

INTERSTATE TRANSFER (COMMUNITY BASED SENTENCES) BILL 2009

Second Reading

Ms SINGH (Denison - Minister for Correctional Services - 2R) - Mr Speaker, I move –

That the bill be now read the second time.

Mr Speaker, this bill will facilitate the transfer of community based sentencing orders between Tasmania and other jurisdictions. There are existing arrangements which cover the transfer of prisoners between jurisdictions and in relation to the transfer of former prisoners undertaking parole obligations and this bill will cover the transfer of community based sentencing orders.

The proposal has arisen from the deliberations of the Corrective Services Ministers Council. A trial community based sentence transfer scheme has been in place between the Australian Capital Territory and New South Wales for some years. The Corrective Services Ministers Council has recommended the adoption of this community based sentence transfer scheme by all jurisdictions. This bill is similar to legislation already enacted in New South Wales and the Australian Capital Territory.

Community-based sentences are sentences that are imposed as an alternative to imprisonment, served within the community, and can be supervised and administered locally. Community-based sentences, for the purposes of this bill, will be community service orders, probation orders and other sentences that are either prescribed by regulation, or a sentence that corresponds or substantially corresponds to a sentence in one of the prescribed categories.

Offenders may wish to move between jurisdictions for a variety of reasons, including family commitments or job or study opportunities. Currently, there is no legal way that a community based sentence in Tasmania can be enforced against an offender who moves to another jurisdiction, and vice versa, as there is no mechanism to transfer their sentencing obligations. If an offender moves interstate, resulting in a breach of their community-based sentence order in Tasmania, there are limited alternatives for enforcement action. Extradition procedures are required to return offenders to the State if they do not return of their own volition, which can involve the expenditure of significant time, money and effort. Similarly, if an interstate offender comes to Tasmania in breach of their community based sentence then Tasmania does not have the power to deal with the breach or otherwise enforce their obligations.

The transfer scheme would ensure the enforceability of conditions between jurisdictions and enable breaches of sentences originally imposed interstate to be dealt with in Tasmanian courts.

The Interstate Transfer (Community Based Sentences) Bill will provide a formal mechanism for offenders to transfer their community based sentences between jurisdictions that have corresponding sentencing options available. The bill will also provide formal mechanisms for registering and recognising transferred sentences and dealing with any breaches of such sentences.

Under the bill, an offender with a community-based sentence in Tasmania will be able to transfer the supervision and administration of the sentence to a new jurisdiction on a voluntary basis, provided certain requirements are satisfied. The offender will then be managed in the new jurisdiction as if a court of the new jurisdiction had imposed the sentence. Matters such as appeal or review will remain the responsibility of the originating jurisdiction but generally those avenues would be exhausted before the transfer is proposed.

Applicants for transfer from and transfer to the State will be assessed for suitability against a number of criteria. These include:

- that there is a corresponding sentence available in the receiving jurisdiction;
- the welfare of the offender;
- the administration of justice;
- the protection of the community
- whether the offender can comply with the sentence in the receiving jurisdiction; and
- whether the sentence can be safely, efficiently and effectively administered in the receiving jurisdiction.

Assessment against these criteria will ensure that the best interests of both the offender and the community are considered.

Across the jurisdictions there are a number of community based sentences which are not common to all states or territories and one of the features of the scheme will be that a receiving jurisdiction will only accept the transfer of orders which are similar to those which they already administer. There are orders which could not easily be accommodated, for example drug treatment orders or home detention sentences, so the scheme is reliant on the orders being readily adapted or alternatively varied by the original court to facilitate the transfer.

The bill includes a process for varying Tasmanian orders to make them compatible with the jurisdiction to which the offender may wish to move. The issue, however, is more likely to arise for orders sought to be transferred to Tasmania which are, in some cases, quite different to the orders made here.

When deciding to accept a request for transfer, individual preconditions may be imposed on the offender which will ensure that the offender can comply, and is willing to comply, with the sentence in this jurisdiction.

Any offender transferring to Tasmania will not have their sentence formally registered here until they are able to prove that they are living in the State. This will avoid the situation of an interstate offender accepted for transfer to Tasmania, who is then unable to move for some time, being in breach of an order now registered here.

Once an offender is registered in Tasmania, the offender will be supervised and administered by Community Corrections. The administration of the sentence includes dealing with a breach of the sentence. If the offender does not comply with the conditions of the transferred order, he or she may be dealt with by the Tasmanian Court under Tasmanian laws as if he or she had breached a local order.

If the offender seeks an appeal or amendment of the conviction of the sentence relating to the conviction, the appeal will, as a matter of practicality, have to be made to the original jurisdiction. In the case that an appeal or request for amendment of sentence is successful, the amended sentence will be administered and supervised in Tasmania as though a Tasmanian court had upheld the appeal or made the amendment. As noted earlier this is not likely to occur as a transfer would not be processed if an appeal is in train and would be generally dealt with well after any statutory appeal periods.

Allowing an offender to transfer to a new area in which the offender has good support or opportunities increases the probability of the offender fulfilling the order, being positively reintegrated back into the community, and being diverted from returning to the prison system. The Government encourages the early passage of the bill to ensure the prompt and efficient implementation of the scheme.

I commend the bill to the House.