



Adrian Pederick MP
Member for Hammond

House of Assembly
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Social Development Committee: Recidivist Young Offenders and Youth Parole Board Act Review

Mr PEDERICK (Hammond) (11:48): I rise to speak to the motion that the report of the Social Development Committee, entitled Review of the Statutes Amendment (Recidivist Young Offenders and Youth Parole Board) Act 2009, be noted. The committee commenced this inquiry in August and we received a total of seven submissions, with SAPOL presenting verbal evidence. Hearings were concluded on 13 October 2014.

Amendments were made in 2003 to the Criminal Law (Sentencing) Act to provide South Australian courts with the discretionary powers to declare an adult offender to be a serious repeat offender. The introduction of the Statutes Amendment (Recidivist Young Offenders and Youth Parole Board) Act allows for the same principle and provides South Australian courts with the discretionary power to declare a young offender to be a recidivist young offender.

This act came into operation on 27 June 2010. It was initiated as a response to community concern about the harm done by young offenders who engage in repeat offending of a serious nature and also to allow young offenders to be tried as adults where a pattern of serious repeat offending was alleged to have occurred. The act made amendments to both the Criminal Law (Sentencing) Act and the Young Offenders Act. The key changes to the Criminal Law (Sentencing) Act are:

a provision to declare a young person a recidivist young offender;

a provision for judicial discretion to make such a declaration;

that the court is not bound by the rule of proportional sentencing; and

a nonparole period that is handed down must be at least four-fifths of the sentencing period and not at least two-thirds, as it is under the provisions in the Young Offenders Act.

The key changes to the Young Offenders Act are:

a provision to establish a victims' register;

a provision to keep a record of an informal caution, a provision that did not previously exist;

a provision to impose a custodial sentence where there has been a declaration of a recidivist young offender; and

a provision for the review board to be reconstituted as the Youth Parole Board.

During the operation of the act, six offenders were brought before the Youth Court, and of these three have been declared 'a recidivist young offender'. It is to be noted that in submissions presented to the committee the operation of the act and its effect on the criminal justice system in South Australia have been minimal because the legislation does mirror some provisions that were already addressed in existing legislation.

The committee also noted from a submission and from hearing from the South Australian police that the judicial discretion is a significant hurdle for declarations under the Criminal Law Sentencing Act, and they did propose that judicial discretion, as opposed to a mandated requirement, presents a significant hurdle for young offenders to be declared a recidivist young offender.

Some evidence presented to the committee suggested that introducing explicit measures to declare a young person a recidivist young offender, and imposing longer sentences and longer periods of incarceration by extending the period of time they are eligible for conditional release, may be a counterproductive measure. It is uncertain if evidence-based research supports the view that more punitive measures for young people who offend will increase community safety, but I add that there are many different views on that in the community.

The object of the Young Offenders Act is to secure care, correction and guidance for young people who commit offences, and this needs to be balanced with their need to understand their obligations under the law and that communities should be protected against violent or wrongful acts. There have only been three declarations of young people as a recidivist young offender, and it shows that the recidivist young offenders legislation has not significantly impacted upon substantive sentences imposed upon serious repeat offenders to date.

The committee considered that the operation of the act, which is intended to be directed to a small number of young offenders who refuse to learn from experience, has been minimal to date, and its effect on the South Australian criminal justice system has been minimal, based on evidence

presented. Given this conclusion, the committee has recommended that a further review be conducted in three years from now.

Some statistics were presented in an appendix in relation to a study involving the act and looking at cases finalised in South Australia since 27 June 2010. The study was completed in January 2013, and the appendix states:

Between 27 June 2010 and 31 December 2011 there were 96 individuals who were convicted of a total of 177 juvenile offences that were 'serious offences'. A total of 42 individuals who were convicted of a serious offence were sentenced to imprisonment. However, only 6 of these individuals fulfilled the two sets of criteria of 'recidivist young offender' of having been convicted and imprisoned twice previously for a serious offence.

Since the act commenced in 2009, there have only been six young offenders as at 31 December 2011 who were eligible to be declared a recidivist young offender.

In conclusion, I would like to thank members on the committee: from this place, Ms Dana Wortley (member for Torrens) and Ms Katrine Hildyard (member for Reynell); and from the other place, Hon. Jing Lee; Hon. Kelly Vincent; and the presiding member, Hon. Gerry Kandelaars. I would like to acknowledge the work of committee secretary Robyn Schutte and research officer Carmel O'Connell.