DRAFT SECOND READING SPEECH

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Justice Legislation Miscellaneous Amendments Bill 2019

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

The Government is committed to ensuring that Tasmanians have access to an effective and efficient justice system. Consistent with that commitment this Bill makes minor amendments to three Acts commonly used by the courts. These amendments will clarify or improve the operation of the respective Acts.

I will now briefly outline the reason behind the changes.

Amendments to the *Sentencing Act 1997*

Part 5A of the *Sentencing Act* 1997 introduced the new sentencing option of a home detention order, ensuring there is a broader range of appropriate sentencing options for the courts to apply depending on the seriousness of the crime or offence committed.

Home detention orders require an offender to be at a specified premise, during specified times and to comply with strict conditions, including electronic monitoring. The courts have embraced this sentencing option and, as at 1 September 2019, there have been 48 home detention orders made.

With these provisions now increasingly in use, the Chief Magistrate has requested some minor amendments relating to procedural aspects of home detention orders, in particular the section in Part 5A of the *Sentencing Act* 1997 that sets out various powers to arrest offenders who are subject to home detention orders.

Currently a court can issue a warrant to arrest an offender where the offender fails to appear as required, or where reasonable efforts have been made to serve an offender with an application. The court may also issue a warrant to arrest an offender to whom a home detention order relates if the offender has failed to comply with a condition of the order referred to in section 42AE(1) of the *Sentencing Act* 1997.

In accordance with section 42AL(4), the police may arrest an offender, subject to a home detention order, if the police officer believes on reasonable grounds that the offender has breached, is breaching or is about to breach a condition of the order.

While the *Sentencing Act* 1997 does provide a process for offenders arrested by police, the Act is silent on what occurs after the arrest on a warrant. However, the *Criminal Law (Detention and Interrogation) Act* 1995 requires the offender who is under lawful arrest by warrant or under the provisions of any Act to be brought before a magistrate or a justice as soon as practicable (unless the person is released).

If a person is arrested for an offence and brought before a justice, a justice has, subject to some exceptions not relevant for current purposes, powers under the *Justices Act* 1959 to grant or refuse bail to the person.

However, people arrested under a warrant issued by a court are not necessarily arrested for 'an offence'. For example, the warrant might be issued for failing to appear as required, or for breaching a condition of an order. Therefore, the provisions of the *Justices Act* 1959 providing a single justice with the power to grant or refuse bail for an offence would not apply for an offender arrested on a warrant under the home detention order arrest provisions.

The effect of the current provisions means that there may be increased time in custody if an offender is arrested out of hours. While the offender would still be required to appear before a single justice in an after-hours court, the justice would have no power to admit the offender to bail or remand the offender. This results in inefficiencies within the system.

This Bill addresses this situation by providing a justice the power to bail or remand an offender who has been arrested. This additional power only applies to an order made by a magistrate. A person who is subject to a home detention order made by a judge must be taken before a judge, as it is appropriate for the jurisdiction that made the original order to make decisions in regard to any subsequent action.

This Bill also provides clarifying provisions in relation to the procedure when a person subject to a home detention order is arrested by police.

The Bill also amends section 44 of the *Sentencing Act* 1997, as requested by the Chief Justice.

At present section 44 provides that "a court that orders an offender to pay a fine must also order that the fine be paid within 28 days". The Act is silent as to when payment is required in a situation where a court imposes a fine but makes no order as to the period of payment.

This Bill addresses this by allowing a default period to apply to the payment of fines ordered by a court in the event that a court does not specify the timeframe. This removes provides clarity for those being sentenced, and removes any doubt over when enforcement action can be commenced.

Amendment to the *Criminal Code Act* 1924

The Director of Public Prosecutions has requested the amendment to section 401 of the *Criminal Code Act* 1924 to provide the power to allow an appeal of an order deferring sentence.

This amendment will make the Crown's appeal rights for deferred sentences consistent with those for other sentences that can be imposed under the *Sentencing Act* 1997, as well as with how deferred sentences are dealt with in some other Australian jurisdictions.

The ability to defer sentencing is an effective tool for the courts to assist certain offenders to take steps towards their rehabilitation, such as drug or alcohol treatment, prior to finalising sentencing. The power to appeal an order deferring sentencing provides an appropriate balance to review if, for example, an order does not include adequate oversight to ensure community safety.

Amendment to the *Criminal Law (Detention and Interrogation) Act* 1995

The Chief Justice has requested an amendment to section 4 of the *Criminal Law (Detention and Interrogation) Act* 1995 to ensure that the current practice where a person arrested under a Supreme Court warrant is taken directly to the Supreme Court is reflected in legislation.

At present section 4(1) of the *Criminal Law (Detention and Interrogation) Act* 1995 provides that:

> *"Subject to subsection (2), every person taken into custody must be brought before a magistrate or a justice as soon as practicable after being taken into custody unless released unconditionally or released under subsection (3) or subsection (5) or under section 34 of the Justice Act 1959".*

Judges routinely issue warrants for the arrest of accused people and witnesses who have failed to attend the Supreme Court. In practice, it appears that a person who is arrested pursuant to a Supreme Court warrant is not taken before a magistrate or justice, and is instead brought before a judge as soon as practicable.

A concern has been raised that a literal interpretation of section 4(1) of the *Criminal Law (Detention and Interrogation) Act* 1995 may be read as to apply to individuals arrested pursuant to Supreme Court warrants.

Supreme Court proceedings would be delayed unnecessarily if, instead of being brought by police directly to the Supreme Court on an arrest warrant, a person was first brought before a magistrate or a justice. Bringing a person arrested on a Supreme Court warrant before a magistrate or justice could potentially result in longer trials and unnecessary delays.

Magistrates and justices appear to have no powers to remand or bail a person arrested on a warrant issued by a judge, so a requirement that a person be brought before a magistrate or justice appears to serve little purpose. At times it would delay, and create unnecessary work for both courts.

To address the concern that has been raised, this Bill amends the *Criminal Law (Detention and Interrogation) Act* 1995 to expressly provide that section 4 does not apply to persons taken into custody pursuant to arrest warrants issued by judges of the Supreme Court.

It is important for both the courts and those that use them that there is certainty in how the law is to applied. The amendments in this Bill provide for that.

Madam Speaker, I commend the Bill to the House.