

Honourable Attorney General's Speech
on the
Alternative Sentencing Bill, 2006

Madam Speaker,

1. I rise to present to this House a Bill entitled the Alternative Sentencing Bill, 2006.
2. Madam Speaker, I will attempt to put this in perspective. Hon. Members of this House will recall that in October last year in direct response to the upsurge in violent crimes then, the Government enacted a raft of crime fighting legislation.
3. These include an amendment to the Firearms Law to provide a minimum mandatory sentence of ten years for certain firearm offences. An amendment to the Penal Code to outlaw the possession of certain implements (weapons) etc. in certain places e.g. cinemas and places of entertainment; and amendments to the Prison Law to ensure that persons incarcerated for violent offences remain in prison sufficiently long enough so that their punishment is commensurate with the gravity of their transgressions. An amendment to the Bail Law to make it more difficult for certain offenders to be granted bail.
4. Madame Speaker all of us in Government, and indeed in this House however recognize that there are myriad of reasons why people get involved in deviant/anti-social behaviour. We also recognize that it is incumbent on Government to ensure that persons who are involved in criminal activities are not simply convicted and warehoused somewhere at Northward without hope.
5. It is recognized that as a Society we have a duty to try and salvage every single individual involved in criminal activities, who can be salvaged. We must assist them where possible to

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have another opportunity to make something good not just for themselves, but also for their families.

6. In other words, Madame Speaker, we must assist them, where possible, on the road to rehabilitation. We are all aware that conversion on the road to Damascus is not unique to the Apostle Paul. So they too can be converted.
7. Madame Speaker, the benefits to be derived from this approach are enormous. Both the State and the individuals can benefit.
8. From the country's standpoint there are enormous savings that will eventually be realized. We heard about the figure of approximately \$53,000 per annum to keep one person incarcerated. We heard, Madame Speaker, of the need to erect a maximum security wing at Northward, we have heard of all the other attendant costs of keeping persons locked up in prisons. We heard of the problems of overcrowding, etc. It is our hope, indeed, we are confident that the Alternative Sentences initiatives will result in significant reduction in the prison population.
9. It is the Government's considered view that we can significantly reduce the burdens in a general way with a different and more enlightened approach to sentencing and indeed with how we deal with some of our offenders.

Government is firmly of the opinion that this enlightened approach to sentencing will overtime have the dual effects of the eventual reduction on the Government's recurrent expenditure while at the same time helping offenders by providing them with an opportunity to lead a productive life.

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10. From the offenders' standpoint this different approach to sentencing will allow the offender to pay his dues to society for his offences, whilst at the same time providing for his family; continue to be a part of the established family structure and thus help keeping his family unit together. So there will be a reduction in the break up of offenders' families. Indeed, maintaining family ties has been shown to be an important factor in preventing recidivism.

Additionally, Madam Speaker, it will allow offenders through community service orders, to make reparation to the community for their crime, rather than imposing a net cost of being accommodated and fed in prison.

It also has the effect of preventing offenders from associating with each other in prison where they may share expertise and minor offenders may be influenced to eventually committing more serious crimes. This is even more important for juvenile offenders.

Finally, Madame Speaker, it will help in reducing the pressure on prison places which will allow more spaces and staff resources to focus on rehabilitation of the remaining persons.

Madame Speaker, the new approach of which we speak, has its genesis in the excellent work of the Hon. Chief Justice and his Sentencing Advisory Committee. For the last six (6) years or more the Chief Justice and a small group consisting of persons from the Attorney General's Chambers, the Social and Probation services, and in more recent times the Portfolio of the Hon. Chief Secretary have worked tirelessly to bring

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about changes in the sentencing culture of our courts. I wish publicly on behalf of Government to applaud the efforts of the Sentencing Committee.

11. Madame Speaker, during the period when the Cayman Islands was pursuing these initiatives, the FCO also quite helpfully commissioned a wider study on the Alternative Sentencing Options throughout the Overseas Territories. The person who conducted that study was Mr. Charles Ekin – who eventually produced a very helpful report. However, Cayman Islands was already well on the way to looking at reforming our sentencing options by the Mr. Ekin..... However, some of his additional observations were taken on board in shaping this Bill currently before this House.
12. Madame Speaker, in effect what we are embarking on here today is the culmination of a convergence of initiatives being pursued by Government to improved the Criminal Justice System, which also includes how we deal with our offenders, including our young offenders. These initiatives also include an element of sentencing planning as well as other reforms being pursued by the Hon. Chief Secretary's portfolio, the Hon. Minister of Health and Human Services Ministry, the RCIP as well as other agencies of Government. In other words Madame Speaker, it is a grand partnership.
13. Madam Speaker, this House will hear later on in this session of another set of initiatives by way of a companion piece of legislation in the form of a Drug Court Bill to widen the options available to our courts in dealing with persons who have been identified as having a drug abuse problem.

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14. Madam Speaker, speaking of Partnerships, earlier this morning I laid on the table of this House a report which sets out the findings and recommendations of a crime study (an Empirical Study on Crime in the Cayman Islands). The study was commissioned by the Government and was conducted by well-known Barbadian Criminologist – Ms. Yolande Forde. In my presentation this morning, I detailed for this House some of the main findings and recommendations contained in the report. What this initiative demonstrates Madam Speaker is that the Government is taking an informed and holistic approach to addressing crime and the causes of crime in this country. Accordingly, the initiatives contained in the instant Bill, combined with the eventual implementation of the recommendations in the Crime Report, will only serve to further consolidate Governments' multi-dimensional, multi-faceted approach to these social issues with which we have to grapple as decision-makers.
15. Madame Speaker, I mentioned earlier in my presentation that this is a partnership. I wish to emphasize that this partnership is of even greater significance because of the necessity for synergy. In order for these initiatives to be successful they have to involve and enjoy the confidence of the entire public. It has to involve our print and electronic media, it has to involve our NGOs, all our social institutions as well as others.
16. Why is it so important, Madame Speaker, to have all these hands on deck, in our pursuit?
17. Madame Speaker, for these Alternative Sentences to be effective, they have to gain the confidence of the public. There is a general perception, worldwide, that community

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oriented penalties are not real punishment. It is therefore incumbent on Government to take the lead in educating the public about the benefits of such sentences. The public has to be persuaded that they are meaningful. That it is not a means of letting off offenders with a slap on the wrist. They will have to be persuaded that the Government has not gone soft on criminals. Accordingly, I think that if the public is given the right information and they are persuaded that it is being enforced, they will eventually appreciate it. I am confident that the public of Cayman will embrace these initiatives.

18. I want to assure members of the public in this regard, that it is not all convicted persons that will qualify for these new initiatives. Indeed, before any convicted person can attract any of these options, they will have to undergo a *risk assessment* in order to ensure that they are suitable to be given a sentence other than a fine and/or a period of imprisonment. Accordingly, violent offenders and others who have exhibited a particular violent propensity or certain anti-social tendencies will not qualify for alternative sentences. The public will still have to be protected from such persons.
19. In addition, Madame Speaker, I wish to assure all Honourable Members of the House and indeed the general public that there are adequate safeguards in the Bill to address the issue of non-compliance – See for e.g. Clause 22.

Additionally, Madame Speaker, alternative sentences are not available to persons who have committed Category A offences, it is only available for the lesser offences, and

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some ... way offences. Not available for gun crimes, drug trafficking, rapists and persons of similar dispositions.

20. Madame Speaker, what are the initiatives that we are here speaking about?

The Alternative Sentences Bill 2006, if enacted into law will provide the Courts of these Islands with a wide range of sentencing options for persons who are convicted of certain offences.

21. Madame Speaker, the options we are here speaking of include:

- a. curfews and monitoring of offenders' movements with the assistance of electronic devices to ensure compliance with the curfew;
- b. intermittent sentences, conditional sentences and suspended sentence supervision orders which allow offenders to spend a part or all of the period of their sentence within the community;
- c. exclusion orders which require an offender to stay away from a certain place or places at certain times. Such orders are aimed at offenders who present a particular danger or nuisance to a particular victim or victims;
- d. restitution centres which are special centres of incarceration where prisoners are allowed to work and use their term of imprisonment earning funds for the purpose of compensating their victims of crime;
- e. a fine option programme-where an offender's sentence is to pay a fine. This option allows him to work,

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whether *or not he is prisoner* and which will count as a credit towards the payment of the fine;

- f. community orders for repeat petty-offenders. Instead of imposing a fine on a repeat petty criminal, where the court is of the opinion that he will not be able to pay his fine or fines the court should instead consider imposing a curfew order or a community service order;
- g. victim impact statement- for the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged in respect of any offence, the court may, in addition to any other matter, consider any statement made by the victim or by the prosecution on behalf of the victim describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

22. Madame Speaker, another order that the Court will be able to make is that known as an *Exclusion Order*, whereby a person can be prohibited from entering a particular place or premises – See Clause 11. This Order will also stipulate where the offender shall reside. Again Madame Speaker, if there is a breach of this Order the Court is empowered to revoke it and either impose a fine or send the person to prison.
23. Madame Speaker I would like to read in full Clauses 15-17 of the Bill dealing with conditional sentences. I think these three Clauses together basically sum up just about what these initiatives are all about.
24. Of significance also is Clause 23 which speaks to the option of “*Restitution and Restitution Centres*, in short, *Restitution*

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of Victims, et al (explain). Court will now be able to order a convicted person to do the following.

- a. compensate the victim for any property damaged by the offender.
 - b. compensate a victim for bodily harm (injuries); loss of income or support
 - c. spouse, common law partner, child, et al. in circumstances where.
25. Madame Speaker, because this is a multi-agency initiative which cuts across the Portfolio of the Hon. Chief Secretary, Minister of Health and Human Services, the Judiciary, the Portfolio of Legal Affairs, etc, it follows that all steps will have to be taken to ensure the appropriate synergy.
26. Returning to the issue of enforcement and possible non-compliance, Madame Speaker, a more detailed look at the Bill will show that it provides a number of features. These include a provision for:
- a. Curfew Orders – See Clause 5
It enables the Court to make an Order requiring a person to remain, for a specified period at a specified location.

This restriction may be monitored by a GPS electronic monitoring device to track the person's whereabouts.

Madame Speaker where a person breaks his curfew the Court can revoke that Order and instead impose a fine and or a period of imprisonment. – as clearly stipulated in Clause 7 of this Bill..

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27. Madame Speaker, these tracking devices are extremely effective. Indeed, in May of this year a number of us traveled to California, USA to view first hand the operation of these tracking devices. We went to a particular Corporation, the company that manufactures them and also installs and monitors them. The plan is that our 911 Department will be the lead agency working together with the Police, the Courts and the Probation Department to install and monitor these equipment. 911 will understandably, have to have some of their personnel trained by the company providing the equipment. It is therefore proposed that at least whichever company is chosen will be working closely with 911 in order to ensure a seamless implementation of the project. A little more about the actual equipment itself and the workings of it:

- a. Madam speaker, the equipment used for electronic monitoring is tried and tested. It is relatively simple. A number of countries have used it over the past 10 years. It has been shown to be an effective and humane form of detention which does not violate the subject's rights. The scheme is intended for low-risk offenders. Only offenders selected by the courts will be monitored electronically, and their suitability for this form of detention will be assessed by the court based on advice from Police, Probation and other social service agencies.**

- b. The two main pieces of equipment used to monitor the offender's movements are a "tag" and a monitoring unit. The tag is a plastic device shaped like a wrist watch but worn around the ankle. It is**

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strong, compact and reasonably comfortable. It is waterproof and is even safe to a depth of about 15 feet. The monitoring unit is a small box that is set up in the offender's home or place of work or wherever the court chooses to monitor his movements. Once the tag has been placed on the subject, it emits a radio signal that is picked up by the monitoring unit. The monitoring unit transmits all data from the tag via telephone to the monitoring centre at 911. There will be a dedicated monitoring centre at 911, with specially trained staff, to monitor all subjects being electronically monitored.

- c. If the subject tries to move outside the geographic limits set by the court, then the monitoring unit immediately signals an alarm at the 911 monitoring centre. For example, if the court has set a home curfew of 7.00pm to 7.00am and the participant steps outside the boundary of his house during this time, the equipment will immediately alert the monitoring centre at 911. Similarly, if the subject tampers with the equipment - for instance trying to cut off the tag or interfering with monitoring unit - an alarm will sound in the 911 monitoring centre. Appropriate action, which can include dispatching the police, will then be taken. The subject has a strong incentive not to breach this curfew, because every breach will be carefully recorded and could result in him being sent to prison to serve the rest of his sentence.**

- d. An additional monitoring feature that may be used is called voice verification. Voices, like fingerprints,**

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have a unique character or “voiceprint”. If an offender is ordered by the court to be at a particular place at a particular time, his presence can be verified by voice verification. For example, if the court orders that he undergo drug counseling on Tuesdays and Thursdays, his presence there can be confirmed by his calling the monitoring centre at a specified time. If he is supposed to go to work or be involved in community service, the monitoring centre can verify his compliance automatically by generating random calls to these locations to check that he is there.

- e. Madam Speaker, electronic monitoring provides a structured lifestyle for the offender which supports the other features of his alternative sentence, such as community service. It costs a fraction of incarceration. The equipment is reliable. It generates creates records that are acceptable in court. It is possible that it may even reduce re-offending, especially among young offenders. The recidivism rate in Cayman - the rate of reoffending –is high – possibly 70% or higher. Electronic monitoring, if carefully used, can be an effective tool in the judicial toolbox to help us contain crime in a cost-effective manner and hopefully to reduce the number of victims of crime.

28. **Needless to say, how impressed we were with the workings thereof.**

Madame Speaker, I wish to assure the public that it is relatively cost effective. Indeed when compared to the cost

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of keeping an offender locked up, it is a far less costly exercise. In fact, we have seen comparisons which state that *three months of an electronically monitored curfew are nearly five times cheaper than three months in custody.*

29. UK statistics show that on an average, it costs £1,300 to monitor an offender who has been released from prison on Home Detention Curfew for 90 days compared to £6,500 for the same period in custody. Additionally, Madame Speaker it allows an offender to live as nearly as possible a normal life, but at the same time ensuring compliance with a Court Order.

The idea is to go about this gradually, so it is hoped that in the initial stage approximately 70-75 offenders will be involved in these initiatives.

30. Madame Speaker, I wish to also point out that it is our intention to also amend the Prison Law to provide that where certain offenders are sent to prison for the less serious offences – that the Court and/or prison may put arrangements in place to allow for such a person to serve an initial period of incarceration and thereafter given an early release subject to being monitored by a tracking device for the duration of the remainder of the sentencing period that he is out. I wish to make it clear that this option will not be available to persons who commit serious offences and it will not be available to persons serving life imprisonment.
31. Madame Speaker, I want to caution Members of this House, as well as the general public that these initiatives are well intentioned. However, I wish to make it clear that they will not be the panacea to all crimes/anti-social behaviours in these Islands. They are yet another set of initiatives, which,

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when taken together with ongoing initiatives should fundamentally alter how we deal with some criminal offenders.

32. Finally Madame Speaker, before coming to this House, this Bill was the subject of extensive consultation. We have had suggestions from numerous agencies, including Probation, Police, Human Rights Committee, Social Services, etc. some suggestions were accepted, some were not. But all relevant persons were given an opportunity to comment.

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