

2011

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CORRECTIONS AND SENTENCING LEGISLATION AMENDMENT BILL

2011

EXPLANATORY STATEMENT

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Corrections and Sentencing Legislation Amendment Bill 2011

Outline

Purpose of the Bill

ACT Corrective Services and the Sentence Administration Board operate primarily pursuant to three pieces of legislation:

- the *Crimes (Sentencing) Act 2005*;
- the *Crimes (Sentence Administration) Act 2005*; and
- the *Corrections Management Act 2007*.

The purpose of the Corrections and Sentencing Legislation Amendment Bill 2011 is to make minor amendments to the above legislation to resolve specific operational issues identified, for the purposes of improving corrections administration.

Specific issues addressed by the Bill relate to:

- pre-sentence reports
- periodic detention
- release on licence; and
- Sentence Administration Board powers.

Human Rights Considerations

The Corrections and Sentencing Legislation Amendment Bill 2011 contains minor and technical amendments to existing provisions and does not engage or limit the human rights located in the ACT's *Human Rights Act 2004*.

Corrections and Sentencing Legislation Amendment Bill 2011

Detail

Part 1 — Preliminary

Clause 1 — Name of Act

Clause 1 is a technical clause that names the short title of the Act. The name of the Act would be the *Corrections and Sentencing Legislation Amendment Act 2011*.

Clause 2— Commencement

Clause 2 commences the Act on the day after it is notified on the ACT Legislation Register.

Clause 3— Legislation amended

Clause 3 lists the legislation that the Act amends.

Part 2 — Corrections Management Act 2007

Clause 4 — Segregation – safety and security

Section 90(5)(b)

Clause 4 provides that where a detainee is only being transferred to another correctional centre for 1 day or less (for example, the detainee is transferred to the Court Transport Unit for appearance in court) the chief executive does not need to review a segregation direction that has been made in relation to the detainee for the safety and security of others.

Prisoners are often transferred from the Alexander Maconochie Centre (AMC) to the Court Transport Unit for one day or less. This amendment will ensure that prisoners can be transferred to the custody of Court Transport Unit officers and taken to court without the need for review of segregation directions which will continue in force if the detainee is returned to custody by the court.

Clause 5 — Segregation – protective custody

Section 91(5)(b)

Clause 5 provides that where a detainee is only being transferred to another correctional centre for 1 day or less (for example, the detainee is transferred to the Court Transport Unit for appearance in court) the chief executive does not need to review a segregation direction that has been made for the purposes of protective custody to protect the safety of the detainee.

Prisoners are often transferred from the Alexander Maconochie Centre (AMC) to the Court Transport Unit for one day or less. This amendment will ensure that prisoners can be transferred to the custody of Court Transport Unit officers and taken to court

without the need for review of segregation directions which will continue in force if the detainee is returned to custody by the court.

Clause 6 — Segregation-health
Section 92(4)(c)

Clause 6 provides that where a detainee is only being transferred to another correctional centre for 1 day or less (for example, the detainee is transferred to the Court Transport Unit for appearance in court) the chief executive does not need to review a segregation direction that has been made in relation to the detainee for health reasons.

Prisoners are often transferred from the Alexander Maconochie Centre (AMC) to the Court Transport Unit for one day or less. This amendment will ensure that prisoners can be transferred to the custody of Court Transport Unit officers and taken to court without the need for review of segregation directions which will continue in force if the detainee is returned to custody by the court.

Clause 7 – Duration of investigative segregation
Section 163(2)(b)

Clause 7 provides that where a detainee is only being transferred to another correctional centre for 1 day or less (for example, the detainee is transferred to the Court Transport Unit for appearance in court) the chief executive does not need to review a segregation direction that has been made in relation to the detainee for the purposes of investigation.

Prisoners are often transferred from the Alexander Maconochie Centre (AMC) to the Court Transport Unit for one day or less. This amendment will ensure that prisoners can be transferred to the custody of Court Transport Unit officers and taken to court without the need for review of segregation directions which will continue in force if the detainee is returned to custody by the court.

Part 3 — Crimes (Sentence Administration) Act 2005

Clause 8 – New section 41A

Clause 8 clarifies that an offender who performs periodic detention for a detention period is taken to serve 7 days of the offender’s sentence of imprisonment. A detention period starts at the reporting time on the reporting day (a day of the week specified by the court or the Director General) and ends at the finishing time on the second day after the reporting day.

The purpose of this amendment is to provide clarity, for example in circumstances where some detention periods are “missed” and the court (in re-sentencing) seeks to take into account how much of the sentence has already been served.

**Clause 9 – Periodic detention – application for approval not to perform etc
Section 56(2)**

Clause 9 allows for the presentation to the Sentence Administration Board of a certified copy of an original doctor's certificate for non-performance of periodic detention.

**Clause 10 – Board powers – management of periodic detention
Section 75(5)(a)**

Clause 10 provides that the Sentence Administration Board, in determining whether an offender is unlikely to be able to serve the remainder of their periodic detention period by periodic detention is only required to have particular regard to the offender's health or any exceptional circumstances. The Board is not required to have particular regard to both these considerations.

**Clause 11 – Suspension or cancellation of periodic detention – recommittal to full-time detention
Section 82(4)(a)**

Clause 11 provides that the deputy chair of the Sentence Administration Board can also sign a warrant for an offender's arrest where the Board decides to suspend or cancel an offender's periodic detention. Currently only the chair of the Board can sign such a warrant. Both the chair and deputy chair of the Board must be judicially qualified. The amendment will have the benefit of reducing potential delays in proceedings.

**Clause 12 – Confidentiality of board documents
New section 192(5)**

Clause 12 provides that for the purposes of section 192 of the *Crimes (Sentence Administration) Act 2005* 'giving' a document includes both physical and oral disclosure of the information contained in the document. This will enable the Sentence Administration Board to give full effect to the non-disclosure purposes of the section.

Clause 13 – New section 303A

Clause 13 provides that corrections officers are required to report a breach of licence obligations (where an offender is released on licence under Chapter 13 of the *Crimes (Sentence Administration) Act 2005* (the CSA Act)) to the Sentence Administration Board. The CSA Act requires corrections officers to report breaches of other sentence obligations such as periodic detention and parole. This amendment will bring the reporting requirements for release on licence into line with those for other sentence obligations.

Part 4 — Crimes (Sentencing) Act 2005

Clause 14 – Pre-sentence reports – order Section 41(6), definition of *assessor*

Clause 14 provides that interstate assessors can also prepare pre-sentence reports ordered by an ACT court. This amendment will allow for an interstate assessor (who may have better access to and knowledge of an offender who is from that jurisdiction) to prepare the report.

Clause 15 – Pre-sentence reports – availability of written reports Section 45(1)

Clause 15 provides that an ACT court is only required to provide a written pre-sentence report to parties where the report is received by the court at least 2 working days before the offender is sentenced. This amendment will allow on the spot assessments for pre-sentence reports to be performed and written reports provided to the courts the same day. This will address potential unnecessary delays to court proceedings.