

DRAFT SECOND READING SPEECH

HON GUY BARNETT MP

Sentencing Amendment (Presumption of Mandatory Sentencing) Bill 2023

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Mr Speaker, I move that the Bill now be read a second time.

Our Government has now been elected twice with policies designed to further protect some of Tasmania's most vulnerable, namely our children and young people.

This Bill fulfils our Government's commitment to strengthen penalties for serious sexual crimes perpetrated against children and young people.

This Bill will amend the *Sentencing Act 1997* to introduce a presumption of minimum sentences. These minimum sentences are based on the recommendations of the Sentencing Advisory Council on what would be appropriate minimum levels of imprisonment for these serious crimes.

Our Government believes that offenders of sexual violence against children and our young people deserve significant sentences of imprisonment in recognition of the heinous, and lifelong effects of their criminal conduct on their victims.

This Bill legislates the community's expectations as to the appropriate sentence of imprisonment that should be imposed in relation to child sexual offenders while preserving judicial discretion in circumstances where a Court is satisfied it is unjust to do so. For transparency, the Bill requires the Court to provide reasons if it does not impose the minimum sentence.

Mr Speaker, introducing this Bill to provide for a presumption of minimum sentences for serious child sexual offences is a very important and substantial step forward. These measures will assist consistency in sentencing and improve public confidence by ensuring that sentences reflect community views for these heinous crimes.

Importantly, this Bill also includes a presumption of minimum sentences where the victim of the crime is under 18 years as follows:

- 4 years' imprisonment for the crime of rape (section 185 of the Criminal Code), where the complainant is under 18;
- 4 years' imprisonment for the crime of persistent sexual abuse of a child or young person (section 125A of the Criminal Code) where one or more of the unlawful acts is a crime of rape;
- 3 years' imprisonment for the crime of persistent sexual abuse of a child or young person (section 125A of the Criminal Code) where none of the unlawful acts is a crime of rape;
- 2 years' imprisonment for the crime of penetrative sexual abuse of a child or

young person (section 124 of the Criminal Code) in circumstances of aggravation; and

- 2 years' imprisonment for the crime of penetrative sexual abuse of a child or young person by a person in a position of authority (section 124A of the Criminal Code) in circumstances of aggravation.

Recently, the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse has again increased the community's awareness of the disturbing levels of prevalence of institutional child sexual abuse, both historical and contemporary, and the devastating long-term and often life-long impacts of child sexual abuse affecting victim-survivors.

Our Government has carefully monitored the work of the Commission of Inquiry and it is apparent that many members of our community are still often dissatisfied with the length of sentences given to convicted child sexual abuse offenders.

Our Government rejects any argument that Parliament should not legislate to set a benchmark for minimum sentences or penalties for these abhorrent and heinous crimes against children. It is the role of the Legislature or Parliament, as Tasmania's law-making body, to make our laws guided by community expectations.

Of course the Court has the discretion to impose a higher sentence for these crimes, as it has for all other indictable offences under the *Criminal Code*, that is appropriate and commensurate to the seriousness of the offence in each individual case.

Mr Speaker, coming to a conclusion about the appropriate minimum level for a sentence is a complex task and one that the Government asked the Sentencing Advisory Council to consider through research and their collective knowledge and experience. The Council also consulted widely in relation to this issue. Our Government has adopted the Council's advice.

The circumstances of aggravation that attract the presumption of mandatory minimum terms of imprisonment in relation to certain sexual offences are outlined in section 11A of the *Sentencing Act 1997* and include:

- the victim being under the care, supervision or authority of the offender;
- the victim being a person with a disability;
- the victim being under the age of 13 years;
- the offender committing the offence in whole or in part in the presence of any other person or persons, besides the victim;
- the offender subjecting the victim to violence or the threat of violence;
- the offender supplying the victim with alcohol or drugs with the intention of facilitating the commission of the offence;
- the offender making forced or uninvited entry into the victim's home or other premises;
- the offender doing, in the course of committing the sexual offence, an act likely

to seriously and substantially degrade or humiliate the victim; and

- the offender causing any other person or persons to carry out any of these before mentioned acts.

Mr Speaker, importantly, there are safeguards included in the Bill. The minimum sentencing provisions proposed in the Bill will not apply where the Court is satisfied that it is unjust to do so and identifies the reasons why the presumption has been displaced. It is important that victim-survivors know and understand the Court's reasoning when sentencing their abusers.

The provisions will also have no application to offenders who are under the age of 18 years at the time the crime was committed or, in certain circumstances, to offenders who have impaired mental functioning that is causally linked to the crime.

Mr Speaker, this is an extremely important Bill, especially since the work of the Royal Commission and our recent Commission of Inquiry in Tasmania.

By introducing a presumption of mandatory minimum sentences in this Bill, our Government will provide Tasmania's children and young people with better protection and will help to ensure that victim-survivors receive appropriate justice for the heinous crimes perpetrated against them.

The community expects our children and young persons to be protected, and our Government will do all that is within our power to protect those who are most vulnerable in our community.

Mr Speaker, I commend the Bill to the House.