

**SENATE***Tuesday, May 05, 2020*

The Senate met at 10.00 a.m.

**PRAYERS**[MADAM PRESIDENT *in the Chair*]**PAPERS LAID**

1. Public Accounts of the Republic of Trinidad and Tobago for the financial year 2019. [*The Minister of Public Administration and Minister in the Ministry of Finance (Sen. The Hon. Allyson West)*]
2. Value-Added Tax (Bond-Payment Refund) (Amdt.) Regulations, 2020. [*Sen. The Hon. A. West*]
3. Value-Added Tax (Bond-Payment Refund) (Amdt.) (No. 2) Regulations, 2020. [*Sen. The Hon. A. West*]

**URGENT QUESTION****Sale of Pre-packaged Doubles/Pre-packaged Meals****(Legal Basis for Stoppage)**

**Sen. Wade Mark:** Thank you, Madam President. To the hon. Minister of National Security: In light of reports that members of the Trinidad and Tobago Police Service stopped the sale of pre-packaged doubles and other pre-packaged meals at St Christopher's Service Station, can the Minister advise as to the legal basis for such action?

**The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young):** Thank you very much, Madam President. Madam President, I would like to start by just taking the opportunity to thank all of the men and women in the Trinidad and Tobago Police Service who, during this time of great uncertainty as a country, deal with the measures implemented to put

in place and put in place to deal with COVID 19 which, for those who have missed it, is a global pandemic, have had the unenviable task of interpreting regulations and ensuring as best as they can—this is the men and women in Trinidad and Tobago Police Service—that the measures and the policies that the Government has put in place to keep the population safe are maintained. It is not an easy task with between 5,000 to 7,000 police officers out protecting us the population, to be called upon at any given moment in time to interpret the regulations.

This question and the mischief behind it are rejected, and, in fact, facts have overtaken, because as soon as the Commissioner of Police became aware of this particular incident, he moved with alacrity and certainty, after consulting with the Minister of National Security, and put out an apology. We are not always—“we” meaning the Trinidad and Tobago Police Service—going to get it right, but I take the opportunity to thank them for being on the frontline and protecting the population of Trinidad and Tobago. [*Desk thumping*]

I thank them, I thank the men and women in the Defence Force, in Immigration, in Customs, our health workers, and all of those, the fire service, our prison officers, for taking on the fight of COVID and doing so knowing that they must protect the population and rejecting the naked politics that certain people try to keep inserting into the battle against COVID. Thank you. [*Desk thumping*]

**Sen. Mark:** There is no naked politics or mischief. Madam President, may I, through you, ask the hon. Minister what measures are being taken to ensure that the hard-working men and women of the police service who have to interpret, as we were told, these regulations, what measures are being taken to avoid these unnecessary errors of judgment by these officers in dealing with the public on sensitive matters as outlined in the regulation?

**Hon. S. Young:** Madam President, in the day-to-day policing of any country, any

State, any sovereign nation, as I said, the officers who are on the frontline will have different interpretations. What happens with the police service is the Commissioner meets with his executive via CompStat and via other meetings. On a daily basis the Commissioner, the CDS, other members of the national security team meet with me, we have a daily briefing and discussion. It does not stop the men and women who are put in the situations of making decisions out there from making errors.

This was an innocent error made and let me tell you why it was made—I suspect—why it was made. It is because there are still persons who are trying to find loopholes in the regulations. There are certain restaurants—because restaurants are not allowed to be opened—that are cooking food, freezing food and trying with delivery service, curbside service, et cetera. So maybe that is what the police officers were after. This matter was corrected within a matter of minutes—it was not hours—and I commend the Commissioner and the men and the women of the police service for the manner in which they handled their situation.

**Sen. Mark:** Madam President, is the Minister accusing Massy Stores, a financier of the PNM, of being involved in mischief or being engaged in activities which are totally against the regulations in the context of having on their supermarket shelves pre-packaged food items?

**Madam President:** Sen. Mark, that question is not allowed.

### **ORAL ANSWERS TO QUESTIONS**

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Madam President, there are four questions on notice for oral answer. The Government intends to answer all four questions.

**Carifesta 2019**

**(Details of Sums Owed)**

**UNREVISED**

**55. Sen. Wade Mark** asked the hon. Minister of Community Development, Culture and the Arts:

Given reports that hundreds of persons including several suppliers and artistes are owed millions of dollars arising from the staging of Carifesta 2019, can the Minister indicate the following:

- (i) the actual sums owed;
- (ii) to whom said monies are owed; and
- (iii) when will payments be made?

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Madam President, I thank my colleague, Sen. Mark, for this question. In relation to the first part of the question, the actual sums owed to suppliers and artistes from the staging of Carifesta 2019 based on invoices received by the Ministry of Community Development, Culture and the Arts is \$1,873,176.60.

The suppliers and the artistes to whom these moneys are owed as at April 29, 2020, are as follows: Amiladis Cabalero, Marissa Nimrod; KerriAnn Small; National Carnival Commission; Chareese Arjoon; Ian Daniel; Sherry Cornell; Khalida Constantine; Marita Bartholomew; Joseph Koolchan; Mr. Alfred Le Llamo; David King; Brandon's Events Rental; Holistic Music School; Trinbago Commercial Development Company; Country Boys Tassa Group; Risk Management Services Limited; Copyright Association; Rent-a-Amp; and Johnny Q Sound Company.

And in relation to the third part, it is expected that all payment will be made by the end of June 2020. I thank you.

**Sen. Mark:** Madam President, can the Minister explain what is responsible for this unusual delay of payments after Carifesta was held a couple months ago? Can

the Minister indicate what were the factors or the reason leading to these outstanding payment to the various persons identified?

**Sen. The Hon. C. Rambharat:** Madam President, my colleague Sen. Mark was himself a Minister of Government and he understands that a variety of factors are involved. One is the timing of this so that Carifesta was held very close to the end of the last fiscal year. So that some payments, if the invoices were received and processed before the end of the last fiscal year, those payments would have been processed, and those invoices which were received after the start of the new fiscal year would have been in a position to be processed about October/November last year. That is one factor.

The second factor would have been the actual receipt of the invoices and the dealing with any queries and additional information required on the invoices. My friend knows how tedious it could be and how the rules of the public service in relation to the Exchequer and Audit Act put an onerous responsibility on public servants, in particular Permanent Secretaries, to verify payments which are required. And thirdly, the process of requesting releases and ensuring that funds are available to allow the Comptroller to authorize the printing of the cheques and the issue of the cheques to the persons.

So that process, I would say to my friend, has resulted in our not—I would not call it delays. We have had issues in this country with pan men, and with calypsonians, and with the suppliers, contractors having to wait years sometimes for payments. So while we regret any delay it is not unusual, and the Minister has said by the end of June these payments which are to be made will be made. I thank you.

**Sen. Mark:** Madam President, may I ask my honourable colleague how come these artistes waiting for all these months for \$1.8 million, how come, Madam

President, through you, the Government is unable to find this money to pay these artistes but is able to find millions of dollars to pay four private security firms to supposedly patrol communities in this country without any tendering process?

**Madam President:** Sen. Mark, that question does not arise. Next question.

**Sen. Mark:** Madam President, can the Minister indicate whether the real reason—what is the fundamental reason? Is it that the Government is suffering from a serious cash flow problem to identify \$1.8 million to pay these artistes? Can the Minister explain, Madam President, through you?

**Madam President:** Sen. Mark, that question is not allowed.

**Sen. Mark:** Madam President, can the Minister give this Parliament a firm undertaking that these outstanding moneys owed to these artistes will be honoured as he has indicated to us by June of 2020? Can I get that undertaking from the hon. Minister?

**Madam President:** Sen. Mark, that is also not allowed. Next question, Sen. Mark.

### **Government's Purchase of Vaccines**

#### **(Details of)**

**73. Sen. Wade Mark** asked the hon. Minister of Health:

Having regard to Government's purchase of vaccines for the influenza virus, can the Minister indicate whether:

- (i) the vaccines which have been procured are of sufficient quantity to ensure that the virus is adequately contained; and
- (ii) if the answer to (i) is in the affirmative, what is being done by the Ministry to encourage the public to get vaccinated?

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** I thank my colleague, Sen. Mark, for this question, a very important

question. In relation to the first part of the question the answer is very simply yes. The vaccines which have been purchased are sufficient. And in relation to the second part of the question which is contingent on the first part being yes, I would say that the Ministry of Health has been very aggressive, Madam President. Taking into consideration that there has been an anti-vaccine movement around the world, but in Trinidad and Tobago or also, and within this Parliament and outside this Parliament, there has been some anti-vaccine voices, and the Ministry of Health has been very aggressive particularly on the radio and through the primary health facilities, the community facilities, in getting people to understand the importance of taking the vaccine in the context of the potential of getting ill.

Madam President, the communication programme is built around one very important concept, and that is that not everybody needs to have the vaccination. The focus is on the high-risk group which would be children age six months to five years; adults over 65 whose immune system is compromised by diabetes, hypertension and obesity; persons on immune suppression drugs with respiratory diseases, and pregnant persons. So this is the group that is being focused on. The information is disseminated via the radio and through the primary public health facilities in the community in particular, and through the Ministries and the state enterprises.

Madam President, I dare say that it has been done through the Parliament because I myself had to remove my shirt and have my shot and I am very happy to have done that, and I encourage the citizens of this country to do the same and get the vaccine, and the Ministry of Health is confident that there are enough supplies in the country to do that. Thank you very much.

**Sen. Mark:** Madam President, in light of the influenza virus being adequately contained, can the Minister explain why so many citizens between September of

last year to the present time have perished, have died, as a result of this influenza virus? Can the Minister explain?

**Sen. The Hon. C. Rambharat:** Madam President, let me explain it in this way because my colleague seems to be back on the issue of sufficiency of the vaccine, and if I may assist and let me just say this. During the period 2010—2014, for example—that is when my friends were in Government—the amount of vaccines purchased during that period was 85,900 doses, and of that 85,900 doses only 54 per cent were used. So it means that 46 per cent of that small sum expired and was not utilized. Compared to the period 2015 to now and the amount purchased, the vaccines purchased by this Government under the very able Member of Parliament for St. Joseph, the Minister of Health, Terrence Deyalsingh, the number of vaccines have increased by 534 per cent. So we have moved from 85,900 to over half a million doses. That is a serious change [*Desk thumping*] and, Madam President, of that stock that has been purchased, so far the utilization rate is 73 per cent—400,000 have been used.

So that, Madam President, for the 2019/2020 influenza season the Ministry has procured 159,200 doses, and as May 04, 2020—that is yesterday—112,000 have been used, which is a utilization rate of 70.7 per cent. So it means that the Minister of Health is procuring more vaccines. The vaccines which have been procured have a much higher utilization rate, and in the current season the utilization rate is above 70 per cent and that alone should signal the vast improvement and the serious approach the Minister of Health has taken in relation to this issue of the influenza. I thank you.

**Sen. Mark:** Madam President, given the high utilization rate as outlined by my good friend, Sen. The Hon. Clarence Rambharat, can the hon. Minister indicate to the Senate how many people have died as a result of the influenza virus for the



period September 2019 to the present?

**Sen. The Hon. C. Rambharat:** Madam President, that is an important question. I know it has been provided by my colleague, the Minister of Health, and I would provide that information in writing within one week. Thank you.

**Sen. Mark:** Madam President, can the Minister indicate at this time how many influenza vaccines are still available for public access at this time?

**Sen. The Hon. C. Rambharat:** Madam President, most certainly let us do some maths. For this year, 159,200 vaccines have been procured and are available. As of yesterday, 112,645 doses were available—were used, sorry. So, Madam President, I would say that about 47,000 vaccines are available now which is 30 per cent of what was procured originally. I thank you.

**Sen. Mark:** May I ask the hon. Senator, through you, Madam President, when are these vaccines expected to be expired? Is there an expiration date for these vaccines, may I ask the hon. Minister?

**Sen. The Hon. C. Rambharat:** Madam President, my friend has stretched me to a point where I can no longer reach. I am unable to answer that.

**Madam President:** Next question, Sen. Mark.

### **Unilever Caribbean Limited Retrenchment Proposal**

#### **(Government's Intervention)**

**74. Sen. Wade Mark** asked the hon. Minister of Labour and Small Enterprise Development:

In light of reports that Unilever Caribbean Limited proposes to retrench approximately two hundred and eighty-six (286) workers in a restructuring exercise, can the Minister indicate whether the Government intends to intervene to prevent the loss of said jobs?

**The Minister of Labour and Small Enterprise Development (Sen. The Hon.**

**Jennifer Baptiste-Primus):** Thank you very much, Madam President. Madam President, the Ministry of Labour and Small Enterprise Development seeks at all times to establish and preserve a peaceful industrial relations climate. The current matter concerns a decision by Unilever Caribbean Limited to cease all manufacturing operations locally and partially restructure its operations. Unilever Caribbean Limited, by letter dated December 03, 2019, gave formal notice to the Minister of Labour and Small Enterprise Development of its intention to terminate the employment of 191 workers on the grounds of redundancy. These 191 workers form part of the monthly paid and hourly rated employees of the Oilfield Workers' Trade Union, also known as the OWTU. Unilever Caribbean Limited also advised the Minister of Labour and Small Enterprise Development that in the first instance 184 workers consisting of casual workers, warehouse workers, sanitation workers, custom workers, quality control department, field specialists, import planners, inter alia, were terminated by retrenchment on January 17, 2020.

Additionally, four warehouse managers were retrenched on January 31, 2020, and three other workers were retrenched on March 31, 2020. Furthermore, by letter dated March 25, 2020, the Oilfield Workers' Trade Union reported eight disputes to the Minister of Labour and Small Enterprise Development pursuant to section 51(1)(b) and section 23 of the Retrenchment and Severance Benefits Act. The Oilfield Workers' Trade Union in their report to the Minister also claimed that the action of the employer was contrary to the provisions of Article IV of the respective collective agreements of the monthly paid and hourly paid workers. These disputes, Madam President, are presently before the Minister of Labour and Small Enterprise Development in conciliation.

The Ministry continues to monitor the environment and is very mindful at all times of the economic impact this dispute is having and will have on the

manufacturing sector and on the national economy, and will continue to do all that it can towards resolving this issue. The Minister of Labour and Small Enterprise Development remains committed to continue working with all parties involved to find an amicable agreement on this matter. Thank you very much, Madam President.

**Sen. Mark:** Thank you, Madam President. Madam President, may I ask the hon. Minister, through you, whether Unilever offered any explanation or gave any rationale for its decision to cease all manufacturing activities in Trinidad and Tobago? Can the hon. Minister share with this House what were the reasons or rationale for discontinuing manufacturing activities in this country?

**Sen. The Hon. J. Baptiste-Primus:** Madam President, my senatorial colleague with his trade union background is very much aware that the matter is under conciliation and I can go no further at this point in time.

**Sen. Mark:** I do not understand. Madam President, may I ask the hon. Minister—I do not agree with her on this matter. May I ask, Madam President, through you, can the Minister indicate, with the retrenchment of 191 employees at this company called Unilever, what impact this will have on Government revenue having regard to the taxes that these workers used to pay and the company through corporation taxes and other taxes? Has the Minister been able to determine what impact this would have on Government revenues?

**Madam President:** Sen. Mark, that question does not arise.

**Sen. Mark:** Madam President, can Minister indicate whether she is aware of the total labour force or the total workforce of Unilever? Can the hon. Minister indicate—in other words, Madam President, whether the Government anticipates further retrenchment at this company?

**Madam President:** Sen. Mark, that question also does not arise.

**Sen. Mark:** Madam President, may I ask the hon. Minister what steps are being taken by the Government to assist the manufacturing sector to discourage them or to encourage them to continue their operations in this country rather than ceasing the continuation of their operations to have it sent to other jurisdictions? What efforts are being made by the Government to encourage those companies to contain their operations in this country?

**Madam President:** Sen. Mark, that question also does not arise. Next question, Sen. Mark

### **Elections & Boundaries Commission**

#### **(Denied Right to Vote)**

**75. Sen. Wade Mark** asked the hon. Prime Minister:

Can the Prime Minister advise as to why officials of the Elections & Boundaries Commission (EBC) denied a 39-year-old differently-abled woman her right to vote in the December 02, 2019 elections, when she presented herself to vote at the South Oropouche Government School?

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Madam President, in relation to the question, the information provided is as follows. On Monday, December 02, 2019—which will be the local government election—the elector referred to as the 39-year-old differently-abled woman presented herself at the South Oropouche Government Primary School at polling station 4400-3 accompanied by an individual who identified himself as her brother. The red line clerk at the polling station was going through the procedures for voting with the elector and her brother, but the elector was not responding to anything being said to her. This was deemed unusual. The matter was then brought to the attention of the presiding officer. The presiding officer introduced herself to the elector and her brother and asked if she could have posed a few

questions to the elector. The brother agreed.

The elector was asked her name, she did not answer; the elector was asked her age, she did not answer; the elector was then asked where she lived and she did not answer. Repeated attempts by the presiding officer to elicit a response from the elector in these unrelated questions proved futile. The elector's brother, her companion, as defined under Election Rule 48(4)(b) of the Representation of the People Act, Chap. 2:01, also sought to get the elector to respond to the questions posed but was also unsuccessful.

**10.30 a.m.**

The elector remained silent and appeared to be uncertain as to why she was at the polling station. The Presiding Officer then went further by volunteering to accompany the elector and her companion to the voting booth, to witness whether the said companion would in fact exercise the will of the elector. The companion refused this, opting to leave the polling station with his sister. The elector was brought back to the polling station, Madam President, later in the day, accompanied by another individual, who identified himself as one of her brothers and there to act in her as a companion.

The United National Congress candidate for the electoral district, and an attorney at law also accompanied the elector and her companion. The Presiding Officer once again attempted to engage the elector and she did not respond. Presiding Officer again volunteered to accompany the elector and her companion to the voting booth to ensure that said companion would in fact be exercising the will of the elector. The companion also refused. Therefore, Madam President, the Presiding Officer reasonably concluded, both from the elector's behaviour and apparent confusion that she would have been unable to swear an oath in the form set out in Form 59 in keeping with Election Rule 48.1.

In these circumstances, Madam President, Elections and Boundaries Commission is of the firm view that the Presiding Officer correctly determined that elector should not be allowed to vote. I thank you.

**ADMINISTRATION OF JUSTICE  
(ELECTRONIC MONITORING) (AMDT.) BILL, 2020**

*Order for second reading read.*

**Madam President:** Minister of National Security. Minister, I remind you, you have 30 minutes.

**The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young):** Thank you very much. Thank you very much, Madam President, I beg to move:

That a Bill to amend the Administration of Justice (Electronic Monitoring) Act, 2012, be now read a second time.

Madam President, it is indeed a pleasure and a privilege to be here today, even as we as a country are facing measures put in place to deal with a global pandemic, that is COVID 19, to pass legislation that is seen as important as this, by the Government of Trinidad and Tobago, and that is, a Bill that is entitled “An Act to amend the Administration of Justice (Electronic Monitoring) Act, 2012”.

Madam President, this Bill seeks to amend the Administration of Justice (Electronic Monitoring) Act, No. 11 of 2012, which is not yet proclaimed in order to facilitate the smooth implementation of the Electronic Monitoring System in Trinidad and Tobago and the proclamation of this Act. The Act provides for the use of electronic monitoring devices as part of the criminal justice system. It allows the court to impose a sentence of electronic monitoring for an offence committed in lieu of a sentence of imprisonment or as a condition of bail.

Electronic monitoring may also be imposed as a condition of a protection order made under the Domestic Violence Act, or, of a pardon granted under section 87(2)(a) of the Constitution, which is the section that provides for the Mercy Committee to advise Her Excellency the President to either conditionally or unconditionally, release a convicted inmate, a convicted prisoner from the prison system back out into our society, and also to allow a competent authority empowered to grant early release.

Madam President, the original and parent legislation was passed in 2012. Absolutely nothing of significance was done to be able to operationalize this important technology from 2012 onwards to 2015. Upon this administration coming into office, immediately the Ministry of National Security began looking at it and working along with the Office of the Attorney General and Legal Affairs, identified a number of deficit provisions in the existing legislation.

So whilst these were being worked out in a consultative manner, with others who would have the task of the implementation of this important technology, the Ministry of National Security also got to work for the procurement of the system to be able to operationalize electronic monitoring. The Ministry of National Security has implemented several proprietary measures towards the operationalization of this Act.

For instance: the Electronic Monitoring Unit has been established with the purpose of implementing and maintaining a system for electronic monitoring, in accordance with section 4(1) of the Act. The unit will provide, inter alia, real time tracking of the location of persons placed on electronic monitoring and report any alarm notifications, signal loss and device malfunction to the police or the relevant personnel. The unit has been staffed. These staff members include the Manager, the Deputy Manager, Liaison Officer, Shift Monitoring Operators and Business

Operating Coordinator. The Unit has also developed several standard operating procedures and conducted numerous outreach exercises and workshops.

Madam President, at this stage, I would like to thank the Electronic Monitoring Unit for all of the work that they have been doing towards the movement of the final operationalization of this important technology and use of this platform as an asset in the criminal justice system. I would also like to put on record that at National Security, we have continued a recruitment exercise now seeing the light at the end of the tunnel for hopefully the final implementation and by the passage of this Bill, towards us being able to greenlight this system.

The system is ready, the system can be operationalized and it requires some more physical human assets for us to be able to be in a position to use more of these electronic monitoring bracelets and that is being done. The recruitment exercise did take place; persons will be offered positions; they will be trained in a short timeframe and hopefully that would mean that once this Act is proclaimed, we will be able to operationalize much more than we currently can.

Two, the specifications for electronic monitoring devices have been approved by Order, Legal Notice No. 1 of 2014, pursuant to section 9 of the Act. An Electronic Monitoring System was procured and commissioned by Amalgamated Security Services Limited, who has been engaged to provide a full turnkey solution for the supply, delivery, installation, commissioning, and maintenance of an electronic monitoring system, the installation of the required hardware and software for the system both at the main site and at the backup site has been completed and the devices were tested throughout Trinidad and Tobago.

I pause here, Madam President, to just put on record as well, the award of that contract was via a competitive tendering process undertaken by iGov Trinidad and Tobago. The letter of award was Amalgamated Security Services Limited and



an Israeli company that they partnered with, called Attenti Limited. They were the successful bidder and they were so informed in January 2019 with a contract being executed in April 2019, to provide the same full turnkey electronic monitoring solution I have just referred to, with installation not only at the main command centre but also of a backup site of hardware and software.

The contract included the supply of 300 devices, ankle monitors, the training of staff, the commissioning and maintenance of the system for a period of three years at a contract cost of \$10.3 million VAT inclusive. The breakdown of the cost was provided, Madam President, by myself in a statement in the other place, with the breakdown of the cost itemising a number of different style tracking units so single piece solutions, what we call domestic violence tracking units that are two piece solutions.

These domestic violence tracking units allow the person who is the potential victim to have a device on their person, so that the Electronic Monitoring Unit can notify that if the person wearing the ankle bracelet comes out of a parameter zone, or comes within a certain amount of distance to the potential victim. An alarm will go off, the Electronic Monitoring Unit will notify the Trinidad and Tobago Police Service, but also the potential victim, thereby providing a much safer and more secure environment for these possible victims of domestic violence.

We also have 50 home confinement units which are multi piece GPS tracking solutions for use with certain persons on bail or persons who may be released from prison on this condition. We are provided with the software licences servers, a disaster recovery site, furniture for the monitoring room, the various monitor displays, the LED large screens, training for 40 persons, three years of field support, three years of online support, three years of a helpdesk support with maintenance and support for the tracking units, a three-year system and software

maintenance, all totalling the amount of \$10.3 million over this three-year period. The system is operational and all we await now to be able to implement it fully is the passage of this legislation.

I would like to say that the contract—the system is being operated and will be manned by staff from the Ministry of National Security and not any third party personnel and in particular, not any personnel from Amalgamated Security Services. They were just contracted to set up and to provide the system. It will be operated by National Security staff, and the responses to any breaches of the system will be provided by the Trinidad and Tobago Police Service, and not any private security contractor. There was an attempt previously to create an element of mischief around this. The Ministry, as I said, Madam President, has hired a Manager, Deputy Manager and other staff and we are ready to operationalize the system once this legislation is passed.

In accordance with section 18(1) and (2) of the Act, an approved police response mechanism has been established in collaboration with the Trinidad and Tobago Police Service. In this regard, a police liaison has been assigned to the Electronic Monitoring Unit to coordinate the police response mechanism. This liaison from the Trinidad and Tobago Police Service will assist the unit where there are any alarm notifications concerning the breach of a condition of the electronic monitoring.

Madam President, we have also set up an Electronic Monitoring Implementation Committee which was done in 2016 to make recommendations with regard to the implementation of the electronic monitoring system in Trinidad and Tobago. This committee included representatives from the Judiciary, the Electronic Monitoring Unit, Trinidad and Tobago Prison Service, the Trinidad and Tobago Police Service, the Office of the Director of Public Prosecutions, Probation

Services, the Legal Unit of the Ministry of National Security, and the Office of the Chief Parliamentary Counsel.

At this juncture, Madam President, through you, I would like to thank all of those on that committee, as well as my colleague, the hon. Attorney General, for the yeoman service and the work that they did in a consultative manner to be able to produce this legislation here today, these 25 clauses that will finally bring the law in line with how it needs to be and as I will get to in a short while, allow the Judiciary more extensive discretion in how they apply the use of this technology going forward through various orders not only in domestic violence legislation and orders, but also in other areas.

Arising out of the meetings held by this committee, it was determined that several areas of the Act needed to be amended to ensure the efficient implementation of the system.

Madam President, the amendments proposed to the Bill include, amongst others:

- a. Ensuring that all employees of the Electronic Monitoring Unit take an oath of secrecy to not disclose any information received during the performance of their duties. Moreover, the staff will also be obligated to maintain confidentiality, even after their employment with the unit has ceased.
- b. Allowing the court the discretion to impose electronic monitoring as a condition of bail for offences listed in the First Schedule where bail is granted. This is essential as the First Schedule offences include shooting or wounding with intent to do grievous bodily harm, kidnapping, trafficking in dangerous drugs, et cetera.

Madam President, this is again an important amendment being made because what it does is it allows the Judiciary working along with the Office of the Director of Public Prosecutions, the opportunity, the option rather, of electronic monitoring bracelets to be used in granting bail. It is a condition of the bail that does not currently exist.

It allows us at the Electronic Monitoring Unit, working along with the Trinidad and Tobago Police Service, to monitor certain offenders who may be let out on bail that are not currently monitored on a 24/7 basis, thereby providing us with immediate technological information as to the whereabouts of these particular offenders. This would be a tremendous tool and will be greatly welcomed by those in National Security for making us a safer and more secure environment in Trinidad and Tobago.

- c. Making provisions for an applicant who is granted a protection order to consent to being issued a protection device that would monitor, inform and alert the applicant if the person against whom the protection order is made, comes within the specified proximity of the applicant.

This is what I was referring to a short while ago, Madam President, allowing potential victims of domestic violence, the safety and security of an alert system, knowing that the police would be able to respond on an immediate basis through the use of the ERP vehicles and dispatching police officers to be able to protect a potential victim if one wearing an ankle bracelet by order of the court breaches the parameters of the order.

- d. It ensures that the Rules Committee can make court rules for the purposes of this Act. The Bill aligns with the Ministry's strategic objectives and the Trinidad and Tobago Police Service's crime fighting strategies and operations. The TTPS has recently launched a Gender Based Violence

Unit, and the EMU, Electronic Monitoring Unit, would work along with this unit to ensure that persons who obtained a protection order can be monitored, thereby providing an additional safety mechanism.

**10.45 a.m.**

Madam President, the Government's policy is that as soon as we are able to proclaim this Act, which we hope will be in the not-too-distant future—we are hoping within the next week, within passage of this Act, that we will be able to work now along with the court system and focus our priority in the launch of the implementation or operations of this system on the victims of domestic violence.

We see it as a massive tool, an important tool to provide that level of comfort for those who are screaming out in our society who are the victims of domestic violence, and to provide us with the opportunity to provide them with a safer and more secure environment, and for us to be able to react through the Trinidad and Tobago Police Service. Far too many instances have taken place in the past and not so distant past, where there have been innocent victims of domestic violence who have been badly injured or sometimes the ultimate, losing their lives. We believe that this system will assist in that fight and in allowing real time protection as opposed to just a paper order from the court.

Madam President, there are many other benefits to be gained from employing electronic monitoring. It can be imposed in lieu of a sentence, especially for minor offences, another important point that we gave consideration to. We do not want young offenders, for example, to be caught up in the prison system and then it being used as what we call in National Security, a “university for criminality”. Young offenders who have made an error, who have made a mistake in their life, who may have committed a more serious crime, through the use of these electronic monitoring bracelets we can release them back into society,

rather than have them being trained by hardened criminals in the system. First offenders and others can utilize this system and we allow them to reform their lives on the outside, rather than incarcerating them in prison.

Electronic monitoring is also more cost effective on the nation's coffers as it costs less to monitor a person than to incarcerate them.

Madam President, the proposed amendments can also boost public safety as persons who are out on bail for serious offences, as I mentioned before, can now also be monitored as a condition of their bail.

Madam President, just to briefly go through—may I ask what time is my full time?

**Madam President:** You finish at two minutes past 11.

**Hon. S. Young:** Thank you very much. Now to just quickly take us through the clauses and the purpose behind the clauses.

Clause 4 of the Bill is an insertion of definitions for words not previously defined in the Act; new definitions as a result of proposed amendments and amendments of words previously defined. For example, “authorised officer” defined as it is used in the proposed new section 4A. “Court” is being amended to reflect the current judicial positions in the criminal justice system. A lot of emphasis has been placed by this administration over the past four and a half years of reforming as best as it could, working along with the Judiciary, the criminal justice system, introducing masters into the system, removing Registrars from the Magistrates' Court and these other types of newly created positions so they will now be captured by this new definition.

“Occupier” is used in the Act but it was not defined previously. The definition of “occupier” is defined broadly to include any person exercising control over the premises which would include licensees and holders of a power of

attorney, et cetera. The “protection device”, the definition is now included as this term is proposed to be used in the new section 10A. The definition of “electronic monitoring device” was amended to include telecommunications network as part of the electronic monitoring system. This change allows the use of a broader spectrum of technology than currently exists to allow the tracking of these devices and to be able to pinpoint exactly where the ankle bracelet person—the person wearing the ankle bracelet is positioned to allow a better monitoring process.

The definition of “respondent” is amended by deleting the words:

““or against whom a Protection Order is granted under the Domestic Violence Act””

This proposed amendment restricts the definition of “respondent” to include only persons against whom a protection order is made.

Clause 5 of the Bill is the insertion of a new section 4A to provide for the director to delegate his or her functions. The director would be able to delegate his or her functions under the Act. The director performs many critical functions which include, for example, providing the court with a director’s report. This express and specific amendment allows that director to now delegate these functions, therefore not grinding to a halt the whole system in the case of the absence of the director. It now allows a specific power to delegate.

Clause 6 is the insertion of a new section 6A to empower the director to issue standard operating procedures. These standard operating procedures are to protect the users of the system, the end users of the system, those who utilize the system in any which way. These standard operating procedures have already been drafted and are in place.

Clause 7, section 8 is repealed and replaced with an amended section 8 that provides for confidentiality of information, Madam President. The proposed

amendment ensures that all employees of the unit take an oath of secrecy to not disclose any information received from the unit other than the proper course of their employment. Disclosure of the information in contravention of the oath is a summary offence. This amendment provides for a more robust system to ensure confidentiality of persons employed with the unit and the end users of the system.

I pause at this juncture just to put on record, one of the attempts to push back at these amendments in the other place was the suggestion that to use contract workers as opposed to public servants, there is something wrong, inconsistent, unusual about that. We reject that outright. There is absolutely no unit, no division, no Ministry, no organization within the public service that does not currently use contract workers. Remember this system is now being set up and it is better to use the contract workers in the first instance. As the system rolls out and we see how it works, at the appropriate time, permanency of positions can be taken to the Public Service Commission. At this stage, it is felt that we just needed to get on with this long outstanding and very necessary set of technology.

Clause 8 inserts a new subsection 10(2) (c), (d) and (e). This amendment gives the court a greater discretion in the imposition of electronic monitoring. Under the Act, the current section 10(2) specifies that the court may also impose electronic monitoring as a condition of bail or a protection order made under section 5 of the Domestic Violence Act. The amendment now includes probation orders under the Probation of Offenders Act, community service orders, under the Community Service Orders Act as well as a catch-all which allows the court to exercise discretion in cases deemed fit. Therefore, Madam President, this amendment gives the court greater discretion to determine when an electronic monitoring system bracelet can be imposed or should be imposed.

Again, this goes back to some of the examples I was giving previously to



allow, for example, first instance offenders, young offenders, the opportunity to not be incarcerated but rather to have this ankle bracelet on as part of their bail conditions or even as part of their sentencing. It just allows a greater flexibility for reform of those types of persons and also others who may not be in the best position to be incarcerated.

Clause 8 inserts a new section 10(3A). The new clause gives the court the discretion to impose electronic monitoring as a condition of bail for offences listed in the First Schedule where bail is granted, or in the case of a child, a very important exception and a very important power. This is essential as the First Schedule offences include various offences such as shooting or wounding with intent to do grievous bodily harm, trafficking in dangerous drugs, kidnapping, et cetera. The amendment makes it clear that persons charged with these serious offences, once out on bail, that the court can impose electronic monitoring as a condition of bail.

One of the struggles right now in law enforcement is that persons who are charged with these offences, when granted bail, there is no real time way of monitoring them. There is the old system of going to the nearest police station and having a copybook signed in. But what we are doing now is allowing technology to be utilized, especially on some of these more serious offenders.

Clause 8 amends section 10(5) and (7) by deleting:

“the Court shall commit the person to custody”— and replacing it with—

“...may commit...to custody or...grant bail...as...”— the Court deems fit.

Clause 9 inserts a new section 10A that provides for a protection device to safeguard an applicant who obtains a protection order. So this now makes provision for the applicant to consent to being issued with a protection device. The device would ensure that persons against whom the protection order is made do not

come within a specified proximity of the applicant. In the event of a breach, an alarm would sound, the Electronic Monitoring Unit will activate its protocols including contacting the victim, giving instructions to the offender and escalating to the police response mechanism as is required.

Clause 10 inserts a new subsection 11(2). This proposed amendment allows for decision makers when determining whether to grant a pardon, to request a report from the director.

Clause 12 amends section 13(1) by repealing it and replacing with a new section 13(1). This amendment removes the requirement for the application form to be prescribed. The required form will now be created by the Rules Committee of the Judiciary and would form part of the rules to be developed for electronic monitoring. The requirement that the criteria for application be prescribed by regulations is also removed to allow for greater judicial discretion.

Clause 14 inserts a new section 16(1A) that deals with individuals who negligently damage the device. This now provides and allows for the State to make these persons liable for the replacement cost of the device if damage was due to negligence. Additionally, the person monitored would also be brought back to court or the competent authority to determine if he or she would continue in the programme.

Clause 14 amends also section 16(3) to allow the court to send copies of the order to any other party the court considers necessary to inform.

**Madam President:** Minister, you have five more minutes.

**Hon. S. Young:** Thank you very much, Madam President.

Clause 15 of the Bill provides for an amendment to section 18(2), by providing for the breach to be reported to a police officer in charge of a— rather than a police officer in charge of a station in the magisterial district, to bring it in

line with what currently applies, that if there is any breach, you could report it at any police station. So rather than the archaic terminology of old legislation that you must go to the magisterial district, it now provides greater flexibility that at any police station, a report can be made.

Clause 16 inserts a new section 19(2A) that provides for the director to notify the court forthwith of any proposed change in circumstances.

Clause 17 repeals section 22(2). This section provided for section 14B of the Evidence Act to apply.

Clause 19 deletes sections 25(1)(b), (c), and (f). The deleted subsections were considered to be matters that should be left up to the court's discretion.

Clause 20 inserts a new section 25A to allow the Rules Committee to make rules of court for this Act. This insertion allows them to do exactly what we have described. The Fourth Schedule introduces the oath of secrecy.

Madam President, with the greatest of respect and to the Senators who will enter the debate today and for the Senators who will subsequently vote on the passage of this legislation, I ask you as the mover and the piloter of this legislation to please support it so that we may get on to long outstanding use of technology. We are ready to implement it. There can only be benefits from the use of this technology and these benefits, in the first instance, we hope will redound to the benefit of those who suffer the scourge of domestic violence and also, some of our young offenders to give them those opportunities in life.

We are ready to implement. I thank all of those who participated in the preparation of these few amendments to allow us to be able to implement and finally operationalize this important piece of technology in national security, in our continued fight against criminality, and providing a safer and more secure Trinidad and Tobago.

Madam President, it will also be an opportune moment for me to apologize for my impending departure and to say that the Attorney General will have the opportunity on behalf of the Government to do the wrapping up as we get to that point, and to thank everyone for their attention. I look forward to the support for the passage of this important Bill, this important piece of legislation. So we in Trinidad and Tobago can finally move towards the utilization of this technology.

Thank you very much, Madam President. [*Desk thumping*]

**Madam President:** Minister, I need some words from you.

**Hon. S. Young:** Sorry, I beg to move, Madam President. [*Desk thumping*]

*Question proposed.*

**Madam President:** Sen. Mark, you have 30 minutes.

**Sen. Wade Mark:** Thank you, Madam President. The Bill before us is an Act to amend the Administration of Justice (Electronic Monitoring) Act of 2012. Madam President, this Bill has its origins in the parent Act of 2012 which was passed by the People's Partnership Government as part of a trilogy of criminal justice Bills with a view to transforming and modernizing the criminal justice landscape in our country.

The then Minister of Justice stated, and I quote:

“This...is just one of the measures proposed by our Government to overhaul the penal system by introducing a new sentencing option which would have the effect of reducing prison overcrowding and introducing a more effective prisoner management system.”

Madam President, this Act was assented to in 2012, but sadly without the support of the PNM. In the both Houses of Parliament, the Senate and in the House of Representatives, the PNM voted against this very important piece of legislation. Madam President, I will let you know, in doing the research on this matter that

whilst this was passed in 2012 and we demitted office in 2015, the PNM came into office in 2015 and they are about to leave office in 2020. It took the PNM four years and a half in order to bring changes to the legislation. Today, on their way out, they have now brought amendments to deal with this matter of strengthening the Administration of Justice (Electronic Monitoring) Act of 2012.

Madam President, as I proceed I will refer to my dear friend, the Attorney General, who was very vociferous in his objections to this Bill which became an Act in 2012, and some of the arguments that were advanced in order to justify his opposition to this Bill in the period mentioned.

Madam President, when we look at this Bill very carefully, we would see that this Bill has taken the form of many, many conversations. There is a report that I want to refer to called the Seventh Report of the Joint Select Committee on Finance and Legal Affairs in which in that report it was stated that one, and we have confirmed this today, the Electronic Monitoring Unit has been formalized, has been established, up and running. We know of its location on Tragarete Road in Port of Spain. We know that 300 electronic monitoring devices have been acquired by the EMU. We know that 361 officers have been trained for this exercise and sensitized to this very important initiative.

We are also conscious that in the parent Act there is provision both for public offices to be created via the director and the deputy director, under section 121 of the Constitution. But we also know that there were interim measures in the very legislation to permit the engagement of contract officers. What we do know is that in the electronic monitoring unit of the Ministry of National Security we do have on board two powerful officeholders, the General Manager who, under the public service arrangement, is known as the Director. He has been employed for almost two years now—two years. Then we have the Deputy Manager, I suspect,

and I can be corrected, he too might have been employed for a similar period of time. But even though these people have been on board for two years, although the contract has been executed for one year, Madam President, it is as if the Earth has stood still. There is no pilot project.

This was one of the arguments that the then Sen. Faris Al-Rawi, now Attorney General, piloted, promoted, prosecuted the need for a pilot project. We are going into this amendment, we are debating this amendment and there is no pilot project, and there is no testing period as it relates to this initiative.

What we do have is a contract that is being executed by the Government through ICOMTT and the winner has been Amalgamated Security Services Limited with an Israeli firm called Attenti, and the value of the contract is \$10.3 million. This is the same Amalgamated that has a contract, according to the Minister's statement I have a copy of, \$24 million to \$25million to transport prisoners. So this one private company is involved in two streams within National Security. They are providing the software and the hardware, they are maintaining the software and the hardware, they are conducting training on this very important area, and they are involved in the transportation of prisoners.

This must be cause for concern as it relates to conflict and threat—well, I will not say threats, but concerns as it relates to national security, to have one private agency being responsible for two critical sectors or areas within national security.

We know this Bill in its current form is supposed to deal with domestic violence. So those people who are aggressing our women, 97 per cent of the cases deal with that in this country, and we have had thousands of cases of domestic violence in this country. So this is, I would say, one of the promises and one of the main driving forces as it relates to this Bill, to protect our women through

protection orders, and through the court having these individuals ankle braced or issued with ankle bracelets, so they can be monitored by the appropriate authorities, and of course, prisoners. We know that the Government has been talking about COVID 19, and they have gone before the courts to see if they could get about 388 or thereabouts prisoners released early. Maybe this system is designed to assist in achieving that objective, Madam President.

So we know that the Government is interested in these areas, and that is a matter that certainly we have no problem with. Non-violent offenders can qualify. Persons who fail to pay maintenance, traffic offences, using obscene language, marijuana possession, resisting arrest, these are some of the categories that will benefit from this electronic monitoring exercise.

I would like to ask the hon. Attorney General—it is our parent Bill so any attempt to strengthen it will certainly be welcomed. Therefore, I have no difficulty in asking the Attorney General to look at certain specific sections of this legislation to determine if they require a special constitutional three-fifths majority. If they do, we are willing to sit with the Government and correct the deficiencies of the legislation that is before us.

Madam President, I would say that there is need for the Government to pay attention, and the Attorney General to pay attention to clause 8 of the Bill which seeks to amend section 10 by expanding the grounds on which a court may impose a sentence of electronic monitoring. We are expanding the power of the court to impose, Madam President, a sentence of electronic monitoring. I think that is an area of concern, and the Attorney General would be well advised to look at clause 8 of the Bill.

Madam President, another clause of the Bill that we would like the AG to look at in the context of its collision with sections 4 and 5 of the Constitution is

clause 13 of the Bill, which seeks to amend section 15 by extending the category of who may pay for use of the electronic monitoring device. It may be argued that the payment of user fees is a form of discrimination against youths and the poor, and therefore, the right of citizens or the right of the individual to equality before the law, and the protection of the law under section 4(b) of the Constitution, as well as not to be deprived of property. Those are the areas we would like the hon. Attorney General to look at as well.

**11.15 a.m.**

Madam President, as it relates to clause 9, we are saying where the Government is seeking to insert a new section 10A which would provide for the issuance of a protection device to an applicant, and we know that a protection device is intended to provide audible and visual warning signals that a monitored person is nearby, and therefore it is important that the applicant who is issued a protection device accepts responsibility for its proper use and care. This is what is said in the section that I am referring to. So this is a matter again, Madam President, that we would like the hon. Attorney General to look at because we believe this section interferes with the right of the individual to respect for his private and family life, so these are areas we would like the Government to look at.

Madam President, as we go further into the Act that is before us, the amendment rather, we have to make reference as well to the parent Act, because, Madam President, we are seeking to put certain transitional clauses, well not transitional clauses, but measures are being taken on a transitional basis to get this Act going. So the electronic monitoring manager is a contractual office, the deputy electronic manager is also a contractual office. The AG had argued, and I support, in 2012 when he debated this matter, that both the electronic monitoring manager and the deputy electronic manager/director and deputy director had no



qualifications stipulated for their appointments. I think this is a solid point that was advanced by the Attorney General, and I would like the Attorney General to give consideration to this matter at the committee stage, looking at possible amendments to that section of the legislation to deal with qualifications.

Madam President, I would also like to indicate that there is need for us to consider very carefully this decision to delegate which is a very strong point, again raised by the Attorney General, then Sen. Faris Al-Rawi, to delegate powers and duties and functions of the director or general manager to employees of the EMU. Madam President, you cannot just delegate powers just so. What is the role of the deputy director? What is the role of the general manager? Why not delegate those functions to the deputy general manager and not just to employees? So I ask the hon. Attorney General to look at this matter of delegation of functions to a member of the unit, which could be a contract person or otherwise, permanent employee. But, we would like the hon. Attorney General to examine that suggestion very carefully. He argued very strenuously and we support him on that matter.

The hon. Attorney General also argued in 2012 that we were putting the cart before the horse and we ought to introduce what is called the parole system. The parole system has not been introduced. Amendments are now before this House. Are we still putting the cart before the horse? I would like the Attorney General to tell us this because he was very adamant in 2012, that we need the parole system to make this thing work. We do not have a parole system. There is no parole legislation, yet still there is an amendment to the Bill without any parole legislation. Is this the cart before the horse? We would like the Attorney General to share with us.

Madam President, another area of concern to us is this matter of what is called—there is an amendment here and it deals with the director having the power

to establish what is called standard operating procedures. Now, consistent with section 25 where we talk about Regulations, we are also talking about standard operating procedures, I would like the Attorney General to explain to us in this Parliament whether standard operating procedures even though they are linked to internal operations, whether they are going to become part of the Regulations or whether they are going to form part of the substantive law, because rights could be infringed in terms of standard operating procedures, and we would like that matter to be looked at very carefully.

Madam President, we saw where in the law that is before us, the Bill, where the Government is deleting the word “spatial” where data appears, and we wanted to get a proper explanation for this development, because this legislation was taken out of the Bahamas experience, and this spatial data referred to specific geographical location. When you remove spatial you leave it open. And by extending the definition of Geographical Positioning System, GPS, which is not dealing with just on Earth but above Earth via satellite communication, it also deals with a matter that we need some clarification on as far as the Government is concerned. We need some clarification. So, in terms of SOPS, standard operating procedures, we need to know, Madam President, where are we with those matters re the Regulations? Otherwise, we are proposing that those standard operating procedures should see the eyes—the Parliament rather should have eyes and be able to see these standard operating procedures, unless we are convinced otherwise.

Madam President, we also would like to suggest that whatever contractual services are being issued, we would like that to be subject to the Public Procurement and Disposal of Public Property Act which we did not see in the legislation.

Madam President, as we go to clause 7 of the Bill we would like the hon. Minister to look at what is being proposed here. The Government is seeking to cover all employees as it relates to this oath of secrecy. Now, I think the hon. Attorney General, then Sen. Faris Al-Rawi, made mention of the oath of secrecy. But we found in going through this legislation the oath of secrecy to be very weak, very, very weak, and we would like the Government to consider going to the DNA legislation and taking the very oath in the DNA legislation and substituting that oath for the one that we currently have before us. We believe, Madam President, the threshold of confidentiality should be higher than what it currently has in the Bill. So we would like to suggest to the Attorney General that he examines the oath of secrecy as contained in the DNA legislation.

Madam President, we also believe that the Bill, we are seeing it in the Fourth Schedule, they are describing the director as well as the deputy director as employees, and the director has to sign off the oath of secrecy. That is a contradiction in terms. The director has to take an oath of secrecy, but the director is signing off on the oath of secrecy. I do not think that is what was meant. That is why we are asking the Government to look at the oath of secrecy provision as it currently exists in the DNA legislation.

Madam President, the whole issue of electronic monitoring, I would like the Attorney General to pay attention to this device being placed both on the offender as well as the victim. The victim should not have the same kind of protection device. They should have a portable device but not an ankle bracelet. Madam President, I have a document entitled “Standards and Ethics in Electronic Monitoring” out of the United Kingdom, and it makes it very clear that we have to be very careful with how we treat with victims of domestic violence. Do not put an ankle bracelet—

**Madam President:** Sen. Mark, you have five more minutes.

**Sen. W. Mark:** Yes—on that individual, that is, the victim. They are proposing in accordance with human rights, that should be a portable device. In your pocket as the case may be, but not on your ankle. So that is an area we would like the Attorney General to pay some attention to as well, Madam President.

Madam President, clause 14 of the Bill, we do not like this concept of competent authority having the power to determine whether they should be allowed to continue electronic monitoring. A competent authority could mean a statutory authority, a tribunal, or some board. Madam President, we are suggesting to the Government, the court is the one that will determine whether they will impose an electronic monitoring device on you with your consent, and we believe that should be the only body that should be responsible for determining whether you should continue to participate in that arrangement.

Section 17 of the Act deals with deliberately tampering or removing such a device because of negligence. We think that the Government needs to define exactly what is meant by negligence in this regard. And I made the point earlier, Madam President, that when you are imposing these conditions on youths and children and persons who are poor, there could be a situation of inequality and discrimination which runs afoul of our constitutional rights to equality of the law and protection of the law. So this question of if somebody damages or in a negligent way damages or removes this particular ankle bracelet which is doing the monitoring, we need to be very careful to determine what are the implications for poor people and whether that is not a discriminatory provision that is being advanced in the legislation.

So, Madam President, in closing, I want to remind the AG of the following: Look at the clauses that I, that we have put forward rather, for consideration as it

relates to a collision with sections 4 and 5 of the Constitution. We want to ensure that whatever is done is not open to legal challenge in the courts, and therefore we are saying to the Attorney General, there may be infringements of the sections 4 and 5. We need to pay attention to those infringements. We are prepared to support whatever amendments are required to ensure that the legislation is tightly arranged.

And, Madam President, the final point I would like to raise for the Attorney General's consideration. I found it very strange doing my research that this contract that was issued to Amalgamated Security Services Limited by iGovTT, we understand that there was an evaluation committee that submitted its report. In fact, they did their evaluation between the 9<sup>th</sup> and the 13<sup>th</sup> of July, 2018, and they were told that they had to amend their evaluation report. I think this is cause for worry. Why were they called upon, Madam President, through the board of iGovTT to amend their report? And it is after that amendment of their report we had for instance this company emerging winner. We do not know because we do not have all the facts before us. Maybe the Attorney General should table in this Parliament the evaluation report of this committee so we could see that everything is above board. And why would an iGovTT board of directors, having received an evaluation report, send it back to the evaluation committee for amendments? Why was that necessary? What did they amend? These are matters, Madam President, that we consider very important in this particular debate.

And, Madam President, with these few words, I would like to thank you for giving me the opportunity to deal with these matters, and I want to serve notice in closing that we will be circulating amendments to strengthen the legislation. Thank you very much, Madam President.

**Madam President:** Sen. Richards.

**Sen. Paul Richards:** Thank you, Madam President. I should wait until the podium is sanitized.

**Sen. Mark:** Yes, yes, because you do not know what is going on.

**Madam President:** Sen. Richards, I remind you, you have 30 minutes.

**Sen. P. Richards:** Thank you, Madam President. Thank you, Madam President, for recognizing me and allowing me to make a hopefully worthwhile intervention into this, an Act to amend the Administration of Justice (Electronic Monitoring) Act, 2012. Quite frankly, there is not much I have seen in this legislation, this proposed legislation with these proposed amendments to offend me. I just have some observations and some recommendation as to how I think it can be strengthened in terms of its possible application in Trinidad and Tobago.

And the issue of electronic monitoring is not a new technological application in many jurisdictions. In fact, I was able to secure some information from the Scottish Centre for Crime and Research, which published a report, No. 8 of 2015, titled “Scottish and International Monitoring Review of the use of Electronic Monitoring”. But before I go into that I will go straight to the proposed Act and seek some clarification from the hon. Attorney General in his wrapping up because it kind of raised a red flag in terms of one of the concerns raised in another jurisdiction where the definition of “protection device” means a small portable device which generates audible and visual indication signals received from the radio frequency tag physically attached to the monitored person. And I am wondering if this definition is wide enough and of great enough concern that it is only intended to generate these audible and visual indication signals to identify the position of the person to which the monitor device is applied, or does it leave room for these visual and audio signals to be actually sound and visuals which can lead to privacy issues for the person being monitored if indeed the device under this

definition can do that. So I am hoping the Attorney General can clarify that and if it probably needs to be tightened to only apply to the position the person is, the geographical position the person is in the context of monitoring the movement of the person. So, I am hoping to get some clarification on that. Because if it does not do that, it could open the door to some privacy issues where a monitored person is concerned and their utterances and also some compromising visuals possibly.

So, according to the Scottish and International Monitoring Review of the use of Electronic Monitoring Report No. 8 of 2015, there are quite a number of very productive applications for electronic monitoring, including monitoring persons who have been accused, charged and convicted of violent crimes. The hon. Minister of National Security in his piloting of this identified the domestic abuse paradigm which is one of the great concerns and productive applications, because we have seen in Trinidad and Tobago the fact that persons who are under protection orders and who have sought the protection of the State from persons whom they are victims of abuse on many fronts are being in some instances killed, including I think last year or year before, a police officer, and also the inclusion of the victim alert system whereby the victim also gets a device. Sen. Mark raised some concerns about that, if it is the same device and if the device should not have more technical abilities because the victim is the person we are trying to protect here, so that is of concern.

Sexual crimes, particularly paedophilia, and I was honoured to be part of a JSC which dealt extensively with sex crimes against children, and the fact that persons who are on that registered list can now be subject to the imposition of these electronic devices, so they stay within the parameters of their release upon serving their sentences, and we are able to, through the application of electronic

monitoring, identify if they are going close to schools and monitor their movements so that children are protected against these persons. Alcohol and drug related crimes, persons who are repeat offenders and in some instances under rehabilitative orders, can be monitored, and it is also used for vehicle theft. People with prolific offence histories and also, very importantly, people suspected and convicted of terrorism, when they serve their sentences if they are not life sentences, because these persons or these individuals have to be monitored in the interest of protecting the wider society.

There is also the issue which came up in the public domain regularly in the past couple months, and I know pronouncements from the hon. AG, the Minister of National Security and the Commissioner of Police in terms of some persons who would have been able to secure bail for gun crimes, or gun charges, sorry, and the concern that some of these persons had in their possession very dangerous weapons, including AK47, but they were able to secure bail. I think under these circumstances electronic monitoring devices applied to these persons can help law enforcement and the Ministry of National Security's apparatus to identify if these persons are continuing to associate with known criminals and continue to prove to be a danger even while they are out on bail. Also, electronic monitoring devices can also be used as non-custodial apparatus in terms of rehabilitation procedures to monitor persons to help with their transition out of the inmate situation, the prison situation and into real life as part of what Sen. Mark alluded to, a parole system where persons who would be able to fulfil particular behavioural patterns and benchmarks while incarcerated, may be able to be eligible for parole when we get to that stage, and certainly this will help.

And also, as we have seen in situations like YTC and other custodial institutions for young persons who may have run afoul of the law, non-custodial



juvenile truancy and behavioural monitoring systems where these young persons if they meet particular benchmarks can be fitted with electronic monitoring devices. And the other two areas I would identify in terms of possible applications and possible amendments to this, and I think that would be where clause 8 comes in in terms of the presumed intention in widening the courts' ability to apply to various circumstances, and these two I will cite in advance are quite controversial in some jurisdictions.

In terms of persons, elderly persons with the consent of the persons who have responsibility for them, including their children and other people, who may suffer from dementia, so they may be fitted because some of the elderly people who have dementia sometimes wander away and put themselves in danger, and in some jurisdictions are fitted with these devices with their consent or the consent of those persons, their children or the offspring in those instances, that have responsibility for them so that they can be found if they wander off.

And also another controversial application is in terms of persons with mental health issues, psychological issues, where the challenges may render them not always *compos mentis* and incapacitated to the point where they are a danger to themselves and others, and in those instances under the prescription of a qualified mental health care person, that individual can be fitted with an electronic monitoring device for their own safety. I already identified community reintegration for rehabilitative processes, and also these devices can be applied as an alternative to remand. We all know of the very challenging remand situation we have in Trinidad and Tobago, where in terms of some low-risk persons or some maybe considered minor crimes, these persons can be fitted as an alternative to remand to support pre-trial conditions, and for persons with possible shorter sentences.

And one of the also controversial applications to electronic monitoring is the issue of law enforcement and national security agencies using monitoring devices, and we usually think of these electronic monitoring devices in terms of the bracelet on the ankle alone, but in some jurisdictions they have evolved into chip insertion into the human body for undercover officers who go undercover to unearth and dismantle gangs, terrorist organizations, et cetera, where the State, the person is a law enforcement agent in some aspect and is fitted with the electronic monitoring device, and that monitoring and the information gleaned from that can be used and admitted into court.

Also, in terms of the issues that where this can be applied, and I do not know if it is taken into contemplation in this proposed legislation, is the monitoring of high-risk inmates, and on several occasions we have had information from the hon. Attorney General, the Minister of National Security about individuals who have been deemed high-risk inmates who continue to communicate with the outside world and interact with other inmates, and run criminal syndicates from inside prison walls, and in other jurisdictions it has been found very useful to fit these inmates with electronic monitoring devices so that the surveillance of them can be more on a 24-hour basis in the interest of thwarting their criminal and nefarious efforts.

In terms of the cost as identified by the hon. Minister of National Security, he cited \$10.3 million in three years, and I will tell you that this cost is actually much cheaper than the cost as identified in this paper that I cited earlier on in Scotland, where the average unit cost for electronic monitoring in Scotland between 2013 and 2014 was £743. You know, it started actually at £1,940, and in 2011 was as much as £1,043.73. And, according to my quick calculation, and I hope I am not wrong and will not be embarrassed, but that means that the unit cost

for 300 units identified in the Minister of National Security's deliberation, brings it down to \$4,333 per unit, which is significantly lower if that is the case over the three years. My question is that if that is the identified expenditure over the three years, is it that we have not factored in maintenance cost and also expansion of this programme, if it is proven to be successful within that three-year period? And what sort of phased implementation do we have intentions of doing where this is concerned?

So, I would actually want to know what the plan is where that is concerned, in addition to the fact that, you know, Sen. Mark raised it. But I also have a concern about any particular private sector entity having an increasing footprint in national security as much as I am seeing developing in Trinidad and Tobago. And that is not to say that I have an issue with the private sector entity as identified, but more and more we are seeing specific private sector entities, in this case Amalgamated Security, having more and more of a significant footprint in the national security grid, and I do not know if that is as much a productive development, especially since I do not know what the private sector entity in this case is bringing to the table that the National Operations Fusion Centre and the Ministry of National Security could not do itself in terms of putting out, doing the research for international competence, in this case the company with which Amalgamated liaised, is Attenti, which is a well renowned Israeli company which is a very good company. But I am not seeing the value brought past being a very successful, very effective broker to find an international agency that can provide the equipment and the competency and apply it in Trinidad and Tobago.

I do not know that the Ministry of National Security and one of its agencies could not fulfil that mandate. So, I am wondering what Amalgamated brought that the Ministry of National Security's personnel or the National Operations Fusion

Centre could not do. So, if someone could provide me with that information I would be very comfortable with that. But, as it stands, I am not seeing what role responsibility that the company brings that we could not have fulfilled within the Ministry of National Security.

**11.45 a.m.**

In terms of arguments for electronic monitoring, as I said before, I am all in favour of this, it is way overdue. The research proves that 60 per cent of all prison sentences of less than six months can be executed at home with electronic monitoring and there is a high degree of compliance with electronic monitoring. In those jurisdictions, research, less than 10 per cent are revoked for compliance breaches. And electronic monitoring has a much lower recidivism rate, 17 per cent compared with custodial prison sentences at 38 per cent. Electronic monitoring is much cheaper than incarceration in prison and it is more applicable to facilitating a better rehabilitative process.

Some of the concerns that I have also include the reliability and efficiency of the ICT framework upon which this must run in terms of the information and the GPS positioning of persons who would be fitted with these devices; the response time of law enforcement, particularly in cases of sex offenders and domestic violence situation; penalties for noncompliance and there are some legal questions that I hope can be answered in terms of how will the court view cases involving a failure to respond to an alert by law enforcement that may result in a new crime. That has been raised in other jurisdictions when the information is that the person is within the commission of a crime, the officers do not respond in time and another crime is committed while that person has been fitted with an electronic monitoring device, the person commits another crime. So in other words, the device has failed to prevent, and does the State become reliable in some way to

that?

How would the courts view cases involving a new crime committed when the radio signal is lost during equipment malfunction? How will the courts view the admissibility of location data points and reports from GPS vendors as a third party conduit for this process and this project? How will the court view privacy rights challenges in these cases? How will the courts decide on potential issues of cruel and unusual punishment, and public expectation balanced? And we also need to set in place a system of doing—using the data that would be collected during this phase, this implementation phase of the electronic monitoring device, should of course this may muster and pass in this honourable House. What kind of research are we going to gather, as I am saying, I have quoted extensively from the Scottish Centre for Crime and Justice Research, Report No. 8 of 2015, and part of what their mandate was—upon the implementation of their electronic monitoring which dates back about 15/20 years— was in terms of using the data gleaned to provide research on criminal justice in that jurisdiction which can help, one, better law enforcement responses, better state responses and guide policy in a more productive manner. So I am hoping that part of what we will see coming out of this is the issue of related to research, data gathering and analysis from the competent authorities.

So with those few words, Madam President, I thank you for the opportunity to contribute and as I said before, I do not see very much, in terms of content, as offensive in this. I just suggested some expansions of the possible applications and I asked some questions and I hope the AG in his wrapping up can provide those answers. With those few words, Madam President, I thank you.

**Sen. Nigel De Freitas:** Thank you, Madam President, for the opportunity to contribute to the Bill that is engaging the attention of this honourable Chamber,

which is a Bill to amend the Administration of Justice (Electronic Monitoring) Act, 2012.

Madam President, at this current time, I can say that I am happy and I will tell you why. In 2015/2016, one of the first things that the Joint Select Committee on National Security did was to take a look at pieces of legislation which required some follow-up that would have a great impact on national security. There were two that were identified. First being the DNA legislation, which we dealt with and we brought regulations to this House, and the second was this piece of legislation that is before us today. And I say so because that Joint Select Committee on National Security did follow-up with the entities responsible for bringing this piece of legislation and operationalizing it.

I am glad that Sen. Mark indicated in his contribution that any attempt to strengthen this legislation will be welcomed, especially where as in this Chamber we tend to have a difference of opinion. But I just want to respond to Sen. Mark in relation to the other comments he made, whereas he indicated that it took the PNM four years to bring changes and we are on the way out. And what I want to say to Sen. Mark is when you are dealing with crime legislation especially, a bipartisan approach is always required. And I could easily respond and counter that argument by indicating this legislation was passed in 2012, it required some form of follow-up and operationalization after but nothing was done. But that would be a moot point because it does not really help the situation.

And therefore, I could also go on to say that it took seven years to get this operationalization working. And the reason for that is because this particular process of electronic monitoring is not a simple one, it is going to be complicated. And the Minister of National Security would have alluded to that when he spoke to some of the things that needed to be done in terms of training for the TTPS, in

terms of acquisition of the devices, and Sen. Mark kept asking the question as to whether there would be testing or if any pilot phase would have been done. But because this particular operationalization of this piece of legislation requires something to be functional then I want to believe that testing must be done and that the piloting of it would have been done because it could not have been rolled out. So to Sen. Mark, I would indicate it is not about what the other side did or what the other side did not do, but it is about what we can do together to ensure that we curb the scourge of crime in this country.

And so, Madam President, as I normally do with crime Bills, I try to create the context in which this piece of legislation works with other pieces of legislation to ensure that we consistently and continually reduce crime in this country. And we indicated early on, in this Eleventh Parliament that there are five pillars that we always look at when we are talking about crime legislation, and that is: prediction, deterrence, detection, prosecution and rehabilitation. And this piece of legislation speaks specifically to prosecution, detection and deterrents when we are talking about electronic monitoring.

And so, Madam President, electronic monitoring to me and as most speakers before me have alluded to, helps in the sense that it gives us more data to work with when we are dealing with individuals whose behaviour is errant to what society deems normal behaviour. And so, for the purposes of this piece of legislation, Madam President, I will talk about the positives, which you can find in clause 8 of the Bill and a lot of the speakers that have gone before me have spoken to the effect of reducing the individuals on remand, and Sen. Richards would have just spoken to that, so I would not go into that too much.

The Minister of National Security spoke in great detail about the ability of the judicial system to use it as an alternative to incarceration, especially for minor

offences and therefore reducing the prison population which Sen. Mark, in his contribution, indicated was the general purpose of the Bill when they passed it in 2012 under that previous administration. But one of the other points that was not made that I want to raise today as a potential positive, is the ability to use this particular system in the witness protection programme.

And as much as we have, Madam President, the Evidence (Amdt.) Bill before us that we are treating with and that witness protection programme, and things that come up in that Bill to treat with that, this is another avenue where in some form or fashion we can utilize this electronic monitoring system and the protection unit that this Bill speaks about in terms of helping out the witness protection programme. And of course, that would be very specific to the unique circumstances upon which a person might find themselves in the witness protection programme. And if I was to try and talk about that for a second it would speak to, one, a protection device for the person in the witness protection programme. And if a threat, as a result of a particular individual could be identified towards that person then it may be fitting to have that person outfitted with an electronic monitoring device, so that that witness has extra protection. And for me, that is an added positive to this Bill in terms of that programme that no one has spoken about just yet.

But, Madam President, let me move to clause 9 and the most important clause in this Bill as it treats to a situation that has been too prevalent in our society, and that is domestic violence and victims. For as long as I can remember, we have heard the stories over and over again, a victim takes out a restraining order, the restraining order does little to nothing in terms of protection, especially if the perpetrator, upon who the order is put, is determined to do harm. Too long had we heard of victims' plight, too long have we heard that the restraining orders



have been ineffective.

Madam President, clause 9 in this Bill is to a domestic violence victim, what water is to a man in the desert. It is lifesaving. And just to bring that point home, I want to draw your attention, Madam President, to a newspaper article in the daily *Express* on January 27, 2020, titled:

“Wife murdered outside Couva workplace, husband commits suicide

There was a murder-suicide in Couva on Monday morning.

It happened in the parking lot of Venture Credit Union, along the main road.

The building is located near the Couva Police Station.

Police said Naiee Singh, 31, exited her vehicle and was attacked by Roger Singh, 32, her husband. He was waiting for her in the parking lot.”

And, Madam President, I will stop there, because clause 9 speaks to ensuring that victims, upon their request, are able to have a protection device which will alert them by audio or visual tones as to when someone, who a restraining order has been put on, is close by. And based on what I have just read, you can tell that had we had this piece of legislation and that piece of operationalization that that individual would have been able to acquire that protection device, and this entire newspaper article could have been read differently. She would have been alerted to the presence of the perpetrator and she would have been able to find shelter or to seek help very quickly. She may have very well still been alive today. And I think that is why this clause in this Bill is so profound and it is so important, and I commend the Attorney General and the drafters of that amendment for this Bill for thinking ahead enough to put that in this Bill to ensure that domestic violence victims have a fighting chance beyond just getting a restraining order.

And so, Madam President, in response to Sen. Richards who wanted to find out by way of the definition in the Bill in relation to this protected device, for me I

can say that when I read the definition I did not think that it meant that you will be able to hear what the perpetrator is doing or that you would be able to see what the perpetrator is doing because in the definition it speaks to radio frequencies in relation to the ankle bracelet. Now I am not a techie person but when I heard radio frequencies, to me, when I read audio and visual I immediately thought you would hear an alarm, or the device— this is the protection device— would either buzz or give you some sort of a visual representation like a bell ringing or something on your arm, just to alert in a split second the victim, that the person you took the restraining order out on is very close by, and you need to seek protection or you need to seek shelter. But if it is required that the definition needs to be more specific to indicate that there can be no listening or there can be no visual cues coming from the perpetrator well then, I leave that to the Attorney General to treat with. But that is not what I got when I read the Bill in relation to that protection device.

Sen. Mark spoke to some of what he perceived to be the negatives and that is the oath of secrecy. And he felt that it was too weak in this Bill. Now the thing about institutions, Madam President, is that you have individuals that work within an institution and inherently, once you have anybody working in an institution then that institution can be weakened by the behaviours of those individuals, and I found it to become comforting when I read the oath of secrecy and the extent to which it went in this Bill. Because one of the things that could happen to bypass any protection given, especially in a domestic violence situation— we do live in a relatively small society, 1.3 to 1.4 million people and it could be that someone in the process of dealing with executing that electronic monitoring order could end up trying to warn a family member that such an order is pending or coming. And that is why the oath of secrecy in this Bill which speaks to individuals in the Electronic

Monitoring Unit, it speaks to those who are doing consultancy work, and it speaks to anyone who comes into that contact with information in relation to that process being sworn to an oath of secrecy, not just while they are working with the Electronic Monitoring Unit but even after they have left the unit, or even after they have completed work in relation to that process. So to me, the oath of secrecy, Sen. Mark, is perpetual, it continues and that is very important for the effectiveness of this.

Sen. Mark also spoke to the standard operating procedures and I will leave that for the Attorney General to deal with, but what I was comfortable with is the fact that it was implemented in section 25, that rules and the processes could be put in place by the Judiciary through their Rules Committee. And this is important because one of the bodies that has a large amount of knowledge in relation to dealing with cases of domestic violence is the Family and Children Court. So the ability of the Judiciary, through their Rules Committee, to set up rules in relation to this particular process, who, when, how, what, why—

**Madam President:** Sen. De Freitas, you have five more minutes.

**Sen. N. De Freitas:** Thank you—to me it is very important because they will have that knowledge going back as long as that system has been there in that Judiciary, to make sure that it is effective and to make sure that it has the intent that this Bill is trying to execute.

So, Madam President, those are the things that I wanted to say in relation to the Bill that is before us. This electronic monitoring is going to allow us once again to be able to consistently and continually reduce the level of crime in this country. We are adding tools to the system that allows us to one, get feedback, use that feedback to ensure that the pillars that I have identified in the beginning of my contribution, that we hit each marker in relation to those pillars so that we can live

comfortably in Trinidad and Tobago and that we do not have to worry about any level of rise in crime. With those few words, Madam President, I thank you.

**Sen. Khadijah Ameen:** Thank you very much, Madam President. I thank you for this opportunity to contribute to this Bill, the Administration of Justice (Electronic Monitoring) (Amdt.) Bill, 2020.

The parent Act was passed by the People's Partnership as one of three pieces of legislation, criminal justice Bills which was described by the former Minister of Justice as having a view to transforming and modernizing the criminal justice landscape in Trinidad and Tobago. And it was just one of the measures proposed by our Government in the overhaul of the penal justice system. It was modern—division for our penal system was modern, innovative and technology-driven. There is no doubt that the present Government also believes that our present penal system needs an overhaul. Introducing electronic monitoring as a new sentencing option would have the effect of reducing prison overcrowding and introducing a more effective prisoner management system.

The Act that was assented to in 2012 remains to date to be proclaimed and I find myself agreeing with—I think he is Minister of National Security, one of the—Minister Fitzgerald Hinds, who at a JSC said:

It is very, very clear that we are behind schedule and this matter is long overdue, embarrassingly so.

Madam President, it appears from the Members who have spoken so far on the Government Bench, as well as utterances in the public domain, that the Government is seeking to introduce the 2020 amendment Bill at this particular time to serve two rules. I just want to quote the Attorney General at a media conference who indicated the:

“...(bill) is materially important to everyone in two areas. One; it's

connected to how we manage prisoners who may be released out of the system and number two; very importantly, it's...connected to the issue of domestic violence.”

Madam President, given the Government's recent announcement that plans to release certain sectors of the prison population, described as “low-risk prisoners” with a view to managing the spread of the COVID 19 within the prison system. It is evident that this is also primarily responsible for the Government's move to have the Bill brought to the Parliament at this time when even the Parliament has been asked to deal with only the most essential matters. This Bill would allow the Government or the State to enhance the current conditional release programme as more inmates can be released from our correctional facilities.

Madam President, Sen. Mark would have mentioned the then Opposition's request and suggestion for a pilot project for electronic monitoring. The Attorney General has proposed simultaneously testing a novel and technology-driven system of electronic monitoring. And it was mentioned before that a pilot project did not occur, did not materialize. One of my questions to the Government, given that the Attorney General and others would have indicated—in fact, let me be very precise. On the 1<sup>st</sup> of April, 2020, the Attorney General indicated that there were 388 prisoners, non-violent offenders, who had been identified thus far and who would be eligible for early release. And these offences included:

“...failure to pay maintenance, traffic offences, use of obscene language, marijuana possession and resisting arrest.”

The number of prisoners that the Attorney General indicated it quite falls into the number of devices we are told have been procured or a contract has been awarded to procure, which was 300. Is it that the Government intends to use this COVID pandemic recommendation of the World Health Organization to allow

prisoners to be removed from correctional facilities with electronic monitoring as their pilot for this electronic monitoring device to be used in Trinidad and Tobago? If that is so there is no problem with that but you should tell the population that out of this exercise, you intend to gather lessons, gather data that would improve the system before you go forward. I think it is very important for the State, the policymakers, our criminologists, our Judiciary to have information in addition to what exists in other jurisdiction, but what happens in Trinidad and Tobago, how our culture, our population, the size of our country would impact on the use of these devices and ways that it can be improved.

Madam President, I say this having regard to the fact that there are a number of countries that are presently implementing this early release scheme. The United Kingdom, France, the US, Germany, Australia and Canada. It is a worthwhile effort for Trinidad and Tobago to consider this early release and how we qualify prisoners for that. Madam President, the present pandemic provides that opportunity but my question for the Government and for, in fact, the nation to ask the Government and ourselves, by the time this legislation is passed in Parliament, operationalized, implemented, training taking place, is this measure really for the coronavirus response? Is it really going to come in time to prevent the spread of COVID 19 in prisons? The Government should share their view with us in terms of what their intention really is. And as I said, raising this matter is not me objecting to the system being put in place.

Madam President, another issue that I would like to have clarified is where in clause 6 the Government proposes to delete the word “spatial” and now have the Electronic Monitoring Unit maintain a historical record of all electronic monitoring data, as opposed to just spatial data. Now I am not quite sure that the Members opposite have explained to this Parliament the reason or given a full justification of

requiring all that data. So spatial data really indicates activities, locations, schedules, in real time as opposed to all data.

**12.15 p.m.**

So this all data could include names, interactions, other private data collected via the electronic monitoring device and it may be viewed as a good thing in that there would be an abundance of information that can be referenced if any future offences take place. But on the other hand, we must weigh how invasive collecting this type of data would be since it encroaches, not only on the monitored person's privacy, but also that of those he or she may interact with. Would all data include audio, images, et cetera? So, Madam President, if the Members on the other side could explain why all data as opposed to simply spatial data?

*The Standards and Ethics in Electronic Monitoring: Handbook for professionals responsible for the establishment and the use of Electronic Monitoring*, Dr. Mike Nellis, Council of Europe, in 2015, defined electronic monitoring as:

“Electronic monitoring technologies enable judicial and executive authorities to restrict, regulate and enforce a suspect or offender's spatial and temporal activity (their locations, movement and schedules), at a distance, often in ‘real-time’, potentially in a very finely calibrated way, for periods of variable duration. Contemporary monitoring technologies focus on pinpointing offenders at fixed locations, following the trails of offenders ‘on the move’ or alerting authorities when the perimeters of designated exclusion zones are about to be crossed—separately or in combination.”

Are we, Trinidad and Tobago, setting a new definition for what an electronic monitoring device will do by removing the words “spatial data” and allowing the

monitoring device to be able to collect all data?

Notwithstanding this question, I also want to suggest that it is very important, if the State is going to collect all this data that we must have adequate protection mechanisms particularly for the data outside of what is defined as spatial data, outside of what is acceptable to be collected by the justice system, or the penal system, or the State, in fact in all the other jurisdictions. Protection of that data for the protection of the privacy of not only the person who is wearing the device, but also the persons who that person might interact with.

Madam President, I now want to move to clause 9 but first of all, let me say clause 8 has expanded the grounds on which an electronic monitoring device may be used, and they include bail, protection order, probation orders, community orders and any other application which the court in its discretion deems fit. Madam President, one of the areas that I think all Members here would be happy to see is clause 9:

“10A (1) Where an order for protection is made under any written law, the Court may inquire of the applicant whether that person consents to being issued with a protection device.”

So one, you have consent of the applicant, and:

“(2) Where the applicant agrees to being issued with a protection device under subsection (1), that the applicant shall complete the prescribed form indicating that they understand the purpose of the device and accept responsibility for its proper...”— care and use.

**Madam President:** Sen. Ameen, you have five more minutes.

**Sen. K. Ameen:** Thank you.

This new section provides for the issuance of a protection device to an applicant and it is intended to provide audible and visual warning signals that a



monitored person is nearby. So the applicant who is issued with the protection device accepts the responsibility for its proper use but can also receive alerts. This section basically seeks to allow electronic monitoring to protect victims and survivors of mainly domestic abuse crimes.

If I am permitted, Madam President, I would like to share an excerpt which captures my belief and principle in the use of these devices for victims. Using electronic monitoring to protect victims necessarily involves the police in its use. It is only ethical to use electronic monitoring devices with crime victims, usually victims of sexual offences, stalking and domestic violence, if the effect of doing so is empowering to them—empowering to the victim. If they feel less vulnerable to re-victimization, more protected knowing that the police know both his or her, as well as the suspect or offenders whereabouts, if they feel safer in their own homes and when they move about in public, victims must only be offered portable receiving devices to pick up a signal from the offender's tracker, never persuaded to wear a tracker themselves. So this comes to the point that Sen. Mark made where the device that an applicant is issued should not make them feel like they are in shackles. If real time location data shows the offender and victim coming into proximity of each other before visual contact, the urgent provision of police support to the victim and seeking out and intervening with the offender.

Madam President, this is an important point. When we look at the operationalization of this measure for victims of domestic abuse, notwithstanding the additional security that the device can provide to the victim, or survivor, or applicant, managing these technologies require considerable technical and other support resources. My question with regard to this point to the Government: What protocols are in place for interaction between the roles of the Electronic Monitoring Unit, Gender-based Violence Unit operational from the 1<sup>st</sup> of, I think,

January this year, and the emergency responders unit with regard to victim protection? The Minister of National Security did indicate, when he was piloting this Bill, that the EMU will notify the police, but, Madam President, what is the record of the police in responding to these types of reports in Trinidad and Tobago at present?

Madam President, even with the most sophisticated alert and monitoring systems that these devices will provide or intend to provide, it will come to naught if the police response times are not significantly improved, if the system of alerting a responder who can immediately be on the scene has any hiccups. A bracelet alone, a device alone, will not protect a victim of domestic violence from an offender who is hell-bent on killing him or her, or causing any harm.

Madam President, in Trinidad and Tobago, a number of women have lost their lives due to domestic violence and the existing situation. I want to ask that we take this opportunity to ensure that the NGOs and other stakeholders who work with victims of domestic violence have an opportunity to have an input in the operationalization of this particular measure. I thank you. [*Desk thumping*]

**Sen. Sophia Chote SC:** Thank you, Madam President, for the opportunity to make a brief contribution towards the proposed legislation before us. I must commend my colleague, Sen. Khadijah Ameen, for an excellent contribution and in fact, the quality of her contribution will make mine even shorter, but there are a few points that I think I have to make and I apologize if briefly I may repeat some of the points made by my colleagues earlier, but I think, Madam President, I am struggling a bit with the mask so I was not able to take my place at the head of the line as I had promised.

I too, in the wording of the Act, observed that the GPS system contemplated, that is to say that the satellite system, seems to empower the agency to fit units

which can pick up audio. Put simply, that may allow the person whose is wearing the bracelet to be recorded without him knowing about it and also, anyone around him may also be recorded. That would be in breach of their constitutional rights and I think that if there is any way in which this language may be amended to make it clear that it is just intended to be used as the alert, then I think we ought to tighten it up. And Sen. Ameen, by going into the definition of the word “spatial”, brought the point home quite effectively I think. But when I saw radio frequency, I thought to myself, well, how do we as parliamentarians know that radio frequencies would only be used for a particular purpose? Now, because we are not experts and we are not familiar with the technology which is going to be used, I think as lawmakers, it is incumbent upon us to ensure that the law does not permit those executing the legal obligations and responsibilities under this Act to go beyond the ambit of what is permitted by the law. So that is my word of caution with respect to that.

Now I had another question with respect these devices because it seems to me as though these devices may be monitored or the agency may be working in conjunction with current telecommunications providers. I am not clear on that. Is it that they have to go through separately to get a telecommunications licence or are they going to work with existing telecommunications providers? And the question which we have to ask is: How do we regulate the working together of the agency with the personnel and the assets of the telecommunication provider in question? I do not think that I know enough about the technology to take the point any further but it is certainly something that I would like to find out more about.

Now one of the points that I wish to address, and I suppose I am jumping about a bit, but it is an issue which I had when the legislation had been passed in 2012, and that is the issue of when you look at, I think it is the Second Schedule of

that proposed legislation, you see that one of the things that a court will consider in determining whether a bracelet or an ankle bracelet will be permitted to be worn, is the means of the person. Now I have to say, I object to that. I think that this is a cost which the State must absorb for the safety of all of its citizens. To say otherwise, would allow the young person with wealthy parents or wealthy backers to be able to convince the court that if you put a bracelet on me, I can happily get bail and continue with my life because I can pay for it. Whereas, the young person, with no such financial backing, of course, may not get bail because they cannot be tracked, and I think that would be grossly inequitable and unfair, and I would be grateful if the hon. Minister could give consideration to that factor being removed from the Schedule

In terms of parties being liable for negligently damaging these devices this is what I have to say. I do not see that this particular section makes a great deal of sense because if a child—what test are we going to use for a child as opposed to an adult? What duty of care are we going to impose upon a child when we determine that the child has been negligent? And if the child has been negligent, let us say the child went to play football or jumped into the beach or got sand into the device and it stopped working, who has to pay for that? There is nothing in the legislation which provides for it. I think the easiest thing to do might be for the State to take responsibility and simply insure these devices. That would mean that we remove the inequity, we ensure that we do not have a bugbear about what to do if a device is negligently damaged and so on. I think our focus should really be on the people who try to tamper with the devices or try to get them off, and criminalizing such activity, of course, is entirely appropriate.

So I think this whole thing about negligence— I mean, while you want to impress upon the person who gets the ankle bracelet, that you must take good care

of it, you are not supposed to damage it and so on, I do not think that is necessary for us to have that included in the legislation. Now, I know that this suggestion may not be universally acceptable but I know that we are only going to get about 300 units if I followed what the Minister of National Security had to say, and I will respectfully ask if some consideration could be given when those units are being considered for use, whether they could be given in terms of priority so where you have domestic violence applications, for example, I think if we have a limited number they should be at the top of the list.

Secondly, we should have persons charged with sexual offences, and I pause to give an example—a real life example. There is a gentleman who one may refer to as a repeated sexual offender and while he was being prosecuted for one of his offences, he decided that he was going to stalk the female prosecutor and it was a terrifying experience for her, and I think we have to appreciate that certain kinds of offenders need to be monitored very closely. So if we have a limited number of units, there must be something that we can put in here to say that priority should be given to domestic violence cases because too many women have lost their lives and also, to sexual offences cases or serious sexual offences cases.

Now the other thing that I would ask the Government to consider is—I know the Government has said the Rules Committee will be drawing up rules for the use of all of this and so on, but I think the proper thing to have done was to have regulations attached to this piece of legislation in the amendment, and let me say why. Because the Judiciary has gone past the day when they draw up procedural rules for every single thing that has to do with law enforcement. Yes, we had the Judges' Rules from 1964, which govern the admissibility of confessions and that kind of thing, but legislation has been introduced in this Parliament to say that those Judges' Rules will no longer apply, and the proper way to approach it is to

have legislation whether primary or secondary. We should have legislation hashing out what is acceptable and what is not acceptable, and the reason I say that in particular is because I think any rules that deal with how children ought to be fitted with bracelets, as opposed to adults, should be separate.

It should not be one set of rules for the fitting of bracelets on children and on adults. Because when you have children concerned, you fit a bracelet on a child and that child, you have to remember, is going to have to go to school with that bracelet with all that follows from that, and the bracelet may actually be giving the child his liberty to be out of a prison but it may be harming him in so many other ways that we cannot imagine. So I think there ought to be different considerations in the rules when it comes to “braceleting” children as opposed to “braceleting” adults. So if we have to go with the Rules Committee setting up rules, then I would respectfully ask if some consideration could be given to the separation of rules for children as opposed to adults.

Now, because these rules will govern things like liberty, perhaps admissible evidence and this kind of thing, and may deal with issues of privacy, I thought that the rules should be subject to the positive resolution of Parliament, not the negative because this is a piece of legislation which requires a three-fifths majority. So I think that to say that the rules which are to be proposed must be subject to negative resolution is illogical, it is inconsistent with the thinking of the legislation as a whole. So I know that much has been said prior to my attendance this morning about this piece of legislation, but these are the few points I would like to make and I hope that some of them at least are taken on board. Thank you very much, Madam President. [*Desk thumping*]

**Sen. Deeroop Teemal:** Thank you, Madam President, for the opportunity to contribute on this Bill, an Act to amend the Administration of Justice (Electronic

Monitoring) Act, 2012. Madam President, I think a couple of speakers before me would have intimated about a pilot project, because in almost all the jurisdictions, in fact most of them, where the introduction EM systems pilot projects serve as an introduction for the verification, for the trial run, for this sustainability of such systems and its effective use in managing the prisoner population.

It is indeed noteworthy, Madam President, that whilst we are exposed to a present type of incarceration, the COVID incarceration, that we are looking at a new form of incarceration referred to in many jurisdictions as e-carceration. We have heard from speakers before that the EM system is going to be used or is intended to be used for a very wide cross-section of judicial decisions that prohibit both contact and incarceration itself, and we have heard about pre-trial detention and those who would be on bail, alternatives to prison incarceration, early release from prison, protection of victims particularly in the case of domestic violence, surveillance and tracking of offenders who have committed sexual crimes, and generally judicial decisions prohibiting contact with persons and victims.

Madam President, it is just because of this wide range of offences that the EM system is intended to address and with the introduction of just 300 units, 300 devices, as we heard from the Minister of National Security, as the first batch based on the contract awarded to Amalgamated Security, I was just wondering—Sen. Chote mentioned about prioritizing—what really the focus would be within such a small amount of units, and which category of offence that emphasis would be placed on. Because although it has not been fully stated that the 300 units may serve as a pilot project, it is appearing to me that in effect, it would be along those lines of a pilot project, and in such a case, in order to derive enough data over this three-year period for the implementation of this first phase of the EM system, in order to see how it operates, what percentage of the units are going to be allocated

to which category of offence in sufficient quantities to allow effective and proper assimilation and evaluation of data that comes from this monitoring exercise. Maybe someone from the Government side could probably indicate to the House, you know, if there are any thoughts or plans regarding this aspect of the system to be introduced.

**12.45 p.m.**

Madam President, it is obvious that there are high social and political expectations with regard to EM programmes, but at the same time, as a country, we must be mindful of making safe investments with regard to technological investments and making investments that are beneficial from a cost point of view to the overall well-being of the country.

I am not sure what projections have been done about the expected cost benefit brought about by a corresponding decrease, or expected corresponding decrease in the prison population. Because when we look at \$10.3 million applied over 300 units for three years, and then we add on the overheads of the monitoring unit, and all the associated administrative overhead costs, we are well looking at definitely over \$300,000 per device for the three years, which is indeed a substantial cost to the nation. And in that context, Madam President, from just looking at it from a purely punitive measure, we need to see EM not as a replacement, but as a tool to support the execution of sentences or penal measures and to be used as a strategy to intervene with dependence on convicts, in an effort at rehabilitation and social reintegration. And it is this rehabilitation and social reintegration that will really add to the overall cost benefit analysis of EM systems, which is why I am suggesting that our model here in Trinidad, whilst combining both control and intervention, should place a greater focus on control or social re-integrative actions.



The regulations, Madam President, should therefore be structured in such a way that the EM unit ensures that the surveillance and intervention are geared towards the needs of social reintegration and not purely guided by punitive protocols.

Regulations should ensure in detail that all of the possible problems alerted by the system coming out of what categories they are given within, that all possible scenarios alerted by the system should have a clear reaction scenario laid out in the rules and procedures with the subjects, appropriate for the specific situation and the risk that the potential noncompliance represents.

Madam President, and this would ensure in terms of the overall cost benefit, that if we have to add in reintegration, the benefits of social reintegration into the equation to make this a cost efficient exercise, then our regulations really address this as well.

Madam President, before I get into the Bill itself, I just want to make one point that our roles and procedures and regulations, should also deal with procedures to be followed when the GSM or the GPS system goes down since lives may be at stake, whether it may be minutes, or parts of hours that the system goes down, lives may be at risk, particularly in the case of domestic violence victims.

Madam President, I would like to go to page 2, section 4, clause 4, section 3 of the Bill, part (a), under the definition of “occupier”, where an amendment is proposed for the definition of occupier, where it says that the occupier may mean:

“any person exercising control over that part of the premises where the equipment is to be installed for the time being;”

I am not that well versed in crafting legislation, Madam President, but by the use of the word “equipment” here, both in the parent Act and all the way through the amendments, we have “monitoring instruments”, “protection device”,

“monitoring device”, appearing at several instances within the amendments and the parent Act. And here we have introduced the term “equipment” and I was just wondering if legislatively, we should have married that term “equipment”, or replaced that word “equipment”, with “monitoring instrument”, “protection device” or “monitoring device” to be consistent with the definitions within the Bill.

Madam President, I would like to go to clause 5 of the proposed amendments where, with the introduction of section 4A where it says that:

“The functions of the Director under this Act may be delegated in writing by him to an authorised officer who shall be a member of staff of the Unit acting under and in accordance with his general or special directions.”

Madam President, the powers and the duties vested in the director of the EM Unit is indeed wide reaching and exceedingly important. And I would submit that should the director decide to delegate to an authorized officer any of those duties and responsibilities, then such delegation should at least be subjected to the approval of the Minister, or at the consent of the Minister. Because here we would have the director of the EM Unit deciding to delegate functions, without any consultation or authorization from anyone per say and I think, there should be some form of oversight with regard to this delegation.

Also in section 6, with the introduction of 6A, where it says:

“The Director may, from time to time as necessary, issue standard operating procedures for the proper functioning of the Electronic Monitoring Unit.”

And again, these standard procedures that are being issued by the director, what oversight is there in the whole process of the development and issuing of these operating procedures, or whether there should be some form of ministerial oversight prior to the issue of these operating procedures.

Madam President, on page 5, clause 7, where it speaks about this oath of secrecy—the oath of secrecy is limited to an employee of the unit or as is stated here in the clause an employee of the service provider. And my question is, what about the secrecy of the service provider himself? Because the unit is going to engage, of course, in engaging service providers in order to fulfil the objectives of the monitoring unit. And whereas individuals are being charged with that oath of secrecy, as a service provider as a subcontractor, somebody engaged by the unit, are confidentiality clauses going to be included in that arrangement with the service provider and the unit itself or do we need to legislate an actual oath of secrecy regarding the service provider themselves?

Madam President, in clause 9 where it speaks about the protection device and responsibilities for proper use and care, I know Sen. Chote spoke about the whole question on the ethics of the cost of the device and not only the cost of the device itself, because other than the initial capital cost of the device, there will be an operational cost, of course.

**Madam President:** Sen. Teemal, you have five more minutes.

**Sen. D. Teemal:** Thank you, Madam President. And in such a case, as she had mentioned, whether it is the potential for abuse by those who can afford the device to apply to the courts, to actually get the device but this is something I think that because of the heavy investment that the State is making, there has to be some mechanism where some aspect of the cost could be recovered and maybe consideration has to be given in the whole roles and procedures, of who would qualify for such a device based on application. Is it going to be categorised? Is consideration going to be given to social factors, personal factors, and other factors that would allow some equity in the allocation of these devices, or approval for the person to get a device on application?

Madam President, in section 11 where it says that:

“The competent authority party may also request a report from any other person where applicable...”

Madam President, I am wondering why so broad, because here we have an Electronic Monitoring Unit that is being set up at considerable expense where, within the unit there will be expertise and then also the unit has the ability to contract service providers to provide services as well. What other person would there really be? What would necessitate such a need for the court to have or the competent authority to request a report from any other person where applicable? Would not the unit, or the service providers it engages, be sufficient? And with these couple of words, Madam President, I thank you.

**Madam President:** Hon. Senators, at this juncture the sitting will be suspended and we will return at 1.30 p.m. So the sitting is suspended until 1.30 p.m.

**1.00 p.m.:** *Sitting suspended.*

**1.30p.m.:** *Sitting resumed.*

[MR. VICE-PRESIDENT *in the Chair*]

**Mr. Vice-President:** Whosoever is ready, Sen. Thompson-Ahye or Sen. Sobers. Sen. Thompson-Ahye..

**Sen. Hazel Thompson-Ahye:** Thank you, Mr. Vice-President, for the opportunity to contribute towards the Bill for an Act to amend the Administration of Justice (Electronic Monitoring) Act, 2012.

I would like to begin by telling a story. It is a true story. It has been published in the *Guardian* some years ago. It was published, and it has been heard in different fora in Trinidad and even recently in Amsterdam.

She was named after the month of the year when she was born. She died in that month too. Her name was April. I remember April's quiet manner, her infinite

patience, her smile. She was smiling when I saw her last that Friday afternoon but I could sense her fear. The cocaine, his viewing of the Charles Manson videotape, his constant sharpening of the dagger he had recently bought for her, he had said, made her so afraid.

“Don’t worry,” I tried to reassure her, “It would be all right. After all, the judge had said he must not re-enter the matrimonial home.” “But what if he comes in still,” she persisted. “Call the police,” I advised. “But they will not come,” she said, “So many times before he has beaten me and they did nothing.”

Two days later she was dead. “Wife stabbed to death”, screamed the newspaper headlines. He too was dead. He had drunk poison. At the funeral I wept for April, for her four beautiful children all under 12 years, who sat stony-faced staring at their mother’s coffin, and for all the Mays and Junes who were victims of domestic violence. Desperate, they turn for protection to the law and it fails them. Someone asked, “Was she a close relative?” “No,” I sobbed, “She was my client”.

That was 35 years ago and this scenario continues to be played out in communities around my country. Only the names have been changed and the weapons of choice may be more frequently the guns or knives, rather than machetes, or as we say, cutlasses.

So it is 35 years too late for April, because had we the electronic monitoring device that we are putting forward today, then she might have been alive. Because the perpetrator had come to the door, even though there was an order against him. She opened the door and saw his brother and not knowing that he was hiding in the shadows of the door, when she opened it, he came and he stabbed her repeatedly. Had she had a device and he a device after the judge’s order, then she would not have opened that door that day.

This Bill speaks about a number of benefits that we can use the electronic

monitoring devices for. We heard the Minister speak of situations of early release. We speak about release in lieu of imprisonment, so that is a method of diversion which is especially important for juveniles. It can be used as a condition for bail to monitor persons who are outside. It can be used after a pardon by the Mercy Committee and when there is need for ongoing supervision of persons who have run afoul of the law.

In preparing for this debate, I looked at a study entitled “Electronic Monitoring of Domestic Violence Cases: A Study of Two Bilateral Programs”. Now, this Bill speaks to both unilateral and bilateral programmes. When we talk about unilateral programmes, we are talking about public safety concerns, for example, you want to prevent the absconding of someone while on bail. So we are dealing really with one party and the issue is really public safety. When we talk about bilateral programmes, we are talking about a device being used for a specific person, not the community as a whole, and that is usually the victim of domestic violence. It is to protect those persons and to strengthen the protection order.

Now, we know the dynamics of domestic violence, that there is always danger to the victim being heightened when there is a shift in power because domestic violence is about power and control. So whenever the perpetrator feels that there is something going on to redress his power, what is he going to do? That is when the victim is most at risk and that is why lawyers and police officers have to explain to their victims that they have to be extra careful.

So this device, after you receive the protection order or you have applied for it, will say where the person is because the perpetrator will always know where you live. He will know the workplaces, the shopping malls, where you take the children to school. So all of these things will be monitored to make sure that that perpetrator is kept some distance away. But of course, it would depend on the

reliability of the police and the reliability of the device.

So we have the electronic monitoring device which is used to monitor compliance with the conditions of release of a monitored person. Now, I know I have read several times that people talk about the protection order is just a piece of paper, it is of no use whenever anything happens, but they never stop and think how many people have in fact benefited from the protection order, which a number of us fought to get on the statute books, because there are people, right-minded perpetrators who do not, once there is an order, do not violate that order. Otherwise when you look at the number of people who have received protection orders, we would be like a COVID 19 situation, with several bodies all over the place. So it is in fact of some benefit.

So the perpetrator is fitted with the device and the victim will receive a signal, the message will be transmitted so that she can be protected. There are several benefits because, as I say, it is an alternative sanction. When you think in terms of an overburdened budget—you have heard the Attorney General talk so many times in this Parliament that it takes a lot of money to keep someone in prison, so it is in fact a way of cutting budgetary cost. And facilities also, especially in these days, when we have to keep as many people out of prison because of the real threat of the virus infection, that is another reason that it has become important today.

So it is intended to control the offenders at a cost that is lower than the institutional confinement and it will enable, once the offender is outside, he can continue working and supporting his family.

I have a problem with clause 14. It speaks about—let us look at it:

“(1A) Where a person, respondent, child or applicant has been issued an electronic monitoring device or a protection device under the Act and is negligent

and causes damage to the electronic monitoring device or protection device, that person, respondent, child or applicant shall—

(a) be liable for the replacement cost of the electronic monitoring...”

And that has been spoken to earlier by Sen. Chote SC. But my main concern is that when you look at who is a child in the legislation, it simply says a child means an individual below the age of 18 years. So it gives a maximum age but it does not give a minimum age. So is it that you can fit a child offender of tender years with a device? We need to clarify what is meant. I think some minimum age should go in there to determine who is a child for the purpose of clause 14.

I certainly do not agree with the replacement cost of the electronic monitoring device, if it is negligently damaged, being paid for by that child or on behalf of that child. I think what can go in there is a clause to say perhaps under what circumstances that person would have to pay for the device. Is there some provision that we can put in there which is not just negligence because negligence is very wide? It could be deliberate negligence. It could be a number of things can happen there for that device to be damaged. So we need to look at that provision again.

In terms of pre-release, on another occasion I would want to speak more about that, but what I would want to say now is that when we are talking about pre-release, when we are talking about the Mercy Committee having people out of the prison, then we are talking about persons in the community and therefore, we ought to consider reintegration. When we talk reintegration, we must address the issue of restorative justice processes. We must therefore look at preparing the family and the community for the release of that person.

We must look to see how we are going to address the stigma of being in prison. We must look to see what are the human, financial and physical resources



that are available; who will hire, who will befriend. Who is there to say, “I condemn not you but your actions, I am here for you. I will go to the drug treatment programme with you. I will go to the alcohol treatment programme with you. I will provide emotional, spiritual, practical assistance.” And again, this will be something that we can have the faith-based community, and they are very, very much in place to deal with that issue.

The study that I spoke about, the Federal Probation, it is printed in the *Journal of Correctional Philosophy and Practice*, “The Electronic Monitoring of Domestic Violence Cases”, was very instructive. It spoke to the success of this monitoring situation. Over a period of two years, only seven violations were found and it was only when those persons were intoxicated, the perpetrator, and in one case, an over jealous husband came to the house. He was paying for the apartment and he saw a boyfriend there, and of course, he decided that he cannot be paying for this woman and somebody else is enjoying conjugal favours. So that is a very common scenario. But what we can see is that many times situations can be saved when there is counselling. When there is a session of family group conferencing, where the families get involved in trying to change the mindset of the perpetrator.

Now, in spite of the device, the study shows, it does not prevent other types of encounters. So you have the encounter by telephone call. We have people going to the malls and in spite of that, you still find there may be violations by not only the perpetrator but also the applicant. Because domestic violence is a very emotional issue and the ties of one party to the other is not so easily broken. So in one case, when it was seen that the monitoring device was triggered and it was not the first time, and the probation officer went to the house, and the woman kept saying, “No, no”—the house of the perpetrator— “This is not happening”, and they actually found her hiding in the bathroom. So sometimes we have to work with

both the perpetrator and the victim to make sure that they are in a right place for their own safety.

This is not going to solve all of the problems. We are very pleased that we have a domestic violence unit but we must also continue, and maybe within the regulations, we can consider the whole issue of continuous training of the police. There is not always support by the police. Even with the unit, you see that there is provision for other police officers to be involved. There is not always going to be the person who belongs to the domestic violence unit—

**Mr. Vice-President:** Senator, you have five more minutes.

**Sen. H. Thompson-Ahye:** Thank you. So we have had cases where police themselves have been very instrumental in, in fact, facilitating domestic violence murders. We knew about the incident in Grand Bazaar with the love triangle, where in fact the police officer called to say, “Look, the woman inside here with de other man”, and it ended in murder. We know that there have been instances where, in fact reported in the press, where the lady did not want to go to her own police station, she went to another police station, and in fact what happened is that he was notified, the police officer, and he came down even to that police station.

So we have to continue training the police and maybe we could put something there within the legislation so that when the police refuse to take a report, in spite of the domestic violence unit, or they take it half-heartedly, or they do not prepare a proper receipt, because I have seen a receipt with the name of the person who is reporting, and absolutely no name of the victim. So especially when the perpetrator is a police officer, the police have their challenges. We ought to ensure that they in fact deal with it and continue to deal with the offence of domestic violence in the best way. And also, that we look at this as something that we can do for juveniles to keep them out of the prison system and that stigma of

having been in prison can be eliminated if very early o' clock we use that device to monitor the juvenile who needs to be monitored in a good way.

Thank you very much.

**Mr. Vice-President:** Sen. Sobers.

**Sen. Sean Sobers:** Thank you, Mr. Vice-President, for recognizing me this afternoon to contribute under these circumstances to an Act to amend the Administration of Justice (Electronic Monitoring) Act, 2012.

Mr. Vice-President, if you will permit me, this being my first contribution subsequent to this pandemic reaching our shores, I would just want to congratulate Trinidad and Tobago on the whole, for the level of resilience displayed by our people in terms of dealing with this situation. It really makes me feel comfortable and properly well-hearted, especially when I look at the words on our national emblem: "Together We Aspire, Together We Achieve". That together as a society we are aspiring to defeat this virus and we will achieve success in that regard.

Jumping directly into the Bill, because many speakers have gone before me and a lot has already been said, the Bill in my opinion is very direct, very to the point in terms of what it intends to achieve. I agree with some of what has been said by many other speakers, that it has been long overdue. I think especially in terms of the climate that we find ourselves in, in terms of dealing with a significant number of domestic violence cases, a significant number of offenders being trapped within the walls of the prison and who, for particular reason, should have an opportunity at accessing their liability with certain restraints, this particular piece of legislation would achieve that goal in proper fashion.

I think especially when it comes to domestic violence cases, as I will touch on briefly when I come to clause 9, many persons have spoken about the operation of the protection order. I can see as a practitioner before the courts that I have

been faced with clients on a number of occasions who after facing the court and going through the rigours of a trial, just to get the protection order, that piece of paper, that it still offers them no comfort. That most offenders who— the respondents to those applications really do not care for the piece of paper and they still act out their violent intentions and wishes as they see fit.

What many persons are not aware of is that even after a breach of the protection order itself, it is not that the person is arrested and carted away to jail. You still have to go back to court to prove that the breach in fact occurred and then the person is sentenced subsequent to that.

So having some type of hardware attached to, in some instances, the respondent and even the applicant, I think would bring a significant degree of comfort to those clients, those persons who find themselves before the court. Sometimes in those particular family courts, as we call them, a number of persons are there on a daily basis looking for some sort of comfort from both the State, lawyers, police officers and whatnot. So, for my part, this is in fact a welcome approach to treating with that as quickly as possible.

So I looked at clause 5 of the Bill, and I think Sen. Mark, Sen. Chote and as recent as Sen. Thompson-Ahye, and I think also Sen. Teemal touched on what could possibly an issue with respect to the delegation of duties by the director of the unit.

For my part, when I listened to all the Senators that spoke, and even reading the clause myself, I think the problem that I had, and I think maybe this is what troubled some of the other Senators as well, when we are dealing with delegation of duties by senior personnel within other divisions, let us say for example the TTPS, and we have in other pieces of legislation crafting and enacted circumstances that would allow delegation of duties, we usually set the bar when

we are dealing with the TTPS, sometimes a delegation to a sergeant or an inspector of police because we are well aware as to the organizational chart of the TTPS, the experiences, educational background of those officers that we say duties can be delegated to.

I think because this particular unit being very new and we are not entirely certain as to the organizational structure of the unit, it may have troubled some of us when we read it, that some very important functions of the director can be delegated to other members of staff of the unit, without us specifying in particular where that buck should stop or who it should be delegated to, because we are unaware as to members of the unit itself, and the expertise and functions and experiences that the person with whom that authority is delegated to would possess. So I do not know if it may very well be possible that we amend, in terms of the committee stage, that we could maybe include something there that could bring the necessary comfort and relief to Senators who would have spoken before me.

I also looked— because the clause speaks to the oath of secrecy. For my part, I really do not have much of a difficulty with the words, save and except for the oath speaks to—I think is line 8 or 9—

“25

...by me as a result of my employment to any unauthorised person, orally in writing, without the previous sanction of the Director/Manager...”

Because there is going to be some degree of delegation. I am wondering whether or not that could also be altered to reflect “Director/Deputy Director or authorised officer”, and it is also amended at the base where the signature is required of these individuals as well too. Again, but that is for the committee stage if we are looking at that, at that juncture.

**2.00 p.m.**

I then looked at clause 9 that a lot of us have spoken about. And a lot of persons, as I opened, also spoke about the need for such relief to persons or victims of domestic violence, and the ability in this particular section to allow an applicant to avail themselves of actually having some sort of device fitted on their person for their day-to-day activities, and in passing at the recess I spoke—in speaking to Sen. Teemal and the hon. Attorney General, we spoke about the audio and visual issue raised by Sen. Richards, and I mean when I read it, and also in terms of listening to Sen. De Freitas, for me audio and visual simply meant a noise being made in the event respondent was within close proximity, and the hon. Attorney General indicated that as well too in his winding up, but the visual part of it simply may be a light going off or something like that, so that the applicant is aware that the threat is eminent or is within the vicinity.

I also just wanted to comment a bit and I believe the AG in winding up would also touch on this as well too. I think there should be some narrative within the next couple of days in terms of the roll out of this particular initiative to the public informing them of the capacity, the ability, the infrastructure, the manpower that the Domestic Violence Unit of the TTPS has to date, because I am aware that they do have it, to treat with the rolling out and the operationalization of this particular Electronic Monitoring Unit, specifically as it pertains to domestic violence applicants, so that applicants will be aware that the device may in fact have a panic button as well to notify the unit if for whatever reason they may spot the offender, the respondent, even if he does not come within the proximity to set off the device itself, and that real-time information is sent to the TTPS so that they are properly equipped with the necessary GPS technology within their vehicle to quickly respond to the situation at hand and locate the individual and arrest

accordingly. So that I would want that level of information to be proffered to the public so that they are comfortable and well aware as to what they can definitely look forward to.

The issue of cost as well came up when looking at the clause itself, and I would have to agree with Sen. Chote in saying that many a times persons who apply for protection orders, a lot of them would do so through the Legal Aid Authority and attorneys would be assigned to assist them in their cases to apply to the court for this protection order by virtue of the authority itself, so that when it comes to cost many of them may very well not be able to pay for the device and it would really be a shame if they are not allowed to access the device because they are unable to afford it. So that I would want some consideration to be placed in terms of dealing with the issue of cost, especially for persons who would access the Legal Aid Authority to get an attorney to apply for this protection order as it may be. Because when you apply to the Legal Aid Authority to get a lawyer for this protection order you would automatically already have gone through a means test that would make you or qualify you to be legally aided, so those records could be shared with the Electronic Monitoring Unit.

Now, I also looked at clause 10 which is located on page 7, and this confused me a bit. So, clause 10 deals with amending section 11, and would allow for applications to be made for a device to be fitted on someone who makes an application for a presidential pardon. Now, presidential pardons—the operation of a presidential pardon under the Constitution generally would be for persons who the Act—the Constitution actually sets out the four instances where a person may in fact apply for a presidential pardon. So in most instances persons could very well be not incarcerated when they make the application for the presidential pardon as well as there are one or two instances where the person could very well be

incarcerated and is asking for a reduction in sentence as the case may be. The thing is, when I read the clause itself it says that the director—so:

“Before making a decision under subsection (1), a report shall be requested from the Director considering the person, which the Director shall cause to be provided as soon as it is practicable and where necessary, the person shall be committed to appropriate custody while awaiting the report.”

Now that particular part:

“...the person shall be committed to appropriate custody while awaiting the report.”

—is also repeated further down whenever someone asks the unit to prepare this report by the director.

And I am wondering, what would be the custody that we are referring to here? What is the appropriate custody that is being envisioned here with respect to this amendment? Because if the person in most instances has access to their liberty in the instance of the presidential pardon, then it obviously based upon the wording would not be appropriate for the person to be in custody pending the outcome of the report or pending the preparation of the report. But in instances where someone is already incarcerated, or is already in custody, or is the respondent to a protection order application, and that person is not in custody but has lost the case, then the applicant has been successful and the protection order has been awarded. Is it that during the period of time that the situation is being dealt with, is the respondent going to be placed in custody pending the outcome of the report? Which is something that I would like some clarity on.

I also looked at clause 14, on page 8, which amends section 16 of the primary legislation, and it basically calls for, which Sen. Thompson-Ahye was just speaking about, the replacement. Liability for the replacement of the electronic



monitoring device. As much as I agree with what has been said by other Senators with respect to cost and whatnot, I think that there should be some degree of responsibility also placed upon the person who has the device in his or her possession, let us say it is the applicant or even the respondent. The thing is what I would like to find out is the way in which it is worded here in this particular clause there is no representation of a sanction or a consequence. It simply says:

“...be liable for the replacement cost of the electronic monitoring device or protection device;”

What is the sanction or consequence if the person is found to be liable? Is it then that the authority or the court who the monitoring unit is going to file a civil action against the person to recover the moneys for the unit itself? And in such an instance would it be a situation where the candle will be costing more than the funeral? Because if the cost of the device is a couple hundred dollars, I am just saying, or even a couple thousand dollars, filing a civil claim to be compensated for the cost of the device may very well cost more than the actual device itself.

The last point I really wanted to make was actually cleared up by the hon. Attorney General in discussion with respect to the operation of the unit itself, with respect to passing on certain bits of information to the TTPS, and the TTPS being able to act on the information irrespective of being notified by the unit of a breach by an offender. The AG cleared that up for me. So in closing I really just would like to say that this is a particular piece of legislation that is really needed. It would in fact bring comfort to many citizens throughout this country who have been victims of domestic violence, and as much too also persons who may very well be incarcerated and may have an ability to access some degree of liberty with some degree of constraints. With those few words, thank you, Mr. Vice-President.  
*[Desk thumping]*

[MADAM PRESIDENT *in the Chair*]

**The Minister of Communications (Sen. The Hon. Donna Cox):** Thank you very much—I was just about to say Mr. Vice-President—Madam President. It is indeed a privilege to be afforded the opportunity to join this debate on what is without doubt a critical plank in Government's legislative agenda, specifically as it relates to the modernization of the criminal justice system.

This piece of the puzzle interlocks very neatly, Madam President, with measures already introduced to increase the number of judicial officers, the number of courts, the number of divisions within the courts and the drastic reduction in the number of offences requiring judicial time. When these are coupled with the introduction of a parole system, the increase use of community service orders and probationers report, the end result is a less burdened judicial system and by extension a judicial system that would deliver justice with greater speed than this country has ever known. And for this, Madam President, I offer my sincerest congratulations to the Attorney General and his team, the Chief Justice and his team, the Minister of National Security and his team, the Commissioner of Police and his team, and the Commissioner of Prisons and his team.

Madam President, I am aware that they worked tirelessly with stakeholders in the quest to transform the penal system. Every Bill that is brought before this Senate is important to the life and well-being of the citizens of this great republic, but some Bills are more equal than others. And the Bill before the Senate today is one of those. This Bill touches the heart of a very serious problem being experienced in Trinidad and Tobago, and that of domestic violence. The introduction of electronic monitoring for perpetrators of intimate partner violence or those against home protection orders have been granted will provide the level of

safety and security to victims that hitherto was not possible. And if one victim is saved from death the time spent in this debate would have been well worth it.

It is no secret that within recent times domestic violence has been a burning issue with fatal consequences in some instances. It is heart-rending to read in the dailies, even before you could have a cup of coffee, about the slaughter of another female at the hands of a ditched husband or lover. Now, I make no apologies for saying female because this statement is not to minimize or even dismiss the view that some men may be abused in one way or the other, but statistical evidence has never been presented where a male has been hunted and killed because he parted ways with his partner. In fact, a restraining order now takes on a different complexion as women have been murdered with impunity when this court document is administered. So it seems as though from the time you say, well, you know, I am taking out a restraining order, then that is probably an operative word to kill. I see the Bill speaks about a protection mechanism, and I am totally in agreement with this protection mechanism for the victim. Tracking of either partner if this Bill is successful, should bring a sharp reduction in assaults, and most importantly murders, once the process is effectively executed. Saving lives should be the ultimate goal as we debate this Bill, and if we care about the women of this beloved country, any legal methods used to ensure their safety should be applauded and not criticized or prevented from becoming good law.

Madam President, for 2020 at least 14 women have been killed, the vast majority of whom were victims of domestic violence. And as this country battles the ravages of COVID 19, one of the unfortunate bi-products is that many unhappy couples are now forced to spend more time together. Figures provided by the Trinidad and Tobago Police Service tell the sorry tale of a great increase in reports of domestic violence. At a press conference on the 10<sup>th</sup> of April this year the

Commissioner of Police reported that in February 2019 the TTPS received 39 reports of physical domestic abuse. In February of 2020 that figure had increased by 87 per cent to 73. Similarly in March of 2019 the TTPS received 42 reports of physical domestic abuse. In March 2020 that figure had increased by 129 per cent to 96. Put another way, Madam President, whereas the increase from February to March 2019 was 7 per cent, the increase from February to March 2020, was 24 per cent. So, Madam President, these are frightening, and if not sobering statistics, and should make us pause today to ensure that at least in this case we cast off the weight of partisan and pre-colloquial interest and lend our unstinting collective support to this Bill.

Madam President, when I entered representational politics in 2007, nothing I had experienced before prepared me for some of the stories of domestic violence I heard in my constituency and other places. Nothing prepared me for the nights when my phone would ring and I would hear screams coming from the other end or for the children I would see so frightened by a daily diet of abuse that the slightest noise would have them cower in a corner. Nothing prepared me for the women who would casually pull a knife from their bags and declare that they were prepared to spend the rest of their life in jail if they were attacked once more. Nothing prepared me for the impotence I felt for the waves of helplessness I would feel and for the tears that would repeatedly flow.

Today, Madam President, I can say to those victims, there is help. The protection order is now worth more than the paper on which it is written, because we now have the capacity through this technology to not only monitor the perpetrator, but also to alert the victim of any potential violation of that protection order. Let us not diminish in any way the full impact of the legislation before us today, especially as the numbers paint a very worrisome picture. And, Madam

President, the central registry of domestic violence reported 94 breaches of protection orders in 2017. This number increased by 22 per cent to 115 in 2018, and by 85 per cent to 174 in 2019. There can be no doubt that this Bill can and will make a difference in the lives of victims of domestic violence also. The youth of our country is also our investment for the future and this should be an area for much discussion, and we have recognized with great concern the behaviour of some of our youths in this new global village that influences these young impressionable minds through technology. The Children's Authority Act, concomitant with the Children's Authority, gives us a proper framework in which to manage these youths who may have fallen through the cracks. And we can argue whether incarceration of our youth is productive or counterproductive. Young persons may lose opportunities during the time being separated from society, and the loss of freedom may affect them mentally, physically and emotionally.

However, there are a number of academic and skills programmes at the Youth Training Centre to ensure that these young boys and girls are tooled and retooled for successful reintegration. But however, the preference once credibly assessed should be for these young persons to remain with parents, guardians and/or caregivers in an environment that may create easier transformation depending on the young offenders' willingness to change. In this regard, the use of electronic bracelets would give magistrates alternatives, rather than continue to utilize custodial sentencing in the absence of these facilities. And these bracelets will allow tracking of young offenders and give their parents some responsibility to ensure adherence to the rules and regulations, although the police unit will continue to have the ultimate responsibility to any deviation from the release guidelines.

I think I heard Sen. Khadijah Ameen speak about monitoring of high-risk inmates as one of the areas that this could be used, that I am in total agreement with that. Another important perspective is penal reform which has been the mantra of the Ministry of National Security and by extension the Government of Trinidad and Tobago, and in this regard parole is one of the reasons why electronic monitoring was being examined and articulated by both the prison administrations and the prisons association. And I note that the Ministry of National Security and the Attorney General are putting measures in place to bring this into fruition.

Madam President, one of the implications of this Bill is the provision of an alternative to custodial sentencing for judicial officers. For example, a person incarcerated for non-payment of maintenance cannot earn an income while incarcerated and therefore continues to be of no use to the aggrieved party. So surely than application of the electronic surveillance technology would allow the person the opportunity to either continue earning an income or allow for the opportunity to seek out gainful employment. The prison system and the tax-paying public will also not be burdened with another client whose stay at the prison is fully funded by the Treasury.

Madam President, there has been in the public discourse a narrative about the amount of money being spent on the 300 electronic bracelets that would form the basis of this electronic monitoring exercise, and it has been widely noted that the value of the tender was 10.3 million for the provision of 300 bracelets over a three-year period. But that works out to me—well I am not a financial guru so I did my own calculation. I heard different calculations. I do not know what was used but my calculation tells me that it works out to one bracelet costing the taxpayer approximately \$1,000 per month, which is less than 50 per cent of what it currently costs to keep a prisoner incarcerated. This is not only tremendous value

for money in the introduction of the electronic bracelet, but a more than healthy return on the investment.

In closing, utilizing this instrument to track and control persons who would have run afoul of the law will act as a major conduit for overcrowding in the prisons. It would also offer real time monitoring of offenders, therefore would increase public safety. It will ensure the safety of our female population and even other individuals, whether male or female who have been given the restraining order instrument as a safeguard. It would also allow children to remain in a more comfortable environment whilst getting the corrective interventions much needed. It will ensure that persons do not rot in prison, who may have turned their lives around and are looking for a second chance.

Madam President, I have no doubt that all of us gathered in this august Chamber grasp fully the significance of this piece of legislation and the implication of its safe passage. I have no doubt that in the end we would do the right thing. As for me and my house, we would give our unequivocal support to this Bill. I thank you. [*Desk thumping*]

**Sen. Dr. Varma Deyalsingh:** Thank you, Madam President, for recognizing me in this discourse here. First, Madam President, I might say I was a bit disappointed that since 2011, 2012, this Bill—you know, it was actually there waiting to be proclaimed. And I looked at that delay as somehow a “mis-justice” to the women who actually succumbed in this time.

So it is about eight years, and I think the nation needs an apology in the sense that we had this legislation in place but people were still allowed to be maimed, killed, die. And you see it is not just the women and their relatives, but it is the entire country, when they see these atrocious murders occurring, sometimes children being involved, it really hurts us. So eight years we have, but I have to be

thankful that at least it is here, and I have to say I am very privileged that at least I am here to help in this sort of debate. I was in a position where domestic violence I had presented a few papers, and for years we have been looking at this situation and we have to thank the previous Government, and I think it was Mr. Herbert Volney who moved this piece of legislation, and again delays, but we have to thank again the Government for bringing it here. And Sen. Cox mentioned a few people we have to thank, the Judiciary, we have to thank the Commissioner of Police, who definitely has to be thank for bringing this gender-based unit to the forefront, and this is something we really, really needed.

You see, Madam President, I had personal experiences with persons who actually were victims of domestic violence, and I had one instance where one of my patients died. I must say now as this is going through here today, one of my close friends, Madam President, Marcia Henville, one of my close friends, we used to have discussions. We help people. And I am sure from heaven, wherever she is, she would actually be looking down and saying—she would have called me if she was alive and say, “Varms, thank you, this is coming.” So we have to thank again the Government and the Opposition and those here to try to push this forward.

Madam President, I must say too, as giving thanks we have to give thanks today, strange enough, to—people may find this strange—Spiderman, because when our friendly neighbourhood Spiderman, and I read *esquire.com*, an article by Matt Alleyne, where Spiderman created electronic bracelet. Now, from the history we knew it was a psychologist called Skinner who actually had twins do some experimentation and social psychology. But it was a judge called Jack Love back in 1977 who had a Spiderman comic, where somehow a tracker was placed on Spiderman. And that judge actually had an IT expert make the first sort of



electronic tracking device where he used for some sort of a home, some sort of grounding. So what I am saying is, we have to be thankful to all, and there is an article, Madam President, I would like to read where it is from the journal of the offender rehabilitation, Vol. 46, Issue 3/4, dated 2008, pages 101 to 118. And the title is From B.F. Skinner to Spiderman to Martha Stewart: The Past, Present and Future of Electronic Monitoring of Offenders. Again, it went through the whole idea that it was this judge who read this comic and other persons who contributed to it that we reached here today. But, at the end of this article significantly, the author suggested that the goal of long-term public safety will be most likely achieved if the unique technical capabilities of electronic monitoring are used in combination with interventions based on social learning theory. So, the electronic bracelets, yes it will help, but you have to have other parameters in place if we want to get that social change.

But, Madam President, I would like to say that probably COVID pushed this here, because as I say Sen. Cox mentioned the figures of probation infractions that occur. People are still not obeying when you have these restrictions. And again, we know during COVID and the lockdown we have noticed that the rise in the domestic violence, as you had mentioned, and those are facts, we know that. And then we are forced to do this also because of the prison situation. We cannot afford for one prisoner in the prison situation to get this and a whole set of prisoners to come. So again we are being forced into this position, but thankfully it is something that I am thinking for the benefit of the health of the prisoners and the rest of us, and the health of the economy, this is a good move. So therefore COVID is not only just fuelling the state of respiratory distress, it is fuelling domestic violence also, and this is what we have to understand. So this section 9, I am thinking it is a victim-based, you know, victim-friendly piece of legislation

which was much needed years ago. Years ago this was needed, so we have to be thankful that that is here.

Now the issue I have, Madam President, is, you know, we are all grounded virtually, we are grounded because of this COVID lockdown. You know, it is not to say it is an electronic virtual bar or a virtual wall as this Bill proposes. We are locked down. So we know the strains that occur, we know that the lockdown itself will give us that degree of frustration, but what I am saying, Madam President, is the lockdown itself that we are going through voluntarily, it actually would make us realized there is some benefits for it. So there are some benefits for persons who cannot have their movement, cannot go out, so there is some benefit there. But therefore I need to emphasize though, not everyone would like the idea of the electronic lockdown. Some people would criticize it. Some people would see that this may be a way of—when you played Monopoly you had a card called “get out of jail”. Some people may use this and think that the elite may be able to use this as a get out of jail card. Because, remember, Madam President, in the United States there are certain high profile persons who used this piece of legislation to come home. And you see I felt initially when I looked at this and I realized what was going on in certain other jurisdictions I felt hurt, because we all remember the case of Roman Polanski, this guy he makes the movies, he actually was a famous fugitive from the American justice, and he actually was having sex with minors, 13 year old, and he escaped the justice.

**2.30 p.m.**

But what end up happening at the end, he actually had to pay 4.5 million bail, but he lives now in his resort, where basically some people may say, is that a punishment? You have destroyed the lives of so many young girls and it goes—I mean, we have other persons, like Dr. Dre in 1992, a rapper, we had Lindsay

Lohan, you know, a lot of elite persons. So therefore we cannot use this mechanism—and that is why the rules of the judges that they allow to develop this, they have to be careful with the balance, that it is not looked at that certain elite want to get away, white collar criminals may use it and be able to stay home, have their own parties at home, have their own, you know. So it should not be looked at in that manner. What I am saying the judges who are going to make these rules have to be careful that society does not feel somehow white collar criminals can get away.

So, there were other pieces of concerns I had about this Bill, Madam, in the sense that you had—initially when it was proposed in 2012 and it was not proclaimed, I looked carefully at this piece of legislation, what was happening to it. Because I am seeing I had people who actually died and I realized up to recently the Government had a plan to have a pilot study—where that pilot study, it was a small area, they are going to see how it would be working and I was happy about that, because I say at least it will get out the ground. But from the pilot study it came to this nationwide sort of thrust, which again, commendable. But when I looked at the pilot study, why I want to bring this up because people were talking about cost, the cost factor. And if you are having a pilot study, I was thinking if you have a pilot study in one area you might be able to hire one security firm to help you, in another area if there is another security if you are having a base there because there are few security firms you may have a different area.

So therefore, in a sense, not one person will get the entire pie. It would be unfair to people because the rumblings outside, it may be a monopoly, we heard these things. But, be it as it may, it may be better to have one coordinated body. But I am saying cost factor came up, \$10.3 million just to establish it with the Israeli counterparts, but then we still have to factor in the cost of the director and

the staff and setting up this unit will be a continual cost. But, again it was mentioned by one of the Senators that the Attorney General tells us about the high cost of keeping criminals in our prisons. It is a high cost to taxpayers.

So therefore what I am saying, Madam, I just want to just relate the factor of the cost is that, I just want to read this, “State-By-State Court Fees”, May the 19<sup>th</sup>, 2014. It is by NPR, [www.npr.org](http://www.npr.org), where they actually did a nationwide survey and they did find that it helped reduced the cost. So it is a good benefit for us, taxpayers wise. Because right now with the economy as it is, any sort of savings we can get I am thinking will help. But in this article what it actually said is that the burden of the cost is also shared by the persons having the bracelet. So therefore—they said it cost St. Louis roughly \$90 a day to detain the person awaiting trial where in 2017 the average stay was 291 days. When the individual now has to pay for the bracelet at \$10 a day for their own supervision, it cost the city nothing.

So probably in the future we may have to look at the persons who are getting their bracelet now having to pay that level of that bracelet. Now, they may argue that sometimes they cannot even afford their own bail but they had a sliding scale where they afforded that person that opportunity. So this is something that I am thinking that we have to look at. And also it was mentioned that some probation officers and sheriffs run their own monitoring programmes, renting equipment from manufacturers, hiring staff and running their own thing. So therefore in the future as cost was mentioned we may have to look at this idea of the burden being shared and also the fact that it would look like a monopoly affair.

Now, Madam President, I must say that when I looked at the cost of the running a body now that we are having, I am thinking we also have to look at, are there any failures that we need to look at. Now we have certain things in the

legislation but I just want to point out one thing, Madam President. You see, we have to look at what happened in other countries to know what we could prevent here because we are setting up something. So therefore, I just want to read here:

Criminals paid £400 pounds for loose electronic tags.

And this was *Sky News*, on the 15<sup>th</sup> of February, 2017, where there was a sort of collusion between the prisoners and telling the security officers put my bracelet loose and they can now go on their own frolicking. And they eventually caught up and they realized that—you know Trinidad, there were allegations too about police officers lending guns and uniforms. So we have to be aware that that is a level we have to be monitoring whichever security firm that we have there.

And again, looking the cost factor again I would just like to read in [politics.co.uk](http://politics.co.uk):

“Moj paid G4S & Serco millions for electronic tagging during fraud investigation.”

This article, Madam, was by Ian Dunt, Tuesday, 25<sup>th</sup> of June, 2015. And the whole idea is, it is two security companies overcharged the Government for their electronic services and this happened in the UK and this caused a big investigation. So we have to be able to monitor carefully what we are paying for. So those two things are issues that we would have to be looking at.

Now the other thing I would like to mention is, the fact is, Madam, we are looking at clause 9 as the safety factor. And I am pleased with the fact that we have clause 9, I am pleased that the Commissioner of Police had that Gender-Based Violence Unit. But you see, Madam, if you have a call coming in to this unit for somebody who has left their premises, who was under a curfew or a lockdown, and a call coming in for somebody who is now going to kill their wife, who is breaching that order, we have to have some manner to prioritize.

**Madam President:** Sen. Dr. Deyalsingh, you have five more minutes.

**Sen. Dr. V. Deyalsingh:** Thank you. So therefore, what I am saying we have to have that plus if we do not have a faster police response time, if we do not have vehicles for the police, we are back to square one. So even though people may hesitate with the security companies not coming on board, I am thinking we should have a way where the security companies are also called together with the police, together with the gender-based unit. So you call all three, whoever arrive on the scene first may be able to defuse that situation.

So then I looked at the fact that, you know, people may say it is a Big Brother control, if I do form a social control, but the whole idea is you know some attorneys also said it is a breach of constitutional principles of proportionality in sentencing and they say it goes against Article 7 of the ECHR. But I think we need it. We need it. We need it for the request to—what the COVID has presented to us and we also need it because of the clause 9 which I think would definitely save lives. And, Madam, I just want to look at one aspect of the legislation where—I want to look at clause 8, where clause 8 looks at (e), they are looking at—the Act is amended, where you are looking at different areas where you could put in this sort of order, like:

- “(a) a probation order...
- (b) a community service...
- (c) and any other application which in its discretion it consider appropriate to impose electronic monitoring.”

Madam President, in the United Kingdom there is something call TPIM which is, Terrorism Prevention and Investigation Measures and since Trinidad is on a terrorist watch list, people coming in from other countries, probably we may have to look, could this be implemented? The other thing too, there is something

called “scram bracelet” and a scram bracelet is one of those monitors where you actually see levels of alcohol and drugs and it gives a feedback.

So I am saying we may have in future to see if we get that to look for people who are drunk driving or on drugs and this I think is the future where we have to look at the bracelet wearing. In the past people used it for Alzheimer’s patients, patients with dementia. Again, we have to look at that possibility. The Government is planning to decant St. Ann’s Hospital, we may have to see, could we use it for patients outside without any sort of human rights abuse.

And as I close, Madam President, I am saying I think section 18 of the Act which is opening up to, which is not restricted to one police station, it is a very progressive one. So you could make a complaint to any police station and you would be able to get that, afforded that service. So I thank you, Madam, for giving me this opportunity to present and I thank again the Attorney General and the Minister of National Security for bringing it at this time. Thank you. [*Desk thumping*]

**Sen. Saddam Hosein:** Thank you very much, Madam President. I am deeply obliged for the opportunity to join this debate on an Act to amend the Administration of Justice (Electronic Monitoring) Act, 2012. [*Crosstalk*] Madam President, when I looked at the particular piece of legislation—I want to just begin by saying that in the Holy Month of Ramadan I would just like to wish all the Members of the Senate and Trinidad and Tobago Ramadan Mubarak. We have just completed the first 10 days of the month and hopefully we will be blessed enough to see the other 20 days as we complete this holy and auspicious month.

Madam President, with your permission, I would now get into the substantive part of the Bill. And when I looked at the parent Act and I looked at the Bill that is before this Senate, the electronic monitoring will only apply to two

instances and it will all fall in the criminal arena. In the first instance it would apply to the court being empowered to grant a sentence for the conviction of a criminal offence by electronic monitoring and secondly, as a condition for bail where someone is charged with a criminal offence. And I say this because this is outlined at section 9 of the parent Act which is also being amended by this particular Bill.

And this piece of legislation came in response to what is currently before us, which is this COVID 19 pandemic. And I looked at the Commissioner of Police at a press conference on the 9<sup>th</sup> of April, 2020, where some statistics of domestic violence were being given by the police service, by the TTPS. And in the year 2019 there were 232 cases. When you compare that to 2020, there are 558 cases of domestic violence. For the month of February 2019, there were 39 cases; for the month of February 2020 there were 73 cases. In the month of March 2019, there were 42 cases and in the month of March 2020 there were 96 cases.

So it clearly shows that there has been an increase in the number of domestic violence instances or incidents that is happening right now in Trinidad and Tobago. And when we look also at the protocols that were issued by the Judiciary we saw that matters for domestic violence were categorized as matters that are fit for hearing during this pandemic. So it shows the importance of these matters. And under the Domestic Violence Act a court is empowered to grant a protection order once it finds that there has been some level of domestic violence being meted out to the applicant or, for the duration of the matter, the court can issue an interim protection order to offer some level of protection to those applicants. And the Minister of National Security in a Ministerial Statement indicated that there are 300 devices, but we are seeing how much cases of domestic violence there are currently in Trinidad and Tobago. And that is one dimension in which the



Government introduced the electronic monitoring.

The second dimension would be in response to the WHO, the World Health Organization, in terms of how countries deal with their prison population in a pandemic like this. And it is no secret that Trinidad and Tobago, we have an issue with respect to overcrowding and poor prison conditions currently at our prisons. And, Madam President, it would be a disaster if there is one case of COVID in our prisons, then we are sure that because of the high rate of transmission of this deadly disease what will happen in our current situation and we would not want that to happen. And I know the Attorney General currently has engaged in litigation in which there are matters that are going to be reviewed in terms of the conditions for bail and also for the commutation of some sentencing by presidential pardon.

And, Madam President, with those introductory words I would just like to go through the Bill, some clauses that I have identified some issues with and I should not be very long after this. And I start at clause 4 of the Bill and I looked at the definition of monitored persons. And monitored persons are classified as:

“...a person”—which is defined in the parent law as someone—“...who is charged with or convicted by a Court for an offence.”

So that is one category. Then we have the respondents who would be the respondent to the domestic violence application, you have a child, a person who is under the age of 18 and an applicant who may be subjected to electronic monitoring pursuant to a court order. Now there is one addition I would ask the Attorney General and the Minister of National Security to consider, which are virtual complainants in matters, especially those in sexual offences. Because, Madam President, you would have persons who are on bail and the virtual complainants are the victims of the crime who would also be probably very close

proximity in terms of environment. I do not know if whether or not the legislation can contemplate that virtual complainants in sexual offences matters can in fact be added to the list of those persons who can be offered some level of protection.

The second instance I look at is in a kind of quasi criminal case, where under the Children Act there is now an application that can be made by the Children's Authority for a fit person order. Now this does not necessarily mean that a person who is charged with an offence has custody of the child. So if I may give the background to it, is that if a child is in a home or an environment whereby the child is being abused or he is in need of care and protection as the legislation outlines, the Children's Authority after investigation can make an application to the court in the civil jurisdiction to apply for a fit person order to appoint either a guardian or appoint either one of the homes in order to have custody of the child as the child is in need of care and protection. I wonder whether or not the legislation can also be extended to capture these circumstances whereby the persons who may be accused of abusing a child they can also be monitored under the legislation having regard to the fact that it falls under a civil realm rather than a criminal realm. Because not in all circumstances those persons may have been charged and be brought before a criminal court. So those are the two instances I am asking whether or not we can widen the legislation.

I am looking at page 3 of the Bill, the definition of court. And court is defined as:

“...a Judge, Master, District Court Judge”—which is now a magistrate then the Bill also includes—“Magistrate, Registrar, Magistracy Registrar and Clerk of the Court or Coroner...”

Now, I looked back at the definitions in the Criminal Division Act and Attorney General you may have to do some adjusting to this particular definition because we

no longer have magistrates, they are now called “District Court Judge”. I saw that there was the omission of Senior Magistracy Registrar and Clerk of the Court and also the wording of Magistracy Registrar and Clerk of the Court, that also has to be tightened up also so we can look at that at the committee stage of the Bill, just to keep in line and be consistent with the Criminal Division Act.

Also at clause—we are still at clause 4, the definition of “respondent”. I noticed we deleted the words from the definition of respondent “a person whom a protection order is granted or who a protection order is made against”. So the respondent is now being restricted to the definition of when the matter is live before the court rather than when an order is made. I just wanted to get the rationale for the deletion of those particular words which now excludes a respondent where an order has actually been made against a person.

I move at clause 5 which deals with the delegation of powers being given in this particular legislation. And this is found at section 4 of the parent Act, and section 4 of the parent Act gives the director the power. The Bill now will give the director the power to delegate his powers to an authorized officer. Now, I had to look at other pieces of legislation where delegated authority is found, and I looked firstly at section 127 of the Constitution, I looked at section 4 of the State Lands Act and I also looked at the Immigration Act. And whenever a power is being delegated from the substantive office holder to a subordinate or an authorized officer, normally the delegation is being made by order. And the importance of this is so that there can be some level of notice at large to persons so that they would know exactly which power is being delegated and also it can assist with the person whom the delegation is made to know the ambits of their powers in which they can act. Because acting under delegated authority a person will only be protected if he acts within the powers in which that was delegated to him. If you

act outside of that or you act on a frolic of your own then you would incur some level of personal or tortious liability.

So that is one instance I am also asking whether it could be adjusted so that there can be some level of notice so we can circumscribe and prescribe the exact power that is being delegated and whom the power is being delegated to. Now I looked at clause 10 of the Bill and clause 10 of the Bill it deals with the presidential pardons. And the only issue I have with this is that no timeline is being set, because once the report of whether or not the person is fit for monitoring by the director, whether or not there should be a time limit. Because you do not want someone to have applied for a presidential pardon and they serve their entire sentence and then the director makes a recommendation after the reports. I am asking whether or not we can just include some time limit so that we can encourage the public authorities to act in a very expedient and quick manner, because we would want these things to be disposed of quite efficiently and effectively.

I know a lot has been said with respect to clause 14 of the Bill which deals with negligent damage to the devices. And I join with Sen. Chote in her observations with respect to this point in terms of what will be the duty of care being prescribed to minors, especially children who may have the device on them. And I think that level of negligence is too low and maybe it can be adjusted to some level of wilful destruction or wilful interference with the devices and then make them liable. And in terms of a policy point I would like to enquire whether or not these devices are in fact insured so that you can prevent—so that in some instances persons who may not be able to afford to replace the devices whether or not there can be some security in terms of an insurance, so that once the device—we have limited devices and we have a lot of cases so that the devices can be

replaced quickly and replenished in a very effective—in a cost effective manner.

And, Madam President, I know we have had many speakers on this Bill already and a lot has been said and these are my very brief and succinct observations on this particular piece of legislation. [*Desk thumping*]

**Sen. Anita Haynes:** Thank you, Madam President. [*Desk thumping*] Thank you, Madam President, for allowing me to join in this debate on the Administration of Justice (Electronic Monitoring) (Amdt.) Bill, 2020. I will be even more brief than my colleague because I have just one point to add to this debate. Sen. Ameen and Sen. Chote raised it but I just have an addition to the point looking at clause 6 of the Bill, re: spatial data, the removal. And so I will do so briefly, Madam President, to introduce what my points are on this.

When we make legislation, Madam President, we are contemplating legislation for our time now to assist with what we are doing now and for the future. And as we move into an increasingly technological world our understanding of the term “data” as it were in the past, what it is now, and our contemplation of what it may mean in the future, when we think about this legislation it may encompass more than what even minds can come to here today.

Now, Madam President, I looked at a particular piece of analysis, the *Standard and Ethics in Electronic Monitoring, Handbook for professionals responsible for the establishment and the use of Electronic Monitoring* by Mike Nellis, in the Council of Europe, 2015. Now I am only raising this, Madam President, for the consideration of the Attorney General and the Government, because I want to make it very clear, the merits of this Bill profoundly outweigh any negatives that we can contemplate right now. What we are seeking to do will assist in protecting the lives of many innocent persons.

However, as we do that today and we move—and I am saying—the reason I

am entering this debate to raise this point is because I have seen it in pieces of legislation passed where you are looking to capture all data, and this concept of we need access to all data. And I am standing here, Madam President, urging caution because in our fight against crime and criminality in this country, which is critical, and we always talk about proportionality and the balancing of rights as it were and as we understand it now, but as we move more and more of our lives online, Madam President, that balancing act becomes even more tenuous when you talk about the concept of all of the data. And I note in particular that clause 4 of the Bill seeks to extend the definition of electronic monitoring device to now include a device which operates not only on GPS or radio frequency but on a telecommunications network which is used to monitor compliance and conditions of release of a monitored person.

So, again, Madam President, what I am discussing here is the balancing act of electronic monitoring, data analysis and data protection and how we are thinking about it as we draft legislation for the future. As we balance justice, protection, safety and how we think about rights in an increasingly technological world we need to be careful as we put these words “all data”, wide data capture in our pieces of legislation. And I say this, Madam President, my solution as I will put forward to the Government right now is to have continuous monitoring and evaluation to ensure that the system works as it is intended to work and to protect ardently against any abuses in this system. This is not to say and I hope no one tries to misconstrue what I am saying about—they trying to protect the data of criminals, et cetera, it is not anything like that. It is to say that as we contemplate law and legislation today, including things meant for the benefit of all of society, Madam President, we must do so understanding that when we discuss rights and privileges, et cetera, and you talk about data that we should not be trying to capture the widest

amount but that which is most necessary to meet the legitimate aims of the legislation. And that, Madam President, is my intervention here for this Administration of Justice (Electronic Monitoring) (Amdt.) Bill, 2020. Thank you, Madam President. [*Desk thumping*]

**3.00 p.m.**

**The Attorney General (Hon. Faris Al-Rawi):** Thank you sincerely, Madam President. Madam President, I start off by saying to this honourable Senate, thank you to each and every Senator present here. I would genuinely like to put on the record—and I think today has been one of the most productive debates we have ever had. I somehow think that the reduced speaking time has helped us to get succinctly to the point, and I genuinely think that we have done the very best that we can in terms of the measures before us today. Madam President, permit me to dive to the responses to the issues raised by my learned colleagues. There are some issues that are in common for several of our Members and there are some issues upon which there are some diverging points of view. So perhaps it was easier if I were to treat with this in terms of an individual response to hon. Members.

So, Madam President, I would like to say the first point that has come up was raised by Sen. Mark, and in Sen. Mark's contribution I do acknowledge that the electronic monitoring legislation was born under the Administration of Justice (Electronic Monitoring) Act brought then by the Minister of Justice, Herbert Volney; secondly, that that legislation was certainly one which had quite strident views coming from then Opposition PNM, and I would like to say that the views taken by me in particular, sitting as a Senator in Opposition, are consistent with the approach that we have adopted today. And permit me to say that very quickly,

number one, we did engage in a pilot programme in terms of seeking the operational parameters to be clear.

In encouraging the birth of the electronic monitoring operational system and in looking at the setup of it, and in causing the 300 bracelets and devices to be procured, we certainly did sit with the Judiciary, with the Trinidad and Tobago Police Service, with the Electronic Monitoring Unit, the Ministry of National Security, the Attorney General's office, and put in place an operational structure which we effectively understand in its terms and conditions how it will work. So there is no inconsistency then in our position with now because we have effectively, as we would say, beta tested the system.

Madam President, I can say that the rationale for bringing this into effect now is not really only because of the COVID issue. It is entirely because of the other reforms that we have caused to be made. And I want to remind that the first public consultation that I as Attorney General engaged in was in 2015 on the prison system. That was specifically the focus so that we could measure one of the areas that was worst performing in Trinidad and Tobago. The litmus test that was engaged in, in looking at the rate of flow of remandees to the court and then the rate flow out of convicted persons on how they were being managed had to be done first, and that is why we know how long people have spent in incarceration before their trials were engaged in, what mechanisms we needed to look at, how we wanted to treat with the recidivism from the convicted end.

That is why we can say now, quite easily, \$15,000 to \$20,000 per month per prisoner to keep in incarceration; we can say now that there was a need for child rehabilitation centres; we can say now that there was a need to quicken justice by the implementation of divisions of court, the Criminal Division, the Family and Children Division, the Probate Division, the amendments to the Civil Division, the



implementation of rules of court, as we have introduced the Criminal Procedure Rules; the use of maximum sentence indications, the use of plea bargaining, the use of judge only trials, the improvement in the number of judicial officers as we raised the number of judges from 36 in the High Court to 64; from 12 Court of Appeal judges to 15; from two masters to 25 masters as we get there; from 11 criminal courts to 69 criminal courts, and so we go. In other words then, perfecting the formula to improve criminal justice by plant and machinery, people, processes and then law.

It may be lost upon persons that the payment into and out-of-court legislation, that Act of Parliament was a simple Act which some people believe only facilitated the payment of moneys. No, Sir. It encouraged, Madam President, electronic filing for the first time, and today we sit in a COVID pandemic with courts operating on emergency basis where we are in fact filing electronically all our court documents. And therefore it is the combination of events logically managed by this Government, logically managed by the Office of the Attorney General that have allowed us to move into this solution delivery mode as effortlessly as we have, Madam President.

So, Madam President, Sen. Deyalsingh is right, we are eight years past the passage of the law, four of those years spent under the UNC's operation, but four of them actively spent under this Government where we had to build out plant and machinery, people, processes and law, because every single one of our laws are operationalized in the large part when we look to the moving pieces that needed to be put together. It is no small feat to be at the cusp of opening an entire Civil Division at the Waterfront courts. It is no small feat to have retained the services of 23 masters, as we come to the full number. It is no small feat to have opened the DPP's office in Tobago to nearly be at the point of opening the DPP's Office in

Port of Spain, to have last week confirmed the opening of the DPP's Office at Gulf City, San Fernando. It is no small feat to have hired the Chief Public Defender and opened the Public Defenders' Division with a brilliant young lady who served as an Opposition Senator.

Sen. Khadijah Ameen knows her well, Sen. Saddam Hosein knows her well; Sen. Hasine Shaikh as she sat on the UNC Bench in this Parliament is the Chief Public Defender. That by itself demonstrates the attitude of this Government, that there is room for all in this country and that talent is what you must go for over politics. So, Madam President, permit me to have put that on the record. Permit me to remind Sen. Mark, respectfully, that the position of the Amalgamated contract, that contract in fact was launched—there is a newspaper article, Friday 22 November, 1996, under the UNC Government where Amalgamated Security was given the contract for justice on time. That contract grew as the number of transportation issues grew. They have provided value for money. We cannot see that the issue of Amalgamated Security is an issue today simply because this Government is in power when they have operated commendably for the service of Trinidad and Tobago for decades. They have in fact reduced their bill from a high point of forty-four-odd million dollars, including VAT and NIPDEC fees down to \$25million, and there is nothing untoward with their excellent provision of the electronic monitoring services. One would expect that a company of that capability has the capacity to do as they won the contract in fair and open tendering circumstances as the public record reveals.

Madam President, I welcome to attention to domestic violence, and I say quite squarely that the issue of domestic violence has been taken up by this Government, we birthed the Family and Children Division; we birthed the Domestic Violence Unit at the TTPS; we birthed the Child Protection Unit at the

TTPS; we did the rules of court to treat with that, and as the population is well aware, we have taken amendments to the Domestic Violence Act. We have received the stakeholder commentary. Tomorrow I intend to tidy up the remaining aspects of that Bill to move to Parliament to amend the domestic violence laws for the first time in a significant way, and certainly by this Government only attending to it since its passage many, many years ago in 1999.

Madam President, I turn quickly, if I may ask what time full time is, please, Madam President?

**Madam President:** You finish at 3.30.

**Hon. F. Al-Rawi:** Three-thirty, much obliged. I turn quickly to the issue of the three-fifths concern that Sen. Mark raised for consideration, I respectfully do not believe that this Bill requires a three-fifths majority for any of its aspects. Sen. Mark touched effectively, (a), upon the right to privacy, right to private and family life; (b) upon the aspects of potential, as he saw it, discrimination for people in certain circumstances; and, thirdly, the issue of property. Permit me to touch upon those very quickly. Madam President, when we are looking at the use of electronic monitoring we are looking at various entities having the power to recommend electronic monitoring.

It is not true to think of this as only the court. The court has the discretion on consideration of bail or alternative methods to sentencing. The court can become functus after it has passed that; it has granted bail, the matter may move on to a different judge, conditionality may be electronic monitoring for an aspect of bail. They may convict someone and say, "Look, you are going to be convicted and one of the conditions is we will allow you out with electronic monitoring", but there are other personalities; the Mercy Committee. Under section 87 of the Constitution the Mercy Committee advises Her Excellency the President on the

power of pardon which includes conditional pardon, and therefore a court has no role or function in those recommendations. Therefore, a competent authority must include the Mercy Committee. A competent authority also includes the Commissioner of Prisons and the Commissioner of Prisons is not necessarily an authority which is why we have removed the word “authority” and put “person”.

The Commissioner of Prisons acts under the Prison Rules. Section 285 and section 285A of the Prison Rules allows the Commissioner of Prisons to effectively allow you to come out of the prisons environment upon utilization of the Prison Rules. As a matter of record, in taking the action as Attorney General that I have to look at the COVID situation with respect to our prisons—why?—every prisoner who is afflicted to COVID is entitled to a bed and a ventilator and therefore our system can crash if you do not look at the “hot spots” for it. As a matter of record this Government has witnessed, in the action taken by the Attorney General’s claim in CR No. 2 of 2020, 121 prisoners and counting having been released already under the purview of section 285 and 285A of the Prison Rules. Madam President, in the exercise of discretion the qualification is really not an equal one. Discretion after all is a factor which has variables. Therefore, so long as the exercise of discretion is reasonable, from a justiciable point of view, that is all that matters, and we have, quite simply, put into effect this whole concept of exercise of discretion.

It is not true to think that the protective device is one where there is a discrimination of treatment or where there is a breach of private life, and I say that in answer to Sen. Mark’s concerns on the new section 10A, and that is because you get that protection device as a person with a protection order by way of your voluntary participation in the process, and therefore your right to private life is not being intruded because you agree to be in that process. If you do not want to be in

that process, well then you are not in.

I thank the hon. Senators, Sen. Sobers in particular for clarifying this point of view from his perspective where we are looking at the issue of the protective device. The sound and light signals are intended to be alerts. There is no position of interception of audio or visual, that is really just a flashing alert. If the sound device is off and it is a sound device in any event, the Administration of Justice (Electronic Monitoring) Act is subject to the Interception of Communications Act. Why? Communication includes any form of communication over a telecommunications network, and we are specifically using a telecommunications network to carry data as one of the options.

Permit me to address that point of radio frequency. The radio frequency reference is a term of art technologically driven at describing the transmission of data, not audio, and that is because we are using GPS, GPRS, geostationary issues in a larger sense, and also radio frequency. It is called an RF identifier. It is commonly found in number plates in foreign jurisdictions. Number plates have an RF tag, so when you go under a bridge way, like a SunPass in the United States of America, it will click the fact that you have passed there. It is a radio frequency ID and not a radio frequency to allow voice or audio transmission.

Madam President, when we look to the positions of the contract of the Director, the Electronic Manager, the Deputy Electronic Manager, we have effectively managed the qualifications by the advertisement for those positions; the Freedom of Information Act applies. In answer to Sen. Teemal's position about the oversight for standard operating procedures, et cetera, I would just like to add, the oversight mechanism by the Minister, as the hon. Senator questioned, is in fact a feature for any of the provisions of the Electronic Monitoring Unit. Number one, it is a division of the Ministry of National Security; number two, the exercise of the

conjoint force of section 75 of the Constitution with section 79 of the Constitution means that the Minister must approve the aspects that come to him or her, as the Minister's case may be, and that is a proper exercise of Executive function under the Constitution. So there is a check and balance. That is further amplified by the reports which the parent law require by the fact that the Auditor General has supervision, and that in the instance of the court that the court has jurisdiction as to the use of electronic monitoring. Similarly, the prisons fall under the Prison Rules, and there is a full functionality and transparency under that, and then the Mercy Committee is a public record as well where Her Excellently the President has purview for that. So all of the supervising aspects are safely captured in law.

I would like to deal with the point of parole by Sen. Mark. I would like to tell Sen. Mark the parole Bill is ready, we intend to bring it to Parliament. The parole Bill in any event has been actively measured by our active utilization of sections 285 and 285A of the Prison Rules. That is why I can tell you in one matter alone 121 prisoners were already brought into the public domain after the proper exercise of discretion by the Commissioner of Prisons. Madam President, the reference to the removal of "spatial" from the definition of data is because we did not want the law to be read as only geo-positioning data or spatial data. We wanted all data captured so removing "spatial" removes the limitation in the law and widens the purview.

The use of "standard operating procedures" is not recommended by way of an Act of Parliament, and I will say why. It was effectively applied in the DNA categorization of laws and that was again a feature coming from the last Government. We thought that it was prudent to utilize that position in the Administration of Justice (Electronic Monitoring) Act, and therefore the standard operating procedures which are discoverable are equally best managed by the

purview of standard operating procedures. It allows for flexibility of operation.

The very useful submission coming from Sen. Chote as to the use of affirmative resolution as opposed to negative resolution, if I can just touch upon that. The affirmative resolution route is in fact a very difficult resolution route to manage. The negative resolution allows an equal opportunity for amendment but in a by far more flexible way. We do not propose in the run that we estimate to be going along the line of Judges' Rules. The rules of court, which are negative resolution rules of court, which the Supreme Court of Judicature Act contemplates, and many other laws allow for the Judiciary to make rules of court, we are looking at rules not of the kind of Judges' Rules or criminal application standards. We are looking at it in a different way, we are looking at the management of the process type akin to civil or criminal or probate proceedings rules. So we are not looking at the Judges' Rules aspect, and we are certainly not permitted by law to engage in subsidiary legislation traversing in a negative way any three-fifths right. Those rules would be ultra vires. So I am comforted by the fact that the rules of court cannot infringe upon three-fifths majority issues because that would have to be done by way of a primary piece of legislation.

Madam President, the victims of domestic violence units, I can say right now, 50 out of the 300 units are immediately intended for domestic violence applicants. We agree that a prioritization needs to be exercised in this regard. I think Sen. Chote was 100 per cent correct, as were many other hon. Senators in this Chamber that we need to have a prioritization. I welcome the pointing out of the sexual offences and the risk in that terrible example that the hon. Sen. Chote gave to us, a very real case that the hon. Senator shared with us.

Madam President, if I can go to the issue of negligence which was shared across the platform. Madam President, we have looked at the issue of negligence,

and I would like to give some insight as to why we raised it. We thought it important to introduce a positive obligation upon the recipients of the devices because the parent law has to manage a responsible approach. Obviously the court has a discretion in the circumstances to answer the issue as to the standard of care for the child; obviously the standard of care for the child is going to be significantly different from the standard of care in negligence for an adult. The person with responsibility for the child has a role to play in that concept. But we looked at other legislative formula/formulae and they all contemplated that aspect of being liable for the device itself. Why? It is a privilege for alternative treatment on the law. As opposed to staying in jail you are getting an opportunity for freedom.

It helps with recidivism, it helps with reform, but there is a nuclear provision in this law. When we say that electronic monitoring can be available to the child, it includes all matters of child charges, including murder. I gave an undertaking to this honourable Senate when we were looking at the provisions for bail that there was a burning question as to whether we should broaden the bail ability for children, and this is actually the avenue into that where the charge is for murder. Those are the First Schedule offences. This therefore allows a dynamic instance of opportunity. I agree with Sen. Chote, and I wish to say that the Government is of course going to have different rules for the child versus the adult, and that comes under the divisions of court, because now all child matters are dealt with in the Children Court. All child offences must be dealt with the Children Courts, child charge matters and conviction issues.

Madam President, we of course think that this is an opportunity for a significant amount of evolution. Whilst we start with 300, and I think the hon. Senators know well my mantra, “just start”. I have said it a thousand times before,



“just start”. We have found by way of our experience a very novel catalyst which is the “just start” formula. We have managed to birth a lot of reforms by literally passing laws and taking administrative improvements on an initial basis which has morphed into a full run basis, and the payments into court and the electronic filing, and the Criminal Division, all of those are ripe examples of success in just starting.

Madam President, if I go to the “Oath of Secrecy”, I did take a look at the DNA legislation, thanks to Sen. Mark. I looked at it in the context of a recommendation for improvement. The DNA legislation does not go so far as this one does. The oath of secrecy confined there is for the currency of employment. We have specifically broadened our aspect to after you are employed and we are capturing consultants in the dynamic as well, so that is employees that are permanent that are on staff, employees who are in the dance of being consultants and their employees.

We have sought to capture the individual, Sen. Teemal, as opposed to the entity, but the entity is obviously going to be contractually bound, and every single person who is involved in that arrangement, an individual basis, signs the oath of secrecy, because we want to attach the criminality to the person as opposed to going through the loop of the entity itself. The entity we can catch as well at law because the person can be captured in a corporation as well.

**Madam President:** Attorney General, you have five more minutes.

**Hon. F. Al-Rawi:** Much obliged, Ma’am. Madam President, I would like to just remind that the cost per bracelet looks like \$1,000 per bracelet now, or device, but there are economies of scale. We can add 700 more devices on and we would therefore have the operating system there, so the more devices we get on is the more the cost is going to be measured downward simply because of the extrapolation of the economies of scale. The denominator and numerator in the

equation is going to change; the more you have on the bottom end of the equation is the less the cost gets. So obviously the denominator growth, the number of bracelets that you have, is going to reduce the cost downward; \$1,000 per person managed on the system is a whole lot better than \$20,000 per person for incarceration as we have it right now.

Madam President, we are looking at the issues. I thank Sen. Hosein for raising it, of the definitions of the “clerk”, “magistracy”, “registrar”, et cetera; I believe we have captured it, but we are certainly going to look at it at the committee stage. Madam President, the law is good law, we have a lot of good laws on the books. One of the most prolific Attorneys General in Trinidad and Tobago in terms of the development of law was the hon. Ramesh Lawrence Maharaj, but the vast majority of law passed by an excellent AG that he was, was not operationalized. What we have sought to focus upon in this Government’s tenure is passing law and operationalizing it at the same time, and that is why we can see so much in active pursuit. Children Courts are up and running, public defender is up and running. The move to the abolition of preliminary enquiries is imminent. The move to the reduction in cases, the number of cases is upon us, we are cutting off numbers by the thousands.

In this tenure of this Government we are more than likely capable and able to achieve a reduction in the magisterial caseload from 146,000 cases per annum down to 8,500 cases per annum, and that is simply by the Motor Vehicles and Road Traffic (Amdt.), the abolition of preliminary enquiries, the decriminalization of marijuana; that takes us from 146,000 cases per year to 8,500. We can and will do this. What is required is a focused attention upon operational structures whilst you legislate plant and machinery, people, processes and law. So that you can, quite confidently as I wrap up, next time you see a protest against the Criminal

Division Bill as it happened—I remember Watson Duke sitting down outside the steps of the Hall of Justice protesting. Thank the Lord God that we did not listen to that as we hired 516 people, birth the Criminal Division, and today virtual courts, electronic filing, more judges, [*Desk thumping*] more staff, computerized requirement. Not every person that portrays a concern is necessarily someone to pay attention to.

Madam President, I thank you for the opportunity to wrap this Bill up on behalf of my colleague, the Minister of National Security, and I beg to move.  
[*Desk thumping*]

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

**3.00p.m.**

**Madam Chairman:** Hon. Senators, I remind everyone that there are 25 clauses in this Bill, and we are about to begin the committee's deliberation.

*Clauses 1 to 3.*

*Question proposed:* That clauses 1 to 3 stand part of the Bill.

**Sen. Mark:** Madam Chair, under clause 4(a)(i), I would like the Attorney General—and Madam Chairman, I want to apologize for not being able to put my concerns in writing.

**Madam Chairman:** Sen. Mark, I think other Members are having some difficulty hearing you. So I think you need to—

**Sen. Mark:** Speak a little louder?

**Madam Chairman:**—just lift your voice a little bit. Yeah? [*Crosstalk*]

**Sen. Mark:** I am speaking my normal terms.

**Madam Chairman:** Sen. Mark, you just speak to me.

**Sen. Mark:** Yes, Ma'am. Thank you very much, Madam Chair. I said I was apologizing for not being able to circulate in writing my concerns. But I hope that the Attorney General would exercise some patience as we go along.

Madam Chair, clause 4(a)(i): “global positioning system”. I wanted to ask the Attorney General why we had included the term “or above the Earth's surface” and to tell us, for instance, what implications are there for data and for privacy of data in the context of this expansion of the definition of “global positioning system” or GPS? I think that there is where I wanted to get clarification, Madam Chair.

**Mr. Al-Rawi:** Thank you. I thank the hon. Senator for the question. The first point is that the Act, the parent Act itself, does not define GPS, and therefore questions as to what it means fell into usage. We went to a scientific and technological description for GPS and this is the description for it. It is literally “on or above”, because these are actually satellites. So there is no interruption of any privacy or other right other than that stated. I mean, obviously your location is your own right. However, if you consent to the involvement in this system, because you must consent. A court may say to you: Look, I am prepared to give you electronic monitoring, but you have to consent, as a condition of a criminal consequence.

So, in those circumstances, there is a consensual aspect of the equation. Yes, of course, your location is something which is a matter of privacy. This is not a strict case of privacy, because it is: (a) by your consent; and (b) pursuant to some conditionality prescribed by law, be it by way of sections 87 to 89 of the Constitution; for the Mercy Committee, the power vested in the court in consideration of bail or alternative sentencing methodologies; or by the Prisons

Commissioner, pursuant to sections 285 and 285A of the Prisons Rules. It is not intended that there would be anything more than that which is prescribed by the law.

**Sen. Mark:** Madam Chair, I just want to remind the Attorney General, in the original parent Act, which we are amending, there was no attempt to deal with the expression “or above the Earth's surface”. It just dealt with “on the Earth's surface”.

Now, this came directly out of The Bahamas legislation. So, what I am asking is that: with that new addition to global positioning system, what are the implications for data protection, as it relates to the widening of the scope of the definition of “global positioning system”? That is my concern, Attorney General. Why did we have to make that change? Because it was not like this in the old Act, and in The Bahamas they have not made that change as well. So that is my concern to see, to what extent there could be any infringement or intrusion into people's rights. That is all I am concerned about.

**Mr. Al-Rawi:** Madam Chairman, it is such a very broad question. The implications to data are expressed. I mean, the data that is sent by a corresponding unit, through a GPS system is the data. It is a latitude and longitude specification as to where you are. That is quite simply just what the data is.

**Sen. S. Hosein:** Thank you very much, Madam Chair. Attorney General, I just wanted to know whether or not, this is at clause 3, we can add in the definition of “monitored person”, a virtual complainant?

**Madam Chairman:** Where are you, Sen. Hosein?

**Sen. S. Hosein:** Clause 4, sorry at (a), 4A, sorry, in the definition of “monitored person” at page 2.

**Madam Chairman:** Okay.

**Mr. Al-Rawi:** Well Madam Chairman, the virtual complainant is captured in the applicant aspect, right, or person aspect; both of them capture that. Right?

“...who may be subjected to electronic monitoring pursuant to a court order...”

And a court order is one that prevails in respect of a virtual complainant. So I think it is captured already.

**Sen. Chote SC:** Hon. Attorney General, two things. First of all, because the word “subjected” suggests that the person, respondent, child or applicant is the person bound by the court order, I think what my colleague is respectfully asking is whether we can, perhaps, change the word “applicant” or broaden the term or replace it with something to make it clearer. I think that is my understanding of what he is asking for.

But with respect to Sen. Mark's question, my understanding is, and perhaps you could correct me if I am wrong, that because we are using data from satellite, this is why we have to say “on or above the Earth's surface”, and the protection of that data will depend on the strength of the codes, the IT codes to protect that data by the persons operating the system. I think that is my understanding of it.

I also do wish to make the point that we will be naive to think that any amount of data coming from a satellite can be entirely protected. But that is not unusual when you use—when you have these bracelets in use as part of your criminal justice system. Am I correct in my understanding of it?

**Mr. Al-Rawi:** Well, yes, I think, if I may. I certainly think you are. But I would just like to remind that section 7(2) of the parent Act specifically makes this law subject to the Interception of Communications Act, and therefore makes it an offence for somebody to intercept any of this communication without the procedures of the Interception of Communications Act being adopted.

Certainly, that person, I mean the only exceptions are the non-warranted aspects under section 6(2) of the Interception of Communications Act by law enforcement. So any other person that is intercepting this is making themselves liable to an offence under the Interception of Communications Act. So that is where I was looking for the comfort of that safeguard applying. So that was in the original law in section 7(2).

With respect to Sen. Hosein's position, I thank you for the clarification. Perhaps, I got it wrong, in terms of the hon. Senator's position. But I still do believe quite safely, I believe from my own perspective that the persons subjected to is meant in the position of simply object and subject, not subjected to. And the structure that we have gone for inside of this in defining monitored person is really self-explanatory. It is:

“a person, a respondent, child or applicant who may be”—the subject of, subject to, that is where it is—“subjected to electronic monitoring pursuant to a court order, a lawful condition of pardon, instructions from a competent authority or an application by a person under section 13...”

So “applicant” was to capture section 13 persons, and everybody else falls within the categories of the order or exercise of privilege coming in. So we did not want to say, I mean, it is true to say an applicant is not a virtual complainant because the applicant in court on a DV matter is actually the policeman or policewoman, as opposed to the person who is offended in certain aspects of protection under the magisterial purview. The domestic violence person may be a different direct person. But this is really as neutral a position to capture everyone as I believe we can get.

**Sen. S. Hosein:** AG, I would be comforted by the fact it is on the record. So if there is any ambiguity it will seem that the applicant will also encompass the

virtual complainant.

**Mr. Al-Rawi:** But how could the applicant ever not be a part of that where the order of the court is, you the person against whom the protection order is issued, you shall wear an anklet? And you the person who consents to have a protection device as defined, you are a person who also has—you see, remember this monitored person catches both ends of the structure. So it can never be a situation where the virtual complainant is not caught, because that person must consent to actually be a monitored person as well.

**Sen. S. Hosein:** You see, the only mischief I am looking is whether or not we are actually even providing for the court to lawfully encompass a virtual complainant under—contemplate having a virtual complainant to be monitored under the legislation.

**Mr. Al-Rawi:** So that is why—

**Sen. S. Hosein:** The person is defined. Respondent is defined. Child is defined. Applicant falls under the section 13. In the criminal matters, in the magisterial criminal matters, the complainant will be the police officer who will be the one making the application on behalf of the virtual complainant in the criminal matter.

**Mr. Al-Rawi:** I am sorry. I just respectfully do not see that the virtual complainant could ever be out of the situation when the law provides specifically that this can apply in domestic violence situations by an order. So if we look to the—

**Sen. S. Hosein:** AG, I am looking outside DV matters, you know.

**Mr. Al-Rawi:** Right.

**Sen. S. Hosein:** I am looking at, for example, a sexual offence matter.

**Mr. Al-Rawi:** Right.

**Sen. S. Hosein:** We have complainant who is the police officer. We have



defendant, or the accused, sorry. And then you have the virtual complainant. The person who will make the application on behalf of the VC for protection will be the complainant, who is the police officer. You understand the distinction?

**Mr. Al-Rawi:** You are wondering, if I could get it right, whether applicant eliminates the virtual complainant—

**Sen. S. Hosein:** Yes.

**Mr. Al-Rawi:**—in circumstances outside the DV context.

**Sen. S. Hosein:** Yes.

**Mr. Al-Rawi:** And where I go to is in section 10 of the Act as we propose to amend it by clause 8. And that is where we say in paragraph (b) we are inserting the following paragraphs (c), (d), (e), any other application which in its discretion it considers appropriate to impose electronic monitoring. And if we look to section 10 of the parent Act itself, subsection (3):

“...the Court may impose a sentence of electronic monitoring—”

That is in part (1).

“(2) The Court may at any time, also impose electronic monitoring as a condition of—

- (a) an order for bail; or
- (b) a Protection Order...”

Sorry, that is where I was initially.

- “(c) a probation order...
- (d) a community service order...”

And:

“(e) any other application which in its discretion it considers appropriate to impose electronic monitoring. “

And that is where person qualifies for consideration in the monitored persons we

are saying its mean a person; skip respondent, skip child, skip applicant; who may be the subject of or subjected to electronic monitoring. So it is clearly captured there.

**Sen. Mark:** Madam Chair, through you to the Attorney General, two final points under definition “protection device” and “electronic monitoring device”. Attorney General, I know it was in March of this year you made the point that the monitoring or device called the protection device, ankle bracelet, as the case may be, would that device have to be worn once there is consent and imposition by both the offender and the victim? Or do we have a separation, in terms of the human rights body out of Europe through the standard operating procedures made it very clear that the victim should have like a portable device, as opposed to an ankle bracelet? But I remember in a statement you had made, you said that they would—well, you did not say it directly but you implied that they will both be wearing the same kind of ankle bracelet. So I just wanted to get clarification on this matter.

**Mr. Al-Rawi:** Sure. May I? Madam Speaker, Madam President, Madam Chair, sorry, three different iterations of different places. It is not an ankle device.

**Sen. Mark:** Okay.

**Mr. Al-Rawi:** As far as I understand it, it is a handheld device. Some of them go by way of bracelets on the hand; something that is inconspicuous. Something that can be kept on the person, but it is not a clamped on fixed device similar to the anklet device that the person will be wearing.

**Sen. Mark:** Okay, okay, okay. And Madam Chair, if I may just final—

**Mr. Al-Rawi:** And in fact, sorry, thank you very much. I just got the confirmation from the unit itself. It is a portable receiver, comparable to the size of an average cell phone. That is what it actually is.

**Sen. Mark:** Okay, all right.

**Mr. Al-Rawi:** Thank you.

**Sen. Mark:** Madam Chair, through you to the hon. Attorney General. You have now expanded electronic monitoring device to include telecommunications network.

**Mr. Al-Rawi:** Yes.

**Sen. Mark:** Explain to us here in this Senate what would be the specific role and how would they be engaged and how are they going to be paid for this particular service that they will be providing? Because these telecommunication networks are there to make money. Some of them are in the private sector, some are state-owned. So if you could explain to us, with the inclusion of them how is this to work? What kind of arrangement? Are these things going to be in the regulations? Because we have not seen those regulations as yet. So, as it relates to these telecommunication networks, are we going to be outlining, Attorney General, in the regulations how this thing is going to function, insofar as electronic monitoring is concerned.

**Mr. Al-Rawi:** Thank you, Madam Chair. Madam Chair, first of all, the rationale for including the telecommunications network is to provide the failsafe. If the GPS system fails, if the RS system fails, your GPRS system on the telecommunications network, what you call the edge communication on your cell phone, you have 3G, you have LTE, you have other forms of broadband sort of connection on your phone, well it is a very low data thing called GPRS, which works on a background system called Edge, if you remember the old days. And the telecommunications network was designed to be a failsafe.

But secondly, in circumstances where GPS fails, if you recall—and I know you have studied our contributions when the Bill was originally being piloted, one

of the things that we have complained about was the geographic drift and in the drift factor what we have learnt is that sometimes some areas are not well serviced and, therefore, you may be going for telecommunications network coverage to monitor, as opposed to RF or GPS systems. So it was meant from a technological point of view. Whatever the cost is to that, will be whatever the cost is to that and of course there are concessions available to the Government in the telecoms arrangements, which can most probably be leveraged in the situation.

**Sen. Mark:** And finally, Madam Chair.

**Madam Chairman:** Senator, there are other Senators who want—

**Sen. Mark:** Oh, sorry, sorry, sorry.

**Madam Chairman:** And you did say that your final point.

**Sen. Thompson-Ahye:** I am obliged. [*Sen. Thompson-Ahye rises*]

**Madam Chairman:** You do not need to stand Senator. It is fine.

**Sen. Thompson-Ahye:** Madam President, on behalf of Hansard and myself I can clearly see their frustration. They are having considerable difficulty in following the debate/the argument. So that if people can enunciate, we may be able to follow. Because I can tell you, I think most of it is being lost up at this end. That is why I tried to stop you.

**Madam Chairman:** Thank you, Sen. Thompson-Ahye. Sen. Hosein.

**Sen. S. Hosein:** Thank you very much, Madam Chair. Attorney General, I am on the definition of “Court”.

**Madam Chairman:** May I just suggest, based on what Sen. Thompson-Ahye just said, that we all channel our inner Sen. Mark when we are speaking and raise our voices a little and I think the Hansard, they would not have a problem. Okay?

**Sen. S. Hosein:** All right. Let me start again, Madam Chairman, if this is better. I am looking at the definition of “Court” and “Court” is defined as a Judge,

Master—but AG we agreed that—

**Mr. Al-Rawi:** We left it out. I thank you for the observation in my wind up. Madam Chair, we did not include the Senior Magistracy Registrar and Clerk of the Court and therefore we proposed an amendment. Thank you, Sen. Hosein, for pointing it out.

**Sen. S. Hosein:** AG, you may have to also make an amendment after Magistracy Registrar, delete the “,” and put the word “and”.

**Mr. Al-Rawi:** Yes, we have it. So we actually have it typed out ready for circulation and we were just waiting to get to that point.

**Sen. S. Hosein:** Also AG, I see you have the definition of “Registrar”, the Registrar of the High Court?

**Mr. Al-Rawi:** The amendments need to be circulated. Thank you so much. Apologies, Madam Chair, and thank you, Sen. Hosein, for pointing it out.

**Madam Chairman:** So while we wait for that amendment to be circulated, may I suggest that we go through to, I will put the question on clauses 1 to 3. Okay?

**Mr. Al-Rawi:** Yes, please.

*Question put and agreed to.*

*Clauses 1 to 3 ordered to stand part of the Bill.*

*Clause 4.*

*Question proposed:* That clause 4 stand part of the Bill.

**Mr. Al-Rawi:** And Madam Chair, consequent upon the observations made by Sen. Hosein in the contributions he made in his debate, we propose an amendment to the definition of “Court”, in term circulated specifically to include the Senior Magistracy Registrar and the Clerk of the Court. Of course the word “and” would follow. So that we have it in the context as circulated.

**Madam Chairman:** So you want me to, to the amendment, add the word “and”?

That is fine?

**Mr. Al-Rawi:** No Ma'am, it is there. I was just covering the point made by Sen. Hosein. So we propose the amendment to “Court” in terms circulated.

*Question put and agreed to.*

*Clause 4, as amended, ordered to stand part of the Bill.*

*Clause 5.*

*Question proposed:* That clause 5 stands part of the Bill.

**Sen. Mark:** Madam Chairman, like the hon. Attorney General, in his earlier incarnation as Sen. Faris Al-Rawi, I fully associate myself with his sentiments and strong views on the delegation of any authority by the director in what can only be described as a very broad and almost unmanageable framework. And, therefore, I am asking the Attorney General if we could look at this thing, this clause 5 very carefully.

Firstly, Sen. Hosein said in his contribution that to ensure that there is certainty when you are delegating, it should be done by order.

**Madam Chairman:** Sen. Mark, I have to just stop you here. We are in the committee stage and I am allowing a little, the Attorney General to be questioned on certain clauses. But do you have a proposed amendment?

**Sen. Mark:** Yes, what I am suggesting is that—

**Madam Chairman:** Do you have the wording?

**Sen. Mark:** Yes, I have a wording—

**Madam Chairman:** Well Sen. Mark, first of all—

**Sen. Mark:**—in my head.

**Madam Chairman:** No, a wording should not be in your head. It should be on paper and circulated.

**Sen. Mark:** Yes, I agree with you.

**Madam Chairman:** You did indicate at 11 o'clock this morning that you had amendments.

**Sen. Mark:** Yes, yes, I have it in my head.

**Madam Chairman:** No, you have to not have it in your head. You have to have it on paper, please.

**Sen. Mark:** I understand, Ma'am.

**Madam Chairman:** And, therefore, I am going to ask you to put your question to the Attorney General, a direct clear question so that he can answer, so that we can move along in committee stage.

**Sen. Mark:** As you direct. Attorney General, I would like to propose after the word "delegated" in line 2, you add "by order". And I would ask you to consider deleting, right after him, beginning "to" and ending at "and". So we will move away. Madam Chair, I am suggesting "delegated by order" to, in writing, "to his deputy director in accordance with his general or special directions". Because I think it is very dangerous. The way it is worded, Madam Chair, any Tom, Dick and Harry, in that unit can be delegated in accordance with the definition. We have to be serious with what we are doing.

**Madam Chairman:** Any other questions or comments on clause 5, please? Attorney General?

**Mr. Al-Rawi:** Thank you, Madam Chair. Madam Chair, first of all the director does not have the capacity at law to issue an order; he not being a Minister of Government with Executive function under section 75 and section 79 of the Constitution.

Secondly, to have the director ask for the position of the Minister exercising that discretion would be rather unruly. Thirdly, since my contribution as a Senator sitting in opposition back in 2011, when this Bill came up and then 2012, we have

the benefit of some case law coming on to the record. Fourthly, we have also had the amendments to the SSA Regulations, the Income Tax (Amdt.) Act and others, where it has now become the position for certainty to know who has done what aspect that we insist upon delegations of function which are axiomatic at law. You have the power in the administration of positions to do these things. But what we did is we wanted to put it in writing.

We wanted to put a positive obligation upon the director in the exercise of his direction, because in his direction he could tell John or Jane do X or do Y. What we are saying here now is: No, no, no, that is not good enough. We want to know that you gave an expressed authorization in writing for that effect.

**4.00 p.m.**

So, we are not too worried about the function as it prevails now with this amendment. We are actually improving the position by making sure that there is an actual record of the delegation function i.e. the aspect of power that the director has put in. Put it another way, it would have been open for us to have the director simply instruct that something be done because anything the director says is effectively a delegation of his function. Instead, we want a written record of it, and that is specifically so because we are operating using the DNA Act formula, with the standard operating procedures. Again, those must be in writing. So, we are actually clarifying the positions on this occasion.

**Sen. Mark:** Madam Chair, if I may? AG, under the Public Procurement and Disposal of Public Property Act, the Chairman, when he is not present, that is the regulator, let us say, his deputy is the person who would take charge of the activities of the unit or the body. What I see as a danger here, is that you have a director who is like the head of the administration and then you say this director can delegate his authority to any member of staff. That could be any employee, a



messenger. Now I am just trying to tell you how it could be literally— or it could be stretched. So, all I am asking is whether you would not want to consider in delegating his authority, he should do that to the deputy general manager, the deputy general manager and not to any member of staff, Madam Chair. That is why I am very concerned about this aspect, Madam Chair. AG, I am genuinely concerned about this.

**Madam Chairman:** Before the Attorney General responds, could I just say that we are all under a little bit of pressure as we proceed through this Committee and the sitting, we all have to adjust to wearing the mask, so I will just ask for the cooperation of all Members, please, all right. There are rules by which we are supposed to operate, okay. Attorney General.

**Mr. Al-Rawi:** Yes, Madam Chair. The rationale for delegation is not to be capricious, hence the reason for it to be in writing so there is a record. I do not know if I am being clearer for the purposes of Hansard, I am trying my best to operate through the mask. So, Madam Chair, number one, we are proposing to be, express in writing therefore providing safeguard. Number two, as the operationality of this unit grows into the thousands, as there is more and more demand, it is therefore important to recognize the strictures of the entity may come to collapse the system. So we went to the SSA model in the Interception of Communications Act, the Commissioner of Police, the SSA Director, and the Chief of Defence Staff have certain functions that they can exercise for interception. There are delegated positions under that as well.

So, we have taken note of the case law, the need for protection, particularly because we are looking at a vast number of things, but the last thing we want to do is to find out that somebody says, “Look, this whole thing is to be collapsed because the director himself was supposed to do it”. And therefore, we are

blending the practical operation of potentially thousands of units, domestic violence orders, prisoners that are coming out, bail conditions, mentally unstable people, diminished responsibility, people with Alzheimer's, whatever the system might be, we really need to make sure that we are not throwing the baby out with the bath water by having somebody tackle the system and say, "Ay, the director himself was supposed to do this." Hence, instead of having the implied operation of his delegation permitted at law, we are saying put it in writing so that we know who is liable in the conditionalities of consequence.

**Sen. Mark:** I rest my case on that clause.

**Madam Chairman:** Yes, are you still pursuing the amendment?

**Sen. Mark:** I feel strongly about it. I am not satisfied with what the Attorney General has said, but I will rest my case.

**Madam Chairman:** So you withdraw?

**Sen. Mark:** No, I am not withdrawing. I feel very strongly about it.

**Madam Chairman:** So, shall I put your amended clause to the Committee?

**Sen. Mark:** No, you do not have to put it, but I just feel strongly about it, okay. In other words, when you put the question, I will indicate what my position is.

**Madam Chairman:** Sure.

**Sen. Mark:** That is it.

*Question put and agreed to.*

*Clause 5 ordered to stand part of the Bill.*

*Clause 6.*

*Question proposed:* That clause 6 stand part of the Bill.

**Sen. Mark:** May I, Madam Chair?

**Madam Chairman:** Yes.

**Sen. Mark:** Madam Chair, I would like to ask again— well, I know the Attorney

General tried to explain the spatial aspect of it and why they have deleted it. I understand what you are saying to some extent. I think this is going to clash with privacy issues and it could impact on data protection law of our country, but I would not debate that too much.

What I would ask, Madam Chair, is the standard operating procedures, are these standard operating procedures, Madam Chair, through you to the AG, have they been established thus far, AG? And whether they will be in the regulations, or are they coming separate and apart from the Regulations? I just want to know, and whether you would want to share with us these standard operating procedures? Do you anticipate any infringement on the rights of persons who are going to be monitored by this unit and the employees, in terms of—even though it is internal—in terms of procedures, how do you—

**Madam Chairman:** Okay so, Sen Mark, I think the Attorney General has to be allowed an opportunity to answer because you have asked about four questions already on this one clause. Attorney General.

**Mr. Al-Rawi:** Madam Chair, number one, the deletion of “spatial” from 6(2)(f), “f” as in foxtrot, it is because (f), as it currently stands in the existing law is:

“(f) ensure that a historic record is maintained of all electronic monitoring spatial data...”

That would have been woefully short. We do not want to know spatial data only, we want to know all data, so that we can protect people to make sure that whatever other data was not thrown away, suppose somebody had clandestinely collected some other data. Now we put a positive obligation. If you collected any data at all, keep a record of it. So it is a material improvement to the balancing of rights, as opposed to an intrusion of anybody’s rights. That is one.

Two, the standard operating procedures will stand apart from regulations, et

cetera. Again, this is a material improvement because what we are saying is: if you have any kind of practice that you have, make sure you can prescribe it. No more “make it up as you go, come up with an excuse when somebody comes with a claim against you”, and you—no, no. You have regulations, you have rules, and you have standard operating procedures, so that there is certainty and discoverability. Remember, the Freedom of Information Act applies here. So we want to make sure that the balance of justice is in the round by having access of a public authority to this kind of information.

The last point, Madam Chairman, this concept of intrusion of rights. It is just not on. These are qualified circumstances. Number one, it is a condition of bail. Number two, it is by way of voluntary participation. Number three, it is exercise of conditionality by the President in pursuant of the constitutional arrangements under section 87. And number four, it is an exercise of again, discretion by the Commissioner of Prisons, pursuant to section 285 and 285A of the Prisons Act. So these are our qualified circumstances in and of its nature, because your alternative is to just stay right where you are. Go to jail, stay in jail, fight up your regular conditions of bail, et cetera. So, there is not a strict aspect of it. The point is, that it is proportional, it is measured, and there is no proper intrusion requiring a section 13 of the Constitution consideration because these thing are well within balance of the existing structures. Everything is being exercised by a due process consideration.

**Sen. Mark:** One final question, Madam Chair.

**Madam Chairman:** Sure.

**Sen. Mark:** Standard operating procedures? I have asked the Attorney General whether they have established those standards or SOPs—

**Mr. Al-Rawi:** Yes, they have.

**Sen. Mark:**—so far? And whether those standards will be tabled for the eyes of the Parliament? Or is it strictly for internal use, Madam Chair?

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Sure. The regulations are prepared, the standard operating procedures are prepared, the regulations will be tabled, the standard operating procedures are for internal use. However, they are discoverable under freedom of information in case anybody wants to have it. But they are so basic at a level, that what we wanted was to make sure that there are proper procedures in place. The point is, they are not hidden and are available.

**Sen. Mark:** Madam, I will pause at this time.

**Madam Chairman:** May I ask that people remember—Members, remember what they have to do with their electronic devices. May I just say that I do not want to hear another one going off while we are in this committee stage. Okay?

*Question put and agreed to.*

*Clause 6 ordered to stand part of the Bill.*

*Clause 7.*

*Question proposed:* That clause 7 stand part of the Bill.

**Sen. Mark:** Madam Chair.

**Madam Chairman:** Yes.

**Sen. Mark:** In terms of clause 7 to begin with—

**Madam Chairman:** Yes.

**Sen. Mark:**—I just wanted to ask the hon. Attorney General, whether he would be minded to look at the oath of secrecy that we have under the DNA legislation. I find that oath to be very powerful as compared to what we have here. Both in terms of the one for the custodian and the deputy custodian. So, I ask the Attorney General, where this is being administered, Madam Chair, by the director, “dat

sounding flimsy and jokey”. This has to be done by a Justice of the Peace, and this is what we did with the DNA. We say, you are working in an area that is very confidential, highly secretive and therefore, the threshold of confidentiality must be very high. And I am asking the Attorney General to look at the DNA and look at what we had put, and that is the one I would like to be substituted for what we have here. I think the one that we have here is weak.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Sure. We did look at the DNA legislation and in fact we looked at the most recent one which is captured by Legal Notice No. 50 of 2020. And in that, I remind that the Administration of Justice (DNA) Act, Second Schedule was amended by virtue of that particular legal supplement appearing. So we amended form five of the DNA Act, and that, Madam President, only takes us so far. What we are proposing in the Schedule that we have here, the Fourth Schedule, is an oath of secrecy, and this oath of secrecy is most importantly actionable per se. The mere fact of the issuance of the oath is actionable. So what we are doing here, Madam Chairman, is we are capturing importantly something which the DNA Act does not have in the Schedule. If you look at the end of the Fourth Schedule of what we do in clause 25, we are saying, “I understand that these provisions apply not only during the period of my employment, but also my employment with the unit has ceased”, right? So we thought that this particular version was a little broader than the DNA position and therefore, we believe that we have caught this one in proper measure.

**Sen. Mark:** Madam Chair, may I? I understand what the AG is saying, but AG, through the Chair, you have the director or manager witnessing this. How can you have a director witnessing a secrecy oath? I am suggesting a Justice of the Peace.

**Mr. Al-Rawi:** Madam Chair, if I may just interrupt. I think I now catch what Sen.

Mark is saying. Not that the language of the oath was off, he is referring to what I think he is right about, that the form inadvertently omits the Justice of the Peace line. It should be there, so I mean, that point I agree with, I thank the hon. Senator for. If that is the position there, yes, it should certainly be an oath done before a JP.

**Sen. Mark:** Well, I was going a little further, but I will compromise on it. That would be adequate for me.

**Madam Chairman:** Sen. Chote.

**Sen. Chote SC:** Thank you, Madam Chair. Hon. AG, two things. I am looking at clause 7(1), last part of it where we talked about:

“...otherwise than in the proper exercise of his function.”

Now, experience tells us that this— the interpretation of a phrase like this might become problematic, so I was wondering whether you would be willing to include the words “or as required by law”? And secondly, in subsection (2), I think we forgot out mens rea. We created an offence and we did not talk about mens rea, so it suggests that it is a strict liability offence. So if we could put in something about “intentionally or willfully discloses information”, I will be most grateful for your consideration of that.

**Mr. Al-Rawi:** Madam Chair, I thank Sen. Chote for improving the first part of the clause. I think that we would certainly be assisted by “or as required by law”.

The second part of it, I catch the point. The mens rea aspect of it is usual but in the breach of secrecy, as far as I have seen it, from the SSA, from the DNA, from other pieces, they have all been strict in the liability. Of course, we know well that it is arguable that there is an element of mens rea in strict liability offences, possession, for instance, is an example of that, right. So, allow me a moment just to confer with the CPC department.

[*AG confers with CPC*]

Madam Chair, thank you for the opportunity to confer with the CPC and his team. Madam Chair, we think that definitely we ought to add in “or as required by law” to take care of other circumstances. And that would probably capture, under compulsion of law, for instance, where you are required to give the issuance, right.

I have confirmed that the breach of secrecy, the oath of secrecy does not usually have a mens rea element attached to it, and I would be loath to make this the first of the opportunity particularly where we are looking at private information, location, other circumstances, et cetera. We would want to keep a very strict obligation upon persons to look at this particular point. I think if there was a trip, we would have to really look at that as a whole, because it is a whole host of other laws. We pulled up DNA, we looked at SSA, as two quick examples and there was no mens rea factored in either of those two laws, and I am confident from the other ones that we have done that I have not seen it as well. But that is just really by way of memory.

So, if I could respectfully not take the opportunity on this occasion to look at the mens rea. I will look at it in general and see if I find any other examples and I can give you an undertaking. We intend to come back to Parliament with another miscellaneous provisions Bill very shortly, within a matter of weeks, and I give you my undertaking and you know I do fulfil my undertakings to look at it. So, Madam Chair, clause 7, you have it?

**Madam Chairman:** Sen. Mark, you wanted to ask something?

**Sen. Mark:** I just wanted to ask Attorney General, through the Chair, I would like you to consider, given the fact that this is a very revolutionary piece of legislation on our statute book, as we seek to confront the criminal justice system in a much more frontal way. What I wanted to ask Attorney General, through you, Chair, we



have no provision in the legislation for the submission to this Parliament of an annual report. These people who are in charge of the EMU, they have a lot of power, they have a lot of responsibilities, and I think that Parliament should be able to get an annual report from this body. Now, Madam Chair, I am just putting it for the Attorney General's consideration.

**Madam Chairman:** Yes, but—

**Sen. Mark:** I know that he is not before us.

**Madam Chairman:** Yes.

**Sen. Mark:** But I just thought—

**Madam Chairman:** Yes, that is fine, but let us now deal with clause 7.

**Mr. Al-Rawi:** Madam Chair, could I just say that I hear Sen. Mark. I gave an undertaking that I will look at that. I will be back here within two weeks on another miscellaneous provisions.

**Madam Chairman:** Okay. Hon. Senators, the question is that clause 7 be amended as follows: By inserting the words “or as required by law” after the word “function” in subparagraph (1).

*Question put and agreed to.*

*Clause 7, as amended, ordered to stand part of the Bill.*

*Clauses 8 and 9.*

*Question proposed:* That clauses 8 and 9 stand part of the Bill.

**Madam Chairman:** Sen. Sobers.

**Sen. Sobers:** Thank you, Madam Chair. Really it is at clause 10 where it seeks to amend section 11 of the parent Act, and I am trying to understand where it says:

“...which the Director shall cause to be provided as soon as it is practicable and where necessary, the person shall be committed to appropriate custody while awaiting the report.”

Now, I know this appears within the parent Act as well, but I am trying to understand at what stage would that actually occur. In most instances, the persons, whether through application or through being before the court on a criminal offence for bail, or sentencing, or wherever, they would already, in essence, be in custody. So, I am trying to understand what instance would this person now be “committed to appropriate custody while awaiting the report”? And, since there is no timeframe, save and except to say that “soon as it is practicable”, it could in fact cause the person to be there for some inordinate period of time.

**Mr. Al-Rawi:** Thank you, Madam Chair. So, clause 10 which amends section 11 of the Act adds a new subsection. Section 11, originally simply said, i.e., without amendment:

“Electronic monitoring may be imposed as a lawful condition of a pardon granted under section 87(2)(a) of the Constitution.”

We wanted to capture a few things, number one, the ability to have the Mercy Committee have the lawful right to call for certain reports to improve its considerations at the Mercy Committee. Now, whilst it is true that a pardon may be granted firstly, with respect to somebody who is not even been convicted yet. Secondly, with respect to somebody who has been convicted. Thirdly, with respect to somebody who has been convicted and has completed sentence and is out. In other words then, just the record remains, the circumstance that we have contemplated at the tail end of subsection (2):

“...shall cause to be provided as soon as it is practicable and where necessary, the person shall be committed to appropriate custody while awaiting the report.’.”

That custody is not intended to be a fresh power of arrest or putting somebody into custody when they were out of custody already. It was in the circumstance where

they were actually exercising the request for grant of a pardon, and were in custody. So, it was to capture the situation because we could not possibly, by way of this amendment, be committing somebody to be put into custody, that could only happen under the lawful mechanisms of an order of court or under arrest, where the police are given that specific power. So, I hope that that helps to clarify this.

**Sen. Sobers:** No, but, I am still just, through you, Madam Chair, I am just— and maybe I do not know if Senator—

**Madam Chairman:** Well, could you finish your thought, Sen Sobers?

**Sen. Sobers:** Yes please, Madam Chair. If it is a situation where someone is actually in custody and making the application for the pardon to have the sentence shortened, then is it that that person would be—would the custody itself— the person is already in custody, so it is just that the person would remain there? I am not understanding when there would be a situation where this appropriate custody while awaiting the report would arise then, because they would already be in custody.

**Madam Chairman:** Hon. Attorney General, I think Sen. Chote wanted to say something.

**Mr. Al-Rawi:** Yeah, sure.

**Sen. Chote SC:** Thank you, Madam Chairman. I was going to make that same point. It seems as though we should have a full stop after “practicable”. If the person is in custody, then there is no necessity to have that person committed to appropriate custody while awaiting the report. And then you create all sorts of difficulties about who is entitled to issue a warrant of commitment to a prison and all those kinds of things. So, if the person is in custody, then I think you maintain the power of the Mercy Committee to ask for reports of the kind that you wish to

have and the person simply remains in custody until the report is provided.

**Mr. Al-Rawi:** Thank you, Madam Chair, if I may confer with the CPC. I can see the logic of both Senators' enquiry. So just permit me an opportunity because this springs from the exercise of discretion, they were really looking at modifying custody aspects, but I think it is correct to say that that can be done in a number of other ways. For instance, via the Children's Authority, under its amended provisions, et cetera. This provision was drafted some time before some of the amendments that we did most recently. So, if you would allow me a moment, Madam Chair?

*[AG confers with CPC]*

Madam Chair, I thank both my colleagues, Sen. Sobers and Sen. Chote. the CPC has confirmed that we can actually lose the words, in light of some of the observations that we have all collectively made. So, Madam Chair, we can, in clause 10(b), literally delete the words:

“and where necessary, the person shall be committed to appropriate custody while awaiting the report.”

And just end with a full stop at “practicable”.

**Sen. Dr. Dillon-Remy:** Madam Chair.

**Madam Chairman:** Sen. Dillon-Remy.

**Sen. Dr. Dillon-Remy:** My question to the Attorney General about clause 8, as it refers to the subsection, clause 8(f), where it says:

“by inserting after subsection (8), the following subsection:

“(8A) The Court may also request a report from any other person, where applicable, to further assist in making a decision under this section.”

Specifically as it relates to the case of a child which was in (b)(ii) that talked about:

“in the case of a child...”

I was just wondering here whether there would be any need to get an involvement of the probation officers from the Children’s Authority as it relates to recommendations for children being monitored.

**Mr. Al-Rawi:** Madam Chair, I think Sen. Dillon-Remy has caught exactly what the clause is intended for. It really was designed specifically for matters including those matters. So, that is why we left it as wide open as possible. Because in the new (3A)—

**Madam Chairman:** Attorney General, one second. Will the Senator with the offending device please leave the Chamber? You can return in five minutes. Continue, Attorney General.

**Mr. Al-Rawi:** Yes, Ma’am. Because we are looking at the novelty in the case of the child, we really want to have the ability to call for as many persons with information as can assist in the exercise of this discretion. And that is specifically what the subclause (f) was designed to include in the new proposed:

“(8A) The Court may also request a report from any other person, where applicable, to further assist in making a decision...”

We wanted to leave a wide open clause in the discretion of the Court.

**4.30 p.m.**

**Sen. Dr. Dillon-Remy:** So, they could be included in that section?

**Mr. Al-Rawi:** Yes, they are. They are certainly, yes. We did not want to name them specifically, because then we would fall to the specifics of (a), having named them and, in some instances, they are given some ejusdem generis, meaning people of that class associated.

**Madam Chairman:** Sen. Sobers, you wanted to raise something?

**Sen. Sobers:** Yes, Madam Chair. I just have one comment. I am thinking I

understand where the person shall be committed to appropriate custody. When I read—the thing is, I think it was taken directly from the parent Act because when you read further down at section 12 of the parent Act, and they are referring to a competent authority empowered to grant early release from imprisonment—

**Madam Chairman:** Sen. Sobers, I am so sorry to interrupt you, but I am really not understanding the point you are making, because when last we dealt with this issue which you raised, Sen. Chote suggested an amendment which I am soon to put before the committee. Is there something further you are adding to this?

**Mr. Al-Rawi:** Yes Madam Chair, he is.

**Madam Chairman:** Yes, just finish the thought Sen. Sobers, but in a more direct way please.

**Sen. Sobers:** Right. Madam Chair, what I am trying to get at is when you look at the parent legislation with respect to that particular wording, when you are dealing with situations of early release from imprisonment which is in section 12 of the parent Act, which is directly tied to this clause 10 of the amendments, it has the same wording at 12(2) of the parent legislation. So I am just wondering in terms of being tidy, I do not know if, because it is going to be in the parent legislation as well, that same wording, the person shall be committed to appropriate custody, and if the person is in prison already and making an application then for early release, what appropriate custody are we referring to?

**Mr. Al-Rawi:** Madam Chair, Sen. Sober is correct, but the reason why I have given into quite happily to Sen. Chote's joining in of your first enquiring—and I want to thank you Sen. Sobers for being as measured as you are—because 12(2) contemplates early release. So we know that there is for certain in custody. It is to a fact that the language came from 12(2) as we were looking at it above, but why I think Sen Chote has helped us out of our difficulties is that because the pardon may

involve somebody who is not in custody applying for a pardon, it could be argued in the reverse way that those persons should be put into custody and then the difficulties of how you arrange that committal, the warrant, et cetera. So I think out of an abundance of caution, I think Sen. Chote has helped us out of that difficulty, but you are correct, the language did come from section 12(2) and I think it is distinguished on the back of one being in actually custody and one potentially not being in custody in the pardon situation.

**Sen. Chote SC:** Thank you, Madam Chair. Hon. Attorney General, it was not entirely that. That was part of the thinking. I agree with Sen. Sobers because when we look at the definition of “competent authority” in section 3 of the parent Act, we see it includes a statutory board or tribunal or other person appointed under any written law for the purposes of this Act. So, to me, you might be giving powers to agencies—fresh powers to agencies which they do not have and which they do not have the infrastructure to engage in. So, I am respectfully thinking that perhaps it may also be useful to remove the committing of the person to appropriate custody while awaiting the report from 12(2) as well.

**Mr. Al-Rawi:** So, Madam Chairman, I respectfully do not think that we need to do that because, in the first instance, we removed it by way of recommendation because we are dealing with pardon and specifically in that circumstance. I think it is safer to do it as per your recommendation. In 12(2), which is not an amendment before us, in 12(2) we are actually looking at a different situation, that is, electronic monitoring—sorry.

“A competent authority empowered to grant early release from imprisonment under any written law, may impose electronic monitoring...”

And:

“Before making a decision...the competent authority shall request a report

of the Director...as soon as...practicable...and...shall, where necessary, commit the person to appropriate custody...”

I want to leave that because this was created since 2011, sorry 2012, and insofar as that is already in place, if I were to touch an amendment to this right now, I do not know what factually exists on the outside there and I may be confusing the place in terms of the amendment now. So, Madam Chairman, what we propose, if the question is being put—

**Madam Chairman:** Well, yes, I have it down already.

**Mr. Al-Rawi:** Thank you.

**Madam Chairman:** Sen. Chote you wanted to say something else?

**Sen. Chote SC:** No. I appreciate the difficulty which the AG has.

*Question put and agreed to.*

*Clauses 8 and 9 ordered to stand part of the Bill.*

*Clause 10.*

*Question proposed:* That clause 10 stand part of the Bill.

**Madam Chairman:** Clause 10 is amended as follows. At 10(b)(2) by placing a “full stop” after the word “practicable” and deleting all the words thereafter until the word “report”. *Question put and agreed to.*

*Clause 10, as amended, ordered to stand part of the Bill.*

*Clauses 11 and 12 ordered to stand part of the Bill.*

*Clause 13.*

*Question proposed:* That clause 14 stand part of the Bill

**Sen. Mark:** Madam Chairman, in section 14(1A)(a), I wanted to ask the Attorney General whether there should be a clash between the court and/or competent authority? And I say this against the background of the fact, Madam Chair, that it is the court that determines whether something should be imposed on this



particular individual who is on bail, in Remand, early release, et cetera, but then you are having a competent authority trying to determine whether that bail now it will be able to continue dealing with the person rather, be allowed to continue participating in electronic monitoring.

Madam Chairman, I am suggesting to the Attorney General that the matter like this should be determined only by the courts and not by no competent authority, because it is only the court that can impose this arrangement, but we are now giving it to somebody else to determine whether you should continue with it. No, that should not be. Only the court should do that, not some stranger to the courts calling themselves competent authority. So I ask the Attorney General to consider this, Madam Chair.

**Sen. S. Hosein:** Thank you very much, Madam Chairman, and if I may add my voice also to just support that point Sen. Mark has made, and also to ask the Attorney General if he is minded to delete “negligent” and use the standard of “wilful” instead, so that there is wilful damage to the devices instead of negligent damage to the devices.

**Madam Chairman:** Anyone else? Sen. Chote.

**Sen. Chote SC:** Madam Chairman, because of what I had said during the course of my contribution, and because of the legal difficulties I foresee in having to determine what would be the appropriate standard of care, I think it might be simpler for us to use the word “deliberate” or “wilful” as Sen. Hosein has suggested.

**Madam Chairman:** So, Attorney General, you heard Sen. Mark’s contribution and Sen. Hosein and Sen. Chote.

**Mr. Al-Rawi:** I have, yes please. I think that hon. Senators have a point. I think that the mandatory liability on bare negligence standard could be difficult,

particularly if we are looking to the disaggregation between child and adult even though I think it can be dealt with. The question is, can we improve it? So I think that we can modify the animus, the intention of negligence with the word “wilfully” and that could help us significantly along the way. So, Madam Chairman, in 14(a), new proposed subsection (1A), after the word—before the word “negligent” and after the word “is” insert the word “wilfully”.

**Sen. Chote SC:** Madam Chair—

**Mr. Al-Rawi:** The CPC is tugging my shoulders. Right? So the question is whether we want to move the standard higher than negligence or qualify the standard of negligence and, perhaps it is open to us to look at wilfully or recklessly causes damage to the electronic monitoring, because recklessness would be a degree higher than negligence. Right? Or whether we want to manage the quality of negligence with a more severe intention.

**Sen. Chote SC:** Well, since the Act has a section which already deals with tampering, and I think what you want to deal with here is something entirely different, I think we need to divorce “wilfully” from “recklessly” because you are talking about different standards entirely, but “recklessly” is a word which I respectfully suggest is one that can quite properly be used to replace “negligent” and that is my suggestion.

**Mr. Al-Rawi:** I think the CPC is equally happy for the suggestion. He was just nudging me on that very point. So, Madam Chair, for clarity, in 14(a) new proposed (1A) delete the word “negligent” and substitute it with “recklessly”—and is reckless. We could say “recklessly causes”, so we could delete the word “and” and “is”, so “and recklessly causes damage.”

So, Madam Chairman, the CPC is asking whether we would be minded to consider deleting the words “is negligently and” and saying “and wilfully or

recklessly causes damage”. That really would capture the effect. So, Madam Chairman, delete the words “is negligent and” and substitute with the words “wilfully or recklessly”. I thank you for indulging us, Madam Chair.

**Madam Chairman:** Attorney General. Sen. Mark’s contribution, his comment was basically I think that—what was it?

**Mr. Al-Rawi:** I confess I am smiling under the mask, Madam Chair. I apologize.

**Sen. Mark:** Yes, AG, what I was suggesting is that if you go to 14(1A)(b), I was simply saying that since the court is the body that would have decided on the imposition of some protection device on this particular person who is on bail, or early release and given consent by somebody else to do the same, why are we allowing a competent authority outside of the jurisdiction of the court to determine whether that should discontinue? In other words, discontinue monitoring as you say or participating in this electronic monitoring process. I was simply advancing, Madam Chair, that we should leave out competent authority and let the court alone determine this matter. That is my submission for the consideration of the Attorney General.

**Mr. Al-Rawi:** Sure, thank you for repeating. Sen. Mark, I apologize I did not respond earlier. Madam Chair, because the competent authority can be an entity outside of the court as defined, including the pardons, the Mercy Committee, the Commissioner of Prisons that gives you—well I would not say Commissioner of Prisons, because he has exercised a discretion—a tribunal that would sometime in the future be managing this process, we have to contemplate their jurisdiction as well but, in particular, the one that is most pointed is the Mercy Committee that would have granted a conditional.

Obviously, if you are given an electronic monitoring device as a condition of pardon, it is a conditional release and the entity that has the jurisdiction to consider

that conditionality would only be the Mercy Committee. So we have to give that competent authority the locus to consider the conditionality prevailing.

**Sen. Mark:** Okay.

*Question put and agreed to.*

*Clause 13 ordered to stand part of the Bill.*

*Clause 14.*

*Question proposed:* That clause 14 stand part of the Bill.

**Madam Chairman:** Clause 14 is amended as follows. At 14, (1A) by deleting the words “is negligent and” and substituting the words “wilfully or recklessly”.

*Question put and agreed to.*

*Clause 14, as amended, ordered to stand part of the Bill.*

*Clause 15 ordered to stand part of the Bill.*

*Clause 16.*

*Question proposed:* That clause 16 stand part of the Bill.

**Sen. Sobers:** Madam Chair, clause 16(b) where it says:

“(b) by inserting after subsection (2), the following subsection:”And this particular section deals with a change in circumstance being forwarded to the director by a person who has the device outfitted on their person, and it says:

“in circumstances under subsections (1) or (2), he shall forthwith notify the Court in writing.”

That is the director. I am just wondering whether or not we could include that the director will also notify any other party in its discretion that it considers necessary to inform. Because I am wondering whether or not when the director notifies the court, would the court then notify the TTPS, for example, which exists when the court makes an Order concerning the outfitting, the court has certain persons they need to send that Order to, but in this case if there is a change in circumstances I

am wondering how the police would actually get the change itself.

**Sen. Chote SC:** Could I just put in my respectful two cents? I think it is a good idea to broaden it a bit because you may have the unfortunate situation where somebody forgets to notify the virtual complainant or the victim in the matter. You may also have a situation where you have a foreigner, an immigration authorities also need to be notified. You may have a situation where the Director of Public Prosecutions may need to be notified. So, I was just thinking that, perhaps, Sen. Sobers' suggestion is a good one.

**Sen. S. Hosein:** Thank you very much, Madam Chair. And AG we could also include the relevant competent authority also because we dealt with court here and it may be a competent authority who may have been granted the monitoring Order.

**Mr. Al-Rawi:** So, Madam Chairman, I welcome the proposals. If I may, I just been thinking about how to capture the wording. I do not know if "such other persons as may be affected by the Order" captures the competent authority. I do not know if they are affected but they may have an interest. Right? So this, Madam Chair, if you would give me a moment to confer? [*Pause*]

Madam Chairman, if I could just say that we are thinking of including after the word "Court" in 16(b), new proposed (2A) in the second to last line after the word "Court" if we insert the following words "and any other person affected by or having an interest in the change of circumstance in writing." Right?

**Madam Chairman:** Hon. Senators, the question is that clause 16 be amended as follows: At (2A) by inserting the words after "writing and any person after Court? By inserting the following words after "Court"—"and any other person affected by or having an interest in the change of circumstances."

**Mr. Al-Rawi:** Madam Chair, we are all sort of wrestling with the words "in writing" coming at the end. So, perhaps, you could say "notify in writing the

Court” and then put the rest. So let us take the words “in writing”. So the amendment would be that we delete the words “in writing” after they appear after the word “Court” and we would say, the amendment would be “he shall forthwith notify in writing” and then we go “the Court and any other person affected by or having an interest in the change of circumstance”. I think that might be a little easier to read.

**Madam Chairman:** So, hon. Senators, the question is that clause 16 be amended as follows: At (2A) by deleting the words “in writing” and inserting after the words “notify in writing” and after “Court” the following words “and any other person affected by or having an interest in the change of circumstances.” Is it plural, change in “circumstances”?

**Mr. Al-Rawi:** Yes, please. Thank you. Yes, “in the change of circumstances”.

*Question put and agreed to.*

*Clause 16, as amended, ordered to stand part of the Bill.*

*Clauses 17 to 22 ordered to stand part of the Bill.*

**Sen. Mark:** Madam Chair, I would like to support the suggestion—

**Madam Chairman:** Which clause, Sen. Mark?

**Sen. Mark:** I am on clause 20.

**Madam Chairman:** We have passed clause 20. We are dealing with 21 and 22.

**Sen. Mark:** You have gone past 20?

**Madam Chairman:** Yes.

**Sen. Mark:** I was not aware of that.

*Clauses 23 and 24 ordered to stand part of the Bill.*

*Clause 25.*

*Question proposed: That clause 25 stand part of the Bill.*

**Mr. Al-Rawi:** Madam Chair, consequent upon the recommendations coming from

my friends on the opposite, could we please amend clause 25 by deleting the words “Director/Manager, Electronic Monitoring Unit” at the end of the Schedule where it appears, Fourth Schedule, and put in instead “Justice of the Peace”..

**Sen. S. Hosein:** AG, I think you could also use “Commissioners of Affidavit”.

**Mr. Al-Rawi:** We would keep it in line with the DNA Act as the Justice of the Peace. In fact, if I could just put it on the record, the SSA Oath does not have a Justice of the Peace, it in fact only has the director and that was done for different reasons to keep the confidentiality of the person as opposed to a JP knowing it necessarily because it would have described.

**5.00p.m.**

**Sen. S. Hosein:** The reason for my recommendation is because I think in the Oaths Act both a JP and a Commissioner are the only two of the authorised officers who can in fact execute the oath.

**Mr. Al-Rawi:** I hear you, you are keeping Sen. Mark’s recommendation.

**Sen. S. Hosein:** The JP is fine, you know. The JP is fine with me.

**Mr. Al-Rawi:** Yeah.

*Question put and agreed to.*

*Clause 25, as amended, ordered to stand part of the Bill.*

*Question put and agreed to: That the Bill be reported to the Senate.*

*Senate resumed.*

**Madam President:** Attorney General.

**Hon. Al-Rawi:** Madam President, I wish to report that a Bill entitled an Act to amend the Administration of Justice (Electronic Monitoring) Act, 2012, was considered in committee of the whole and approved with amendments, I now beg to move that the Senate agree with the committee’s report.

*Question put and agreed to.*

*Bill accordingly read the third time and passed.*

### **ADJOURNMENT**

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Madam President, I beg to move that this Senate do now adjourn to tomorrow, Wednesday, May 06, 2020, at 10.00 a.m. At tomorrow's sitting, Madam President, the Government proposes to deal with the Miscellaneous Amendments Bill, 2020. I thank you.

**Madam President:** Hon. Senators, before I put the question on the adjournment leave has been granted for two matters to be raised. Sen. Mark.

### **COVID 19 Food Relief Efforts**

#### **(Criteria for Allocation of Funds to Religious Organizations)**

**Sen. Wade Mark:** Thank you very much, Madam President. Madam President, my first matter on the Motion for the Adjournment deals with the need for the Government—in fact, I do not have it before me properly but it deals with the need for the Government to properly provide some degree of accountability for the allocation to the respective religious organizations of some \$30million according to statements emanating from the Government. Madam President, we have learnt that the Government of Trinidad and Tobago has provided over a three-month period the sum of \$30million to what is called faith-based organizations in an effort to assist the Government in its food relief efforts in this COVID 19 period that we are all experiencing. We have absolutely no difficulty in the State providing funds, taxpayers' money to religious bodies so they can assist in the relief effort, re: food distribution, but what we do not appreciate, and we need to have some clarification on, Madam President, is the criteria, the set of criteria that the Government employed in allocating 30million taxpayers' dollars to the various religious bodies.



So we have raised this matter so that there can be proper accountability, transparency, fairness and equity in this process, Madam President. Madam President, we know under the Office of the Prime Minister there is something called an ecclesiastical grant that is given on a yearly basis to various denominational bodies in this country. It is a grant, so when you give a grant, Madam President, I get the impression, and I am advised, and I may be advised otherwise, that there is no need for proper accountability on the part of recipients of this annual grant or those annual grants issued by the Office of the Prime Minister on an annual basis. What we would need to clarify is whether, Madam President, what we have at this time, what the Government has begun to hand out to various religious bodies constitute a grant or whether it is a subvention. Because I learnt from what the Minister of Social Development and Family Services has said on this distribution of the first tranche of \$10 million is that bills and receipts will have to be produced and if they are not produced then they will not get the second tranche of the \$30million.

So the question that has to be asked is what kind of system of accountability the Government is putting in place to ensure that there is a proper reporting of the expenditure, after all, Madam President, we are dealing with taxpayers' money and we need to have proper accountability. So we need to get from the Government the criteria that they have used in allocating moneys to these religious bodies.

Madam President, I looked at today's *Newsday*, Tuesday, May the 5<sup>th</sup> on page 9 and I have seen where a number of religious organizations have collected or have received moneys in the name of the organizations outlined. I have also seen, Madam President, where certain organizations, for example the Evangelical churches have been allocated 1.7—or let us say round it off to \$1.8 million, but so far this sum has not been collected. When I looked further, I saw the name Jamaat

al Muslimeen and I saw in brackets “unstated and uncollected”. So, again, Madam President, we are not too sure how much this—and I have no problem if the Government is allocating funds to organizations. They are giving the Jamaat al Muslimeen, no problem, but please, Madam President, the Government has a duty if they are giving out taxpayers’ money to organizations, religious organizations they must be able to tell us criteria, and in this instance how much money has been allocated to this particular entity and whether all these entities where we have seen moneys allocated, these moneys have been collected thus far.

So we are asking the Government, Madam President, this evening to please outline to us what are the criteria used or what were the criteria used, or what will be the criteria used in the future for the distribution of these moneys for food relief. I saw where the Minister was referring to fraud involving the members of the public who were providing the Government with false information, and the Minister is threatening ordinary people with the police intervention involving some \$510, but here it is we are giving out TT \$30million, taxpayers’ dollars. And the Minister says that the only main accountability would be accountability to God; the only main accountability would be that of God. So on the one hand ordinary people are being told that if they provide false information to get a food card they are facing jail and the police, but on the other hand the Government is saying that the \$30million that they are giving to religious bodies—and, Madam President, I have no problem with giving them \$30 million, \$20 million, \$45million, what we are demanding is transparency, accountability, fairness and equity in the distribution of public moneys and taxpayers’ money. And we hope that the Government is not using this period of COVID 19 to use taxpayers’ moneys and to use, Madam President, moneys from the Heritage and Stabilisation Fund—

**Madam President:** Sen. Mark, your time has expired. Acting Leader of

Government Business. [*Desk thumping*]

**The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat):** Madam President, it is almost as though it was divine intervention on the subject of funding to religious bodies for the purpose of undertaking relief efforts across the country, not to their membership or spiritual followers but to the communities in which they operate. And my colleague, Sen. Mark, “giveth as he taketh away”, fully supportive, and if he had been given another two minutes we would have heard all sorts of parables in respect of this funding. Madam President, let me just deal right away with four matters he has raised. Sen. Mark said he learnt, he learnt about this, well, there is nothing to learn. This was a measure announced by the Minister of Finance in a statement to the House of Representatives on the economic effects and financial response to the COVID 19 pandemic. So this was announced in the Parliament, it is not something that is surreptitious.

The second thing is that it is intended to reach the communities and the Government recognized that a number of religious bodies, not only religious bodies but a number of our religious bodies are engaged in efforts in the communities on a year-round basis, and for that reason the Government felt that it was advantageous that these bodies assist in some of the relief efforts. The third is, Madam President, Sen. Mark has talked about my colleague, Mrs. Robinson-Regis, threatening; I did not get the impression that there were any threats. She was reminding, as far as I know. She was reminding the recipients of all funding from the State of the obligation to use it for the purpose for which it was given, lent or handed, and also the obligation to provide documentation in support of the request, documentation which is accurate and truthful. And in many cases persons accessing some of these forms of assistance are required to swear to an affidavit or

make a declaration and those are enforced by law, so my colleague was merely reminding people, not threatening.

Madam President, this thing about the accountability to God, I always say to people and remind them that in the Parliament you sometimes just get a snippet and you do not get the full context, you do not get the crosstalk sometimes, but my colleague was speaking in respect of something very well known to these religious bodies. My colleague was saying that the purpose of this funding is very specific, and it is not possible for us as Ministers to come into the communities and to make sure, to weigh and measure every morsel of food that is given or every inch of support that is given. And she was saying among all the accountabilities, and I will talk about the agreement and so on, she felt that as spiritual people they were also accountable to God insofar as you believe in that being. Madam President, it is very, very important because mischief travels faster than good news.

Madam Presidents, the grants, and they are grants, are approximately \$10million per month per three months, and they have been given to 20 or 30 bodies. Initially they have been given to what we call “umbrella bodies” in the country. For example, in respect of the Muslim community the grants have been given to the ASJA, the Masjid at Taqwa, the TML, the San Fernando Jama Masjid, and the Jamaat al Muslimeen. In respect of the Anglican Church the grant has been given to the Anglican Church of Trinidad and Tobago, the incorporated trustees. So it has been the umbrella bodies. But those grants—and I will go through it very quickly but when I reach that point—so far total \$7.7million in respect of the first month, but the point had been made by the Minister that there are other allocations to be made as the Ministry identify various other umbrella bodies and unattached groups of religious bodies.

So we also recognize that these are umbrella bodies and in each grouping,

for example the Pentecostals are normally associated with the Pentecostal Assembly of the West Indies, but there are other groupings, and there may be churches that are doing excellent work, individual Pentecostal churches that are currently doing work and require some support, and the Minister and the Ministry of Social Development and Family Services are engaged in that exercise. Madam President, the grant is covered by an agreement, and this is not an agreement between the Minister and God, this is an agreement between the Government and the bodies, and like all agreements and arrangements for the disbursement of public funds, it is governed by the Audit and Exchequer Act. These are things that fall under the purview of the Auditor General. They fall under the purview of internal auditors within the Ministries. It falls under the purview of the committees of this Parliament. They are susceptible to freedom of information requests, and they fall into that realm where any Member of any House can ask a question of the Government.

So there is nothing short on transparency here, but the agreement sets out the terms which include the purpose for which the grant is being given, the grant amount and the circumstances in which further grants, as my colleague, Sen. Mark, in a moment of clarity understood that there would be no further grants if the moneys disbursed in respect of this month of May have not been properly vouched, and they are required to do close out reports, and so on. But, Madam President, I think the most important thing for Sen. Mark, because he is curious, is to know who gets what. So the Anglican Church, the incorporated trustees, \$792,000; the ASJA, \$200,000, but I want you to note that the Anglican Church is the only Anglican body. In respect of the Muslim community there are five different groups: ASJA, \$200,000; the Masjid at Taqwa, \$100,000; the TML, \$100,000; the San Fernando Jama Masjid, \$50,000, and the Jamaat al Muslimeen, \$100,000.

Adjournment

2020.05.05

Sen. The Hon. C. Rambharat (cont'd)

In respect of the Hindu community, the Sanatan Dharma Maha Sabha, \$500,000; the Shri Siddhi Vinayakorganization, \$100,000, and SWAHA, \$200,000. In respect of the Baptist community, the National Evangelical Spiritual Baptist Faith, \$150,000; the NCOIBOTT Archbishops Council, \$350,000; the West Indian United Spiritual Baptist Sacred Order, \$100,000, and the Triune Shouters Baptist Incorporated, \$100,000. In respect of the other Baptist groups, the Independent International Baptist, \$30,000; the Baptist Union, \$30,000. The Methodist, the Trinidad and Tobago Methodist Trust, \$148,000. The Open Bible Churches, \$200,000; the Council of Evangelical Churches, \$400,000. PAWI, which I have mentioned before, \$200,000. The Bahá'í Faith, Madam President, \$40,000; the Moravian Church, \$49,000; the Orisha Elders, \$99,010; the Presbyterian Church, \$297,000; the Roman Catholic Church, \$2.5 million; the Rastafarian Movement through the Ethiopian Orthodox Church, \$85,000; all Mansions of Rastafari, \$64,000—

**Madam President:** Minister, you time is up. Sen. Mark.

**Sen. The Hon. C. Rambharat:** Thank you very much, Madam President. [*Desk thumping*]

### **Small and Micro, Medium-Sized Businesses**

#### **(Government Assistance Re: COVID 19)**

**Sen. Wade Mark:** Thank you, Madam President. Madam President, small and micro and medium-sized businesses are reeling under economic stress and facing a lot of financial turbulence in this country. It is like a nightmare these small and medium-sized businesses are going through owing to the present economic crisis brought on by this COVID 2019 and all the “incompetencies” that we had in the last four-and-a-half years by this Government not really getting this economy growing in the way that it ought to be; it ought to have been growing. Madam

President, the time has come for the Government to move swiftly to address this question. They have done it with the churches, \$30 million, let us see how they can move quickly to help these hundreds, if not thousands of small business operators and organizations in this country in order to prevent destruction of hundreds, if not thousands of small businesses together, Madam President, with thousands of jobs that they provide. It is troubling that after some seven weeks after the hon. Prime Minister promised that financial institutions would assist firms, small, micro, medium-sized businesses during the COVID 19 pandemic many business owners and chambers are publicly complaining that their banks as well as insurance companies have offered no significant waivers. While, Madam President, landlords are still seeking rental payments despite the inability of these organizations and businesses to operate during the “stay-at-home” orders issued under the Public Health Ordinance Regulations.

Madam President, it is very serious as it relates to the survival of these small and medium-sized enterprises. Some have suggested that the situation is so grave that the Government must take steps to give what is called legal protection to these small businesses who are facing huge financial and economic difficulties in repaying their loans, in meeting their rental payments and in addressing, Madam President, utility charges. Not to mention many of them, Madam President, in the first few weeks were able to sustain some of their employees, but because of a cash flow problem many of them are unable to continue providing their employees with either weekly or fortnightly payments in term of wages as well as salaries. So, Madam President, the Government needs to understand that this sector is under extreme economic and financial stress. There is need, Madam President, for the Government to stop talking the talk and start walking the talk insofar as small businesses are concerned. Maybe the time has come for the Government to

consider instituting a legal moratorium by having discussions with the banks on loans, especially for small businesses, Madam President.

How are these businesses going to get the capital, Madam President, to facilitate their successful recommencement of operations when the lockdown begin to recede after the Prime Minister addresses the nation on the 10<sup>th</sup>? And I am sure by the 15<sup>th</sup>, measures will be taken to begin the gradual and incremental reopening of our business and economy on a phased basis with all the appropriate safeguards and restrictions to safeguard lives, Madam President. But as we safeguard lives we must safeguard livelihoods, Madam President, because businesses are in danger of going down.

Madam President, I call on the Government to take measures to intervene directly in this matter, whether we are dealing with rentals by landlords—the Government owns Trincity Mall, the Government owns Long Circular Mall; they own One Woodbrook Place, and many tenants are still being called upon by the Government who is the landlord to pay rent. So we want the Government to lead by example, and “doh come and tell meh about no liquidator”. The Government is in charge and the Government must take steps to protect our people who are under extreme stress, as I said, Madam President. So I call on the Government, through the relevant authorities here today, to take steps to give our small and medium-sized and micro business enterprises breathing space, some breathing space so that they can get back on their feet, Madam President, when the lockdown is over.

**5.30p.m.**

We have to do what we have to do to protect jobs, Madam President, to aid and facilitate economic recovery in our country. And the basis for that recovery, Madam President, lies in our micro, small and medium-size business operators.



They employ tens of thousands of citizens and many of those citizens are now on the breadline begging for food. And as the Minister of Agriculture, Land and Fisheries has recognized, it is not *Español*, it is not “Vennies” in the line. It is nationals, Trinidadians and Tobagonians lining up for hampers because they are hungry, Madam President. And this incompetent Government has not done what it was supposed to do to save and to intervene in a proper way to save these small and medium-size businesses.

So I call on the Government this afternoon to stop the talk, get serious, take action, intervene if it means legally bringing legislation to this Parliament for a moratorium for small and medium-size business operators. So that they can all breathe after the lockdown is over. That is what we have to do, Madam President, and we call on the Government to take action and take action now and stop talking and start acting. I thank you very much, Madam President.

**The Minister in the Ministry of Finance (Sen. The Hon. Allyson West):** Thank you Madam President. Madam President, the Government is quite aware of its obligations in respect of the fallout that is impacting our citizens as a result of this COVID 19 pandemic.

From the outset, the Government went about carefully determining which stakeholders would be most directly impacted, identifying the most vulnerable groups and putting things in place to deal with that.

In respect of the small and medium-size businesses, we recognized that cash flow and ability to meet their bills and maintain their obligations and inability to pay staff would be the most significant of the issues facing them. So, in that regard we took two immediate steps. One, we set about putting in place relief programmes to address the needs of the staff who would have been terminated. We spoke to the Chambers to seek their commitment to persuading their members to retain staff for

as long as they could, and we did get that commitment. We put systems in place to reduce the capital reserve requirements, so that banks would have greater liquidity to be able to lend to these businesses and we reduced the repo rate, which would have made lending of funds cheaper. Having put those things in place and got the commitments of the banks to skip payments, to reduce interest rates, to make facilities available to their customers, including reduction of credit card interest rates, and so on, the Government set about setting up direct relief facilities.

In this regard, we did two things. We met with the credit unions because the information we had was that a lot of small and medium enterprises, some of them prefer to bank with credit unions rather than traditional banks. So we met with the credit unions and said we want to set up a facility using your mechanism to provide loans to these small and medium-size enterprises that are suffering from COVID. So, we have agreed with the credit unions. A memorandum of understanding has been signed that we would make available to them in the first instance \$100 million to provide soft loans to their clientele, the small and medium-size enterprise sector. The loans would be given to the credit unions, not at the standard credit union rate, which is 1 per cent per month on the reducing balance, but half of a per cent per month on the reducing balance to reduce the obligation and the burden on them. They would have a moratorium of three months to start repayment of these loans and they would have a period of two years within which to repay the loans after the lockdown was reversed and we went back to economic activity.

The Government would provide the funds to the credit union, so the credit unions would not be hampered in their normal business activity and the credit unions would manage the operation, identify the businesses that were most impacted to determine who the loans would be disbursed to and would seek, at the

correct time, to collect repayments on those loans. To the extent that the loans are not repaid, the credit unions again would not be burdened. The burden will fall on the Government.

The Government went further and met with the banks to do something similar. It is setting up a fund of \$100 million again, in the first instance to be deposited at UTC to be used as a guarantee by the banks to provide loans to small and medium-size enterprises at reduced interest rates. So this would allow the banks to have the assurance that they could make these loans available to people who, perhaps, they would want to get significant collateral from as security for the loan. They could overlook that in these circumstances, because the Government would provide a guarantee with the funds readily available in a UTC facility. Those are the two main measures that the Government is implementing immediately. As I said, one of the MOUs has already been signed. The other one is on the brink of being signed.

Over and above that, we recognize that the small and medium-size enterprises in particular are going to be impacted in the medium term. It is not only a short-term thing because they have been locked down for a while. They have been earning no income. It will take them some time to recover.

So, as we are all aware, the Prime Minister set up a committee to design a roadmap for the recovery of Trinidad and Tobago. That committee is comprised of very competent, very capable, very dedicated persons who are contributing their time, expertise, away from their business, away from their families, to the people of Trinidad and Tobago, to come up with a recovery programme. They have been working very hard. They have spent over 7,000 hours so far, since the appointment and the exercise is going very well. We have produced a short-term plan, in terms of how do we start going back to work now. And we are in the

process of producing a longer-term plan, in terms of what continuing support will the Government need to provide and in what areas.

One of the key sectors being considered by that committee are small and medium-size enterprises, because we do understand that they would be under pressure. So this sector is not being ignored. It is being supported currently as we speak and the plan is to come up with a plan to ensure the sustainability of that sector, because the Government recognizes the importance of that sector to the economy of Trinidad and Tobago, to the retention of jobs, to our plans for diversification and just to the development of Trinidad and Tobago as we move forward.

So, I would like to assure this Chamber that the Government is clearly apprised of the situation and is working to arrive at a solution for the benefit of that sector in particular and of Trinidad and Tobago in general. Madam President, I thank you.

*Question put and agreed.*

*Senate adjourned accordingly.*

*Adjourned at 5.40p.m.*