions, such as mental health nurses, have the very best protection. On this particular night at Graylands Hospital, Tim faced circumstances that made his workplace very, very dangerous. The staffing levels were a concern. There were actually four nurses on the female ward but only two on the male ward. A cursory look at the staffing that night would make someone think, "Oh, there are six nurses, that's adequate", but clearly it was not, as the breakdown showed.

The Criminal Code Amendment Bill (No. 2) 2013 gives weight to this notion of deterrence value, but my point is that we should not be distracted by this notion of deterrence. We should make sure we are investing in the areas of society that will prevent the violence in the first place. Actions around resources for mental health are very important. Avoiding situations involving anger is very important and diverting people from substance abuse is also very important. No matter how well they are communicated to the public, we must not be distracted by the fact that when people are in the various categories I have outlined as perpetrators of violence, they are not mindful of the so-called dissuasive consequences. I have some degree of concern about the utility of this legislation. Nevertheless, as my colleagues on this side of the house have said, we do not oppose the legislation. I nonetheless remain concerned that dissuasive measures are not particularly effective. They certainly would not have saved someone like my constituent Tim M'Intyre. Indeed, the perpetrator of that dreadful act of violence on him and his colleague, was not sent to prison. We could say that he was already confined because of his poor mental health. But I note in passing that a medical decision had been made to stop his medication, and that led to the act of violence that saw Tim so seriously hurt to the extent that he is now 24 per cent disabled.

I do not want to dwell too long on this legislation. I am about to conclude my remarks, but I would be concerned if this legislation were to distract us in this place and the broader community from the importance of other measures that are essential to reduce the amount of violence in our community.

MS A.R. MITCHELL (Kingsley — Parliamentary Secretary) [7.12 pm] — in reply: I thank members for their contributions to this debate, all of whom made strong points, and for which I have some understanding and sympathy.

I will start in reverse if I may by acknowledging the member for Gosnells' contribution. Like him, I was horrified to hear about his constituent. Mental health is obviously quite a different issue from what we are talking about at this time. His points were well made. Given the Stokes review into mental health and the work that is going on—I have some knowledge of that area now—I am sure he will find that a lot of those problems will improve in the future, as they must. We must look after the people who take care of the people who need that assistance. I thank the member for Gosnells for bringing it to our attention.

I refer now to the member for Butler, the lead speaker for the opposition on the Criminal Code Amendment Bill (No. 2) 2013. He had a very wide ranging discussion on the issues of mandatory sentencing and referred to cases that he is familiar with. As this bill focuses on the Criminal Code and the inclusion in the legislation of youth custodial officers, I do not intend to go through many of the specific situations he raised, although I certainly will go through a couple of matters. Despite his commentary about the issues of mandatory sentencing and whether it has been successful, I am sure the member for Butler is well aware that the act, which was passed in 2009, is being reviewed. I am sure those matters will be taken into consideration by those undertaking the review.

The member for Butler was very concerned about the number of assaults that have occurred and the number of young offenders who have been charged. From 1 July 2009 to 22 January 2013, 12 assaults attracted consideration of mandatory imprisonment. Of those, six received sentences of detention and imprisonment ranging from one to three months; one is still before the court; one case was withdrawn; and four were not referred to the court. They vary depending on the situation. As the member indicated, it also relates to the fact that we are working under the guidelines and under the Director of Public Prosecutions. It is not just a matter of a person touching a police officer and automatically receiving mandatory detention.

I note that the member referred to a number of comments within public offices. I guess that the way we look at the report and appendix A and the way he looks at it differ. The number of assaults reduced from 1 346 to 892 over four years rather than three years. I think he will find that the number of cases has dropped, so there is a deterrent and an outcome for it, although we all agree that it is not perfect yet. I will not go into the specific details. The member has the report in front of him. As I said, a review is underway and I am sure the people undertaking the review will take those matters into consideration.

The member for Butler, as did the member for Girrawheen, referred to Banksia Hill Detention Centre. At no point has Banksia Hill Detention Centre ever been overcrowded. The average daily population was 178, with an operational capacity of more than 200. Today the youth population at the Banksia Hill Detention Centre is 90 males and 20 females, totalling 110. At Hakea Prison, which is housing the Banksia Hill juveniles, there are 58 males. The total youth in detention at this stage is 168. A couple of members suggested that this legislation was

introduced due to the Banksia Hill riot. The request to draft the legislation occurred in May 2012 and, therefore, predated the riot at Banksia Hill. However, some of the issues that occurred there justify the introduction of this bill. I will later discuss why youth custodial officers are now being included in the legislation.

The member asked for some details on youth assaults. From 1 July 2009 to 22 January 2013, 12 assaults against youth custodial officers resulted in six cases of detention or imprisonment, ranging from one to nine months. One case is before the courts; one case was withdrawn and four cases were not referred to the court. Of the six cases resulting in detention or imprisonment, two received one month, three received two months and only one received nine months. On the night of the January riot, one detainee assaulted a prison officer, and that resulted in two charges yet to be heard by the courts. If that detainee is found guilty, mandatory imprisonment will apply. Had that detainee assaulted a youth custodial officer, the same legislative protection would not have been afforded. There was an anomaly with youth custodial officers working in conjunction with prison officers and being under different levels of protection.

The member for Butler also seemed very keen to focus on the number of assaults on youth custodial officers and the need for treatment at a certain level. I remind members that the act contains three levels of criteria to determine which public officers are covered. A couple of members have read them out. The first criterion is that the provisions apply to a uniformed public officer, which is fairly general, and that is when we started to come down. As to recognising a public officer, a public officer is a representative of the community and discernible by virtue of wearing a uniform, amongst other indications. The second criterion was that they apply to categories of officers who face violence in the everyday, intrinsic path of their public duties—the obvious one being police officers. The third criterion was that there had to be some statistical evidence demonstrating that the type of officer has the need, because of the number of violent offences committed on that officer. I guess because at this stage youth custodial officers do not have a high number of assaults against them, they were actually deleted from the original act. That has been revisited after situations that have occurred, and it is obvious that, really, the third criterion should not have more weight than the others. The second criterion certainly supports youth custodial officers in that they face violence in the everyday, intrinsic path of their public duties. The act is being amended at this stage because of that situation, not because of the number of assaults that have occurred, but because of the fact that in their everyday, intrinsic work, violence occurs. One of the reasons nurses were originally left out was because that is not something they face in their everyday operations, and they do often have security people to assist them.

The member for Girrawheen read out a letter that a number of members received from the Aboriginal Legal Service of Western Australia. Yes, we acknowledge and certainly understand that, unfortunately, there are many more young Aboriginal people in our detention centres than we would like. But there is also evidence that the state government is very active and very positive about reducing the number of Aboriginal juveniles in our detention centres. I am also pleased that a number of Aboriginal organisations and people are showing great responsibility in their own community by trying to ensure that not so many young people are finding pathways into detention as they once were. I think activities and programs that provide support for those people are absolutely vital. Legislation alone will not reduce the number of people going into detention; we need to provide support to families and organisations that keep people out of detention.

The member for Girrawheen also asked whether this legislation would be reviewed, specifically the sections around youth custodial officers. The actual act is under review at the moment, and it would mean that these few amendments to the act would need a separate review. But I think members will find that that will occur anyway under the normal legislative review processes, and there is probably, at this stage, no great need for a separate review clause in the amendments.

The member also referred to the Banksia Hill riot, about which I will not go into much detail other than to say that at all times, certainly now that some of the youths have been returned, care and safety are very, very important.

I thank members from my side who spoke in favour of the bill. We are all very cognisant of this issue, and we believe this is an important amendment bill that will protect our public officers who do so much to protect us.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Section 297 amended —

Mr J.R. QUIGLEY: Turning to the breakdown of the figures, during her response to the second reading debate the parliamentary secretary told us that there have been 12 assaults on youth custodial officers. Is that correct?

Ms A.R. Mitchell: That's correct.

Mr J.R. QUIGLEY: And the dates for those 12 assaults were between?

Ms A.R. Mitchell: Between 1 July 2009 and 22 January 2013.

Mr J.R. QUIGLEY: Between 1 July 2009 and?

Ms A.R. Mitchell: And 22 January —

The DEPUTY SPEAKER: Order, member. Can you put your question, and then the parliamentary secretary can stand to answer it. It is easier for Hansard and everybody.

Mr J.R. QUIGLEY: I just could not hear the answer. I will put the question again.

Those 12 assaults occurred between which dates?

Ms A.R. MITCHELL: The time frame is 1 July 2009 to 22 January 2013.

Mr J.R. QUIGLEY: We are dealing with section 297 of the Criminal Code now, which deals with assault occasioning grievous bodily harm. How many of those 12 assaults involved an allegation of assault occasioning grievous bodily harm?

Ms A.R. MITCHELL: Zero

Mr J.R. QUIGLEY: Zero? On what basis does the government say that the courts are imposing inadequate sentences upon youths inflicting grievous bodily harm on custodial officers? Can the parliamentary secretary think of the last time a youth aged between 16 and 18 years was charged with assault occasioning grievous bodily harm on a youth custodial officer?

Ms A.R. MITCHELL: I have been informed that although no offenders were charged with grievous bodily harm, they were charged with offences that did cause harm but not grievous bodily harm—the one the member for Butler raised.

Mr J.R. QUIGLEY: No, my question related to section 297 of the Criminal Code, which prescribes the offence of assault occasioning grievous bodily harm and is headed "Grievous bodily harm". The parliamentary secretary has told us that between 1 July 2009 and the end of January 2013 there were no assaults occasioning grievous bodily harm. I wanted to find out when the last assault occasioning grievous bodily harm was, and what the sentence was; that is, the last assault by a youth on a youth custodial officer that inflicted grievous bodily harm and resulted in a charge under section 297 of the Criminal Code.

Ms A.R. MITCHELL: I would also like to inform the member that the detainees would actually be charged under section 318, not section 297; therefore we do not have that information on section 297.

Mr J.R. QUIGLEY: I do not follow that answer. Does the bill not amend section 297 and is that not related to grievous bodily harm?

Ms A.R. MITCHELL: I think it is important to say that we are referring to all public officers having parity. Grievous bodily harm is one aspect of it, but there are all the others as well. We are not waiting for an assault to occur to get it going; we are using it as a deterrent. The word "deterrent" has been used a number of times by members. It is a deterrent, and it is not something we are waiting for and will respond to only when we have had a serious issue.

Mr J.R. QUIGLEY: I understand what the parliamentary secretary is saying. She said that if someone inflicts grievous bodily harm on an officer, they are not charged under section 297. Why not? If a young prisoner inflicts grievous bodily harm on a youth custodial officer, what section are they charged under?

Ms A.R. MITCHELL: The legislation, as I said, covers grievous bodily harm and a range of assaults. It could be that a mandatory sentence is imposed for assaulting a public officer; it does not have to be grievous bodily harm. At this stage, that has not occurred. Mandatory sentences have been handed down based on assaulting a public officer rather than the grievous bodily harm component.

Mr J.R. QUIGLEY: I am sorry; I have come ill-equipped and do not understand the parliamentary secretary's answer. My question was: if a young prisoner inflicted grievous bodily harm upon a custodial officer appointed under the Young Offenders Act 1994, under which section of the Criminal Code would they be charged?

Ms A.R. MITCHELL: Under section 297.

Mr J.R. QUIGLEY: I will now go back to an earlier question I asked. We know that no section 297 charges were laid between July 2009 and January 2013. I now want to cover a broader time frame. To the parliamentary secretary's recollection, or to her advisers' recollection, when was the last time a youth was charged under section 297 with inflicting grievous bodily harm on a custodial officer appointed under the Young Offenders Act 1994?

Ms A.R. MITCHELL: We do not have specific details extending way back in time. A range of offences against youth custodial officers has resulted in mandatory sentences, but not for grievous bodily harm. The Department of Corrective Services does not actually know the charges; it relays the information to the police and the police take it from there.

Mr J.R. QUIGLEY: I laid a paper on the table of the house for the rest of the day, but Hansard must have taken it for quotations. Just to go back to debunk a furphy, and one reiterated by the member for North West Central today, it is not as though this proposed amendment—that is in clause 4—is needed, is it, because the judiciary have not been handing out adequate sentences? That is not the government's argument, is it?

The DEPUTY SPEAKER: Is that a question?

Mr J.R. QUIGLEY: That is right—is it?

Ms A.R. MITCHELL: Once again, many of these offences have a range of assault charges, not necessarily grievous bodily harm. This is about parity with like officers who in their daily work deal with intrinsic issues, such as being involved with violent activities. Prison officers fit into that category and we believe that youth custodial officers should also receive the same protection.

Mr J.R. QUIGLEY: We are sitting late and we can stay as late as we need to. The chamber has before it clause 4, which deals specifically with an amendment to section 297 of the Criminal Code. It specifically prescribes an offence of assault inflicting grievous bodily harm. We are not talking about a "range" of offences or a "range" of assaults; we are talking about one in particular. The one in particular is section 297, "Grievous bodily harm". It is not the government's position, is it, that the judiciary have been handing out weak sentences to youths who inflict grievous bodily harm on custodial officers?

Ms A.R. MITCHELL: As I said in response to the member's second reading contribution, already a range of times, from one month to nine months, has been given for mandatory sentencing. This is about parity for youth custodial officers who are in similar working situations as prison officers, and they should have the same protection as a prison officer.

Mr J.R. QUIGLEY: Just to clarify that answer, if I may: the parliamentary secretary said a range of penalties has been handed down of between one month and nine months. But she also said, did she not—or am I going silly—that no penalties, indeed no prosecutions, have been imposed for grievous bodily harm?

Ms A.R. MITCHELL: Yes, I said that there were none for grievous bodily harm, but the sentences that I just mentioned are for assaults against youth custodial officers.

Mr J.R. QUIGLEY: We will get to those in a moment. I just want the judiciary to understand why this Liberal government is stripping it of its discretion. It is not because the judiciary has given inadequate sentences for grievous bodily harm, is it?

Ms A.R. MITCHELL: No, it is not.

Mr J.R. QUIGLEY: It is for a political reason, is it not, because the government wants to be seen to be supporting other people and offering parity? It has nothing to do with the administration of justice, does it?

Ms A.R. MITCHELL: Member, as we have said many times tonight, this is about parity for those people who work in situations in which intrinsic violence occurs on a daily basis, similar to prison officers and police. Also, no incidents have involved grievous bodily harm yet, but we also want to make sure that should that situation arise that provision is ready to protect them.

Mr J.R. QUIGLEY: On that basis, the government could impose a life penalty for any Martian breaking into an Australian house, could it not? It has not occurred yet, but we want to deter those Martians from burglary. That is the basis of the government's argument, is it not? We have never come across a youth who has inflicted grievous bodily harm and we do not know of any judge who has acted inadequately, but we are going to strip them of their discretion. That is what the government is saying, is it not?

Ms A.R. MITCHELL: I believe that the example the member has given of Martians coming to Australia is probably a little far-fetched, so I will not go any further on that. But as I said before, this is very much about parity for people in our society who work in similar situations as public officers but who do not have the same

protection. A number of quite serious injuries have occurred to youth custodial officers. As I said, they rely on the police to lay charges and the police have not taken up that option on behalf of youth custodial officers at this stage.

Mr J.R. QUIGLEY: Does the parliamentary secretary agree that there is a vast difference in the severity of an assault that inflicts bodily harm and an assault that inflicts grievous bodily harm? Does the parliamentary secretary agree that the latter incorporates the notion of a life-threatening injury, whereas bodily harm is described as an injury that could be as little as discomfort? Does the parliamentary secretary agree with that?

Ms A.R. MITCHELL: There is no doubt that a great number of assaults against youth custodial officers would not fit this level of penalty. At the same time, we are not taking away from judges the discretion to impose what sentence they wish, but the youth custodial officers rely on the police to lay those charges and we do not give them that option at the moment.

Mr J.R. QUIGLEY: Under section 297 of the Criminal Code, once this amendment is passed, it is a minimum statutory mandatory term of at least three months for grievous bodily harm, is it not?

Ms A.R. Mitchell: Yes.

Mr J.R. QUIGLEY: Grievous bodily harm is defined—the parliamentary secretary has not demurred from or challenged me on this—as involving a life-threatening injury. Would the parliamentary secretary agree with that?

Ms A.R. MITCHELL: I refer to section 297. The Criminal Code establishes that the offence of grievous bodily harm is defined as —

> … any bodily injury of such a nature as to endanger, or be likely to endanger life, or to cause, or be likely to cause, permanent injury to health;

Mr J.R. QUIGLEY: Right, so we are on the same page. Under the proposed amendment to section 318 of the Criminal Code, which deals with assault occasioning bodily harm, it is the same penalty, is it not? Is it not the case that it is a penalty of not less than three months? I refer to section 318(2)(a).

Ms A.R. MITCHELL: There is recognition that they are young people—juveniles between 16 and 18 years of age—and it is a lesser amount. The minimum amount they can receive is three months.

Mr J.R. QUIGLEY: Hang on; it says a term "of at least 3 months".

Ms A.R. Mitchell: I said it was a minimum of three months.

Mr J.R. QUIGLEY: Which is the same under section 318 of the Criminal Code as it is under section 297—that is, three months minimum.

Ms A.R. Mitchell: That is correct.

Mr J.R. QUIGLEY: Is the government debasing—we have never had one yet—the seriousness of grievous bodily harm? The government is applying the same minimum penalty for grievous bodily harm as for a serious assault. There is no difference, is there?

Ms A.R. MITCHELL: It is about imposing a minimum sentence and leaving the judiciary to make the final decision on what it believes is appropriate.

Mr J.R. QUIGLEY: So what I am understanding now is that in the striking of the sentence, the government is really going to hand over to the judiciary and trust its sentencing discretion. Is that what the parliamentary secretary is saying?

Ms A.R. MITCHELL: This legislation does not affect the penalty; it does not aim to change that. We recognise that the detainees are youths and that the minimum additional mandatory sentence would be three months. The judiciary can alter that sentence if it chooses to do so.

Mr J.R. QUIGLEY: The parliamentary secretary cannot help with clause 4 any further, so just put the question.

Clause put and passed.

Clause 5: Section 318 amended —

Mr J.R. QUIGLEY: The parliamentary secretary mentioned 12 assaults that occurred between July 2009 and January 2013. Were all those assaults charged as assault occasioning bodily harm? Did all those 12 assaults involve bodily injury?

Ms A.R. MITCHELL: They all involved bodily injury, and they all came under the definition of serious assault.

Mr J.R. QUIGLEY: Whose decision was it to not refer six of those offences?

Ms A.R. MITCHELL: That would have been the decision of the prosecuting police officers.

Mr J.R. QUIGLEY: So we do not know whether there was evidence or not for those six. There were allegations, but we do not know whether there was evidence, because the police never charged anybody. Is that correct? In relation to those six, no charges were laid. Is that correct?

Ms A.R. MITCHELL: Five were withdrawn or not taken to court—I cannot give the member that information—and one is still before the court.

Mr J.R. Quigley: So five were not referred to the court and one is still before the court; and another six were disposed of in the court. Is that right?

Ms A.R. MITCHELL: Yes.

Mr J.R. QUIGLEY: Were the sentences—the parliamentary secretary has described them—that were imposed in those cases cumulative or concurrent?

Ms A.R. MITCHELL: Member, I do not have that information available at the moment.

Mr J.R. QUIGLEY: Although section 318 provides that there be no suspended sentence, there is nothing in the government's legislation that would preclude a judge from making any mandatory term concurrent with any term that the prisoner was serving at that time, is there?

Ms A.R. MITCHELL: Is the member referring to the Sentencing Act for that information?

Mr J.R. QUIGLEY: I am referring to both the Criminal Code and the Sentencing Act. There is nothing in either of those pieces of legislation that would preclude a judge who was inflicting the mandatory minimum under section 318 from ordering that that be served concurrently with any term that the person was currently serving. The judge cannot suspend the sentence. I agree with that. But there is nothing that would preclude his honour from making a concurrent order, is there; or, if there is, could the parliamentary secretary take me to that provision?

Ms A.R. MITCHELL: Member, at this stage I am not in a position to respond to that question.

Mrs M.H. ROBERTS: Madam Deputy Speaker, if the parliamentary secretary is unable to answer these questions, perhaps the Leader of the House might consider adjourning this debate until we can get answers to the questions that we are asking in consideration in detail. We have a parliamentary secretary who is unable to answer these questions. She says she does not have the information to hand. I am wondering how the chamber can be properly informed. Perhaps the parliamentary secretary would like to adjourn this debate to another stage of today's sitting, or until tomorrow.

Ms A.R. MITCHELL: If the member would allow me the opportunity to provide that information in the third reading, we can proceed.

Mr J.R. QUIGLEY: This is a very important point. The government has brought in legislation for mandatory sentencing and has said there is to be no suspended sentence. I am seeking clarification of this point before I make my speech on the third reading. It appears from my reading of the legislation that nothing would preclude a presiding sentencer from making an order that the term of imprisonment that he has to then inflict mandatorily be served concurrently with any other term that the prisoner is currently serving. I cannot find that in the legislation anywhere, and I need that information. It is a very important point.

Mrs M.H. Roberts: Member for Butler, if that is not the case, what is the point of this legislation?

Mr J.R. QUIGLEY: I will get to that in the third reading debate. But I need to get the answers from the parliamentary secretary first. There is not much point to the first part of the legislation; we know that—the government is going to rely upon the judges to inflict a sentence of more than three months.

Mrs M.H. Roberts interjected.

The DEPUTY SPEAKER: Order, member for Midland! We are not having a debate on one side of the house.

Point of Order

Mrs M.H. ROBERTS: Madam Deputy Speaker, it has been usual practice in this house that when the person on their feet accepts an interjection, the Chair does not intervene.

The DEPUTY SPEAKER: I think it was not so much an interjection as a debate between the two of you. The parliamentary secretary is deliberating with her advisers.

Debate Resumed

Ms A.R. MITCHELL: Member, I do have an answer to that question. It would be cumulative, as it is mandatory.

Mr J.R. QUIGLEY: Where did you get that from, minister?

Ms M.M. Quirk: Her phone!

Ms A.R. MITCHELL: It is from my phone.

Mr J.R. QUIGLEY: The phone? I will have a look on my phone and see if I can find that! I can find that my wife has just arrived in Sydney with my daughters, but I cannot find that provision. Where do I get that provision from? Where does it say that it is cumulative?

Ms A.R. MITCHELL: If the member would keep speaking for a bit longer, I am sure I will get him the answer.

The DEPUTY SPEAKER: Has the member for Butler finished posing his question?

Mr J.R. QUIGLEY: Yes. I have finished posing the question. I am just waiting on the answer.

The DEPUTY SPEAKER: Could the parliamentary secretary answer, please.

Ms A.R. Mitchell: I am seeking to get that information for the member.

Point of Order

Mrs M.H. ROBERTS: Madam Deputy Speaker, it is usual practice that once the member has sat, the parliamentary secretary or the minister stands to give the answer, otherwise they are generally not heard.

The DEPUTY SPEAKER: The parliamentary secretary is seeking advice, and then she will stand.

Debate Resumed

Ms A.R. MITCHELL: Yes, when I have the information.

Mrs M.H. Roberts: This is just a joke. I have never seen this happen in 20 years.

Ms A.R. MITCHELL: Member, I am still awaiting confirmation of that but, as I said before —

Mr J.R. Quigley: You have to take us to the section. You can't just say "the telephone".

Mrs M.H. Roberts: Put the parliamentary secretary out of her misery, Leader of the House.

Ms A.R. MITCHELL: As I said, member, and I am on my feet, we have been advised that it is cumulative because it is mandatory. I suspect it is section 86 but because I do not have the act in front of me, I would like to confirm that before —

Mr J.R. Quigley: Of what?

Ms A.R. MITCHELL: It is section 86 of the Sentencing Act. I would like to confirm that before I put it on record.

Mrs M.H. ROBERTS: When does the parliamentary secretary think she will be able to put an answer to the question posed by the member for Butler on record?

Ms A.R. MITCHELL: It is my desire that that would be as quickly as possible, otherwise I can confirm that tomorrow. That is my understanding of how it would be.

Ms M.M. QUIRK: I have another question relating to a response that the parliamentary secretary made in response to the member for Butler. I think she said that charges had been laid in 12 cases . Of those, were five or six discontinued?

Ms A.R. MITCHELL: Five cases were withdrawn or charges not laid and one is still before the court.

Ms M.M. QUIRK: Of those five, is the parliamentary secretary able to tell us the reasons for the withdrawal of those charges? I ask that question because in my speech on the second reading, I referred to the fact that the Inspector of Custodial Services had roundly criticised the department for poor record keeping. I wonder if the charges were withdrawn when it was decided there was either insufficient evidence or contemporaneous records of the incident.

Ms A.R. MITCHELL: The charges were referred to the police. The police made that decision to withdraw them.

Ms M.M. QUIRK: Again, this might be information that the parliamentary secretary might need to get from her phone. What was the rationale for the police withdrawing the charges? Was it on the criteria that are used in

relation to assaults on other public officers, such as police officers, or was the criteria for withdrawing them that there was insufficient evidence to make out a prima facie case?

Ms A.R. MITCHELL: Those matters are matters pertaining to the investigating police officers, not the Department of Corrective Services or the Banksia Hill Detention Centre.

Ms M.M. QUIRK: With respect, the parliamentary secretary is saying that there is a need for this legislation because of the prevalence of these offences. Almost 50 per cent of them did not proceed to prosecution. That is something about which we need to draw our own conclusions in determining how prevalent these offences are. I would have thought that in informing oneself as to whether this legislation is needed, one would need to know why almost 50 per cent of them did not proceed to prosecution. Are there other issues in the system that could be remedied to obviate the need for this legislation?

Ms A.R. MITCHELL: As I have said a couple of times already tonight, this amendment to the code is not about the number of assaults that have occurred on youth custodial officers; it is about parity. There was an anomaly within the legislation. These people are involved in intrinsic components of violence in their everyday work life, as are police officers and prison officers. There was an anomaly in the system. Criteria 3 was not the main reason for introducing this amendment and including youth custodial officers. The number of assaults was not the main reason. It was about the anomaly that existed and the need to —

Ms M.M. Quirk: To bring in legislation where no problem exists.

Ms A.R. MITCHELL: I did not say there was a problem; I said there was an anomaly. The anomaly is the main reason for the amendment.

Mr J.R. QUIGLEY: Earlier the parliamentary secretary referred me to section 86 of the Sentencing Act. She said that the government is relying on section 86 of the Sentencing Act to mean that these people will get more terms of imprisonment. I am ill-equipped here. Maybe my iPad is out of date and the parliamentary secretary has a newer iPhone, from where her information comes. Section 86, "Terms of 6 months or less not to be imposed", states —

> A court must not sentence an offender to a term of 6 months or less unless —

Then it goes on to give the exceptions to that rule. How does this in any way impact upon the notion of whether a sentence inflicted under section 318, to be amended, can be served concurrently or cumulatively? Section 86 of the Sentencing Act gives no statutory direction at all.

Ms A.R. MITCHELL: I made a mistake. I was supposed to refer to section 88 of the Sentencing Act, which does refer to mandatory sentencing.

Mr J.R. QUIGLEY: Perhaps the parliamentary secretary could take me to the line in section 88, which is a section I am familiar with, that refers to mandatory sentencing because I have just read it again.

Ms A.R. MITCHELL: We are not trying to change these rules at all. These rules already apply to prison officers and police officers. All we wish to do is bring youth custodial officers into the same regime.

Mr J.R. QUIGLEY: I know what the government's wish and hope is but what the parliamentary secretary said in the previous answer when I was raising the question of whether this legislation is just a bit of frippery because the judiciary can simply order that any term be served concurrently with any term currently being served, is that no, that is not the case. Her phone told her that is not the case. Her phone initially misinformed her that it was section 86 and then her telephone informed her that it was section 88. She made that correction and said that section 88 refers to mandatory sentencing. I just want to be taken to the subsection in section 88 that she says refers to mandatory sentencing, so we are all on the same page.

Ms A.R. MITCHELL: I am referring to section 88(c).

Mr J.R. QUIGLEY: What subsection is that? There are five subsections in here. I do not know whether my iPad is throwing up the same information as the parliamentary secretary's telephone. Perhaps she can read me the section that refers to mandatory sentencing.

Ms A.R. MITCHELL: I say again that we are not aiming to change the Sentencing Act. The provisions currently apply to police officers and prison officers. Other public officers come under this code, so we are introducing youth custodial officers into the Criminal Code amendment. That is what we are here to discuss tonight. This is not about the Sentencing Act.

Mr J.R. QUIGLEY: In the course of that discussion—which is more formally known as consideration in detail, to which their honours look when interpreting the legislation that is before them on the bench—the

parliamentary secretary said that section 88 refers to mandatory sentencing. Could the parliamentary secretary please read me the subsection in section 88 that refers to mandatory sentencing?

Ms A.R. MITCHELL: I believe that this amendment is quite clear. We are not changing the Sentencing Act. If the member wishes to bring in the Sentencing Act, that is up to him, but at this point —

Mrs M.H. Roberts: You referred the member to it.

Ms A.R. MITCHELL: I do not need to bring it in. There is no change to the Sentencing Act. This amendment includes youth custodial officers so that they will come under the same provisions.

Mr J.R. QUIGLEY: Would the parliamentary secretary agree that in inflicting the penalty under section 318 the court may order that the three months be on top of what the prisoner is already serving, or, in the alternative, the court may allow the three months to be served concurrently—at the same time—so the prisoner does not serve extra time?

Ms A.R. MITCHELL: It cannot be done concurrently. It must be cumulative.

Mr J.R. QUIGLEY: The parliamentary secretary is not changing the Sentencing Act. I refer the Parliamentary Secretary to section 88 of the Sentencing Act, "Concurrent, cumulative or partly cumulative terms". Does the parliamentary secretary want the Sentencing Act in front of her? The parliamentary secretary's phone may help. Does she have the Sentencing Act?

Ms A.R. Mitchell: No, we do not.

Mr J.R. QUIGLEY: I will read it to parliamentary secretary slowly then —

> (1) An offender sentenced to a fixed term is to serve that term concurrently with any other fixed term that he or she is serving or has yet to serve, unless the sentencing court makes an order under subsection (3).

The starting point is—not the parliamentary secretary's starting point—that this new mandatory term must be served concurrently. Does the parliamentary secretary accept that?

Ms A.R. MITCHELL: This is not a new mandatory term. What the member is bringing up is something different and not what we are talking about.

Mr J.R. QUIGLEY: No, it is not. Under section 318, a young person who whilst in custody assaults a custodial officer appointed under the Young Offenders Act 1994 is subject to, as we have agreed previously, a mandatory term of three months.

Ms A.R. MITCHELL: They are subject to a minimum mandatory term of three months.

Mr J.R. QUIGLEY: It is a minimum term of three months—agreed. Perhaps the Leader of the House is going to save the parliamentary secretary by guillotining me. In the Sentencing Act the starting point is section 88(1) and this Parliament has made this rule for judges —

> (1) An offender sentenced to a fixed term —

There is the three months —

> is to serve that term concurrently —

That is, at the same time —

> with any other fixed term that he or she is serving or has yet to serve, unless the sentencing court makes an order under subsection (3).

Given that the law of Western Australia is that this mandatory term be served concurrently unless an order is made under subsection (3), the sentencing court may order that the fixed term is served cumulatively as an extra three months or that the fixed term is to be served partly concurrently with another fixed term. No rule in the Sentencing Act requires the mandatory three-month minimum to be served as an extra sentence. No rule of law requires that.

Mr J.M. FRANCIS: I have been listening to some of the member for Butler's comments from my office on the TV screen. Clearly, we have a different point of view on the merits of this bill.

Point of Order

Mr J.R. QUIGLEY: I thought in consideration in detail we ask the minister or the parliamentary secretary at the table questions. It appears that the Minister for Corrective Services wants to engage me in general debate. I am trying to get to the bottom of the clause before the Chair in consideration in detail, which is clause 5. If the

minister wants to come in here and give me a general spray or open it up for general debate, that is well and good, but there is a proper time for that.

The ACTING SPEAKER (Mr I.C. Blayney): The minister is entitled to make a short statement.

Debate Resumed

Mr J.M. FRANCIS: The reason we believe this is an appropriate clause is quite simple. We believe that if someone is old enough, even though they are under the age of 18 —

Ms M.M. Quirk interjected.

Mr J.M. FRANCIS: If you are old enough to make a —

Ms M.M. Quirk interjected.

Mr J.M. FRANCIS: It is okay; I can keep standing up and sitting down until I get the right, as every other member of this house does, to be heard in silence when they ask for it. If someone is old enough to make a decision that will find them sentenced to a custodial sentence even though they may be under the age of 18 years, they are old enough to know the consequences of the decisions that they have made. That comes down to —

Mr J.R. Quigley interjected.

The ACTING SPEAKER: Let us hear the minister.

Mr J.M. FRANCIS: That comes down to the fact that a juvenile detainee knows it is wrong to assault a youth custodial officer. The public has an expectation that people will be held responsible for their actions. It is only right that if someone assaults a youth custodial officer while in a detention centre, they face certain consequences. In preparing this bill the government obviously looked at a number of different scenarios and historical statistics on juvenile detainees, who sometimes very seriously assault youth custodial officers within the juvenile detention system. The penalties that were given to those juvenile detainees were nowhere near what the community would have expected. If this bill adds to the amount of time a juvenile detainee spends in a detention centre, so be it. We do not apologise for that. Youth custodial officers, like prison officers, do a significantly dangerous job. They deal with some of the most dangerous offenders in the state. There is a reason why, as of today, there are 162 juveniles in the Western Australian juvenile detention system. That is because, quite frankly, they deserve to be there. I have said before and I will say again that the President of the Children's Court, Judge Reynolds, regularly goes through the list of every charge and every conviction involving juveniles in Western Australia who are in detention. He is quite satisfied that they are there for a reason. They are there, primarily, to protect the public from dangerous offenders. They are there because they knew that the offence they committed was the wrong thing to do. If they are old enough and have enough judgement to serve a sentence, they are old enough and have enough judgement to know that assaulting their custodial officers is, quite frankly, the wrong thing to do. We do not resile from our belief that they should be held accountable for their actions.

J.R. QUIGLEY: We have heard the ramble by the Minister for Corrective Services that people who assault custodial officers should expect further time in prison. Did the parliamentary secretary hear him say that?

Ms A.R. Mitchell: I was actually having a discussion with my advisers.

Mr J.R. QUIGLEY: Does the parliamentary secretary agree that the legislation she put before the Assembly this evening does not require a judge to give any youth who assaults a custodial officer extra effective time to serve?

Ms A.R. MITCHELL: We have probably engaged in quite a bit of discussion, but clause 5 does not deal with penalties in any way, shape or form. We have engaged with the member, but I would prefer to now say that clause 5 does not discuss penalties in any way, shape or form for this amendment.

Mr J.R. QUIGLEY: Section 318 of the Criminal Code most certainly does. The parliamentary secretary is now running by saying that she cannot talk about this matter because this amendment does not talk about the penalty. That is what her advisers have come up with as a way to finesse this and to not 'fess up. The parliamentary secretary's advisers have told her not to talk about the penalty.

Ms A.R. MITCHELL: As we have said before, this is not about changing the penalties in the Criminal Code; this is about bringing youth custodial officers under the same regime as prison officers, police officers and other officers who currently come under this part of the Criminal Code.

Mr J.R. QUIGLEY: I heard the Minister for Corrective Services say that if people in custody who are 16 or 18 years old assault an officer, they have to expect consequences. Is not the purpose of this amendment to make them subject to mandatory sentencing of three months? That is the very purpose of clause 5; to make young

people who are in custody and who assault an officer appointed under the Young Offenders Act 1994 subject to three months' mandatory imprisonment. That is the purpose of the amendment, is it not?

Ms A.R. MITCHELL: I say again that we are not talking about changing the Sentencing Act. This is about bringing youth custodial officers under the same regime as police officers, prison officers and other public officers who come under this code.

Mr J.R. QUIGLEY: What is that regime, please, parliamentary secretary?

Mr C.J. Barnett: You don't have to answer.

Ms M.M. Quirk: Of course she has to answer it, Premier. It goes to the heart of the legislation.

Ms A.R. MITCHELL: They will be sentenced in accordance with the provisions of the Sentencing Act.

Mr J.R. QUIGLEY: There is no sentence contained in the Sentencing Act. The penalty is contained in the Criminal Code. Is the parliamentary secretary going to refer me to a provision in the Sentencing Act? I am all ears.

Point of Order

Mr C.J. BARNETT: This is a very simple bill to provide the same protection to youth custodial officers as is provided to police officers and others. The consideration in detail stage is not an opportunity for members to show off their legal prowess and to simply try to intimidate. This is an opportunity to ask for details of the bill before the house; it is not an opportunity for the sort of inquisition that is being conducted by the member opposite.

Mr M. McGOWAN: I want to comment on the point of order.

The ACTING SPEAKER (Mr I.C. Blayney): Members are entitled to ask questions if they are relevant.

Mr M. McGOWAN: The consideration in detail stage is the opportunity for members to tease out the detail of the bill and what it actually means, and may well be used in further interpretation of the laws that we are debating. It would be good if we were able to get straight answers. I have sat here for a while.

Mr C.J. Barnett: This is just intimidation and you know it.

Mr M. McGOWAN: I think the government is being very unfair on the member at the table in allowing this bill to go along like this. It would be far better if this matter were adjourned this evening.

Debate Resumed

Mr J.R. QUIGLEY: The parliamentary secretary said that the intention was not to change the provisions of the Sentencing Act but to put youth custodial officers under the same regime as police officers. I will wait.

Mr C.J. Barnett: Keep talking; we're listening.

Mr J.R. QUIGLEY: No, the parliamentary secretary is talking to someone. I am not asking the Premier because he does not know the answer.

Mr C.J. Barnett: Keep talking.

Mr J.R. QUIGLEY: About the fraud on the electorate at the last election of fully costed, fully funded? Does the Premier want me to keep talking about that?

The parliamentary secretary said that it was not the government's intention to change the provisions of the Sentencing Act; it was the government's intention to bring youth custodial officers under the same regime as police officers. I am just inquiring of the parliamentary secretary, given that her answer was so non-specific, what regime she is specifically referring to. Is it the mandatory term of three months for assault occasioning bodily harm?

Ms A.R. MITCHELL: I believe the member is going back to the grievous bodily harm matter that he raised initially.

Mr J.R. Quigley: I didn't raise grievous bodily harm.

The ACTING SPEAKER: Can we hear the parliamentary secretary, please?

Ms A.R. MITCHELL: This amendment concerns youth custodial officers; we are talking about serious assaults with a minimum of three months' mandatory sentencing.

Mr J.R. QUIGLEY: This is assaults involving a term of imprisonment of a minimum of three months. Did I understand the parliamentary secretary's answer correctly?

Ms A.R. MITCHELL: I mentioned the word "serious", as in serious assaults as well.

Mr J.R. QUIGLEY: The regime involves a three-month mandatory term of imprisonment. Do I understand the parliamentary secretary correctly?

Ms A.R. MITCHELL: Yes.

Mr J.R. QUIGLEY: Does the parliamentary secretary agree that under section 88(1) and (3) of the Sentencing Act, the three-month term may be served concurrently with any term the prisoner is then serving?

Ms A.R. MITCHELL: No; it is mandatory imprisonment, therefore, it is cumulative.

Mr J.R. QUIGLEY: Judges will be interested in this, so can the parliamentary secretary kindly take me to the section of the Sentencing Act where that is stipulated?

Ms A.R. MITCHELL: It is in the existing sections that are in the Sentencing Act. I am sure the member for Butler can find them and refer to them.

Mr J.R. QUIGLEY: The parliamentary secretary referred me to section 86.

Ms A.R. Mitchell: I told you that I had referred you to the wrong section.

Mr J.R. QUIGLEY: Then the parliamentary secretary referred me to section 88. Is section 88 the final position on which the parliamentary secretary is relying?

Ms A.R. MITCHELL: I said that we are not changing the Sentencing Act, but the member knows where the sections are and he can find them.

Mr J.R. QUIGLEY: Parliamentary secretary, I cannot find anywhere in the Sentencing Act that requires a judge to order that a mandatory term, under section 318 of the Criminal Code, be served cumulatively. The parliamentary secretary says it is there; I am asking the parliamentary secretary to direct me to it.

Mr J.M. FRANCIS: Mr Acting Speaker —

Mrs M.H. Roberts: Can you answer the question?

Mr J.M. FRANCIS: I can explain the government's intent with this clause.

Mrs M.H. Roberts: We know what the intent is. What's the reality?

Mr J.M. FRANCIS: Do you mind? It is my right to be heard in silence.

Mrs M.H. Roberts: No; it's not.

Mr J.M. FRANCIS: Yes it is. I am happy to keep standing up and sitting down all night until I exercise that right.

Mrs M.H. Roberts: It's not okay, so there you go, big shot!

The ACTING SPEAKER: Member for Midland! I will have to call you if you keep interjecting.

Mr J.M. FRANCIS: It is my right to be heard in silence and I will be. My explanation of the government's intent is as follows. If a juvenile detainee falls under one of these —

Point of Order

Mrs M.H. ROBERTS: The intent of the government's legislation is not in dispute. We are seeking the answer to the questions the member for Butler has been asking, in various ways, for over an hour now. The member on his feet has not been in the chamber all that time; he joined us about 20 minutes ago and the Premier joined us about 10 minutes ago, supposedly in an effort to help the member out. The intent, which we have been talking about for hours and spoke about during the second reading debate, is not in dispute.

Mr J.H.D. DAY: The parliamentary secretary, indeed, has been answering the member for Butler's questions, I think very patiently, for a substantial period. She has answered the questions.

Mrs M.H. Roberts: If she had answered them, this would be finished; you know that.

Mr J.H.D. DAY: It might not be in the way the member would like. The Minister for Corrective Services, who has ministerial responsibility for youth custodial officers, is seeking to provide some information about the detail of the legislation and what is sought to be achieved through this clause.

The ACTING SPEAKER (Mr I.C. Blayney): There is no point of order, member for Midland.

Debate Resumed

Mr J.M. FRANCIS: Perhaps the parliamentary secretary can shed some light on the following comment. Is it the government's intent—it is my belief it is—to achieve the following outcomes, particularly the implementation of this clause? If a juvenile detainee is before a judge from the Children's Court to be sentenced for an assault on a youth custodial officer and the juvenile has three months or more to serve on their current sentence, I understand that there is some judicial discretion for whether it is served concurrently or cumulatively. If a juvenile detainee who falls within this clause has one week left to serve in a youth custodial facility, the Children's Court will have no option but to sentence them for an additional two months and three weeks because they cannot serve three months concurrently in one week. That is my understanding of the intent of this clause. The parliamentary secretary might want to comment on that.

Mr J.R. Quigley: Do you want to comment on that parliamentary secretary?

Ms A.R. MITCHELL: This has been in place for the life of this bill and it has been operating that way.

Mr J.R. QUIGLEY: The minister said that if the person is already serving a term longer than three months and then commits an offence and is made subject to the mandatory sentence order, it is at the judge's discretion whether they serve any more time. Does the parliamentary secretary agree with that and will she abandon the earlier silly argument that that is not the case? In other words, does she abandon her argument and agree with the minister, or does she want to hold onto her argument and take me to the section of the Sentencing Act to prove the minister wrong?

Mrs M.H. Roberts: We could have moved on an hour ago if we'd got an answer to this.

Ms A.R. MITCHELL: I say again that this is the same process that has been going on for prison officers and police officers and we are now just bringing youth custodial officers into the legislation.

Mr J.R. QUIGLEY: Does the parliamentary secretary agree with me and the minister that this could result in no extra jail time if the court declines to make an order for a cumulative penalty under section 88(3) of the Sentencing Act.

Ms A.R. MITCHELL: We are of the opinion that it is cumulative but given the information the minister —

Mrs M.H. Roberts interjected.

The ACTING SPEAKER: Member for Midland, can I hear the parliamentary secretary, please.

Ms A.R. MITCHELL: We may need to get some further information.

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House).**