SENATE

Tuesday, March 18, 1997

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence from today's sitting has been granted to the Minister of Energy and Energy Industries, Sen. The Hon. Finbar Gangar.

SENATOR'S APPOINTMENT

Mr. President: Hon. Senators, I have received communication from His Excellency the President of the Republic of Trinidad and Tobago which reads as follows:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency

NOOR MOHAMED HASSANALI

President and Commander-in-Chief of the Republic of Trinidad and Tobago

/s/ N. M. Hassanali
President.

TO: MR. VINCENT CABRERA

WHEREAS Senator Finbar K. Gangar is incapable of performing his functions as a Senator by reason of his absence from Trinidad Tobago:

NOW, THEREFORE, I, NOOR MOHAMED HASSANALI, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, VINCENT CABRERA, to be temporarily a Member of the Senate, with effect from March 18, 1997 and continuing, during the absence from Trinidad and Tobago of the said Senator Finbar K. Gangar.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's this 17th day of March, 1997."

OATH OF ALLEGIANCE

Sen. Vincent Cabrera took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Report of the Auditor General on the accounts of Penal/Debe Regional Corporation for the period October 1, 1991 to December 31, 1991. *[The Minister of Finance (Sen. The Hon. Brian Kuei Tung)]*
2. Report of the Auditor General on the accounts of Penal/Debe Regional Corporation for the year ended December 31, 1992. *[Hon. B. Kuei Tung]*
3. White Paper—National Population Policy for Trinidad and Tobago. *[The Minister of Public Administration and Information (Sen. The Hon. Wade Mark)]*
4. Report on the Development of the La Brea/Brighton Industrial Estate. *[Hon. W. Mark]*

SUMMARY COURTS (AMDT.) BILL

Bill to amend the Summary Courts Act, Chap. 4:20 *[The Attorney General];* read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate. *[Hon. W. Mark]*

Question put and agreed to.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I seek leave of the Senate to deal with "Bills Second Reading", instead of "Motions", under "Government Business".

Agreed to.

COMMUNITY SERVICE ORDERS BILL

Order for second reading read.

The Minister of Social Development (Hon. Manohar Ramsaran): Mr. President, I beg to move,

That a Bill to make provision for the making of community service orders in respect of convicted persons; to make provisions for the making of combination orders; and for matters incidental thereto, be read a second time.

Hon. Senators, the purpose of the Bill before us today is to allow for the imposition of community service orders or combination service of community and probation against convicted offenders instead of custodial sentences, where it is appropriate to do so.

The problem of crime, despite unceasing efforts to eradicate or minimize it, like poverty, remains one of our social ills. The escalation of crime in our beloved country therefore is of great concern to us all. Imprisonment as a sentencing option is available for almost all offences in this country, from the least serious to the most grave. However, imprisonment, along with other modes of sentencing, either in combination or alternatively, has not proved to be a sufficient deterrent in the battle to curtail the high degree of recidivism, or the process of offenders graduating from less serious to most serious crime.

Why is this? Is it because we are simply enforcing punitive measures to fit the nature of the crime? Increasing the prison population daily, cramming more persons into an already overloaded penal system is obviously not working well enough; neither institutionalizing our nation's youth who may already be deprived and depraved. Should we not then be dealing with offenders, not as if they exist in a vacuum, but recognizing and operating in the full knowledge of their communities as well as the psychological and sociological stresses facing all families today?

Let us then examine the purposes of sentencing. What are they? These have thus far been recognized as:

(1) punishment for the particular offence;

(2) deterrence as regards the particular offender;

(3) deterrence as regards the rest of society;

(4) prevention, in separating the offender from society; and

(5) rehabilitation of the offender.

1.40 p.m.

The sentencing policy in this country to date has not taken into account the need for some form of reparation to the victims of crime or the society in general. Focussing only on criminals and their crimes, while virtually ignoring the victims—by far the larger percentage of our population—does not engender a just and fair society. Crime prevention and control in the long-term might best be achieved if

our sentencing policies were also to incorporate that element of reparation towards the victims and our society. Actually, working for the victims or, perhaps, other vulnerable members of our society, could in turn lead to the rehabilitation of the offender. Therefore, the Community Service Orders Bill seeks, in some measure, to address this issue.

By introducing into our criminal justice system the power to impose community service orders in those situations where normally the penalty would be imprisonment, the prison population could be significantly reduced, thus alleviating, in some measure, the chronic problem of overcrowding our prisons. Further, those offenders for whom this may be a first conviction, would be spared the pervading influence of the more hardened criminals within the prison system and, consequently, we also tackle the whole issue of recidivism.

This is particularly important for our 16 and 17 year-old youths who are not regarded as children and who do not generally benefit from the protections in place for younger persons. The United Nations Convention on the Rights of the Child, which this country ratified in November 1991, states, in Article 40, that whenever appropriate and desirable, children in conflict with the law should be dealt with without resorting to judicial proceedings, but by measures alternative to institutionalization. Although a community service order will only be invoked as a result of judicial proceedings, the idea and aim behind it is to avoid the cycle of institution life.

Community service orders allow for some degree of reparation to society, so offenders of or over the age of 16 convicted of an offence, will be required to perform between 40—240 hours of unpaid work in the service of his community wherever possible. Such work, for example, could include cleaning and maintaining the grounds of a home for the elderly or providing school crossing guard service at a local primary school.

The Probation Department of the Ministry of Social Development will be responsible for the supervision of those offenders who have agreed to perform community service. The Probation Department already has a limited experience of community service. In early 1994, three youths, students of a government secondary school in Tobago, appeared before a Scarborough court on serious offences. The court’s decision was a probation order in conjunction with a short programme of community service within the confines of their own school, as well as other secondary schools in Tobago. The youths had to interface with other students and share their experiences. The responses of the youths on the

programme, as well as those who benefited from it were indeed favourable. We need now, Mr. President, to pick up this programme formally.

I am also aware, that a magistrate in Barbados, having recognized the dire need for alternatives to custody, has regularly imposed sentences of community service on offenders whom he felt would benefit from it. In one instance, where three such offenders had to work at a local business place as part of their community service, two of them were subsequently employed on a permanent basis by that very business firm. I am told, Mr. President, that the business community in Barbados has responded enthusiastically to the community service orders. I hope, therefore, that response from the business community here will be equally enthusiastic. Most of us will recognize the link between crime and poverty; poverty as it manifests itself in unemployment, underemployment, housing, education, poor morale and low self-esteem. Community service orders could short-circuit these problems of employment, morale, self-esteem and, it must be stressed again, stem the tide of recidivism.

Barbados is now moving speedily towards introducing their own legislation aimed at formalizing community service orders as an alternative mode of sentencing.

Details of this Bill are such that no community service order will be made unless and until:

(a) a probation officer's report about the offender and his circumstances has been received by the court;

(b) the offender consents to the making of the Order, following an explanation to him in ordinary clear language, the purpose, effect, requirements of, and consequences of failure to comply with the Order;

(c) the court is satisfied that the particular offender is a suitable person to perform work under the Order and that suitable arrangements could be made for him to do so.

Each offender placed on a community service order will be directly under the supervision of a probation officer assigned to the magisterial district in which the offender resides. The Chief Probation Officer may appoint persons to assist these probation officers in the discharge of their duties under the Bill. To this end, Mr. President, provision has been made for the establishment of probation committees and the use of probation volunteers.

The probation committees would be set up in the various counties, and membership would be drawn from among district probation officers; the magistracy, community leaders and the business community. Each committee would be responsible for the compilation of lists of the kinds of work available in each district; ensuring that there is a day-to-day supervision of offenders while performing the stipulated work; keeping records of such offenders and the performance of the work.

Likewise, probation volunteers would also be drawn from among community leaders, religious leaders or even retired public servants of good standing in each district. Hon. Members, so as to be assured of their safety, as far as possible, these volunteers would assist only in the supervision of offenders in low-risk cases, for example, those offenders whose offence did not involve the use of, or threat of violence. The volunteers would be responsible for keeping records of the performance of each offender supervised by them, reporting directly to the assigned probation officers. The use of the probation volunteers provides an assurance that at no time would an offender be performing work as stipulated in his community service order without the actual physical presence of a supervisor, be it a probation officer or a probation volunteer.

Work to be performed under a community service order should, as far as possible, be completed within the 12-month period from the date of the Order. The Order will remain in force past that time, however, if the specified number of hours contained in the Order have not been performed.

For those offenders who feel community service would be an easy option from which they could slide out as time goes by, make no mistake, hon. Members, that any breach of the requirements of the Order will result in the offender being issued with a summons, or be arrested on a warrant to appear, again, before the court. The court then has a range of options, that is:

(a) to continue the Order and impose a fine;

(b) to continue the Order and impose an additional Order;

(c) to revoke the Order and deal with the offender again in any manner as if he had just been convicted.

1.50 p.m.

In situations where, for whatever reason, the community service does not appear to be working out, the Bill also makes provision for the Order to be varied

or revoked on the application of the probation officer or the offender, him or herself. This would include the circumstance of the offender being convicted of another offence for which a custodial sentence was imposed.

Mr. President, the Bill makes provision for the imposition of combination orders which bring together the elements of a probation order and a community service order. The probationary element would require the offender to be supervised by a probation officer between one to three years while the community service would be a requirement to perform unpaid work between 40 to 100 hours. Before making such an order, the court has to be satisfied that there is need to either secure the rehabilitation of the offender, protect the public from him, or prevent him from committing further offences.

The Community Service Orders Bill 1997, therefore, is an innovative piece of legislation that seeks not only to keep the less serious offenders out of the prison system and thereby forestall the slide into repeat and more serious offending, but to indicate to the populace at large, that they are equally as important as the offender and that wherever possible, that offender shall make amends.

Mr. President, I beg to move.

Question proposed.

Sen. Elizabeth Mannette: Mr. President, this Bill seeks to introduce a new method of dealing with criminals and I am pleased to make a contribution on this innovative form of sentencing as the Minister stated. Mr. President, any Bill that deals with crime and the treatment of criminals requires close and careful scrutiny. The reality is that we are living in a time when crime is increasing and the failure of governments to stem the increase of crime is cause for grave concern to all our citizens. Mr. President, that was supposed to be the end of my statement but I woke up this morning and saw a headline on page 3 of the *Daily Express* which states:

"Crime on rise in '97

> There were 28 murders in the first two months of 1997, 64 per cent more than the figure for the same period last year."

The article continues:

> "Police sources said crime and criminal activity in all its aspects have increased."

It is against this background that we must consider this form of non-custodial sentencing. In order to determine if this Bill makes any sense, we must understand the problems that we are facing. We must understand the objectives or the goals of this non-custodial form of sentencing.

The Minister mentioned the reduction in prison overcrowding and, certainly, as crime increases and prison facilities remain stable, there will be a problem of overcrowding which would lead to further anti-social behaviour which may result in repeat offenders.

More than the reduction in prison overcrowding, we are concerned that this method of non-custodial sentencing is supposed to facilitate the rehabilitation of offenders by ensuring that they interract with communities so that they would develop a greater sense of community spirit and, perhaps, reduce the likelihood that they would, again, violate the norms and behaviour of our society.

I refer now to another article in the *TNT Mirror* of Friday, March 14, 1997 written by Mr. David Millette who referred to an expert on Penal Reform International, Miss Vivien Stern, who wrote about many of the problems involved in prison incarceration. It says:

"Community Service saves prison $$."

In fact, this article mentioned that it costs some $60,000 annually to maintain a prisoner in Trinidad and Tobago—I do not know to what year this figure applies—but certainly, if the Government can reduce the amount of money spent on prisoners in maintaining prisons and apply that money to social services, education or health-care facilities, we have no problem with that.

Notwithstanding all these benefits concerning reduction in prison overcrowding and reduction in the cost of maintaining prisons; as I said, a primary concern is to reduce the non-criminal elements of society, making it safer for our citizens. I think that is our duty and the public at large has entrusted that to us. Mr. President, I have a very deep concern with this Bill because of that obligation. Notwithstanding what the Minister said in his presentation, there seems to be no limit with respect to the class of offenders to which community service orders can be applied. I think that is an important limitation. We must set some sort of parameter, some sort of boundary, because we may run into a situation where violent criminals or people who commit violent crimes, are released into a community. I do not mean to seem extremist but that has, in fact, happened in other jurisdictions, and we do not want to find ourselves running to Parliament to

put in amendments to take care of a problem that developed in our society after some tragedy.

Most of us were in uproar a few years ago when a certain sentence was handed down to someone who committed a sexual crime against a teenager and he was sentenced to a very short period of imprisonment, if at all, which was considered a slap on the wrist. Many people were very concerned and I think we may run into a similar situation where community service orders are granted to persons who may have committed rapes, sexual crimes, robberies, murders and so forth. There is no limitation in this Bill, as I read it, to prevent such a situation. I am concerned that we should limit the applicability of this piece of legislation.

The argument I am raising is not a novel one—and I did not think about this overnight—but I know in many jurisdictions where community service orders have been implemented, there are restrictions on the type of offenders that are eligible for the programme. Indeed, in Jamaica, I am aware that the Jamaican's statute—the Criminal Justice Reform Act of 1979—introduced community service orders into their criminal system, but that Act limits the class of offenders that could be eligible for this programme. The language is actually quite similar to ours in clause 3 but goes on to say:

> "That Community Service Orders shall not be imposed where the offence involved the use of or threat of violence or the use of or illegal possession of firearms or imitation firearms."

There are also other jurisdictions where those who commit crimes of passion, murder or are involved in drug trafficking, are not eligible for community service orders. I think we must look at the historical experience of those who have implemented programmes such as these and be instructed by them.

2.00 p.m.

I would also like to note—I am not suggesting that we do this here—that in some jurisdictions community service is considered a privilege and offenders actually have to pay a fee of up to US $100 to take advantage of this type of non-custodial sentencing. So, it is not considered a right that must be available to all offenders, but it is considered a privilege for which few may qualify.

Another concern that I have, Mr. President, also centres around the class of people or offenders to which this Bill applies. Clause 3(1) of the Bill starts out by saying:

"(1) Where a person of or over sixteen years of age is convicted of an offence..."

What this clearly means, Mr. President, is that the community service order will not apply to juvenile delinquents and I wanted to know if this was a well-thought-out position; and if there is some specific reason why the community service order would not be applicable to juvenile delinquents. I ask that because in the same article of today's *Express*, the police authority stated that what is a real concern to them is the involvement of youth in criminal activity, and we are all horrified daily when we hear about the crimes which are committed by those who are 13, 14, up to 20 years old.

It seems as though there is a complete breakdown of trust, and of acceptable social behaviour among the young members of our population. A Bill such as this, I hope, will be applied first to those more vulnerable citizens. But, it seems as though we are leaving them out altogether. Unless the Minister can present a compelling reason, I suggest that we amend it to apply to those juvenile delinquents, because it is very important that notwithstanding the community service order and other aspects of crime prevention, we seek to encourage socialization and education of all our citizens, and this could be done via the Community Service Orders Bill.

I now conclude by restating the fundamental point that the society at large is very concerned about the increase in crime and our country's policy should be to foster and encourage the development of our young offenders. By considering those two fundamentals, I suggest a serious look at the amendments I raised.

Thank you.

Sen. Rev. Daniel Teelucksingh: I congratulate the hon. Minister for his tireless efforts in addressing certain national issues which have been like festering social wounds. The Community Service Orders Bill, 1997 boldy deals with one such concern, namely crime.

Mr. President, the burden of this Bill makes it imperative for us as a nation to consider once more, issues which are receiving universal attention, such as the evils of overcrowded prisons; secondly, the need for protecting minor offenders from the trauma of incarceration and; thirdly the challenge of rehabilitation of social offenders. Because of this rationale, the Bill deserves our support in its intention and purposes but, as Sen. Mannette, I too would like to examine this Bill, consider it and see that it is within our own social context, especially a small nation such as ours.

I too would like to make reference to stories in the press, the crime stories. In one of today's newspapers, a 30 year-old man—front page, but we are accustomed to that, headline stories featuring crime so commonplace in our society—was shot to death in a robbery incident in San Fernando. Another one, a 39 year-old "wapie banker" was shot to death at Laventille. I do not know if someone should have told him to be engaged in state-sponsored and state-protected gambling rather than playing a game like "wapie" that the Government does not support. A 14 year-old Point Fortin schoolboy, all in today's newspaper, severely chopped a 13 year-old on his head. It is common knowledge that more crimes, particularly the so-called minor ones, seldom reach the press, and many citizens continue to suffer silently.

Mr. President, notwithstanding the laudable intention of the Community Service Orders Bill before us, it will surely be accepted, but I have some reservations and I am certain that others in our society will have reservations about this Bill, for our society is fed-up and rightly so. Our society is disillusioned, displeased and at the zenith of anger and outrage against offenders who have disrupted the communal peace and inflicted so much pain and suffering on law-abiding citizens.

We cannot consider this Bill in isolation. Will this Bill go down well with its focus on minor offences? Not a bit of it! Mr. President, this Bill, seen in the context of growing social displeasure against social offenders, is nothing more than playing dolly house with crime. Crime is not to be treated with kid-gloves such as the Bill proposes. Many will scoff at this bleeding-heart Bill. Our people are unwilling to tolerate even small offenders. Even deviants who dare to jump over the fence in a person's yard—these are small offenders you are talking about, jumping over your fence which is a common thing—whether they are armed or they are petty thieves, our society does not have that kind of compassion again, and this is what the Bill is calling for. This is why I find it extremely difficult to fit this Bill within the landscape of crime in Trinidad and Tobago.

The hon. Minister made reference to social problems like poverty. The time has come when we cannot afford to give the nation the impression and support the idea that poverty is an excuse for crime. We have done that for too long as social analysts. Does the Government have good answers for those who ask, as we have been asking? Our first speaker asked about those minor offences. Where is the list? Where do you draw the line? Will we leave it up to a magistrate to decide what a minor offence is? Mr. President, the hon. Minister touched on the nature of community service. This is why I am saying we are playing dolly house with crime.

Are you taking deviants—although they may be first offenders—to pick up paper in a community schoolyard or, to clean a drain at a house for the aged? Help children to cross the street? Mr. President, I think we have to look again at this Bill. What will we do? This is the question we have to ask today. What will we do with a 14-year-old schoolboy who has probably maimed, for life, another boy by chopping him on the head?

2.10 p.m.

When the nation goes to pray tonight, I wonder what are we going to say. Are we going to see this Bill as helping in any way? How do we handle the 16-year-old Chuck Attins? It is a question that has been regularly asked since the conclusion of that Westmoorings case, and long before I must say; he is not the first one.

Mr. President, clause 6 is a very interesting clause that I know somebody else may take up:

> "A court shall not make a community service order under this Act unless the offender consents..."

Somehow or the other, I have a problem with this Bill, as I was saying. As far as the intention goes this Bill is going to be supported. You are telling us the offender must give consent to community work even though a magistrate might want to so advise, he might want to consult the jury, or whoever is there who might think it is a good thing. The onus is on the offender to say whether or not he will do community service. This is why I really believe that something is wrong with this Bill. In fact, I believe this clause should be deleted from the Bill. You defeat the purpose of the Bill by having a clause like this.

Mr. President, the hon. Minister spoke about compensation for the victims. I am very interested in that. Clause 3 provides for an offender to perform unpaid work. I want to close by focussing on these two very important clauses that really undermine the Bill. This particular clause about performing unpaid work, fellows will go after that. It will be just like a less-than-ten-days; they sit there and do anything at all and say, "I am paying back the community, I am paying back society." That Bill should make provisions for compensation and I am glad the hon. Minister made mention of that. I believe that the time has come when offenders in this society—in this kind of Bill—let them be paid for their work, but let their wages be given to victims as compensation. And this is important, even if it takes longer than the one or two years mentioned here.

Mr. President, I believe we have to get tough with crime and I do not see this Bill sending that message across. We have to get tough with crime at all levels or else we will continue to reap the whirlwind.

Mr. President, I thank you.

Sen. Diana Mahabir-Wyatt: Mr. President, this Bill before us to make provision for the making of community service orders in respect of convicted persons, is not something which has all of a sudden been visited upon us out of the blue. For a long time, people who are involved in social work and in rehabilitation, and those who have been convicted of various crimes, have been very anxious that such a Bill be enacted in Trinidad and Tobago. In fact, we are somewhat antediluvian in terms of our attitudes towards penal systems and reform generally.

This to me is a great step forward and I am rather disappointed to hear my colleague be so negative about it, because rather than being soft on crime, I see this Bill as being one of the first steps which would take us away from putting young, first time, and petty offenders into a school for criminals, which is what happens now. When someone commits a petty offence—and I will come back to the definition of petty offence—at the present time, if there is an alternative between paying a fine and imprisonment, very many people cannot afford to pay the fine for one reason or another. The reasons are obvious. As a result, you very often get young people between the ages of 18 and 25 being imprisoned.

One of the reasons—my response to Sen. Mannette and Sen. Teelucksingh—young people below the age of 16 do not fall under this Bill is because there is a specific legislation for them. Those young people do not go to prison, they go to special institutions such as St. Michael's or St. Jude's where they are supposed to be given some rehabilitation and help to move away from their misbehaviour. They are not adults and, therefore, they cannot come under adult legislation like this. They do get rehabilitation where they go because they are too young to go under legislation which would otherwise put them into prison.

The ones between 18 to 24 years who, together with those 14 to 17 years, comprise perhaps a majority of those offenders who appear daily in the Magistrates' Courts, if it is their first offence they go directly from there to prison, and in prison they are taught how to become serious offenders. We really do not have a decent system of rehabilitation or training in our penal system. We do not have schools, enough counsellors, classrooms in prisons, and programmes where people who are in prison for the first time or even the second time can learn to move away from their criminal ways and move towards being useful citizens.

I congratulate the Minister on bringing this Bill before Parliament. It is something which has been needed for a long time, as far as I am concerned, and I am very gratified that this Minister, who does seem to be taking a very serious view of his responsibilities and has moved into areas of improving social development and social service in this country that we have not seen for many years, has brought this Bill before Parliament. I think that his intentions are not only laudable, I think that they are praiseworthy.

The idea of putting offenders to work and then collecting their wages and giving those wages to the victims or to the families of victims is one which I also think is a good idea, but I do not think that is necessary. It is something which could block out the idea of community service.

I do share some of the queries that other Senators have in respect of the kind of community service that we are talking about. For example, school crossing, helping school children cross the roads. As far as I know, there already is an organization that does this on a voluntary basis and has been doing it for the last six or seven years and I think they do it very well. I would hope that whatever work is going to be done in terms of community service as a result of this Bill, will be work that is not, at the present time, being done by somebody else because there is too much of that.

The extent of community service which is carried on in Trinidad and Tobago is very laudable. I am continually gratified at the number of people in this country who, out of the generosity in their hearts, out of a true spiritual conviction that what they are doing is right and not from any personal gain, either monetary gain or gain in terms of status or power, spend hours of their time in voluntary community service with no ostensible reward, simply in order to help other people or because they think it is correct. Without the level of voluntary work we have, which is done largely through non-governmental organizations, the social security system in this country just would not work. The social safety net which is often talked about would not exist, because most of the social safety net in this country is made up of voluntary workers and organized by non-governmental organizations.

When it comes to community work, the suggestion that cleaning up homes for old people is one which is not worthy or is not worth considering; I object to this as well. Homes for old people need to be run. They need to be kept clean and they need a lot more in terms of inspection and in terms of the supervision than they are getting now. One of the things which I hope the Minister will consider during his

term of office is the setting up of a licensing system for homes for the aged, because homes for the aged in this country are very often run as semi-prisons, where elderly people who are weak and helpless are simply often kept in inhumane conditions, tied to beds and given the very minimal amount of care, and only allowed to be untied and move freely when "visiting hours" come, or when it is possible the families might take a look in and see what is happening to them. But those homes which are run by communities which do take a general interest in running them well, are up against a really difficult job. Any residential home is expensive to run, if community work can be done by petty offenders, in helping to run homes for the elderly, I think that this is laudable.

2.20 p.m

My one worry here is that the people who are going to do the community service under this Bill, would be supervised by probation officers. I am very glad to see that the Minister of Finance is here, because my experience of the Probation department is that it is vastly overworked and under-staffed. I hope that the Minister of Finance would consider increasing the budget for this department next year, so that we can double the number of people in that department, because they already have to take on all kinds of duties which were not originally intended for them.

Under the Domestic Violence Act, for example, the counselling to which magistrates can refer offenders—providing there are counsellors—but there are not enough. What happens is, that job is loaded onto probation officers, in addition to their original responsibilities, and now they are going to be given more. As far as I know, Mr. President, there has been no provision in the last budget, and I looked, to increase the establishment of probation officers to take care of this new responsibility that is being put on their already over-burdened shoulders. I hope that, as this Bill goes through, the Minister of Finance would be so kind as to keep it in mind for next year. I made a long list of things which I hope the Minister would keep in mind for next year. I am having a lot of fun with it.

The other question on which I agree with Sen. Mannette that concerns me and, I am sure, everyone else involved in this kind of work, is the restriction of the kinds of offences that will qualify to do this sort of work. There are lots of minor offences which do not involve violence and sexual abuse. One of the offences which has the highest degree of recidivism is that of sexual abuse of children. I am hoping that the Minister would consider putting a restrictive clause into the legislation. I have not had a chance to draft or propose anything, but if the debate

goes on past today—which hopefully it will—maybe this could be done, which would restrict the kinds of offences to those which are civil and traffic offences, for example, trespass, use of obscene language and talking back to a police officer. I gather nowadays, if you talk back to a police officer, you are liable to have three jeeps comprising 13 officers surround and handcuff you. Perhaps somebody who is so wicked as to talk back to a police officer could be put to do community work. I think this would be an adequate punishment for such a violent crime.

There are other crimes, obviously, civil crimes, not violent crimes, which would qualify eminently under this provision. I gather that the biggest growth area in crime in this country over the last three years, has been in white collar crime. If all the white collar criminals were put to do community work, there would probably not be an increase in the budget for the Social Services Department for the next three years; because they could just be put to work as unpaid civil servants. The number of white collar criminals could surely outnumber those criminals who are in jail at the present time or likely to be so for the next two years.

The Jamaican restrictions are good, but I do not think they go far enough. It should not just be for people who are convicted of offences involving firearms or violence, I would also say any offence involving sexual abuse of children, particularly, should not be included in this. The question of theft is also a delicate one, because I am assuming that putting people to work in community service does not refer to habitual criminals, but to first-time offenders. Where there are habitual criminals, the possibility of theft while they are involved in community work, would bring the whole system into disrepute. I think it is a worthwhile system and one that we should support and adopt.

The only other point is, that we should be very careful not to become over emotional in approaching the whole issue of using community service for first-time petty offenders. I do not think they should be referred to as deviants. We should not set up "bogeymen" in case we feel they might slip through any possibility of being punished by the ease of working, cutting grass, painting buildings or doing other sorts of community work. I think we should avoid this. Using community service for first-time offenders, especially in civil offences, is a tried, true and worthy system, which is used throughout the world, and is not something new and experimental. I think it is important that we support this Bill.

I am very pleased that the Minister has introduced it. It heartens me. In the Five-Year Development Plan, one of the key planks of this Government was to

increase community involvement in the affairs of the country, particularly when it came to the social services and the social safety net. I think it is extremely important that we put back into the community the responsibility for dealing with the elderly, young people and this kind of first-time offender. Because when there are young people who are first-time offenders or middle aged people, for that matter, very often the approbation of the community is far greater a deterrent than the impersonality of the judicial system. Paying a fine is nothing compared to having to go walking up and down the street in your own community, with people looking at you knowing that you committed an offence against the community.

When you start to recognize that breaking the law is an offence against the community, not just an offence against the law, and that you have to make reparation to the community, not just pay a fine which is going to go into public coffers, I think that you are starting to recognize your responsibility as human beings in the community. I think it is laudable and I commend the Minister for bringing this before us. I support the Bill entirely.

Thank you.

2.30 p.m.

Sen. Dr. Eastlyn Mc Kenzie: I would like to begin by supporting the Bill and by congratulating the hon. Minister. I would like to go into a little background information.

Mr. President, in 1994, coming out of the Ministry of Social Development, there was a report from a Cabinet-appointed committee to examine the juvenile delinquency and youth crime situation in Trinidad and Tobago. That committee was chaired by the present Permanent Secretary in the Ministry of Social Development, Miss Jennifer Sampson. Subsequent to that report, there was another committee set up to monitor the findings of this report and the implementation of some of the recommendations. I think this is a step further, and as such, I would like to commend the Minister for having gone even further from the recommendations.

Mr. President, several areas were looked at. I happen to be a member of the second committee and I know that recommendations came in from the Tobago division of the Probation Department, in particular. It was seen as a cost-cutting exercise; the involvement of parents, guardians and the community; the age of the offenders, mainly male; the small community syndrome—especially in Tobago where everybody knows everybody else. Therefore, if a young person happened to

go against the law and that person was convicted, everybody in the village knew that Mr. so-and-so's son, or Miss so-and-so's child was convicted and probably he was sent to Trinidad.

Again, you would know that in Tobago, we have no facilities for the care and confinement of young people, so they have to be sent to Trinidad to be put in prisons or wherever, with the seasoned, hardened criminals. Then, there was the stigma when these young people came back, "the jailbird came back home," and so forth. That person was not readily accepted back into the community in a nice way.

At this point I would like to make another request, that the hon. Minister thinks of looking for homes—probably abandoned government quarters—which can be renovated, probably using some of the skills from these very offenders, not only for these people, but young people who have been in prison and probably older ones coming out of prison, and not being accepted back into their homes by their parents, thus becoming homeless. Therefore, if you could repair one or two of these and make them homes, probably on a temporary basis, for young people who have been released from prison and who have not been accepted back by their parents into their homes since the parents feel a bit ashamed when their good little boy or girl has been sent away for some offence, and that person no longer has a name; that person is now a jailbird. When the jailbird comes back, they do not want it to fly back into the coop. Therefore, it would be a nice thing if the Minister would consider somewhere for these people to be housed until they are probably able to find themselves.

I would like to support the point made by Sen. Mahabir-Wyatt in appealing for the expansion of the Probation Division staff, as well as the staff of the Medical Social Work Department. When the survey was done in Tobago in 1992, both divisions had done 50 cases not taking them to the courts at all. Whereas in the courts they had 21 cases. Had it not been for the Medical Social Work Department and the Probation Division, it would have been 71 cases. Therefore, I strengthen what Sen. Diana Mahabir-Wyatt said and ask that these divisions be strengthened because I think that the cases being handled at those levels would be an even better thing than going a bit further.

Mr. President, I think the problem with this Bill would be the implementation and that is where the committee found difficulty. Although the recommendation came from the Probation Department in Tobago, the officer found it difficult to advise or recommend how the system could be implemented. We looked at

attachments where the offender would have a chance to learn and to be disciplined at the same time. We also looked at supervision which we thought would be very important. We looked at places like the Civilian Conservation Corps programme, where the army was in control; there was a varied programme of environmental work; family life education, counselling and career enhancement. And so, I would suggest that we look at the Civilian Conservation Corps programme.

I also would suggest, Mr. President, that we do not highlight the fact that these young people are offenders. If they are in the Civilian Conservation Corps programme they should not have to wear a different uniform. Even the other students on the programme should not know that these are offenders. The supervisors should be made aware and they would know how to treat them, but I do not think that the other students—whoever they are—should know that these persons have committed serious offences and they are only there because we do not want to put them in jail. I am not going to recommend that, and I do not see that as being part of it.

What I would like to suggest, is that there should be a timetabling of the period that these offenders should spend during their community service. There should be a special programme for education even if they have to go to night school. If they are in schools, their education should continue in some form or other as we heard from the Minister, who related the experience of three Tobago students who were allowed to continue their education programme, and had to do community service outside of school time. There should be a time on their schedule for counselling and for reporting to their probation officers, or whoever. This should be made known to them. These things should be compulsory and not be left to the whims and fancies of the offender or their supervisors. There should be a strict timetable and compulsory areas that should be followed.

Mr. President, I would suggest to the hon. Minister that the division begin to work on the implementation process because, very often, as we have seen even in our Coroners Bill, we think of what we want to do, but the implementation process takes so long that, actually, we feel as if nothing is happening. In this Bill I would suggest to the hon. Minister that a pilot project be done with a specific area. I am not going to be out of order if I say start in Tobago because our offenders are not very many. When I read page 10 of the report, I see house breaking and larceny so many times: young offenders at the ages of 13, 15, 16 and 17; most of them, house breaking and larceny; three store breakings, attempted house breaking with intent; serious indecency. It is not very exhaustive. I am not minimizing the

crime. I am saying that there is a small enough criminal population among this age group to allow the pilot of this implementation to be done in Tobago. Sir again, I would like to commend you on this.

Finally, Mr. President, I would ask the hon. Minister to liaise with his colleague in the Ministry of Education, to take note of the cases of children and young people at risk. Let us not wait until they have become offenders. Let us see whether we can pick up the trend—that sort of inclination towards crime in schools—and start to deal with them in the schools as a sort of preventative measure in order to minimize the number of cases of juvenile delinquency and youth crime.

Mr. President, again I commend the hon. Minister and his staff, especially the Permanent Secretary, who, I know, did a tremendous amount of work in this area. I commend also the Ministry of National Security. I know that the Administrative Officer V in that Ministry also did much work. I am certain that with their assistance and guidance, if the implementation is started in Tobago, all the little hiccups that would come about when it is dealt with on a more extensive basis, would be eradicated.

2.40 p.m.

Sen. Mahadeo Jagmohan: Mr. President, I am glad for the opportunity to make a brief contribution on the Bill before this Senate. Very clear authority must be given to probation officers to delegate personnel from the institution or the body which will benefit from such services, otherwise the supervision of such an offender in such work would necessarily consume a considerable portion of the probation officer's time, thus preventing him from performing other duties the Community Service Orders Bill may require of him.

The Bill appears to refer only to the performance of physical work. In the United States of America, offenders are also compelled to prepare and deliver lectures to student bodies or groups of students on topics such as the dangers of driving under the influence of alcoholic beverages, ways of avoiding such situations, handling peer pressure relating to drug abuse, and the bad effects of substance abuse.

Depending on the educational background and understanding of the offender, provisions can be made for ordering him to deliver a specified number of hours of lecture. This, again, will depend on whether the offender possesses a reasonable level of understanding and education and the particular nature of the offence or

offences for which he has been charged. Of critical importance, however, is whether any provision has been made to increase the staff of the probation service. Much concern has already been raised here.

Clause 6 of the Bill unequivocally imposes a duty on each court to obtain a probation officer's report on each person on whom a community service order is to be conferred. Automatically, therefore, the work-load of the probation officer would dramatically increase. At present, I am advised, the bulk of the work assigned to the probation officers from the Appeal Court, the High Court and the Magistrates' Court as well as from walk-in clients is performed by three Probation Officers III, eight Probation Officers II and 15 Probation Officers I. This is a department which is never fully staffed because of officers being on leave, as well as the failure to provide the full complement of officers by way of leave relief personnel.

A recent report on the front page of the *Trinidad Guardian* quoted a source which made reference to the under-staffing of the probation service which was frightening. I wish to point out that an overworked probation officer may be unable to complete his or her assignment within the time-frame stipulated by the court, or may not be able to do a thorough investigation on an offender, which could result in a grave miscarriage of justice.

Of equal importance is the resulting clogging of the judicial system, which could cause delays in dispensing justice, both of which are of critical concern. An overburdened probation officer may have to seek an adjournment because he is unable to complete enquiries. Even at the present time, the courts have continually to adjourn matters because of the inability of probation officers to submit reports within a given time-frame because of their onerous duties and the lack of staff to meet the demand for their services.

Simultaneously, with the passage of this Bill, it is very necessary to complete the complement of probation officers to ensure that there is no miscarriage of justice. When one considers the nature of enquiries required in sensitive matters such as custody cases, which is an essential area of the probation officer's duty, every effort must be made by the administration to ensure that there are sufficient officers to share the work-load and allow each officer sufficient time to conduct thorough investigations into referred matters.

Upon the passage of this Bill, the magnitude of new assignments cannot be fully imagined. For example, if one takes into account the migratory habits of the

criminally-minded person, if such a person were to leave Sangre Grande, commit a crime in Point Fortin, this will entail that the probation officer leave the district of Point Fortin and journey to Sangre Grande to conduct enquiries. If there are several such referrals, one can imagine the number of hours such an officer would have to spend commuting to and from his office to pursue such enquiries, thus the urgent need to increase the staff of the probation service before this Bill is proclaimed. If not, then the entire probation service could collapse from the sheer volume of work.

With regard to clause 11, whilst I agree that the probation officer should receive information, it seems to me that the inclusion of the police in the structure to receive information would help a great deal.

2.50 p.m.

Clause 14(a) of the Bill reads as follows:

> "without prejudice to the continuance of the order, impose on him a fine not exceeding five hundred dollars;"

In the first instance, Mr. President, if an offender is placed to do community service and by some mistake or misunderstanding something happens, this clause is then making it mandatory or, at least giving the magistrates or judges, the discretion to fine a person, and the quantum of $500 is given. I respectfully submit that it might be better, in the cause, to increase the length of time for such service than to fine a person in this regard.

With regard to the clause that refers to magisterial districts in which offenders are placed to do community service, I think, Sen. Dr. Eastlyn Mc Kenzie elaborated the point very well. It might be useful for this Bill to have provisions so that if an offender resides in a particular magisterial district, he is found guilty and is being assigned community service, it might do him well and might help the society as a whole, if he is assigned in another magisterial district or area. This would minimize people referring to him as a "jailbird", though it would not be totally avoided.

Nowhere in the Bill have I seen any provisions for the actual work for a particular offence. However, in our own situation the youth camps in Trinidad and Tobago are an example. The youth camps referred to are not for criminals, but they are self-sufficient in many food items that they use. It appears to me that if some kind of mechanism is put in place to have offenders engage in agricultural

work, where they would produce something, it would be more beneficial to society; it would make the offenders satisfied; it would give them a feeling of importance and help them to realize that they are contributing to the society in a very tangible way.

The point raised in clause 25(2)(c) states:

"make provision for the payment of travel and other expenses in connection with the performance of work under an order;"

Clearly, this is coming through to me as paying actual travelling allowance to an offender to move from place to place. I hope I have not misunderstood this clause. I think it might be a dangerous thing to give money or place the offender in a situation where he could submit a claim.

It appears to me that the best arrangement is to have the particular state agency or government department provide transport. Mr. President, in the public service the first obligation on the employer is to transport the Government daily-paid workers. That is very clearly stated in the present Joint Collective Agreement that covers the terms and conditions of daily-paid workers. On page 16 which deals with travelling allowance it says:

"An employee who is required to work away from his work centre or work area shall be transported from the work centre by the employer or be paid the cost of public transport."

Mr. President, this might be a better arrangement for people doing community service on the basis of this Bill. I therefore urge the hon. Minister to give consideration to this inclusion. It could be done by way of amendment but then the entire Bill could be taken into account and have something included.

The intention of the Bill is very good. *[Interruption]* I do not always hear very well. Mr. President, this is my contribution on the Bill and I thank you for the opportunity.

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I beg to move that this Senate do now adjourn to Tuesday, March 25, 1997, at 1.30 p.m.

I would like to inform Members of the Senate, on that day we will focus on Private Members' business.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 2.57 p.m.