

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Victoria's Criminal Justice System

Melbourne—Monday, 6 September 2021

MEMBERS

Ms Fiona Patten—Chair

Dr Tien Kieu—Deputy Chair

Ms Jane Garrett

Ms Wendy Lovell

Ms Tania Maxwell

Mr Craig Ondarchie

Ms Kaushaliya Vaghela

PARTICIPATING MEMBERS

Dr Matthew Bach

Ms Melina Bath

Mr Rodney Barton

Ms Georgie Crozier

Dr Catherine Cumming

Mr Enver Erdogan

Mr Stuart Grimley

Mr David Limbrick

Mr Edward O'Donohue

Mr Tim Quilty

Dr Samantha Ratnam

Ms Harriet Shing

Mr Lee Tarlamis

Ms Sheena Watt

WITNESS (*via videoconference*)

Mr John Herron.

The CHAIR: Thanks, everyone. Welcome back. We are now very privileged to have joining us Mr John Herron, who has had many experiences with the justice system.

Mr Herron, if I could just let you know that all evidence taken is protected by parliamentary privilege, and that is under our *Constitution Act* but also under the standing orders of the Legislative Council. Therefore any information you provide during this hearing is protected by law. You are protected against any action for what you say during this hearing, but if you were to repeat similar statements outside this hearing, you may not have the same protection. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

This hearing is being recorded by Hansard, and they will provide you with a transcript of today's proceedings. I would encourage you to have a look at that to make sure that we have not misheard you or misrepresented you. Ultimately this transcript will become public on our website but also will form part of our report.

I know I say this on behalf of all committee members: that we are very grateful for you being willing to speak to us today. If you would like to make some opening remarks, we will then open it up to committee discussion.

Mr HERRON: Thank you, Chair. Thank you, committee, for the opportunity to speak. Probably I would start from the top—that the reason that I am here is that my daughter was murdered brutally. Her body was left in Royal Park on 25 May 2019. Otherwise I would have never entertained addressing Parliament in this manner. And it is for her memory and why she died and the circumstances before and after that I am here today to discuss that.

Possibly a little brief introduction of my own background: I run a country law practice in the Macedon Ranges. It is general practice, like a GP. It covers everything from family law to criminal law, commercial law and a lot of family violence matters that I undertake. I have worked for the Victorian government as well for the most part—two-thirds probably—of the last 15 years, including with the department of justice. There I was the project director for the working with children check card, Justice Health and infringement management—but we do not need to talk about that—and I have had a lot to do with prisoners inside and out, recidivism programs et cetera, so I have seen that. I appear in courts, everything from the Supreme Court down VCAT and all jurisdictions. I am also eligible to appear in the federal courts. I appear in the Family Court in the Northern Territory and New South Wales.

But again, it is not about me, it is about what happened to my daughter. Some of you may or may not be aware of the publicity surrounding that. Fiona, I know you did a very nice speech in Parliament at that time, and I appreciate that. But when it encounters you and your family it is very difficult to describe the impact on you—and the extended family as well. As an example, my son is not dealing very well with this. That being said, those are the ongoing issues as a victim that you encounter too. But if I look at the offender and if I slice out where he came to be to meet Courtney and his treatment in the system after, I think to slice it out, we are here today to sort of unpack a little bit in the justice system.

I will start very briefly with how he came to meet Courtney. I found this out from a lot of people who approached me that had to deal with the offender. I have seen his prior list with the police. He had a lot of attacks against women in two states, a very serious offence in Victoria—attempted murder, very nearly killed a woman. He used a knife, strangled the woman et cetera. But prior to that he had been roaming the streets particularly around Brunswick and hanging around a place called Lentil as Anything, living in a van. But he had a lot of no doubt mental health issues. They were very problematic. So what to do with him is a really important lesson to us all. He had attacked individuals at that stage, but leading up to his vicious assault on that particular woman a lot of people had tried to obtain help for him. He had been committed at one stage for a few weeks by the CAT team, as you may be aware.

But really police did not turn up after a lot of violent incidents. They just let him roam the streets of Brunswick literally until something happened. He went to live with a girlfriend. That incident happened—without elaborating too much or invading her privacy. The police then charged him on those issues. He had already

been charged with a number of other offences, but he was basically roaming around the CBD but without help in that instance. He ran into Courtney, a chance encounter. She also took pity on him, took him out to dinner, shouted him a meal. That was her last, and he brutally killed her in Royal Park.

So with the events leading to his release, he had been given a very light sentence, 10½ months—probably about a quarter of the duration that I would have seen in any other state. Inside—he was at Port Phillip Prison—he did not receive any mental health medical care whatsoever. One of the things with that that you may or may not be aware of, and I am familiar with Justice Health, is that he declined to be assisted. In one particular interview it was a code of silence. So a lot of people criticise—do the prisoners receive care or not? I put in the triage system for a lot of Justice Health, and a lot of that was about costing. But it is actually voluntary, so if they do not choose to engage, it is quite a problem there. The light sentence he had—he had access to family money so he appealed his sentence. He was released 4½ months early. He was also given a community corrections order and released to no fixed address. So he wandered around the CBD literally waiting to kill someone. He was high on ice and heroin for the three weeks that he was outside.

So when he was released after appeal—he went back to Port Phillip Prison and was released, and when I say released, he was dropped with a community bus from Port Phillip, caught a train, got off at Flinders Street a few weeks later and ran into my daughter. But there was no monitoring of that with a community corrections order. I will probably touch on this issue—the sentence that he received, as I said, was very light. Being a criminal lawyer too, I might be guilty of this myself, where you try and whittle down charges. So it went from attempted murder, attempted murder, attempted murder to assault charges. Dropping the words ‘intentional’ and ‘reckless’ meant that he did not do a lot of time. Now, I am not getting into the area of ‘Is time a good thing or not?’, but in the violent end of perpetrators, when you have got no care and you are out on the street, then this is the result.

So then to be able to release him on a community corrections order, the County Court judge then whittled that down to a threat to kill. So it went from attempted murder—a brutal attack on a woman—to threat to kill. That enabled the community corrections order to be generated. Then he was released from prison, and that was the last we heard until he appeared on the news reports. Beyond that, when he was arrested, he asked for an expensive lawyer straightaway. One thing led to another and he pleaded not guilty—mental impairments. He is at Thomas Embling at the moment. So that is a snapshot of someone in the system that is at a high risk of murder. Of course we cannot see into the future, but the treatment of that individual and how he got to that space I think is a lesson for all of us.

The CHAIR: John, thank you so much for doing that and speaking to us about that. You are right. We have been speaking this morning about how sometimes the change in bail conditions has meant that non-violent offenders are being locked up when they would not have received a prison sentence, but here we have the opposite occurring: we have a violent offender being released, pretty much on his own, where we know a CAT team has been called; we know that he has been diagnosed with obviously significant mental illness; we know that he has refused—well, declined—treatment while he has been in jail. Can you think of a point where, had we changed the law, the law could have intervened, that something could have stopped the tragedy that then went on and the murder then of Courtney?

Mr HERRON: I would have to go straight to the incarceration aspect, because to be inside prison just for a short period after a lot of serious events—he was not actually diagnosed with anything. But you raised a good point that he had been picked up by the CAT team, so that was aware. But that was not presented at any of the court hearings.

So if I appear in court to have a prisoner arranged on bail et cetera, I always use psychology reports et cetera.

The CHAIR: Yes.

Mr HERRON: None was tendered for him, ever, in the Magistrates Court or the County Court on his release, which I find extraordinary in that aspect. But I think, unpacking that, to be able to view his mental health history would be an important step to identifying what sort of treatment. So when you get to the end of Thomas Embling, it was shown on the ABC *Four Corners* report recently, at that point in time you do receive very, very good care, but it is too late then because people are dead.

The CHAIR: That is right.

Mr HERRON: So, yes, having that availability of reports. The incarceration for serious crimes is an aspect in its own right.

The CHAIR: Yes.

Mr HERRON: Like the whittling down of charges, particularly when you have got violence against women, is an all-too-frequent thing. I have dozens of women that I have to counsel or reassure when they wonder why the system has failed them in that particular manner.

The CHAIR: Yes. I mean, do you think there is a way we can stop that reduction, you know, that bargaining that takes place?

Mr HERRON: Yes, there is. I am not doing myself out of a job, but, for example, in drink-driving and drug-driving there are mandatory steps in there that, when you argue with a magistrate, you cannot—they will say, ‘I’ll consider the x and y, but I can’t back down in that’. So I think what is needed here are practice directions. That is quite easily installed via changes to the *Sentencing Act*—that would be one way of doing that. For example, I use the words ‘reckless’ and ‘intentionally causing injury’. Under the *Sentencing Act* and the *Crimes Act* specifically that brings in mandatory two-year minimum sentences et cetera, so working through that for violent crimes against women. And there are a lot of families that I talk to—the Little family that lives near me.

The CHAIR: Yes, we have met with the Littles.

Mr HERRON: Without running into dozens of names that I talk to, I think that is a very important thing, to be able to put a line or a limit there for the violent offenders. And I think the committee is here—not telling you your business—to look at recidivism, and that is a great endeavour in that aspect because prevention is better than the ultimate result there. But the longwinded answer is that it needs to have a minimum on violent attacks against women. I was speaking to the Meagher family, the Maasarwes and all these other victims and the survivors too—because there are 10 times as many survivors than victims that have gone through horrific things that I come across. So the sentencing thing baffles a lot of women.

I did touch in my submission on intervention orders because I deal with them day in, day out, and they are a big source, like the murder of Celeste Manno, where issuing of intervention orders was a problem. But I will stop myself there.

The CHAIR: No, thank you. And someone else might pick that up, but I think that you have given us some very clear direction there, thank you. Kaushaliya.

Ms VAGHELA: Thanks, Chair. Thanks, John, for your submission and for your time today. I am very sorry to hear about your daughter and also the impact—I cannot even begin to imagine the impact that would have had on your family. You also just mentioned the impact that it is having on your son; it is very, very sad. Now, you yourself are a practising criminal lawyer, so you are very well aware of how the system works. Can you please reflect on the process for appointing judges in Victoria? What are the strengths and weaknesses of this process, and how can it be improved?

Mr HERRON: That is a really good question. Greater minds than mine have come up with a lot of various ways of appointing judges and then at the other end whether to discipline them at that particular end, because at the moment you have really got the Judicial Commission of Victoria. But what can be better done than it is now? I have to say my observation of the judiciary is that I deal a lot with magistrates, and they are completely overwhelmed, and they do a fantastic job. I would rarely pick one out that I do not think is suitable in that role. It is the same with County Court judges. Probably they need to be appointed to an area where they have expertise. There have been a few appointments to the criminal appeals court where the judges do not have any criminal law experiences—that may need a bit of scrutiny. I do not have all the answers for you, sorry.

The CHAIR: No, that is good.

Ms VAGHELA: Yes. So in your view, what knowledge and skills do judges and magistrates need to perform their job? Is there anything ongoing you think they should do or that they should have some sort of training?

Mr HERRON: Yes, that is a good point. So the Judicial College of Victoria—people tend to forget that that was created by Steve Bracks for that exact purpose, to provide that education to judges. Look, I have worked around the courts and court services to know that that then morphed into like a repository for information for legal services, judiciary officers et cetera rather than as a point where they can—I think at the time that was the result of a backlash. The community had a bad perception of the judiciary, that they were not, I think, at the time in tune with what society expected from them. But that is always a long bow to draw. The public perception and what is reality are two different things. So the Judicial College of Victoria potentially could have a greater impact on influencing the judiciary, I think.

Ms VAGHELA: Yes, thanks. I will come back, Chair. Thanks.

The CHAIR: Tania.

Ms MAXWELL: Thank you, Chair. John, lovely to see you. Thank you so much for being here. John, you spoke about raising the bar of evidence to place an IVO. Could you elaborate a little bit more on that? I mean, we are hearing that they are handed out like lollies currently. With your experience, what are you seeing at the moment with IVOs?

Mr HERRON: What do I see on a daily basis? Again, I have a lot of female clients. There are some good and bad things. One of the good developments lately is being able to apply online for them, and that has protected a lot of people that do not necessarily want to go through the process. I think it is really good, and that is followed up by the Magistrates Court. But I think the ease—I think there is something like 600 a day that are issued in Victoria. I am not in a position to say—do not quote me on that because I have said that—but it is huge. The burden of that is massive on the police force and the courts, possibly taking up to a third or a half of their time with that. The thing about it is anyone that goes in can apply for one, so what happens there is that the bar of evidence is very low, understandably because people want to be able to put them on in a comfortable environment. But what I see is a lot of counter-IVOs. Now, a lot of counter-IVOs are instituted by perpetrators—so a perpetrator that has attacked a woman can put one on and have his girlfriend put one on who has never met the person. So on that point, many IVOs are placed without the person ever, ever meeting them. That is one sliver out of many examples. My other beef, if you look at what I say in my submission, is that I think the breaching of IVOs needs to be tightened up. But the number and sheer volume of IVOs generated means that that is impossible to do.

Ms MAXWELL: We know that with people being afforded an IVO—and I am not saying that it may not be needed—the person that the IVO is going against has no opportunity to debate the case if it just happens, and they can be removed from that home even if the person who claims the IVO does not live there.

Mr HERRON: No. I will give you one example. I volunteer at St Kilda Legal Service. A young girl Courtney's age came one night to see us. She had been thrown out of home at 14. Her family disintegrated. People could not understand what that meant, but many of us do. She was picked up, as young women are, groomed and sold, and she had a fight with her handler. She was in her mid-20s. He called the police. He had an IVO out on her. She then went and sold herself for a few nights and came to our attention, so we fed her, looked after her. There was nowhere to take her—Safe Steps was closed, all the usual 1800 numbers did not answer. We took her down to Grey Street in St Kilda and found her a place. It was not easy to do so. She was baffled as to why the IVO was against her in that instance. That is not an unheard-of story—that is at the extreme end. The barriers to test of evidence would be useful. There are ways of doing that, but if you reduce the volume—two-thirds of these IVOs are really what I call backyard disputes, and they literally are. I have people come to me for backyard disputes, playground disputes et cetera. But if you look again at the case of Celeste Manno, the family did not understand the process of how that was issued. So they go down to the police station. The police told them to block the perpetrator on Facebook, then that escalated. They went back. They told her to go home, turn up herself to Heidelberg police station, and then she is dead.

The CHAIR: Thank you. Sheena.

Ms WATT: Thanks, Chair. And thanks, Mr Herron, and my sympathy and condolences to you. Can I just take a moment to say I very much remember around your daughter. Royal Park is very close to my home. I am not too far from Fiona's office, and this case in particular has stuck with me for now a few years as a woman in

Brunswick who often travelled by herself and during that time often travelled solo and on public transport. So this was something that certainly captured my attention—

Mr HERRON: Thanks, Sheena. That's good.

Ms WATT: and made me consider my life, my safety and other things. I just wanted to put that out there, thank you.

You spoke about Justice Health, and we have heard a little bit today around treatments at Thomas Embling but also the limitations on mandatory assistance, whether that be at Ravenhall or other settings. Do you have any recommendations or things for us to consider in particular around Justice Health? We have heard about NDIS, Medicare and how the transition from Medicare into Justice Health has had some troubles as well as some possible post-release challenges. Do you have anything for us to consider around Justice Health?

Mr HERRON: I think the way it is operated as a separate unit—like a lot of government, it is outsourced, these contracts, so Forensicare to Thomas Embling. The other ones are with GEO, G4S et cetera. I was actually involved in that. There was a good concept back in 2010 to amalgamate those contracts for health with the private prison contracts. That would be a good step. As far as the amount of money that is allocated there, it is probably a little bit light. I was involved in the modelling of how much we could treat per prisoner. You are delving into my subconscious here, Sheena, so I am trying to think about it. It is a question of money as well; that is without a doubt. I sat and listened to a lot of these project meetings where that voluntary aspect—so from memory I remember classes of 28 and maybe five attended. Drug and alcohol treatment is essential in that aspect there, so integrating it probably more—

Ms WATT: You are saying five out of 28, so that is an AOD class or something like that.

Mr HERRON: Yes. Look, that varied. It might have been that there were certain classes where they were trying to have more incentives—and I think that would be useful—for the prisoners to attend those classes. I believe Thomas Embling has a little bit more focus on turning up to these sessions to get release, and that might be useful in the prison system there.

Ms WATT: Okay. I think that is certainly something for us to consider—

Mr HERRON: Yes. That is a very good point, I think.

Ms WATT: around participation in health programs and what we can do to consider participation rates and also what that means then for release and other—

The CHAIR: I agree, Sheena and John, and I think you have got one aspect where you want to really incentivise or compel people to be involved in programs, and then on the other side we have got people going into the system who are not even recognised as people who may benefit from those programs so they are not even being offered them. But, jeez, John, there are not many parts of the justice system that you cannot comment on, really, are there?

Mr HERRON: Just out of interest, in our modelling, health is about 55 per cent of the cost of prisoners, and rising. Because, as the police will tell you, when I was first working in this space in 2010 about 40 per cent of people arrested had a mental health issue, and I believe it is about 70 per cent. That would be, not to categorise it, but serious mental health issues. So the treatment of mental health is a big factor in that.

Ms WATT: What was that number again, sorry? Was that around 55 per cent, did you say?

Mr HERRON: Yes, but it has gone up since I did the modelling.

Ms WATT: Thanks.

The CHAIR: And I think also that is something that we have got to get our heads around, how the NDIS plays into that as well.

Mr HERRON: Yes, because that is used for some aspects in the—I did work at the NDIS for a while putting in their fraud squad, but that is another—

But funding availability would be useful to match there.

The CHAIR: That is right. You have got people with ABIs, intellectual disabilities, that qualify, but I do not think we have managed to patch NDIS in to Justice Health.

Mr HERRON: Yes, that has been a project going on with DHHS for some time, and I do not think that project has gone anywhere, so I would recommend that that be prioritised and implemented.

The CHAIR: Yes, given the escalating cost.

Mr HERRON: Yes.

The CHAIR: John, I hope that what comes out of this goes towards protecting further people and hopefully maybe goes towards some of the failures of the system that ended in Courtney's murder. Many of us live in that area. It is not forgotten, and it will stay very front and centre in our minds as we deliberate here but also with Tania's great advocacy in this area.

Thank you, John. There might be a time when we might call you back when we start really contemplating what this report looks like because I think you can provide us with such valuable insight in so many areas. So I hope you do not mind that we may call you again.

Mr HERRON: No, not at all. My pleasure.

The CHAIR: Thank you. That concludes today's hearing. On behalf of the committee members, again, thank you, John, and also thank you to all the witnesses and everyone who has been watching via the internet.

Committee adjourned.