Speech by

Mr L. SPRINGBORG

MEMBER FOR WARWICK

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CRIMINAL CODE AMENDMENT BILL

Mr SPRINGBORG (Warwick—NPA) (Deputy Leader of the Opposition) (9.55 p.m.): In rising to participate in this debate, I indicate that the coalition will be supporting the Bill. I intend to give some reasons why that is the case. Certainly, the honourable member who has just spoken and the honourable member who introduced the legislation into Parliament, the member for Ipswich West, outlined the genesis of the legislation and certainly some of the recommendations that have been made over the past few years.

Firstly, in 1996 the Connolly Criminal Code advisory working group indicated that there should be a reversal of the onus of proof. Certainly, the late Judge Fred McGuire indicated in a number of reports how this particular provision that exists should be either considered for abolition or, should it remain, that there should be a reversal of the onus of proof. Although I am not absolutely convinced that this is the ideal way to go about it, I think that it is a step in the right direction.

For the benefit of this Parliament, it is necessary for me to talk about how this rule evolved as I understand it. The Attorney-General may have some more knowledge as to genesis of this rule. As I understand it, the common law, which provides the foundation for much of the law that is currently interpreted and upheld by our courts, has over the centuries indicated very strongly that a child under the age of seven years cannot be held criminally responsible absolutely. The law indicates further that a child between the age of 7 years and 10 years may be held criminally responsible but only if those who are prosecuting are able to prove that that child understood what they were doing was wrong and subsequently committed that particular action.

The statute law that has come in over the top of the common law over the years has increased that seven year age limit to 10 years. So as I understand it, a child under the age of 10 years cannot be held criminally responsible. The seven years to 10 years age group, which places the burden of proof on the prosecution, had been increased by statute from 10 years to 14 years, or 15 years as it was prior to Denver Beanland, the then Attorney-General, bringing amendments into this Parliament a couple of years ago.

Obviously, as the member for Lockyer pointed out, the common law provisions exist to protect children. Historically, under British law and other jurisdictions throughout the rest of the world, if a person was found guilty of a criminal offence, the punishment was certainly not a matter of counselling or cautioning, and in many cases it certainly was not a matter of jail; it was death. I understand that the youngest person to be sentenced to death under our British justice system was about six years of age. That happened a few hundred years ago. Whether the common law existed at that time, I do not know, but I think that the crime was burning down some stables.

I think there is some element of truth in the assertion that has been advanced by honourable members that today children are far more aware of the law and what their responsibilities are. I would not like to see a situation in which we did away with all of the protections for those aged between 10 and 14. But I certainly am prepared to support the reversal of the onus of proof based on certain recommendations that have been made previously. However, I would have preferred to have seen a situation—and this Bill will not reach the Committee stage—whereby we incrementally reduced the age from 14 to 13. Previously, it was 15 years of age. But given the fact that that is not likely to happen and the fact that a protection will continue to exist that does not otherwise exist for a person over the age of

14 who would be prosecuted, other than if a person is found to have been mentally incapable at the time, I am prepared to offer cautious support to this legislation.

If we look around the State and consider the concerns coming forward from the community, we see there is reason for considering this legislation. Although I think it is appropriate for us to give children who commit non-serious offences a second chance—and certainly the provisions which exist in statute at the moment provide that in most cases children are cautioned by police in the company of their parents; most of those children never come across the law again, and I have seen figures as high as 70%—there certainly are a significant number for which the caution is not going to be of any use whatsoever.

If we are looking at serious crimes, which is what we are dealing with here—indictable offences generally—and when we look at the nature of some of these crimes, whether it be arson, serious assault or whatever the case may be, I think it is fair to advance the proposition that the law should be changed so that children between the ages of 10 and 14 who are alleged to have committed an offence should prove to the court that they did not know that they were committing a crime. If their defence is that they did not know, it should be up to them to prove that they did not know rather than it being up to the State to prove that they did not know.

Mr Foley: Even for a 10 year old?

Mr SPRINGBORG: A number of eminent people, many of whom the Minister would probably disagree with, have discussed this point over time. Former Childrens Court Judge Fred McGuire was one. The Connolly Criminal Code Review Committee was another. It has also been looked at by other committees.

Mr Foley: Denver had the good sense to reject that.

Mr SPRINGBORG: I would advance the proposition that, whilst it was not picked up at the time, in respect of the incremental reduction to 14 years of age there was some support for the notion that we should be looking at this existing defence. I understand that a degree of reticence may have been expressed by those who prosecute and perhaps also by the department, but I am still saying that there is a protection available under what is proposed here that is not available to those who are over the age of 14. I am not necessarily sure that an easy catch-all section in our law should remain. In some cases, it may be an adequate protection, but in other cases it might make it much more difficult to be able to prosecute an offence that might otherwise be prosecuted where the guilt of a person is fairly obvious.

As I said at the outset, although we are not going to get to the stage of making amendments, I would have preferred to have moved an amendment whereby we could incrementally reduce the application of the current rule to those 13 years of age. In the absence of that reduction and in light of the learned people within the law who have in the past recommended that this should be considered, I am prepared to offer the cautious support of the coalition.

A moment ago I was speaking about community frustration. Certainly, a lot more people in the community are aware of the brazen acts of some young people. I think it is fair to say also that the general naivety and innocence that probably existed many decades ago does not exist to the same extent today. We have only to turn on the television at night-time or look at other powerful influences to realise that young people in general are far more aware of what is right and wrong, and therefore they should be held more responsible than they were in days gone by. It could be argued justifiably and forcefully that a greater ignorance existed previously by virtue of people being relatively more sheltered than is the case today. That is very true. It behoves us as legislators to look at these issues as times change.

I listened with a degree of interest to the comments of the honourable member for Lockyer, who expressed concerns about parenting, the breakdown of families and so on. I do not agree that that in itself is a motivation for bringing forward such legislation. It seems to me that we have a lot of child victims out there who are victims not of their own making but that of adults, who are their primary care givers and who should know better and should be acting as proper role models for them. I think we need to be careful that we maintain a system which enables us to give cautions and one where the sanction of the criminal law is a last resort.

The Juvenile Justice Act, which was amended by the honourable member for Indooroopilly, provided greater options for dealing with juveniles and even sentencing options—something recognised by the Childrens Court. We should always have the option of being able to caution and deal with juveniles differently in the first instance.

We tend to pussyfoot around these issues, talk about positive role models and say that some people are dreadful parents, yet the whole cycle is self-perpetuating in that children become parents and their children also become parents, but we are never in a position to actively intervene. We either need far more active intervention or we need to be doing something more about economic empowerment for the people who are going to have children and bring them up in those environments.

At the end of the day, 95% of our resources are going into dealing with 5% of the people. Unfortunately, that is the role of Government. We are supposed to look at issues of equity and address community concerns.

This issue is self-perpetuating. It pains me greatly to hear stories—and the Attorney-General no doubt hears them—about parents of children who have run off the rails and who cannot get the active intervention of the State that they need to be able to address that problem. They say, "Little Johnny is 13. I can't lock him in his room. He goes out the window. Family Services cannot do anything; he has not really done anything wrong yet. The police say, 'He hasn't done anything wrong yet. When he does something wrong, we'll intervene.'" But by then it is far too late.

Some parents are trying to be responsible but their kids are running off the rails. On the other hand, there are parents who, when the police bring home their wayward kids, tell the police to go away in far more colourful language than that and then offer little Johnny or Josephine a stubby on the way through. And in some cases they are not concerned that they are partaking of drugs. What sort of positive role modelling is that?

Whilst there is a need to ensure a greater degree of responsibility and accountability for certain child criminals, we cannot get away from the issue that part of the reason they are actually committing crimes is the dreadful role models at home—role models whom we continue to let perpetuate this ongoing problem. Honourable members should also keep in mind that not everyone who turns to crime does so because they are victims of circumstance. Some people choose to turn to crime. Some people turn to crime because they like it; they like the thrill of it. It is an exciting way for them to go out and make their money. It is an exciting way; it is the chosen way for them. It is almost like a career for them.

Whilst many people who have made that initial mistake will probably never commit a criminal act again—and looking at the jail population, there is around a 30% recidivism rate which means that 70% of people will not reoffend—there are many people who reoffend because they enjoy what they do. There are child criminals out there—those in the 10 to 14 age group—who do this. Some of them have a list of offences that are as long as your arm, whether it is breaking and entering, property offences or car stealing— you name it. They are street smart, they are brazen in what they do, they are not going to be deterred and a caution is not going to work on those particular people. When they go into juvenile aid and they are counselled, they just laugh. They are the first ones out and they are the ones kicking over the rubbish bins as they go back down the street. That relates to a minority of them, but there are a number who go out and do that.

There is an onus on us as members of Parliament to respond to community concern and to look at different ways of addressing these issues. As I said, whilst this legislation reverses the onus of proof—while it seems to do away with an extremely strong protection that existed for those children aged between 10 and 14 accused of crimes—I understand that the legislation still provides them with a protection that does not generally exist for other criminally accused people who are over the age of 14, with the exception of those who may fall within the provisions of the Mental Health Act. So there is a protection, but it is a reverse onus. If the defence of that particular child is able to prove that that child did not know that what they were doing was wrong, then they still have that protection. So it goes from a generally absolute protection, which made it far more difficult for the Crown to be able to break through, to a protection where the onus is on the offender.

Honourable members should also keep in mind that, even though that onus may have been reversed, it is still up to those who are prosecuting the case to prove beyond a reasonable doubt that that person committed the crime. So at the end of the day there is still a presumption of innocence until otherwise proven in court. In conclusion, as I said, I would have preferred to have seen an incremental reduction as times change in this general protection that exists. However, in the absence of that and given the fact that this legislation is unlikely to go beyond the second-reading stage and the fact that eminent legal minds have recommended this as law reform that should be considered, I am prepared to offer the support of the coalition.
