



Report of the
Criminal Justice Review Board

REPORT ON THE CRIMINAL JUSTICE SYSTEM IN BERMUDA

CRIMINAL JUSTICE REVIEW TEAM

We wish to acknowledge the contribution made to this report by those individuals and groups who gave us the benefit of their thoughts and experience.

We are also grateful to the assistance provided by our liaison officer, Mr Dyer .

We hope this report will lead to action.

Stephen Tumim



Melvyn Bassett



Lowdru Robinson



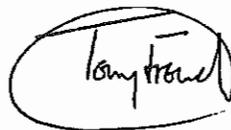
Norma Wade



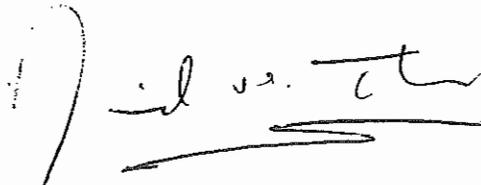
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BIBLIOGRAPHY - PARTS ONE, TWO, THREE and FOUR



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The Honourable Sir John W.D. Swan, KBE JP MP
Premier of Bermuda

October 2, 1992

Dear Premier,

1. This summer your Cabinet invited me to prepare a report on aspects of criminal justice in Bermuda, and submit it to you. My terms of reference were given to me as follows:-

- "a. To review the Criminal Justice System and the primary legislation which impacts on Prisons (incarceration).
- b. To review the Criminal Justice System procedures and policies and make recommendations for sentencing alternatives.
- c. To investigate the perceptions that persons of different races and different backgrounds are treated differently by the system.
- d. To review the Criminal Justice System with a view to recommending how the country can change the emphasis from one of custody to correction."

However you read these terms, the main issues behind them are the same:- How do you reduce the number of people held in custody, one of the highest per head of population in the world, and in particular how do you reduce the proportion of black people in custody, far exceeding the proportion of blacks in the community?

2. To conduct this review, I have had a team of six. Three of them I nominated from those who work with me in the Inspectorate of Prisons in London. They are Tony French, my staff officer, a Prison Governor and member of the bar, David Jenkins, criminologist and Sociologist, former Director of the Howard League for Penal Reform, and Steve Bass, a principal in the Home Civil Service, and our office manager in London. Three of them have been nominated by you. They are Mrs. Justice Norma Wade, a Judge of the Supreme Court of Bermuda, Lowdru Robinson, Director of Community Affairs in Bermuda, and Melvyn Bassett, Principal of Sandys Secondary School, Bermuda. We are all deeply grateful for your nominations. You have given me a well-balanced, hard working and well-informed team, whose joint counsel I shall not hesitate to commend to you. Even they could not have operated as efficiently as I believe the whole team has done, without the aid and presence at every juncture, of Janine Bentley, our wholly admirable secretary.
3. Before setting out that counsel, I propose to make a few comments of my own as a preliminary part of my report to you.
4. Bermuda relies, as I see it, for much of its well-being on tourism and overseas finance. It needs to enjoy the esteem of its neighbours and the respect of its citizens. It needs law and order in the sense that it is made and kept safe for its inhabitants and visitors and seen to be safe. If a community locks up too many citizens it may preserve order short-term but will lose respect. Over-confinement acts as a school of crime, and removes the shame of imprisonment, particularly amongst the young. It destroys self-respect. How then do we get a balance of law and order on one side and esteem and respect on the other, so as to ensure the long term safety and happiness of the public? It is a social problem and by no means wholly technical.

5. The broad nature of the problem as seen by a curious visitor from overseas might be described in this way:-
- a. This is a small heavily built up and occupied group of islands with virtually no countryside, although retaining remarkable beauty and charm. As the people rely for a living on tourism and quick communications, there is a traffic problem. A partial solution has been strictly to control the use of cars. A consequence has been a demanding traffic law, quite rigidly enforced by police and courts, so that many respectable people, otherwise law-abiding, tend to feel harassed by the law.
 - b. There is a unique history for such a small community. The black majority was subject to legally enforceable disadvantage until less than thirty years ago, when schools were officially desegregated. This is to be seen against a background where the Church of England and the Methodist Churches maintained segregated seating policies until the mid 1960's. The twentieth century seems to have taught us a distinction of evils between racial disadvantage by law and such disadvantage by social attitudes. In eliminating segregation, removing the legal basis is not enough. A society must have the fortitude to undertake the task of removing the social attitudes that prevent people from treating each other with the respect and dignity all human beings deserve. It is not surprising that within a mere generation of the 1960's, racial tension continues to underlie the culture and to be raised in discussion of every important topic (although of course always with the agreeable manners of Bermudians).
 - c. There is in Bermuda, thanks to location and the hard-work and skill of many inhabitants, a very high level of income statistically per head of population. There is a lot of money about even in a recession. It comes as something of a jolt to the curious visitor to find that the Government

is perennially short of resources for tasks such as adequate social services, because of the low level of Government income. The very modesty of state resource in a community with the signs of prosperity to be found in Bermuda is a factor to be taken into account in our analysis.

- d. Abuse of drugs of all kinds, including alcohol, is high. The rate of AIDS is exceedingly high; this may in part be linked with an efficient reporting system that is rigidly followed by the medical profession. Probably a majority of serious criminal offences are connected with drugs, or the acquisition of money to buy drugs. This means a continued need for imprisonment for the illegal dealer, and active treatment for the user. One will not work without the other, if the crime rate is to be reduced. A big fall in users would destroy the drug market.
 - e. There is among the young very often a quite specific lack of self-identity. We heard of a boy who said that he felt himself an American when he watched TV, vaguely British at school, and he was not sure what he was when he was at home. One most eminent Bermudian described his fellow citizens as Americans waving the Union Jack.
6. These factors, (I call them a, b, c, d and e) create a problem which lies at the root of the issues on which I am asked to advise. They foster, in inter-action, a large class of young citizens who see themselves as alienated from the official culture, an under class harassed by the forces of law and order. Modern urban changes worldwide in society, with loss of control by families, churches and other institutions, and the increased number of children brought up by a young mother alone go alongside the local factors. From earliest childhood many see themselves as non-citizens and outcasts. "The boy of 16", a distinguished black citizen told me, "needs a rite of passage." It is buying a bike. If you can't buy one, you miss out on

adolescence unless you steal the parts. Then you are a criminal. If you get the parts somehow, and add some gears, then you have false papers, and become a bad criminal."

7. The attitudes of the estranged young (and not so young) raise social questions which can be described but not solved in the present report. Changes in attitudes are more vital to health than mere changes in law. "How small", wrote Dr. Johnson, "of all that human hearts endure, that part which Laws or Kings can cause or cure." The forces of education are more closely involved here than the forces of law.
8. But there remain important issues falling directly within the province of criminal justice. When I arrived in Bermuda, people of all kinds, from prisoners to politicians, hastened to tell us that we were here for too short a time (four weeks) to effect anything, and that even if we stayed for a year, our report would be left on a dusty shelf along with earlier reports. We knew that we could not emulate the eloquence of Lord Pitt, or the massive learning of Dr. Archibald. But we do believe that we can provide the assistance for which we were invited by establishing a modest signpost. Perhaps in a community with Bermuda's traffic problems, a signpost is the most fitting image. In any event it can be used to show at a glance a way ahead. Whether the way is taken is not for us, but for the people of Bermuda. It will depend on their will and their views about the use of their resources, and about the value of what we recommend.
9. We have read the existing reports. We have looked and listened for a month, and have enjoyed the most useful welcome and hospitality we could have hoped for from everybody before, during and after Cup Match. Whether the signs on the post are to be followed or not, I hope they will be widely seen as clear, sharp and practical and designed for the climate.

10. I now submit to you, Sir, the report including as part of it my personal comments as a curious and grateful visitor. And I remain, Sir, your most obedient servant.

Stephen Twinn

Her Majesty's Chief Inspector of Prisons
in England and Wales
One of Her Majesty's Circuit Judges

INTRODUCTION

BACKGROUND TO THE REVIEW

Events at Casemates Prison leading to the decision to establish a review

1 On 23 April 1992 the Government of Bermuda announced its intention to set up a second review of the prison service (the first review involved a Canadian team earlier in the year). The reasons were set out in a front page article in The Royal Gazette on the following day (see Appendix 1). A number of security problems had arisen at the prison, which had damaged public confidence in the prison system. Prison escapes and failures to return from work release programmes - one such incident allegedly leading to a murder - and, in particular, concern that work programmes which had allowed prisoners to leave custody for short periods were being abused, all led to the perception that the public was in danger. A number of short term measures to improve security were in place at the time of this Review.

2 The Government, represented by the Minister of Health, Social Services and Housing, the Hon. Quinton L. Edness, J.P., M.P. set up the second review to restore public confidence in the prison service, 'as an integral part of the criminal justice system' (Royal Gazette, 24 April). There was some reluctance by the public to accept that the Government was serious about setting up a Review for other than cosmetic purposes. The Government's view was that the difficulties demonstrated at the prison were symptomatic of more general problems in the criminal justice system, and widened the terms of reference accordingly.

Terms of Reference of the Criminal Justice Review

3 The Government's terms of reference for the review team were:

- To review the Criminal Justice System and the primary legislation which impacts on prisons.
- To review the Criminal Justice System procedures and policies and make recommendations for sentencing alternatives.
- To investigate the perceptions that persons of different races and different backgrounds are treated differently by the system.
- To review the Criminal Justice System with a view to recommending how the country can change the emphasis from one of custody to correction.

4 The task set for the Review team centred on an examination of the criminal justice system in Bermuda, with particular reference to race, and a focus on how alleged and convicted offenders are dealt with by the system. (The Review team of seven, including the chairman - see Appendix 2, were based in Bermuda from 18 July - 15 August 1992).

How the Review Team set about its Task

5 We had been given a broad brief and had only a relatively short time in which to make our recommendations. A number of key questions, based on the terms of reference, were identified.

- i) How far does the criminal justice system in Bermuda rely on the use of custody?;
- ii) at what level of offending behaviour does the threat of custody become apparent?;

- iii) what arrangements, other than custody, exist within Bermudian society for dealing with offenders under sentence?;
- iv) are criminal justice sanctions applied with fairness to the population? If unfairness exists, in what ways, and towards whom is it expressed?

6 A large number of reports, articles and recommendations in this area have preceded this Review (two significant longer term initiatives are in the process of being established - A National Drug Strategy and the Education Planning Team recommendations). We decided to adopt a dual approach to the subject matter:

- o **The collection and analysis of previous work.** We have collected and examined as much material as possible (it is set out chronologically in the Bibliography), and examined the conclusions;
- o **The acquisition of new information.** The Review team has spent much of its time visiting people and places on the Island which affect the criminal justice system and have reported their findings. Furthermore the Review team invited anyone, or any organisation to submit written and/or oral material. Between 22 July and 13 August there were 40 individual interviews arranged in response to the Review teams invitation. In addition, a total of 38 written submissions were received. At a public meeting, held in Hamilton on 6 August 1992 and covered by local television and press, the issues raised by the terms of reference received a public airing to an audience of about 120. The chairman of the Review team reported regularly through the media on the progress and problems faced by the team as it conducted its work.

Race, Education and Economics - Background

7 A number of concerns dealing with the nature of Bermudian society and its criminal justice system were brought to the attention of the Review Team:

- i) Although comparatively small - approximately 20 sq. miles with a population of about 59,000 - Bermuda has a highly complex social structure. Less than 30 years ago it was a blatantly segregated society. The attempt to develop an integrated society has been made over an exceedingly short period. The racial dimension was a feature considered in our examination of the criminal justice system;
- ii) The economy of Bermuda is one of the strongest in the world. The 1991 census recorded a median annual income of \$48,588 per household. There is no direct income tax. The economy is, however, dependant upon the operation of international business activities and tourism. These activities require social stability and confidence in the legal system for continued success;
- iii) The education system in Bermuda is selective from the age of 11 years. Schools are divided into General Secondary and Academic High schools. A Technical Institute was closed in 1972. There is currently a restructuring exercise of the Bermuda Education System based on recommendations from the Government Education Planning Team. In reality schools are still largely segregated in that the great majority of children appear to go to schools with others of their own colour. The Bermuda College provides facilities for further education, but opportunities for tertiary education are limited. This means that many young Bermudians go

abroad from the age of 16 to receive further education or advanced training. For those left behind, for whatever reason, education and training opportunities on the Island are limited. In a wealthy society, where high incomes are required to live comfortably, this can cause tension. In particular, it may lead to the search for wealth regardless of means. In Bermuda, this can result in an introduction to the drug culture;

- iv) Bermuda is a country which relies heavily upon the use of the fine and custody in dealing with offenders;
- v) the use of custody appears disproportionately applied to black members of the population;
- vi) a defining characteristic of the criminal justice system is that it increasingly affects the young in the Island's population;
- vii) the offences which bring young people into conflict with the law are often minor. Almost invariably they have to do with infractions of the traffic laws;
- viii) that the arrangements for dealing with crime, other than by the use of custody, are not well developed.

8 In our method of working we have attempted to reflect the concerns of Bermudians to provide an imaginative and fair criminal justice system. This Report can only provide signposts to improvement. Whether the directions indicated are followed is a matter for Bermudians themselves.

9 The importance of race, economics and education in any discussion of social issues in this country cannot be disputed. In the following paragraphs we examine these issues as part of the introduction to our own work.

Race and Socio-economic Factors

10 The history of race relations in Bermuda and the impact of prejudice and discrimination as legacies of slavery are well documented in a number of Government sponsored reports. In the past fifteen years there have been five major reports that have covered the problem of race relations ie

The Clark Report	- 1978
The Pitt Report	- 1978
The Gurr Report	- 1984
The Archibald Report	- 1986
National Drug Strategy Proposal	- 1991

11 These reports have identified various aspects of the problem. They are supported by numerous tables of data, covering a full range of socio-economic issues, in an attempt to establish root causes and the effects on life in the community. The reports have highlighted a number of issues that have had a negative influence on race relations. Government has responded by creating various programmes in an attempt to address individual contributory causes and to reverse trends.

12 The importance of the Bermudian way of life, with its unique characteristics, heritage, traditions and values should form the basis for any future co-ordinated programme designed to achieve effective social change.

13 In Bermuda, factors such as class, family background, ethnic origin and economic worth have traditionally been a major influence on the pattern of race relations. Any programmes

designed to achieve social justice and economic equity must take into account all contributory factors and how they inter-relate.

14 Bermudians continue to believe that race relations are a problem. Gurr reported (page 13) that "most Bermudians think that racial discrimination is a problem; but they disagree mainly in how serious". When community issues are non-controversial, the perception in race relations is one of a harmonious community. But in any controversial issue, either personal, business, or community matters, where blacks and whites interact with each other, race can become the central problem.

15 Is Bermuda still suffering from its history of slavery and the legacy of prejudice and discrimination that followed? Can events that happened so long ago still shape present day social events? James E Smith in an analysis of the Emancipation experiences in Bermuda (New Dawn - page 35 - published July 1991) concludes,

"Bermuda's post-Emancipation governments failed to tackle the question of race relations directly, leaving a complex legacy of discrimination and segregation which the present generation of Bermudians are now trying to come to grips with."

16 Since Emancipation, many laws have been passed by the Legislature that confirmed the rights and freedoms of all individuals, but racism continues to persist. The Archibald Final Royal Commission Report (page 53) states,

"While Bermuda may frown upon or condemn overt practices of individual racism - eg, individuals of one race acting openly against individuals of another - The Country has not yet dealt with the area of institutional racism."

17 Sociologists define "institutional racism" as habits of discrimination that have become crystallized into the social

structure, in institutional patterns of housing, schooling, employment etc. These patterns continue despite an absence of conscious deliberate discrimination. The ending of legal discrimination did not bring in its immediate wake social integration, or anything like it.

18 Institutional racism is not the same as individual racism. Individual racism is based on attitudes and mis-information about other groups. Institutions do not have attitudes but they do have policies, practices and traditions. Some of these may form the part of written constitutions, mission statements etc for everyone to see. However, there are often unwritten policies, practices and traditions that are subtle, which have the effect of keeping certain groups out of the institution.

19 Institutional racism is in any institutional policy, practice or tradition that gives one group in the community an advantage over all of the other groups.

20 When several institutions combine, either by agreement or accident, to maintain the advantage of one ethnic group at the expense of all others then racism becomes a part of the fabric of the social system. Those people who make up the institutions are socialized into its values and systems of operations. The idea that these institutions are set up on a basis of discrimination may never occur to them. When institutional racism affects the pattern of race relations in a community, the role of Government should be to find methods of assisting the institutions to change their policies, practices and traditions so that they can provide a more equitable service.

21 Archibald (Page 53) elaborated on his findings on institutional racism and warned of its dangers. He reported,

"Based on evidence presented in the Commission's Private Hearings, institutional racism in Bermuda appears to be far more subtle and rampant than it may appear initially, and far

less identifiable in terms of specific acts. Institutional racism occurs throughout Bermuda society - in Government, business, banks, churches, schools, unions, political parties, clubs and courts - and generally seems to be committed in the name of pressing business traditions and maintaining standards, a fact that makes it no less destructive of human life and self-esteem. Institutional racism is a serious problem that, if not addressed will retard severely the growth of Bermuda and the individuals living here."

22 The Clark Report also stressed the need to work with all segments of society in an effort to improve racial justice and economic equity. The Interim Report (page 6) stated,

"The essential dilemma which now seems to face all of the people of Bermuda, the Bermuda Government, the political leaders of the ruling and opposition parties, community leaders, clergy, small business entrepreneurs, and business and financial leaders, is how to obtain concrete forms of social justice and economic equity by rational and humane methods which will not threaten the social stability essential for the maintenance of a strong tourist-based economy. The problem is further complicated by the fact of past and residual racial inequities and the inescapable reality of political competition."

23 To date, the problem of race relations has been addressed on a piece meal basis. It is true that there have been specific and successful programmes to deal with parts of the problem. However, there has not been any major effort to attack the system that supports decisions and practices that lead to discriminatory acts. To date, there has been little concerted effort expanded to cause the "institutions" in the community to change their outdated systemic patterns of behaviour.

24 Bermuda has come a long way in a relatively short period of time. The stages of transition were outlined in the Pitt Report (page 2).

"First, a low growth, low income, low immigration and relatively isolated colonial society. Second, a high growth, high income, high immigration society catering to an international demand for tourists and business facilities, in which racial divisions are being rapidly reduced but social tension is quite high. The move from the first to the second state has been the theme of the last quarter century."

25 Major and rapid changes have occurred in community life, but have the institutions that make up the fabric of the society changed or are they still locked into outdated systemic and historical modes of operations?

26 If the Island is to continue to make social and economic progress it must remove all barriers to equal opportunity. The Archibald Report (page 54) emphasized this point.

"Thus it is imperative that Bermuda seeks to obtain sensible policies and programmes that will demonstrate to all the people of Bermuda that economic and social progress is no longer a function of race."

27 One of the submissions to the Pitt Commission expressed alarm about the absence of any peer-group pressure in either the white community or the black community which recognized social separation as "less than healthy for our development as an island nation".

28 The issue of race relations is not a black problem or a white problem, it is a total community problem and it will only be resolved when the entire community accepts it as its responsibility. Commenting on race relations in - A Proposal for a National Drug Strategy for Bermuda (page 25), Dr Archibald said;

"Apparently the racial question is a subject that the white section of the country tend to avoid, believing, perhaps, that they have nothing to gain by confronting the issue, or that raising the race spectre does more harm than good. But progress towards racial harmony will be difficult, if not impossible, as long as the white community continues to avoid the issue and discussions occur only among blacks. Racial equality can be achieved only when the issue becomes one of mutual concern."

29 Officially, segregation ended in Bermuda some 30 years ago. The 1991 National Drug Proposal observed that today "many believe that further progress has been stalled and there is some indication that race relations have recently deteriorated". Bermuda still has a long way to go to reach the goal of racial justice, economic equity and the establishment of a criminal justice system that is accepted as fair by all residents. }

30 The economic prosperity and future development of the Island rests on its capacity to create a community where residents, of all ethnic origins, have a sense of belonging to Bermuda. The establishment of a community where all Bermudians enjoy the freedoms of democracy and the duties that derive from citizenship. It is the responsibility of all Bermudians to work to achieve racial equity, social and economic justice. Mutual respect for the inherent rights and dignity of all residents, fostered and supported by the Government, is the key to racial harmony in community relations.

31 The Human Rights Commission is charged with the responsibility (under the terms of The Human Rights Act 1981) to develop and conduct research for educational programmes that are designed to eliminate discriminatory practices, as well as to encourage individuals and organizations to work to improve community relations. This agency could be empowered, by amending

the Act, to take on the task of encouraging social integration and equal opportunity whilst opposing racism, prejudice, and discrimination.

The Structure of Bermuda's Educational System

32 Bermuda's educational system reflects both British and North American influences. The development of the Bermuda Secondary School Certificate (BSSC) programme rests on an American structure and organisation, and standardised tests used system-wide are also American.

33 The public system, as at August 1992, comprises eleven pre-school nurseries; eighteen primary schools with enrolments ranging from 105 to 340 students; seven secondary schools with enrolments of 245 to 551; five special schools at primary and secondary level which cater for 151 children with disabilities between the ages of 5 and 16; and the Opportunity Workshop which has 30 handicapped persons aged 16 years and upwards.

34 There are six private schools, including two which are denominational and one which is operated by the United States Naval/Air Station. All but one cater to both primary and secondary levels.

35 Approximately 8,000 children enrolled in 48 schools are served by a professional teaching staff of approximately 650 local teachers and teachers from the United Kingdom, Canada, the West Indies and the United States. The teacher/pupil ratio is roughly 1:20 on the primary level and about 1:12 in secondary schools.

36 The administration of Bermuda's system of education falls within the portfolio of the Minister of Education, who is responsible for the formulation of educational policy. He is

assisted by the Permanent Secretary who, as his chief advisor and administrative head of the ministry, directs the implementation of policy and the operation of the system.

37 The Department of Education, staffed by professional officers under the direction of the Chief Education Officer, carries out the policies of the Minister. The Board of Education, a Government appointed body of lay people, may advise the minister on any aspect of education.

38 The Ministry of Education publication 'Mission, Philosophy, Goals', states the Ministry's mission is the provision of an environment in which each student may:

- * develop academic, practical and physical skills;
- * practise critical and creative thinking;
- * exemplify the aesthetic, social, moral and spiritual values which characterise a secure, self-confident and responsible individual who is capable of:
 - * constructive participation in the community;
 - * effective functioning in an age of change;
 - * life-long, self directed learning.

39 Bermuda law requires that children attend school between the ages of 5 and 16. Transition from primary to secondary school at age 11 plus, up to the conclusion of the last school year, has been based upon the Secondary School Entrance Examination (SSEE) and partly by means of the exercise of parental choice of school. The right of parental choice is established by law. However, it has been exercised within the constraints of the selection of pupils by principals on the basis of the pupil's performance in the Secondary School Entrance Examination. Lack of space in an individual school has also often been another limiting factor. Effective September 1993, the basis for transfer will be purely geographical, except for those desirous of attending one of the two academic secondary schools. Admission will be gained by

sitting the Secondary School's admissions test. Students will transfer from their primary school to the nearest secondary school to their home, with a vacancy.

40 There is one tertiary institution, the Bermuda College, organised into five departments. Arts and Science, Business Studies, Hotel Technology, the Department of Technology, and General Studies. There is in addition, an Extension Division which offers many of the departmental courses to adult students through evening classes.

41 There is not a university on the Island, however, adults who wish to upgrade skills, retrain or obtain credits towards university degree programmes, may enrol in the extension programmes offered by the University of Maryland and Webster University at the United States Naval Air Station. These are in addition to courses offered at the Bermuda College and through Queens University.

42 Alternative education for persons from 16 to over 60 is offered at the adult Education School, a privately-operated school which receives an annual grant from Government and the Community Education Development Programme which is jointly sponsored by the Ministries of Community and Cultural Affairs, and Education.

43 During the eleven years between the last two census exercises the proportion of the population (16 years and over) possessing educational qualifications has increased significantly. The figures for the highest qualifications achieved are as follows:

<u>Census '91 Report (Annex 1):</u>	<u>1991 Census</u>		<u>1980 Census</u>		
Educational Qualifications	Number	% of total	Number	% of total	% change
No formal certificates	16,983	37%	22,489	55%	-24%
High School (GCE/BSSC)	14,535	31%	8,940	22%	+63%

Diploma (inc. Technical)	8,555	18%	4,446	11%	+92%
Degree	5,857	13%	3,130	8%	+87%

It is acknowledged by the Census Office that a large part of the significant rise is attributable to the influx of persons with university degrees to fill jobs in the growing economy.

44 In July 1992, there were approximately 1,300 Bermudians recorded studying at universities and colleges abroad and another 591 pursuing post-secondary education locally.

45 The results of standardised achievement tests and of the more traditional General Certificate of Education examinations, clearly demonstrate that the quality of the educational output from Bermuda schools has improved remarkably in the past decade. These facts indicate a marked contrast with the opinions formed by the 1977 Royal Commission on Crime - see section regarding the breakdown of discipline in the schools.

46 Despite the outstanding educational gains, the disproportionate number of young black males in the prison system indicates that all is not well. The numbers currently being incarcerated may eventually contribute to the creation of a significant 'underclass'.

47 Many of those in Bermuda's prison facilities are either school drop-outs and/or those who did not have a positive school experience.

48 Prior to 1965, Bermuda had a racially segregated school system. White schools were perceived to have been of a better standard. With the desegregation of schools, blacks began to enter the former white schools in fairly large numbers. However, integration has been mostly in a one-way direction. The former white schools are now fully integrated and, in some cases, the racial composition has been reversed and they are

now predominantly black. This restructuring led to the establishment of academic and general secondary schools. The Berkeley Institute and Warwick Academy assuming the roles of academic schools and Northlands Secondary School, St George's Secondary, Sandys Secondary, Warwick Secondary School and the Whitney Institute, Prospect Secondary School for Girls and Churchill School (later Robert Crawford), all serving as general secondary schools. Admission to the schools, based primarily on the student's performance on the SSEE, rapidly resulted in the establishment of an unofficial 'pecking order' amongst the seven general schools. Some for various reasons becoming more popular than others, causing stigmatisation of those remaining.

49 With many children unable to gain admission or acquire one of the coveted places at Berkeley Institute or Warwick Academy (or at one of the more popular general schools), many began to view themselves, and to be regarded by others, as 'rejects'. Chapter 8.9 of the Report of The Royal Commission Into the 1977 Disturbances addressed the issue:

"A system which requires that a child leaving primary school should indicate the order of preference for secondary school from 1 to 6, in the knowledge that the schools themselves are rated in this order and that their achievements reflect this standard, can only result in a negative approach from those who are selected to attend schools which are found at the bottom of such a league table. This is no way to motivate a young person, or to prevent the parent from feeling disappointed. We are satisfied from our own observations when visiting schools and by the evidence that has been presented to us, that the system of secondary school selection must be reformed."

50 The system of secondary school selection has been particularly unfair to late developers, and to boys who generally mature much slower than girls. Research in developmental psychology has suggested that children of the

same age can show considerable difference in the speed and timing of their physical, cognitive and emotional development. The perpetuation of the selective system has undoubtedly been a contributing factor to the poor self-esteem suffered by many of those who have 'fallen through the cracks' and find themselves involved in some aspect of the criminal justice system.

51 In the Amalgamated Bermuda Union of Teachers' effort to show the negative impact of the selective secondary school system, and the need to change it, they indicated the following in their 1982 Board of Inquiry Report: "Children are very quick to pick up other people's expectations about their academic competence and their behaviour". Research has shown that to an important extent people tend to live up (or down) to what is expected of them. This occurs at both an individual and a group level. For example, David Farrington et al. showed that youths who were publicly labelled as delinquent (through court convictions) tended to become more delinquent as a result.

52 The results of a large study of secondary schools conducted by Michael Rutter suggests that the same principles apply within secondary schools. Children are liable to work better in an atmosphere of confidence. Rutter's research indicated that pupils performed most poorly, and there was more delinquency, in schools with a particularly high proportion of intellectually less able children ie outcomes tended to be less good if the bulk of the school population consisted of children in the lowest ability band. Rutter's research implies that general secondary schools in Bermuda may be more likely to foster delinquency. We have also heard evidence that apparently a disproportionate number of students, past and present, of four general secondary schools (two, Robert Crawford and Prospect Secondary School for Girls, have closed since the report was published) became involved in delinquency and crime. In view of Rutter's research, we are

inclined to question the contribution the educational system is inadvertently making to crime statistics in Bermuda.

53 The majority of black secondary students are enrolled in four of the general secondary schools. Racial integration of secondary schools since the desegregation of schools in 1965 has not occurred in very large measure. The Pitt Report (1977) indicated that "Some progress in reducing school segregation has been recorded since 1971 by the amalgamation of some black and white schools, but this had the effect of persuading some white parents to move their children to largely white private schools". Although the ratio of black and white students is higher at the primary levels, 'white flight' continues at the secondary level.

54 A competitive social order in which the competitors do not start equal produces a school system that appears to maintain many inequalities. These factors may have a bearing on the black prison population.

55 The recommendations of the Education Planning Team for restructuring the school system, to include the establishment of neighbourhood middle schools, should address the problems caused by the selective secondary system. Provided however, that there will not be a departure of white and middle-class children from a restructured system. For that may ultimately mean a greater entrenchment of two school systems. A private one for whites and middle-class blacks, and a public system primarily for blacks.

56 Chapter XIV(B) on Prevention Strategy of the 1991 Archibald Report (A Proposal for a National Drug Strategy for Bermuda) emphasises that:

"every individual must face the practical realities of life, its responsibilities, its defeats and its successes. How is he to meet these experiences, whether

he is to become master or victim of circumstances, depends to a great degree on how well the educational system of Bermuda prepares these students for coping with life. The significant contribution that education makes, not only to personal fulfilment, but to national development is universally recognized".

If Bermuda is to be successful in meeting the challenges of the 21st century, the focus should be on preventative measures. Chapter XIV(A) of the report states that:

"countless studies indicated that when the system offers no help troubled youngsters - especially those with no strong home support systems - turn to their peers for reinforcement. Such disenfranchised young people bind together often in groups whose overriding denominator is no more than childish distress, heartbreak and disenchantment. The danger of civil unrest appears when the emotions of a significant number of these young people progress from ideal disenchantment to full-grown active anger and alienation. It is such disenchanted youths who pose a threat not only to themselves and their families but to their country as well, because shortly they will become angry adults."

57 It is through the educational system that Bermuda has the opportunity to try to reach and help young people to acquire skills, develop their potential and to stay on the right track. Positive, prevention strategies addressing alcohol and drug abuse, as outlined in the Archibald report, along with the encouragement of secondary schools to offer a variety of extra-curricular and after-school programmes (eg army and junior police cadet schemes, Duke of Edinburgh Award programme) will encourage positive interaction with adult role-models and keep young people occupied in constructive, healthy activity.

CHAPTER ONE

THE USE OF IMPRISONMENT IN BERMUDA

1 When the Government established this Review, in April 1992, concern was being widely expressed at the heavy use of custody by the courts. The overwhelming majority of prisoners were known to be black and male. On 20 May 1991 (Census day) 78% of all prisoners were both black and male. On the same day, the ratio of 'black' to 'white and other' races in the community as a whole was approximately 3:2. In the prison population it was 15:2. Further, there was concern that imprisonment was often used as punishment for minor offenders. It has been estimated in an earlier report that up to 40% of those in prison may fall into this category. Our 'snapshot' (paragraph 11) shows a lower figure but may not be representative of the general trend.

2 There are three main custodial facilities in Bermuda. The prison for adult males is Casemates, situated in the Dockyard area at the West end of the Island. It holds both sentenced and remanded prisoners from the age of 16. The official capacity of the prison is 175 housed within the original 50 cells. Casemates is due to be replaced by a new maximum security prison which is being built alongside. This is due to be completed in September 1993 and occupied two months later. It is designed on the 'new generation' model used extensively in the United States and is intended to hold up to 220 men in single cell accommodation.

3 The other two facilities are situated towards the East end of the Island at Ferry Reach. Both are lower security establishments than Casemates, but are still closed establishments. The Co-Ed facility houses, in separate sections, the Senior Training Schools (boys = 20 places; girls = 5 places) and a womens' prison with 20 places.

4 Next to the Co-Ed facility is the prison farm. In August 1992, there were 85 inmate places there. The farm has been used to provide preparatory release experience for inmates, both on site and, via day release, within the community. There has been no significant farming operation for some years.

5 There were no mixed sex postings for prison officers between male and female prison establishments.

6 In Bermuda two categories of offence, traffic related and drugs related, feature prominently in the criminal justice statistics. They both cover infringements of the law which range from the most minor to serious criminal behaviour. The description of an offence as 'minor' does not, of course, mean that it is trivial. We regard it as describing an offence for which a sentence of imprisonment would not normally be considered appropriate in the United Kingdom or most other jurisdictions. Drugs related offences such as possession of a small quantity of cannabis may be an offence not meriting imprisonment in many such jurisdictions; but trading in drugs would be widely considered appropriate for a custodial sanction.

7 The offender is often imprisoned as a result of failing to comply with the terms of a non-custodial sanction eg driving whilst disqualified. Other forms of failure which arise include non-payment of fines, and breaches of probation. The justification for using custody in this way needs to be examined.

8 Our information on the use of imprisonment in Bermuda has been obtained from two sources. We have looked at the actual occupancy of all facilities at the time the review team visited in July and August 1992. This provides a snapshot of the types of offences and offender held in custody. However, this information provides no historical dimension and, therefore, no information on

how typical the 'snapshot population' is for Bermuda. The second source is drawn from police and other Government statistics on the use of imprisonment over a number of years.

9 The population of the prison facilities in Bermuda drawn from the days on which the Review teams visited in 1992 were as follows:

22 July	<u>Casemates Prison:</u>	Remanded in Custody	8
		Sentenced	151
		TOTAL POPULATION	= 159
21 July	<u>Co-Ed Facility:</u>	Corrective Trainee (male)	14
		Corrective Trainee (female)	0
		TOTAL POPULATION	= 14
		<u>Womens' Prison:</u>	
		Remanded in Custody	0
		Sentenced	19
		TOTAL POPULATION	= 19
21 July	<u>Prison Farm:</u>	Sentenced (male)	71
		TOTAL POPULATION	= 71

10 The main offence committed by each individual in the inmate population of the three facilities, as at 30 June 1992 (source - Prison Service headquarters), is set out as follows:

MAIN OFFENCE	TOTAL	:	BREAKDOWN		
			C/Mates	Farm	Co-Ed
Theft	30	:	13	12	5
Importation-Drugs	27	:	13	7	7
Supply Drugs	23	:	14	6	3
Breaking/Entering	22	:	19	1	2
Possession-Drugs	18	:	14	3	1
Consp.Import Drugs	15	:	7	3	5
Disqualified Driving	15	:	7	8	-
Rape	14	:	12	2	-

Assault	14	:	8	5	1
Robbery	14	:	12	2	-
Murder	10	:	8	2	-
Grievous Bodily Harm	7	:	3	3	1
Forgery/Uttering	6	:	1	4	1
Manslaughter	5	:	3	2	-
Wounding	5	:	3	2	-
Unlaw.Carnal Knldge	3	:	2	1	-
Malicious Damage	3	:	2	-	1
Bad Influence	3	:	-	-	3
Attempted Rape	2	:	2	-	-
Offensive Behaviour	2	:	1	1	-
Attempted Robbery	2	:	1	1	-
Arson	2	:	1	1	-
False Pretence	2	:	1	1	-
Receiving	2	:	1	1	-
Other Traff.Offence	2	:	2	-	-
Attempted Murder	1	:	1	-	-
Buggery	1	:	1	-	-
Violently res.arrest	1	:	1	-	-
Poss.offnsve.weapon	1	:	-	-	1
Offensive Words	1	:	1	-	-
Intrude on Privacy	1	:	1	-	-
Burglary	1	:	1	-	-
Larceny	1	:	-	-	1
Handling Drugs	1	:	1	-	-
Poss.Drug Equipment	1	:	-	1	-
Drive w/o Insurance	1	:	-	1	-
Escape	1	:	1	-	-
Military Offence	1	:	-	1	-
Immigration Act	1	:	1	-	-
Currency Act	1	:	1	-	-
<u>Forfeit of Bail</u>	<u>1</u>	<u>:</u>	<u>1</u>	<u>-</u>	<u>-</u>
<u>TOTALS</u>	<u>264</u>	<u>:</u>	<u>161</u>	<u>71</u>	<u>32</u>

11 From the data above, the prison population of 264 in the three facilities on 30 June 1992, contained prisoners who may have

been placed in custody for what could be defined as minor offences. The offence groups within which these possibly inappropriate disposals are likely to be found are as follows:

OFFENCE	CASEMATES	FARM	CO-ED
Offensive Behaviour	1	1	-
Offensive Words	1	-	-
Bad influence	-	-	3
Disqualified Driving	7	8	-
Drive w/o Insurance	-	1	-
Other Traff. Offence	2	-	-
Total minor offences	11	10	3
Minor offences as % of all prisoners	6.8%	14.1%	9.4%

12 These figures indicate that the percentage of prisoners held in custody for minor offences stands at approximately 9%. It must be remembered that this is a 'snapshot' of a situation which might be unusual. In order to see whether there is likely to be a long term trend which is either higher or lower than those above it is necessary to examine records from previous years.

13 A word of caution is necessary. Statistical information on the Island can vary in that there appears to be little cross checking of information relating to the same events. We have extrapolated information from police and centrally produced government statistics. We have not been able to obtain information to show how often, during the years covered, minor offences have resulted in periods of imprisonment being imposed but the following table demonstrates the increasing proportions of receptions in custodial facilities for minor offences.

RECEPTIONS BY MINOR OFFENCES 1989-1991

(supplied by Prison Service headquarters)

Offence	1989	1990	1991
Civil Jurisdiction	-	3)	27
Bad Influence	-	1	3
Drunk & Incapable	15	21	18
Offensive Behaviour	15	12	16
Offensive Words	18	16	12
Wandering Abroad	10	19	38
Littering	-	-	1
Removal Cars/Cycles	4	2	1
Trespassing	5	10	3
Disobey Traffic Sign	-	1	1
Dangerous Driving	6	9	5
Disqualified Drivers	48	77	57
Drunk Driving	15	7	5
* Careless Driving	-	6	4
Fail To Give Name	-	-	1
Fail to Stop	-	1	1
No Insurance	10	7	7
No Licence	7	16	13
Other Traffic	22	5	2
Speeding	24	13	10
Total minor offences	199	226	225
Minor offences as % of all receptions	33.3%	36.5%	39.1%

14 The picture which emerges from the information given in this chapter is one which suggests that Bermuda does use the custodial sanction for minor offences in a significant number of cases, particularly those concerned with infringement of traffic laws. During the three years 1989-1991, traffic offences accounted for 21.2% of all receptions in custodial facilities. The 'Proposals

for a National Drug Strategy' report demonstrates that from 1977 to 1991 the proportion of the total prison population held for traffic offences rose from 4.6% to 11%.

15 In conclusion, the age range of the inmate population of the three facilities as at 30 June 1992 is illustrated in the following table:

BREAKDOWN BY AGE OF THOSE IN CUSTODY (CONVICTED AND REMANDS)
30 JUNE 1992 (source - Prison Service headquarters)

<u>Age</u>	<u>16-21</u>	<u>22-30</u>	<u>31-40</u>	<u>40+</u>	<u>TOTAL</u>
Casemates	12	72	57	20	161 (61%)
Farm	4	27	26	14	71 (26.9%)
Co-Ed					
Boys	13				13)
Girls	0				0) (12.1%)
Womens'	2	9	8	0	19)
Prison					
<u>TOTAL</u>					
(Age	31	108	91	34	264
Groups)	(11.7%)	(40.9%)	(34.5%)	(12.9%)	(100%)

With over 50% of those in custody aged 30 years and under, and over 39% of all offenders in the previous year being placed in custody for minor offences, it is to be expected that a significant proportion of young Bermudians are inappropriately placed in custody. Alternatives to the custodial sanction are needed for them, as for the minor offenders in the other age categories.

CHAPTER TWO

NON-CUSTODIAL FACILITIES IN BERMUDA 1992

1 Non-custodial sanctions are of several types. Courts may use the sanction of the fine, which requires no supervision to administer. They may use the statutory probation service to provide supervision of offenders or other appropriate agencies such as the Department of Social Services. They may also consider using voluntary agencies, such as the drug and alcohol support groups, which provide care and support for offenders.

2 Non-custodial sanctions which do not require supervision take the form, almost always, of fines. The fine is extensively used, although little, if any, use is made of compensation orders.

3 Non-custodial sanctions which do require supervision consist mainly of probation and community service orders imposed by the court. Such sanctions require an infrastructure of supervising officers to maintain the system. This is not well developed in Bermuda. However, voluntary agencies, recognised by the courts as providing particular forms of support, may occasionally be given the responsibility for supervising offenders in the community.

4 Failure to comply with the conditions of any non-custodial sanction can lead to the imposition of alternatives, and, ultimately, to the imposition of a custodial sentence.

The Use of the Fine

5 Observation of the magistrates' court in Hamilton leaves little doubt that the most used non-custodial sanction, especially in the first instance, is the fine. In traffic offences there is little attempt to link the level of fine imposed to the circumstances of the offender and the ability to pay. The fine is set at various levels in relation to the offence committed. The result is that it can be expected to fail in a large number of

cases and give rise to the question of whether the fine is intended as a deterrent or as a revenue raising exercise.

6 Failure to pay a fine means that an offender is liable to be committed to prison and brought back before the courts. The choices available to the court on default are:

- to allow further time to pay;
- to commit to prison. The amount of the fine is equated to a number of days to serve in prison.

7 In considering whether to allow a person further time to pay, the courts do not consider it essential for information about the defendant's means to be available. Observation of the magistrates' court in Hamilton suggested that defendant's own assessments of the time required to pay were often taken as the basis for agreement. This gives rise to the possibility of further default. Very often it is obvious that a nervous young defendant puts forward an assessment without working out whether it can be met.

8 The option then arises to commit to custody for non-payment of the fine. The attraction to a court is that a firm stance is taken towards the failure to obey an order of the court; further, it is open for the family of the person committed to prison to pay the fine and, thus, effect a release from custody.

9 Figures available on the use of the fine, for the years 1988 - 1991 show that the sanction was levied as follows:

	<u>Year</u>	<u>Number fined</u>	<u>Fines as % of all disposals</u>
-	1988	752	52.7%
-	1989	631	57.0%

-	1990	615	52.5%
-	1991	415	46.2%

Source: *Police statistics*

10 The reduction in the use of fines in 1991 was particularly noticeable in relation to drugs offences. Police statistics for the years 1988-1991 show that the use of fines dropped from about 94% of all disposals for drugs offences in 1988 to only 76.4% in 1991. In the same period, the use of imprisonment rose from a plateau of about 7% of all disposals for drug offences in 1988 - 1990 to 17% in 1991.

11 The imposition of a fine for a first traffic offence of speeding at less than 60 kph is subject to a maximum fine of \$500. A discretionary period of disqualification may also be imposed. For subsequent offences, and for higher speeds, the period of disqualification is mandatory. A table at Schedule 3 of the Traffic Offences (Penalties) Act 1976 sets out the expected sentencing practice for disqualification and is reproduced at Appendix 5.

12 In Bermuda periods of disqualification are often awarded by the courts to run consecutively. If a person drives whilst disqualified they will suffer further fines or custody with an obligatory period of disqualification. The following table from police statistics shows the incidence of imprisonment resulting from periods of disqualification during the years 1988 - 1991.

Table : Disqualification and Imprisonment

1988	32
1989	44
1990	95
1991	60

13 Other types of non-custodial sanction available to the courts include probation orders, community service orders and,

occasionally, compensation orders which allow the offender to recompense the victim of the crime. The characteristic of these non-custodial sanctions is that they require a degree of supervision by someone either appointed, or approved, by the courts. In the United Kingdom the primary agency responsible for supervision is the probation service. In Bermuda the structures necessary for supervised community activity are limited and this option is not generally regarded as a viable alternative by the courts.

The Probation Service

14 The Probation Service in Bermuda is located within the Ministry of Health, Social Services and Housing. The number of probation orders ordered by the courts during the last three years were as follows:

1988	157
1989	83
1990	85
1991	105

Source: Police statistics

15 The Probation Service is also primarily responsible for supervising Community Service Orders and for providing the statutory liaison between the courts and the voluntary agencies providing services to offenders. In the last three years the number of Community Service Orders awarded by the courts is given below:

1988	27
1989	18
1990	46
1991	28

Source: Police statistics

Voluntary Agencies providing supervision under Court Order.

16 A number of voluntary agencies provide assistance to offenders with specific problems, and are of a rehabilitative nature. Foremost among these are those concerned with drug rehabilitation, homelessness, alcoholism and the young offender. Although some offenders may be sent by the courts to these agencies, there is no systematic method by which this is done, and the facilities do not exist for it to be done on any large scale.

Social Services

17 The Department of Social Services provides a service to the courts primarily through its contact with young people who come before the juvenile panel.

Community Service

18 Arrangements for Community Service are still developing. With the co-operation of the probation service, some offenders have helped the Department of Agriculture, Fisheries and Parks in keeping the island's parks clean.

CHAPTER THREE

THE COURTS AND THE POLICE IN BERMUDA

Magistrates' Courts, the use of imprisonment, and alternatives to custody.

1 There are three magistrates courts in Hamilton. At the time of our visit two stipendiary magistrates were sitting. The courthouse is extremely busy. As in the UK, all criminal and traffic cases begin in the Magistrates Court, some to be dealt with summarily, others to be committed to the Supreme Court on indictment.

2 Large numbers of young people, mostly black, attend court each day to answer charges relating overwhelmingly to traffic offences. There are also a significant number of minor drugs charges, as well as the more serious offences which would be heard in any jurisdiction.

3 Traffic offences in Bermuda for the most part involve a court appearance. From 1 August 1992, speeding offences up to 54kph will be satisfied by an on-the-spot fine to be imposed by the police. The Road Traffic Act and the Motor Car Act are wide ranging pieces of legislation, and offenders can appear in court as a result of infringing an array of technical regulations concerning not only the manner in which they drive their vehicles, but also the state in which they keep them.

4 The conduct of Magistrates' Court business with regard to traffic offences provides an insight into the way in which justice is dispensed generally in Bermuda. A person charged with speeding for the first time may receive a heavy fine. Failure to pay this leads to the immediate threat of custody for a number of days. In practice, attempts are often made to allow time to pay, but the

courts' expectation is that, in Bermuda, the money can be found if required. Therefore, failure to pay is perceived to be wilful.

5 An offender who pays the fine, and who is later again charged with a traffic violation, will be liable to a second, heavier penalty together usually with a period of disqualification. If the disqualification is breached, there is a distinct possibility that the offender will receive a custodial sentence.

6 As previously indicated, periods of disqualification are frequently awarded to run consecutively. So offenders can find themselves with fines outstanding, and periods of disqualification totalling several years. The sequence of events leading to this situation will often have started with a very minor offence.

7 On one of our visits to the Magistrates' Court we noted the decisions taken in 17 cases, of which 12 were traffic matters! The traffic cases fell into two groups - cases for summary trial and cases previously decided and where a further court appearance had proved necessary.

8 The small court room was full, with about 40 people, in addition to a group of three prison officers, the same number of uniformed police officers, five attorneys and the prosecuting senior police officer. All attorneys were white. Later in the proceedings a young black barrister appeared. Only one person, a woman, in the body of the court was white. Most appeared young. A handful of older men had the appearance of vagrants.

9 The relevant traffic cases were as follows:

- 1) **Fine default on \$100 - Pay within 1 day or 10 days imprisonment;**
- 2) **Driving whilst disqualified - Already disqualified until May 1994. Fine of \$350 and further 12 months disqualification to run consecutively;**

- 3) **Speeding** - First offence, fined \$80;
- 4) **Driving whilst disqualified** (two occasions) - Guilty to one, not to the other, \$300 fine and further 12 months disqualification taking time 'off road' to December 1993;
- 5) **Fine default** on \$500 - Time to pay granted as requested, to 14 August. Alternative = 50 days in custody;
- 6) **Speeding** 53 kph - Previous reckonable offence July 1990 (\$80 speeding fine imposed) - \$180 and 3 months disqualification;
- 7) **Speeding** 57 kph - No previous convictions - fine \$130;
- 8) **Defective brakes** - fine \$75;
- 9) **Disobeying stop sign** - No licence - fine \$175;
- 10) **Warrants issued for failure to pay fine** - time to pay as requested;
- 11) **Warrants issued for failure to pay fine** - time to pay as requested;
- 12) **Failure to provide a breath sample** - as requested by police. The defendant, a white female tourist, was stopped while riding a moped for wearing no crash helmet. The defence submission was that the crash helmet had been stolen, and that the breath test had been unsuccessful because of the defendant's size. Only two attempts at the test had been allowed before charge, despite the offer of the defendant to have another attempt. The

defence argued that police behaviour had been too heavy handed, and that it would have been better if the police had driven the defendant home. Police commented that they did not exist to provide a taxi service. Fine \$80.

10 Points arising from the observations in the court were that:

- the overwhelming majority of members of public in court were young and black;
- in traffic cases disqualification is imposed routinely and one period is often succeeded by further consecutive periods. The likelihood of driving whilst disqualified must be high when a young person faces several years off the road;
- fines are awarded without any attempt at discovering ability to pay. Custody is the immediate threat in case of failure;
- when failure to pay fines is reviewed under a warrant, there is some effort to keep people out of custody by structuring repayment programmes, with the defendant, in the courtroom. Such efforts are, however, immediate and interlocutory in nature.

11 Although there is a probation service in Bermuda, more use could be made of it by the courts if additional resources were made available. The impression is that offenders come to court to be punished, and the absence of a duty probation officer on the day that we visited may have limited the choices available to the court.

12 The presence of so many young people before the court made it surprising and regrettable that access to these non-custodial sanctions was effectively denied in the courtroom. Probation

officers work with caseloads of approximately 60 clients each, but little attention had been paid by either the courts or the service itself as to how best to select those who should receive the benefit of this option of non-custodial supervision.

13 We saw many young people in the Magistrates Court. Judicial involvement with the young takes place also at an earlier stage, with juveniles. We visited the Special Court, which dealt with juvenile and domestic cases, and we spoke to the Acting Director of Social Services. The Special Court was conducted in more informal surroundings than the Magistrates Court, and care was taken to award appropriate sentences. However, the custodial facilities were used to house difficult juveniles, and in the opinion of one official the resources of the Social Services Department were so stretched that the service to the court was adversely affected. The court was of the opinion that it ought to be able to award a wider range of non-custodial sanctions, and in particular, community service orders to those under 16 years of age.

14 From the social services point of view, there was a desire to administer all work with juveniles, and to leave the probation service to deal solely with adult offenders. Secure provision for juveniles was needed outside the criminal justice system. Long term planning for work with the most difficult juveniles was urgently needed, which could examine the need for secure, institutional and fostering programmes on the Island.

15 Bermuda is a wealthy society. Bermudians work hard. Many have two or even three jobs. Transport on the island is a slow business. A maximum speed limit of 35 kph (22 mph) is difficult to sustain in a car. The majority of the working population use motor cycles to transport themselves to work. Part of this population is young. From the age of 16 years, the ambition of nearly every Bermudian is to own a motor cycle. Many learn to drive them at a much earlier age (sometimes resulting in a court appearance and period of disqualification for the owner, as well

as a punishment for the under-age rider). The young novice rider will find it particularly hard to maintain an interest in keeping to the legal speed limit. The high profile traffic policing usually ensures early contact with the police. A routine check is likely to end with a court appearance. The smallest problem on the machine is sufficient. The young person may be rebellious in tone to the police officer, and also worried because of a dependence on their machine to get to work or school.

16 It was suggested to us that historically blacks in Bermuda have been in the position to make changes, but have not felt able to do so. There is often an acceptance of the status quo on the part of the community. A lack of self-esteem among some black Bermudians needs to be addressed. The attitude that things can not be changed appears to run very deep in some sections of this society.

17 People often enter the criminal justice system early in their lives, for example:

- a) At primary school, children often get into fights and early reference is made to the police. Both parents and teachers use the police as a threat to misbehaving children;
- b) From the age of 12 years, the young adolescent begins to tire of his bicycle and starts to think of motorised transport. It is likely that an older friend has a moped, and consents to a ride. This can lead to contact with the police and a charge of riding under age. There is a failure to bring the parents, as well as the child, to account for this charge and, thus, to take responsibility for the future behaviour of the child;

- c) Between the ages of 14 - 16, children often have 'gas on their minds' in an increasingly intense way. The urge to ride presents itself in 'joy riding', usually of tourist machines. Again, police get involved and charges of theft and related offences are added to that of riding under age;
- d) From the age of 16, youngsters at last get their own machines. Within 3 months of owning them they can be in trouble with the police for speeding. This may lead to a fine, which they cannot pay; or, if they can, often to a further speeding charge. Either way, disqualification may follow, the length of which may be outside the offender's imagination. A typical situation could then be that a youngster has a new bike at home, which he or she should not ride. They ride anyway, and this leads to the charge of riding whilst disqualified; if the period of disqualification was shorter this penalty might be more effective;
- e) Police involvement, at this level, varies depending on the officers involved. Sometimes, the attitude towards young riders is hostile and provocative. This reinforces attitudes towards the police as being 'on the other side'.

18 It was suggested to us that there was room for improvement in police relations with young people, through improved training programmes and enterprising police work in the community. The Bermuda Regiment could also have an increasingly beneficial role, in that they work intensively with the young and are highly regarded within the community.

19 On the issue of drugs and the criminal justice system, it was suggested to us that drug abuse was a greater problem to white youths on the Island than to black.

20 The person facing the court is vulnerable not only to the problems associated with having a criminal record, but also to possible economic difficulties if a driving licence is taken away. It was suggested to us that support for offenders in court cases, by families or friends, varied according to different racial groups. The threat of police intervention often used in black families as a means of controlling children, developed a culture that regarded police control as necessary. Young blacks, as a result, were often unsupported in court. For white youngsters, police intervention often had the opposite effect. Support at the police station, initially aimed at avoiding an appearance in court, or support in the courtroom itself was usually forthcoming. " But of course such generalisations, if true at all, carry only a limited truth. For those without such help, the criminal justice system in Bermuda is limited in its response.

21 The frequency with which the courts are used in Bermuda, together with the limited scope of the sanctions available to them, can mean they are viewed with a degree of cynicism, and with little hope that they achieve constructive results.

Police Attitudes

22 We met members at all levels of the police service. The Bermudian police force has an authorized establishment of 489 and an operational strength of 468 (figures at 31.12.91), and is organised around a headquarters building and three police stations. Specialist units include the CID, a motor cycle squad and a cycle squad. Police attitudes to strict traffic control centred on the view that it was a 'firm but fair' policy that they administered appropriately. The police expressed some interest in taking part in training, and other activities which would improve the skills of youngsters using bikes. There was a reluctance to

become involved with the idea of alternatives to custody, such as community service, and a dissatisfaction for the underdeveloped agencies currently responsible for non-custodial provision. However, there was support for the idea of reducing the opportunities for the use of custody through the extension of 'on-the-spot' fines. Police were not keen to have their interviewing practices scrutinised along the lines of the UK Police and Criminal Evidence Act (PACE).

23 Members of the review team had commented on a lack of police presence around the streets of the Island. However, given the numbers of police employed and the use of the criminal courts, we were aware that Bermudians often felt otherwise.

24 In Bermuda, as some police officers suggested, it is believed that money dictates everything. A Bermudian would prefer to pay to get out of any trouble. Many agencies stood to benefit from this attitude including, through the imposition of fines, the courts.

25 Police were not keen on the idea of being involved with community service, feeling that they were under resourced. Additionally, a senior officer felt that Bermudians would not take kindly to community service, as some would find it humiliating. They would prefer to be fined. Police did acknowledge that there might be an increased role for community service in relation to young offenders.

26 On the problem of young people and the traffic laws, police felt that the problem was caused by the fact that, at the age of 16 years, every youngster had a motorcycle. This inevitably meant that they came into early contact with the law. Pressed as to whether this had to mean early contact with the criminal courts, police referred to the Juvenile Liaison Scheme. This was concerned with avoiding bringing young people before the courts for minor criminal offences, providing they met certain criteria. The scheme is based on a minimum period of 6 months supervision by

a juvenile liaison officer (a selected police officer) working closely with the probation service. At the time of our Review, a total of 17 youngsters had been subjected to supervision during 1992. Figures for 1990 were 38, and for 1991, 31 persons. It was also suggested that we should meet the cycle and motor cycle squads on the Island, which had most direct contact with young people in connection with the traffic laws.

27 Police suggested that in many cases, and in all the minor cases, the use of custody arose because of repeated failure to pay a fine. The normal procedure was that time to pay would be granted twice before a committal to custody was issued.

28 The police were asked what efforts were made to work within the communities on the Island in a preventive or community based, way. They referred to the parish constables, saying that they undertook work in schools and other community settings; there was a road safety bus; police had run Junior and Senior Training Cadet programmes and they also ran outward bound courses, and a Junior Brigade.

29 Our conversations with members of the cycle and motor cycle squads, and the CID, revealed a mixed attitude towards the idea of extending criminal justice sanctions in the non-custodial sector. Members of the cycle and motor cycle squads regarded themselves as among the elite of the force, and had little criticism of the way courts dealt with offenders in Bermuda. The CID had an ambivalent attitude towards other agencies. It was clear to us that a great deal of work would have to be undertaken in inter-agency discussion before much progress could be made.

30 Observation of the courts and the police in Bermuda led us to the conclusion that insufficient thought has been given to the constructive roles which magistrates and police can play. The work of the magistrates and the police in Bermuda involves systematic criminalisation of the young. The desire to respond firmly to serious crime has eclipsed the fact that it is

destructive to do so at the expense of those who would not be criminals. To be a policeman in Bermuda means that the young will be a target for attention, and the perception of the police is not one of confidence, but of acceptance that things are the way they are, and cannot change. In the chapters which follow we explore the potential for changing this situation.

CHAPTER FOUR

CRIMINAL JUSTICE IN BERMUDA - PREVIOUS ANALYSES

1 From the outset of our inquiry we were aware that a large number of reports had been written which were relevant to a study of the criminal justice system in Bermuda. In this chapter we note the most relevant earlier reports, and some of the issues they raise.

2 In previous chapters we have noted features of the Bermudian system of criminal justice which are relevant to our terms of reference. It is a system:

- which uses punishment, rather than social intervention, particularly financial and custodial punishment, as a primary response to a wide range of social behaviour;
- in which the police have a problematic relationship with the public they serve;
- in which two types of offending behaviour, connected respectively with traffic and drugs, have a particularly significant effect on the involvement of the public with the criminal law;
- affected by issues of race.

3 In 1968 and 1977, a Commission of Inquiry (Wooding) and a Royal Commission (Pitt) examined specific incidents which had occurred. A Royal Commission on Crime (George) in 1977 examined aspects of sentencing policy. These reports focused on behaviour which brought people into contact with the criminal justice system. Another group of reports deal respectively with education - by the Amalgamated Bermuda Union of Teachers in 1982, and with

prisons and sentencing - by the Association of Helping Professions, in 1983. Official departmental reports, on the work of the police and the prisons, in addition to annual reports of both organisations, were produced covering the last 10 years. Between 1984 and 1991 the Royal Commission into the Use and Misuse of Illicit Drugs and Alcohol produced four major reports leading to the formation of a National Drug Strategy for Bermuda. The report setting out this proposal was published in November 1991.

4 The Report of the Commission of Inquiry into the Civil Disorders was commissioned by Government after disturbances in Hamilton in April 1968, under the Chairmanship of Sir Hugh Wooding. The report emphasises the importance of fostering true racial integration in Bermuda, but in the course of doing so provides revealing insights into other areas which caused (and still cause) tension on the Island. The traffic laws in 1968 were a major source of police activity, particularly in their operation with regard to the young on auxiliary motor cycles. The report describes how, in the late 1950's, people of between 16 and 21 years of age were confined to the use of single gear auxiliary motor cycles. From 1960, the machines that were imported had been modified from two gear to one gear operation, the gear that had been made inoperable being the lower, or slower, gear. It was not long before the owners of these machines found ways of reconverting them. This led to conflicts with the law (para 35):

"Young people feel that the police are always on the alert to catch them if they default. They therefore suffer the unease of being, or apprehending that they are, too often suspect. They do not mind it so much if they are caught speeding....But when as so often they are suspected of reconverting their cycles to two gear machines or tampering with their mufflers, the police procedure is such as to irritate them even more. In any such case the police are empowered to, and do, seize the cycle and submit it for inspection...."

In this way young people were not only frustrated by having their cycles removed, but were also liable for criminal charges if cycles were found to have been modified. The fact that such a modification was not necessarily for purposes of speed, but to enable the easier ascent of hills only added to the frustration.

5 With regard to the use of drugs, police scrutiny of areas, in particular around Court Street, Hamilton gave rise to resentment:

"The young spokesman complained that policemen patrolling the Court Street and other back of town areas proceed....on the footing that every layabout in any such area must be a marijuana peddler or smoker."

The Report goes on to show that police searches of young people in these areas were frequent and random, and concludes:

"Plainly, therefore, the young people have a point when they complain of what they refer to as police attitudes."

6 The Report of the Royal Commission into the 1977 Disturbances, Chaired by the Rt. Hon Lord Pitt of Hampstead, reported in July 1978. The disturbances referred to had been caused by public reaction to two executions in Bermuda. The report ranged over the social and the racial structure of the Island, and examined the educational and criminal justice systems. On the latter the report states:

"The most urgent priority is for a reconsideration of present practice with regard to the enforcement of laws regulating the use of auxiliary motor cycles...We have been dismayed to hear so much evidence of the friction between young people and the police generated by the enforcement of these laws. Because of the manner of their enforcement many young men are passing into adulthood with a bitter hostility towards the police."

7 In both reports cited above, three issues of contemporary significance are clearly described:

- the traffic laws of Bermuda have been causing people to come into conflict with the criminal law at least since the late 1950's;
- the problems associated with abuse of drugs have been identified as a problem on the Island for the same period;
- police relations with young people have been significantly affected by the legislation concerning traffic and drugs, and has made it likely that most young people have contact with the criminal justice system early in their lives.

8 A number of other reports have provided a professional insight into other aspects of Bermuda life. In 1982, proposals for the re-organisation of Bermuda's schools were under consideration and The Amalgamated Bermuda Union of Teachers produced a report advocating the end of selective education. Apart from any educational reason why the Union should have promoted this, a particular feature of the report was that despite the end of segregation in the country, it was believed that schools remained segregated, and that the effects of this on Bermuda's children was detrimental.

9 In 1989 the final report of the Ministry of Education Planning Team was published in which 12 strategies were outlined for the development of Bermuda's schools. The last of these demonstrate that, although segregation ended in 1965, full educational integration of the children of Bermuda with each other has still to be achieved:

"We will find ways to eliminate racial considerations in the education system and to address the multicultural nature of the population."

10 Published in 1983, the Report of the Bermuda Association of Helping Professions Committee on Prisons and Sentencing, analysed the use of imprisonment in Bermuda, cited as "at least two times that of most western nations", and argued for the development of diversionary programmes together with a moratorium on all prison building. The Report does not mention the problem of traffic offenders in Bermuda, but does point out that the criminal justice system needs to operate in a co-ordinated way if expensive and destructive sanctions are to be avoided.

"The tasks set before the criminal justice system by the citizens and government are not easy ones. To accomplish the protection of citizens and assure justice, all parts of the system, including the citizens, must formally work together and share responsibility for the ultimate outcome."

11 We have suggested in this Review that drugs and traffic offences have led to many of the problems with the criminal justice system in Bermuda, and in particular, to some strained relationships between some members of the public and the police. In 1983, an outside observer carried out a review of the Bermuda police which contained special reference to traffic and drugs offences and it is interesting to note the remarks made by a police officer on the way to approach these offences. The author of the report had consulted with Dr. David Archibald (see below) on the subject of the drugs problem in Bermuda; and had read the Pitt Report of 1977 on the subject of police and public relations:

"I am interested in that small proportion of young people whose riding of auxiliary motor cycles deliberately and repeatedly flouts the law and brings them into confrontation with the police. This

confrontation gives rise to bitterness on both sides andcould be the catalyst for spontaneous public disorder unless the Governmentrealise the possible consequences of failing to deal with an important social problem. Police for their part will also benefit from improved patrolling systems, and the renewed and extended emphasis on community relations and the proper use of discretion in regard to many minor traffic offences. It will be recalled how much importance the Pitt Royal Commission placed on relations between auxiliary cycle riders and police....It is therefore disturbing to find that,if anything, the problem has been exacerbated in the intervening six years."

"....there is a total of traffic cases for 1982 of 25,063. This is, in my experience, an inordinately high figure for a population the size of Bermuda and must be the cause of considerable, however short lived, antagonism by otherwise respectable people towards the police....I regard it as important and recommend a study by police to determine in what areasthere may be opportunity for greater discretion in regard to cautions on the spot by the officer concerned."

Finally the author stressed the need for driving tests on all riders.

12 In 1989 a skills training programme for the Bermuda Probation Service was carried out by members of the Inner London and Hertfordshire Probation Services. The programme document recognised the Government's concern with the international problem of drug abuse and the threat it posed to Bermuda. An interesting role for the probation service was identified when, citing a speech delivered by the Minister for Health, Social Services and Housing, the authors focused on the need for preventative education in the drugs field:

"This is one area where the probation and social services are very well placed to work together with community agencies to build bridges towards a collective resolution or, more realistically, reduction of the problem.... (The problem of drugs) is a community problem but the probation service in its traditional role between the client with social/psychological problems and the courts with its responsibilities to the public and the quality of life, is well placed to act as the catalyst in bringing people together."

13 The most thorough examination of social problems arising from the abuse of drugs and alcohol in Bermuda has been undertaken by David Archibald. As Commissioner for the Royal Commission into the Use and Misuse of Illicit Drugs and Alcohol he organised the production a series of reports in 1984 and 1985. From these came a Government commitment to develop a National Drug Strategy for Bermuda. Summarising the objectives of the Strategy, the Report calls for the establishment of a national authority to coordinate work to combat misuse of drugs and alcohol. The emphasis is on a combination of approaches, including preventative and educational programmes, treatment based programmes both in the community and the prison, and research and policy initiatives designed to ensure that the initiatives taken in Bermuda benefit from worldwide experiences of the drug abuse problem.

14 The analysis presented in the report is based to a large extent upon the view that Bermuda seeks to correct its social problems by correction through punishment. This is set within a context of a society which is also reluctant to give its young people a sense of responsibility in sharing in the decision making process, and which the report states has been described as "basically....a punitive society". The statistics produced on imprisonment in Bermuda suggest the highest known use of imprisonment in the world, with drugs-related offences accounting for over 33% of the prison population and traffic offences

accounting for another 11%. The report suggests that the percentage of incarcerated black adult males in Bermuda, 92.4%, is also the highest known rate of this group in the world.

15 The National Drug Strategy report suggest that these sociological features of Bermudian Society have to be addressed. In particular the needs of young people have to be examined. The report quotes the following with favour:

"the quality of nurturing experiences that is provided by many adults for children to early teens is very poor. An alarming number of Bermudians pass through their homes, schools and other institutions without having sufficient, if any, positive experiences with adults, whether they be called parents, teachers, clergymen or friends".

Commenting, the report, states:

"We need to shift our primary focus from drugs to people and the families and communities that nurture them. Strong people, strong families, strong communities - these are the keys to controlling the problem of substance abuse and associated ills."

16 It has been clear to us throughout the course of the present Review that the problems of the criminal justice system in Bermuda are rooted in the problems identified by the Report of the National Drug Strategy and so many of the other reports we have examined. In the chapters which follow we provide our own analysis and recommendations as to what should now be done, and hope that, in conjunction with all the work that has gone before, Bermuda may be able to develop a social structure which allows for social problems to be addressed without inevitable recourse to the criminal justice system; and that, when it is necessary to apply

criminal justice sanctions, that they may be so designed to enable offenders to return to and participate in the community as soon as possible.

17. A complete bibliography is included with this report.

CHAPTER FIVE

ANALYSIS OF EVIDENCE SUBMITTED TO REVIEW

1 The Criminal Justice Review Team asked for submissions from any interested individual or organisation. We received prepared papers and reports, offered interview facilities to those who wished to present their material orally, and supported a public forum at St. Paul's Centennial Hall, Hamilton under the title, 'Justice and the Prisons - Have We Got It Right?'. In this chapter we review what we have read and heard. We do not propose to refer here to every piece of evidence we have taken into account.

2 We have placed the information we have received under a number of different headings. We begin with an examination of Bermuda as a society, the context within which the criminal justice system operates. Much of what we have reported elsewhere in this report concerns young people and we, therefore, look next at the educational system with reference to the inter-relationship between it and the criminal justice system. Closer examination of the criminal justice system follows and we start with the police. We follow with a review of alternatives to custody and the legal system, and examination of the prison system. The subjects of drugs and Bermuda's traffic laws are discussed separately, as is the novel sanction of Community Service. We conclude the chapter with some remarks on public attitudes to the law in Bermuda.

Bermuda as a Society

3 Bermuda is a unique society, drawing its own character from a wide variety of European, American and Caribbean influences. Less than 30 years ago, the country was rigidly segregated on racial lines. Racial intolerance has reduced faster than might have been expected, due perhaps to a wide interest in maintaining a wealthy economy based on finance and tourism. A tension still exists,

particularly among those who lived through the recent past. The ending of segregation does not necessarily create social integration. We heard from many people that Bermudians do not have a strong sense of identity, and that this lack of social cohesion makes some people vulnerable to the legal system. In particular, it frequently and adversely affected young black males. Some of the reasons put forward to us for this concerned family attitudes towards the law. Traditionally, we were told, black families used the law, and in particular the police, as an empty threat to rebellious children. Thus adult relationships with the police are characterised by resentment when, in adolescence, young black males come into conflict with the law. Many black Bermudians had a proud and uncompromising attitude towards the young in trouble and if there was conflict with the law, it sometimes seemed laudable for the young person to face it alone.

4 Attitudes of suspicion towards the police are stimulated by the fact that Bermuda is a society beset by laws which normally law-abiding people may find hard to keep. The traffic laws are the major example, but there are others to which some members of the public are particularly vulnerable. The offences of 'Wandering Abroad' and drinking in a public place are capable of criminalising innocent behaviour. Facts like these led many to express to us the view that Bermuda is an oppressive society.

Education and Criminal Justice

5 Schooling in Bermuda still often takes place in segregated conditions. Although desegregation occurred in 1965, true integration is hard to achieve. Academic standards in the schools vary widely, and this has led to some establishments gaining a reputation for poor education. The criminal justice system is soon involved when young people perceive themselves to have little hope of attainment. The threat of police involvement in some families, and within some schools, apparently comes naturally to some parents and some teachers. The Report of the Education

Planning Team advocates, and current educational policy is, to develop a comprehensive system structured to include junior, middle and senior levels of education with specialist staff in each. Systems of support and counselling are structured into the new system so as to minimise the chance of young people getting into trouble with the law.

The Police

6 A number of views were expressed on the police service in Bermuda, both in general terms and with special reference to the administration of Bermuda's traffic laws. There was agreement that a great deal of improvement was required in relations between police and public. The composition of the police force, with approximately one third from the West Indies, a third from the UK and a third from Bermuda, could cause problems. The police service was not generally perceived as racist, but it was considered by some to be somewhat insensitive and heavy handed in its dealings with the public. Very little time was expended on training in community policing. The potential for the work of parish constables along these lines remained largely untapped.

7 The area in which police intrusion was seen to be at its worst was in relation to traffic offences. Two squads, the motor cycle and cycle squads, operated the traffic laws in ways which managed to raise the concern of otherwise law abiding members of the public. Young people were automatic targets for 'routine checks' on newly acquired vehicles; we were concerned at the number of reports we received of people being telephoned and asked to come into the police station to sort out a traffic matter, only to find on arrival that they were to be locked in the cells, and often kept overnight. There was some evidence presented to us that police differed in their approach to young blacks as opposed to whites. Many respondents felt that there was a need for police interviewing procedures to be recorded independently and for independent prosecutors to be made responsible for the decision to take cases to court.

8 Operation of the police service in Bermuda was not generally seen as intentionally unfair. The need was emphasised for police to be trained in community relations, and to take part in the development of programmes for those vulnerable to the criminal justice system.

Alternatives to Custody

9 Although we refer to alternatives to custody throughout, we are conscious that custody should be the alternative, and punishment in the community the norm. Imprisonment is unsuitable for young people save in the most exceptional circumstances. It can encourage criminal attitudes, is very costly and, for those youngsters leaving prison, it can carry the possibility of an early return to custody. Many of our respondents emphasised that the criminal justice system in Bermuda was insufficiently sensitive to the real needs of those who became involved with it. Alternatives were needed to both the fine and the use of custody. The fine is merely a demand for payment; custody is primarily the loss of liberty. Neither requires public concern with the life of the offender, although those in charge of custody often choose to display such interest.

10 The alternatives to both the fine and custody involve interaction between offenders and others who work with them. Alternatives to custody may assist the offender with a particular problem (such as alcoholism), provide a challenge to offending behaviour (therapeutic training), provide opportunities to develop skills for living (work training programmes), provide opportunities to make some kind of recompense to the victims of crime (restitution programmes), or provide simple support for a time to a person who is vulnerable to committing further offences (probation support). Alternatives to custody can also be used to give something back to the community through the imposition of community service orders.

11 Alternatives to custody of this kind require an organisation

to administer them. A Probation Service, responsible to the courts for the organisation of non-custodial sanctions, is essential if there is to be confidence in the choices that are offered. There need to be improved links with St. Brendan's hospital, statutory and voluntary residential facilities, local educational establishments and employers. Without this structure, there can be no maintenance of programmes which are designed to maximise the chances of an offender staying out of trouble, and no way of monitoring progress or reporting to the courts. All sanctions of the criminal law require the confidence of the courts. If courts do not understand and approve non-custodial programmes, they will return to options in sentencing which are known to fulfil their more limited objectives. The fine and custody would, in such circumstances, return to the centre of sentencing policy.

12 Bermuda has no non-custodial infrastructure of the kind described. There are some social initiatives which benefit offenders as well as others in the community. We were told of additional needs as follows:

- for increased psychiatric services, and for a change in policy on admission to psychiatric facilities to allow for the admission of those who would otherwise face custody;
- for facilities to address drug abuse;
- for increased education and support for those found to be HIV positive;
- for more family counselling procedures in the juvenile justice system;
- for increased compensation schemes for victims of crime;
- for policies and more programmes to assist alcoholics,

particularly those who became vagrants;

- for additional assistance in obtaining employment or skills training;
- for more night shelter accommodation and a day care facility for homeless people.

13 Each of the categories outlined in paragraph 12 refer to social problems existing currently within the population of Bermuda. For those offenders needing the help of agencies concerned with problems such as these, criminal justice sanctions of the fine and custody would not be appropriate. There are already people and organisations prepared to develop and offer the expertise necessary to provide constructive programmes. Whilst no sanction can be guaranteed to be successful, the attempt to address offending behaviour is preferable to the imposition of fines, which will likely remain unpaid. The cost of keeping a person in custody for a year has been calculated by the National Drug Strategy Report as about \$36,500.

14 We heard from people and organisations who provided facilities to help individuals in need. We were impressed by the commitment to programmes to assist AIDS sufferers, drug users and homeless people. We were aware that there was little coordination between these bodies and that there was no coherent strategy for dealing with the major social problems that they addressed.

The Legal System

15 A feature of the information given to us on the operation of the legal system in Bermuda's criminal justice process was that it had to take account of the very high incidence of drug related crime. Estimates suggested that up to 80% of crime had something to do with drugs. The need was to punish those who traded in drugs and to rehabilitate those who were addicted to them. For this reason there was support for the idea of extending the use of

suspended sentences as a sentencing option, and for it to be used in conjunction with treatment programmes.

16 Road traffic legislation needed fundamental reform. It was pointed out to us that for certain traffic offences, such as driving whilst disqualified, prison sentences were mandatory for a second offence. The suggestion was that the mandatory requirements should be abolished and that courts should be permitted to use all sanctions available under the Criminal Code, so as to remove the situation whereby young motoring offenders were locked up with dangerous criminals. In addition it was suggested that the award of consecutive periods of disqualification should be reconsidered, as it did not help the objective of promoting good road practice to disqualify a young person from using the roads for several years.

17 Within the legal structure of Bermuda, it was perceived that a great deal of work needed to be done by the police in developing the confidence of the community. Central to this was the necessity to make police accountable for their actions in respect of accused persons. Legislation which demanded clear and verifiable accounts of how people are treated whilst in police custody was essential. Police training would have to be improved to ensure that standards of practice were consistent with such requirements of accountability.

18 Similarly in the courts, there was evidence to suggest that the standard of behaviour of some Magistrates towards accused persons fell far below acceptable standards. Rules of evidence it was said, in the Magistrates' courts disadvantaged the defence to an unacceptable degree. In the Supreme Court, proceedings relied upon the hand written records of the trial judge involved, which made preparation of an appeal very difficult. As with the police, independent monitoring of court cases using tape recorders, videos or stenographers, was vital.

19 The Legal Aid system in Bermuda was far too weak for a

society which routinely brought so many of its population into contact with the criminal justice system. It applied only to people actually charged with offences and did not cover police station visits and advice unless a charge was made. Remuneration to lawyers, especially senior lawyers, was unattractive and therefore few participated in the scheme. It was essential that a proper defence to charges should be prepared, and that sufficient funds were available to ensure that defendants were properly represented.

20 A Family Court with comprehensive jurisdiction in all matters dealing with the family should be established in Bermuda. The family is the basic unit of society and there is a need to provide help and assistance whenever family issues are in conflict with the law and the community.

The Prison System

21 The prison system, despite the poor conditions in which the present Casemates prison operated, was not badly run in the view of many we saw. Staff worked hard to maintain good relations with inmates. However, their training programme was limited in scope, and this may account for the paucity of the prison regime.

22 As in many jurisdictions, a criminal record is a bar to many employment opportunities. For those serving time for traffic and drugs offences, many of whom were young, the consequences could be particularly severe. Even on release from custody, traffic offenders were likely still to face periods of disqualification, and be thus limited in taking employment. Drugs offenders would find it hard to leave Bermuda owing to the operation of the US Stop List, which bars those with drug convictions from entering the USA without an immigration waiver. The ban includes transit passengers simply using US airports enroute to the Caribbean or elsewhere. For Bermudians, such a ban bars many young people from entering tertiary education, facilities for which are very limited on the Island. In practice, a waiver system operates, but rarely

before five years have elapsed from the date of the conviction. Regardless of the existence of a waiver, any Bermudian with such a record will experience routine difficulty at the airport. In this connection we spoke to a few individuals who had achieved considerable success in business despite having served prison sentences. However, despite the period of time which had elapsed since their sentences, they were often the subject of inquiries when leaving or entering the Island.

23 Concern was expressed at the possibility that the prison could exacerbate the incidence of AIDS on the Island. The argument, expressed also in other countries, is that the closed nature of prisons make them likely places for promiscuous homosexual behaviour. Combined with the number of drug users in prison, many fear the spread of AIDS in the community when offenders are released. There was a call for compulsory AIDS testing by some. This was resisted by others including those working in the community with AIDS victims. The argument for testing is that the community needs to know the extent of the risk. The argument against, which is respected in the UK and other jurisdictions, is that enforcing knowledge of an incurable disease upon an individual offends basic human rights. There is no evidence that such testing would make any difference to the effectiveness and importance of information about AIDS in the wider community. The rights of prisoners, especially in regard to requests/complaints procedures, should be reviewed.

24 A new prison is being constructed in Bermuda. Many people felt that its opening should signal a change of style within the prison service. Staff anticipate training based regimes as being important in the new prison, and it is imperative that they be trained to develop them. With regard to drugs, AIDS and psychiatric problems, it was suggested that the prison should be linked to community based organisations to provide for the sharing of skills and continuity of training for offenders after release. It may be possible to introduce an effective rehabilitation certificate that would have real value to ex-offenders. Given that

the main purpose of imprisonment is to prepare prisoners for release, it is important that the new prison develops a regular working relationship with agencies in the community which are able to provide support to the person both before and after release.

25 In our view the Co-Ed facility was used inappropriately in that it incarcerated juveniles, who should be dealt with in the community, and women, for whom little provision had been made in terms of regime opportunities and preparation for release. Young offenders were subject to an indeterminate sentence of between 9 months and 3 years Corrective Training, the justice and efficacy of which was questioned by many who spoke to us. The Co-Ed facility is unlikely to have a place in the future prison system of Bermuda.

26 The prison regime that we propose will be designed to offer those in custody maximum opportunity to prepare for a successful return to liberty. It is important that prisoners should have a clear understanding of what to expect from the prison, and that there should be accessible procedures to deal with requests or complaints. The prison is likely to hold a diverse population with a variety of needs. It is important that the prison is able to assess those needs, and plan appropriate regimes which include the education and training of prisoners, as well as opportunities for treatment and support for those aiming to prepare for return to the community. We feel that it is also important that, in conjunction with agencies in the community, attention is paid to the problem of employment after a prison sentence. The techniques of interview and promoting self-confidence have to be tackled if they are to move away from the criminal setting and succeed.

Drugs

27 The drugs scene in Bermuda is complicated by the fact that there is an overlap between those who use drugs and those who trade in them. The Island contains traffickers and dealers, respectively the international and national wholesalers of drugs;

and pushers and users, the retailers and receivers. Pushers as well as Users are likely to abuse drugs, and are particularly likely to end up being caught. Both need help, in addition to punishment, and on a small Island it was considered important that support facilities were available. In particular, young people who made limited use of drugs should be helped quickly, and not be criminalised if at all possible.

Traffic Laws and Young people

28 The stringency of the traffic laws on the Island masked another issue which needs consideration. It was particularly alarming to the Review Team to observe the large number of young people that congregated on Palmetto Road on a Saturday evening, remaining there as late as 3.00 am. Young people, we were told, perceived themselves to have little to do in Bermuda, and dissatisfaction with this state of affairs was expressed through the 'Battle of Wheels' between youngsters and the police. This was particularly noticeable in pack racing, a night time sport in which youngsters race at dangerous speed against each other on deserted roads. We were told that this activity predates the motor vehicle, having once been indulged with horses and carts. The motorbike in Bermuda is a rite of passage. The desire to ride one is incredibly strong. The curtailment of this desire produces a frustrated and unhappy young population. Some means need to be found to harness the desire and to keep the young away from the criminal justice system. Programmes for developing skills in riding have long been advocated, but do not get tried as they are seen as being directed only at those who would not break the law anyway. Nevertheless there is a need for such programmes and they should be a part of the regular school experience of every Bermudian child. If the police participated in this programme it could assist public relations. One example of the kind of programme that should be resurrected is Project Ride which once operated in a few schools. Other organisations in Bermuda were seen to have importance in using the energies of the young. The Bermuda Regiment conscripts most of Bermuda's male population for

three years national service, and was generally well regarded by the population as being a useful focus of activity for the benefit of the community. Other ways of dealing constructively with the population were needed urgently.

Community Service

29 Community Service was undeveloped. Work is going on, for example with the Keep Bermuda Beautiful Campaign, to assist in making Community Service a constructive option, not only serving as a sanction for an offence, but also as a means of rehabilitation and possible future employment for an offender. We were told that it is important to ensure that every Community Service programme which involves employment must have the full co-operation of the unions and staff associations.

*** Attitudes to the Law in Bermuda**

30 At the public forum held in Hamilton on 6 August, Bermudians expressed their anger and frustration at the oppressive system of criminal justice to which they are subjected. We had heard individuals tell us that Bermudian youngsters, particularly black youngsters, grew up with a lack of confidence and a lack of trust in the criminal justice system. They also grew up with a lack of educational opportunity, and a lack of support when problems occurred. In many ways we heard that this is a harsh society to its young. We also heard of particular concerns about violence towards women. About 60 people took the trouble to come to see us individually. With them and the participants of the public forum there was considerable and bitter doubt expressed as to whether anything would change. With this thought in mind we turn to our recommendations.

CHAPTER SIX

CONCLUSION - ANALYSIS OF REVIEW FINDINGS

1 This Report is intended to provide a signpost to the actions to be considered if the Government wishes to change the way in which criminal justice is dispensed, and, in particular if they wish to reduce the use of imprisonment. The analysis of our findings and the recommendations we make have been grouped under the headings used in Chapter 5, to allow us to respond directly to the concerns expressed by individuals and organisations in their submissions to the Inquiry.

Bermuda as a Society

2 The fact that Bermuda is relatively wealthy conceals the fact that it is also vulnerable. Tourism is heavily reliant upon the US market maintaining its interest in the Island. Letters from American visitors to The Royal Gazette during the period of the Review frequently emphasised the fragility of this relationship. The continued success of international business interests depend on conditions beyond the Island's control. There was much discussion in the media in August 1992 on the implications for Bermuda of a worldwide recession.

3 We heard from some young people how they felt oppressed by the operation of the criminal justice system in Bermuda. A combination of family values which in some cases may not provide support to a youngster in trouble, educational opportunities which are limited to those with the resources to travel, and a social system which is likely to involve a person with the police at an early age, could lead to a citizen lacking in confidence and direction. A fair criminal justice system has to be developed, based on principles wider than those concerned solely with legal controls.

4 Bermuda has a highly complex social structure. The criminal justice system operates within it and is affected by it. It is within this social context that people either develop or are frustrated in their ambitions, and may come into conflict with the law. We believe that it is not possible to examine the operation of the criminal justice system without understanding how this broader social structure works.

We accordingly recommend that the Government establishes a Working Party to examine the social conditions within which the country operates. Its purpose should be to examine whether all citizens have opportunities for personal and social development together with adequate structures for support, and to make recommendations. (Recommendation 1)

Education and Criminal Justice

5 Bermuda needs to develop its tertiary education structure, so as to maximise the potential of the Bermuda College, and to ensure that any Bermudian can benefit from opportunities in Higher Education either on the Island or through programmes which link the Bermuda College to suitable establishments abroad. The school system should be geared to maximise educational opportunity, and to foster the expectation that this can be done with the support of the Government.

We accordingly recommend that the work of the Education Planning Team be promoted, and emphasis be placed on developing opportunities to tertiary level for all Bermudian students utilising the potential of the Bermuda College by continuing to foster inter-collegiate links between it and establishments abroad. (Recommendation 2)

The Police

6 Reference to reports on the criminal justice system as far back as 1968 clearly indicate that the relationship between police

and public in Bermuda needs to be improved. Part of the problem lies in the nature of the legislation which police are required to enforce, in particular that concerning traffic. Equally important are police attitudes towards the public, and the perception of the police by the public. We believe that there is a need for police to examine their role and contribution within the community, and to develop working styles which emphasise prevention of crime as much as reaction to it. We did not detect attitudes of extreme hostility towards the police, but there was a lack of confidence. This can only be addressed by the police becoming involved in a co-operative way in the affairs of the community. Concern was also expressed to us about the manner in which complaints against the police are dealt with, namely internally. We believe that there should be an independent body established to investigate complaints. Three recommendations follow:

We recommend that the Commissioner of Police appoints a team to examine the role of the police as a public service with particular attention to developing work in the community and improving public confidence. (Recommendation 3)

7 With reference to the enforcement of law, it is important that police methods of interviewing and detaining members of the public should be open to scrutiny. The Police and Criminal Evidence Act in the UK provides, within the context of an independent prosecution system, a structure which governs police involvement with the public so as to make the police accountable for their actions. We believe that the principles underlying this legislation should apply in Bermuda.

We recommend that the Police make more use of video and tape recordings, when detaining and interviewing people, so that they can be made more accountable and that legislation along the lines of the Police and Criminal Evidence Act in the United Kingdom should be introduced. (Recommendation 4)

We recommend that an independently based procedure should be established for the investigation of complaints against the police. (Recommendation 5)

8 There is no doubt that the traffic laws in Bermuda are a major cause of tension between police and the public. It is clear from previous reports that the auxiliary motor cycle is one of the most important possessions in life to a 16 year old. Learning to ride a bike is an informal procedure, often started well before the legal age, whereby under-age youngsters borrow their friends' machines and try them out. This leads, inevitably, to involvement with the police. We recognise that under-age riding cannot be eliminated, but consider that a more constructive approach to the skills of motor cycling could be taken by the police, and other interested bodies, so as to improve the standard of riding by youngsters on the Island. We also consider that a driving test should be mandatory for all motorised transport. We believe that driver and rider education should become part of the school curriculum to ensure that Bermudian young people have a thorough understanding of the traffic laws and the proper use and care of motor vehicles. The police could assist in the running of these courses as it provides an opportunity for them to build relationships with the youth of the community. Two recommendations follow:

We recommend that the police service examine ways in which they can contribute to the road skills of young people in Bermuda. (Recommendation 6)

We recommend that driver and rider education be added to the school curriculum. (Recommendation 7)

Alternatives to Custody

9 We recommend the adoption to Bermudian needs of the code of non-custodial sentences contained in part 1 of the Criminal Justice Act 1991 (UK). (Recommendation 8)

We have in mind Sections 1 - 12, 14 - 16 (including Schedule 2) and 19 and 20. Some can be taken on as they stand; others will need re-drafting to preserve the substance away from other English statute law.

10 We propose that the work be done by a small working party, headed by a Supreme Court Judge or the Attorney General. (Recommendation 9)

It can be done very quickly. It will lay out a code for the use of the probation order, the community service order (a vital part of our recommendation), the combination order, the curfew order and the supervision order. The provisions of the Act dealing with restrictions on custodial sentencing and fining are particularly valuable.

Part 1 of the 1991 Act is included at Appendix 6 to this report.

11 The thrust of the present report is to recommend a move within the criminal justice system from punitive sanctions towards measures which aim to correct and prevent criminal behaviour. This requires a criminal justice system which incorporates the agencies responsible for its operation. The Police, the Courts, the Probation and Prison Services need to have formal organisational links, and to develop understanding of their respective roles. At present these agencies are each responsible to different ministries.

We recommend that a Cabinet Committee consider the possibility that the delegated powers of the Police, Probation and the Prison Services be brought under the same ministry. (Recommendation 10)

12 Non-custodial sanctions in Bermuda are limited to the fine, probation, and to a negligible amount of community service. A variety of services are required for the use of the courts in appropriate cases. Hostels, both for those on bail or under certain types of probation order; facilities for dealing with

alcoholism or drug dependency; facilities for the homeless are all required. In addition, the development of a viable scheme of community service will require access to organisations willing to provide and supervise work undertaken by those sentenced to periods of community service. Statutory and voluntary agencies will have to join forces to run a non-custodial service of the kind which Bermuda needs.

We recommend that a Working Party be established to design a working structure for the administration of non-custodial sanctions which brings statutory and voluntary agencies responsible for the supervision of such sanctions into a working relationship with each other to ensure that all punishments should be in the community, save where a sentence of imprisonment is ordered as the final alternative.
(Recommendation 11)

13 The changes which we are recommending be made to the criminal justice system of Bermuda require careful consideration by members of all the agencies involved in the administration of criminal sanctions. For this reason we believe that a committee should be established to consider and recommend how a reformed system should be constructed. In considering such matters it is important in our view that criminal justice professionals become acquainted with the facilities offered by colleagues. In particular we would highlight the need for magistrates and judges to become acquainted with non custodial and custodial facilities. They should visit both types of establishment regularly. It is important that the establishment of this committee should take place alongside the implementation of our more immediate proposals. Reform of the criminal justice system is urgent, and this committee should be seen as both active and productive.

We recommend the establishment of a Criminal Justice Committee, responsible to Parliament, to keep under review and make recommendations on any issues that impact on the maintenance of a fair and impartial criminal justice system in Bermuda. (Recommendation 12)

The Legal System

14 The terms of reference invite us to consider criminal justice system policies, sentencing alternatives and how to achieve a change of emphasis from custody to correction. We are conscious that in reporting on these questions we must avoid anything which might be seen as trespassing on the most important principle of the independence of the judiciary in sentencing. In support of this principle we are recommending the abolition of mandatory sentences for road traffic offences, thus increasing the discretion of the courts. In other jurisdictions courts have discretion about the appropriate sanctions to award for road traffic offences. Clearly there are some crimes involving vehicles which require firm action. In Bermuda we wish to see discretion restored so that minor traffic offenders do not receive prison terms. We believe that the introduction of fixed penalties for certain levels of speeding offence in August 1992 was a step in the right direction. A points system might usefully be developed whereby offenders would not incur disqualification in the case of minor offences unless they showed no effort to change their driving habits. We have also considered whether to suggest that traffic offences be dealt with in special courts, but we are anxious to reduce the incidence of court appearances for minor offences, and therefore do not recommend this course of action.

We recommend that mandatory prison terms for Road Traffic Offences be abolished. (Recommendation 13)

15 Disqualification from driving is often repeatedly and consecutively used on an individual by the courts. This means that a young person can sometimes face several years before being

allowed to drive. There must be many occasions where one month's disqualification on a teenager, if understood, would be obeyed and effective.

16 Nevertheless it is our strong conviction that the sentencing of young offenders in traffic cases is in urgent need of reconsideration. We have looked in detail at problems arising from practices of pack racing at night and from relationships between the young and the police day and night. We have traced in the report the troubles which so often lead the young from acquiring a bike to Casemates in a comparatively short career. If a boy has a new bike and drives badly on it, either alone or in the manner and company of his friends, a short period of disqualification and a fine he can pay may teach him a sharp lesson. Such a period as a month or 6 weeks without his bike, and a fine of \$50 or so are within his comprehension and he will probably obey and learn. But if he is made subject to disqualification for a year or more and fined some sum which his parents may or may not be able to pay, but he clearly cannot pay himself, he is outside his imaginative experience. Before long he will be riding while disqualified and be carried off to prison for non-payment of a fine. Once this Rake's Progress has been made, the chances of turning him into an honest citizen are very limited. He is likely to join the ranks of the disaffected referred to much earlier in this report.

We recommend that the consecutive use of periods of disqualification from driving be discouraged. (Recommendation 14)

17 In the same way as we have recommended that proceedings in police stations should be subject to scrutiny, so we believe should proceedings in court. We received many complaints as to the way in which some courts and judicial figures conducted matters. In order to ensure that both public and courts are protected from false allegations:

We recommend that in both Magistrates and Supreme Courts tape recorders, videos or stenographers be used to provide a record of all proceedings which should then be available to all interested parties. (Recommendation 15)

18 The annual report of the Legal Aid Committee for 1991 draws attention to budgetary weaknesses in the funding of the scheme. We do not believe that a satisfactory mechanism exists for reviewing and adjusting the funding of the scheme.

We recommend that the operation of the Legal Aid system be reviewed to ensure that it adequately meets the requirements of justice in supporting those facing criminal charges. (Recommendation 16)

19 We have referred to young people in Bermuda as lacking in confidence. It is a society in which family matters become entwined with the law. We noted with interest the paper produced by the Ontario Law Reform Commission on the subject of family courts and consider that such a court could have a value in Bermuda.

We recommend a study to be undertaken to investigate the feasibility of establishing a Family Court System in Bermuda. (Recommendation 17)

20 One of the problems we encountered during our inquiry concerned the collection of up-to-date legislation. We believe that a Government Bookstore should be established to ensure that this problem is rectified.

We recommend the establishment of a Government Bookstore to make official documents, including laws, amendments to the laws, and official reports accessible to the public. (Recommendation 18)

The Prison System

21 In the evidence presented to us the Acting Director of Social Services stressed the need for his Department to provide secure accommodation for young people when this is required. We consider it inappropriate that any juvenile should be held by the Prison Service. They should instead be supervised in a setting which, even if it is secure, is not regarded as penal.

We recommend that no person under the age of 16 years should be held by the Prison Service. (Recommendation 19)

22 In the context of the integrated system of criminal justice to which we have referred, we think that it is important that the Prison Service develop programmes for use in the custodial setting which as far as possible prepare prisoners for release. Links must be established between the custodial and the non-custodial agencies so that it becomes possible for prisoners to return in a supervised way to life in the community. This has a direct implication for staff of prisons, who will need to undergo training in order to run dynamic regimes. In order to provide this we suggest that assistance be sought from the training adviser to the Dependent Territories in the Caribbean. Three recommendations follow:

We recommend that training programmes be designed and implemented for prison staff, and that such training should bring staff into professional contact with other agencies within the criminal justice system. (Recommendation 20)

We recommend that the training adviser to the Dependent Territories in the Caribbean be consulted about the training requirements of staff of the prison in Bermuda, and if possible assist in the design of suitable programmes for them. (Recommendation 21)

We recommend that the design of regime activity appropriate to the preparation of prisoners for release should be commenced urgently, and that all agencies, both statutory and voluntary, working with offenders should be involved in discussions as to how this should be done. (Recommendation 22)

23 In addition to offences arising from infringement of the traffic laws and those connected with drugs we were concerned with the offenders who were brought to court as a result of homelessness or social problems associated with it. In particular, we were concerned at the offence of wandering abroad, under the terms of which police were obliged to apprehend people for no reason other than that they had no fixed abode. We believe that offences such as wandering abroad should be removed from the Statute Book. We have in mind a number of offences connected with a past period of racial discrimination and segregation. A working party, possibly chaired by a High Court judge or the Attorney General, should review these. Following our earlier recommendations we emphasise the importance of the criminal justice agencies, and the voluntary sector, working together to pool the available community based facilities so as to be able to divert the homeless from the criminal justice system altogether. Finally, as we do not see a future for the co-ed facility, separate provision will need to be made for young offenders within the new prison. Three recommendations follow:

We recommend that offences such as wandering abroad or any laws that appear to discriminate on the basis of race or sex should be reviewed by a working party with a view to the abolition of those which are a legacy of an outdated era. (Recommendation 23)

We recommend that consideration should be given to the idea of a half-way house as suggested by Prison Fellowship and the Salvation Army, who have both offered to establish and operate such a facility. (Recommendation 24)

We recommend that young offenders if located at the new prison facility should have separate accommodation and facilities from adults. (Recommendation 25)

24 The Treatment of Offenders Board is a powerful instrument determining the use of custody in Bermuda. At present it decides upon whether early release on licence can be awarded to prisoners, adjudicates on disciplinary offences and punishes prisoners found guilty by cutting remission. We believe that reasons should be given when release on licence is denied, in common with the UK, and that strict limits should be applied to the powers to withdraw remission. In the case of serious criminal offences which occur within prison we believe that the courts should be involved.

We recommend that the work of the Treatment of Offenders Board with regard to the operation of the parole system and the hearing of disciplinary offences should be reviewed so as to ensure that reasons for refusal to grant parole are provided, and that there should be limits on the powers of the Board to remove remission. Arrangements should be made for serious offences brought to the Board to be heard in the Courts. (Recommendation 26)

25 The fact that a conviction in Bermuda for any drug offence (or for a serious non-drug offence) makes the offender likely to go on to a US Stop List is a cause of anxiety. It makes him a virtual prisoner in Bermuda. He cannot go, in particular for tertiary education, to the US or the Caribbean (usually approached through Miami). There is a modified stop list for Canada. There is a Bermudian stop list the other way, but inevitably on their relative sizes, this is less important.

We recommend that discussions be continued with the appropriate US authorities to ensure that those with convictions for minor drugs offences are not prevented

unnecessarily from travelling from Bermuda to continue education programmes or for other lawful purposes.
(Recommendation 27)

26 During the course of this Review public discussion occurred in Bermuda on the subject of whether or not prisoners should be compulsorily tested for HIV. We are clear that no constructive purpose would be served by such an exercise. The changes in social attitudes that are required in order to minimise the risk of HIV transmission in the general population are unaffected by the fact that there is a likelihood that there will be a higher incidence of HIV positive people in institutions such as prisons.

We recommend that the work undertaken on AIDS in Bermuda should fully involve the prison authorities, and that public concern about the spread of AIDS through the prison should be addressed as part of the normal education and information programmes applicable to the community as a whole.
(Recommendation 28)

27 In the Juvenile section of the prison it was common for a sentence of Corrective Training to be awarded which could run for any period between nine months and three years. Although the intention behind Corrective Training is that it should assist in the rehabilitative process:

We recommend that the sentence of Corrective Training be abolished. (Recommendation 29)

Drugs

28 We have examined, in Chapter 4, the work of the National Drug Strategy Group. We have suggested that the analysis contained there has more general application to the situation in Bermuda than just the very serious problem with drugs. The task ahead is considerable. We have commented that in the past a large number of reports have indicated the problems that Bermuda must address.

The National Drug Strategy Group is one of the first practical initiatives to result, and it is essential that it is properly empowered and resourced.

We recommend that the National Drug Strategy Group be given both the authority and resources to carry out its work.

(Recommendation 30)

29 We wish to see more diversion from custody. Prison should only be used as a last resort. This means that police have got to be involved in the decision to divert, as magistrates could argue that they can only act on the cases brought before them. Addiction services were as important to whites as to blacks and Archibald had emphasised, at page 189 of the report on criminal justice, the importance of developing the police role in this way.

30 People became desensitised to the court experience if over-exposed to it. When prison results, in the way it does in Bermuda, it is no big deal. Productive people can become habituated to prison life, and when they come out they do not see the necessity of getting a job. In this way starts the cycle of offences such as wandering abroad and the non-payment of fines. We question Section 24 of the Misuse of Drugs Act 1972 which refers to the definition of a prison but does not allow it to be used as a place of treatment. This needs changing. Judges use as the reason for imposing custodial sentences the fact that there are no treatment facilities. Drugs offences should be brought under the criminal code so that an addict convicted of another crime, by reason of drug abuse, could have a Social Inquiry Report and be sentenced to appropriate treatment. Parole for drugs offenders should be awarded so as to allow time for sufficient supervision. Otherwise, those who had dried out physically from the drug abuse would be vulnerable to relapse. The psychological basis of addiction was frequently not addressed in prison, and support in the community is vital. Without an active parole licence, supervision would not happen. This was described to us as the 'Dry Junkie Syndrome'. Remand prisoners in need of help

were also short changed by the present system. The purpose of prison had to be defined, and proper programmes established for those appropriately sentenced to custody.

31 The drug scene in Bermuda was described to us as economically complex. There was big money involved, but often at a fairly low level on the street, as well as the top end of the market. The following divisions were suggested:

- Traffickers: No drug use themselves. International operators;
- Dealers: No drug use themselves. National operators;
- Pushers: Often, but not always, users. Street operators;
- Users.

32 Both pushers and users were risky in the eyes of dealers and traffickers because of the threat to security they posed by their drug habit; and the economic threat that they posed by using, rather than selling, the drugs.

We recommend that distinctions be drawn between those who trade in drugs and those who use them and that the criminal justice system be flexible enough to develop non-custodial treatment programmes wherever possible. (Recommendation 31)

Community Service

33 We have argued throughout this report for a diverse and imaginative range of non-custodial sanctions to be developed and used to assist offenders in becoming law abiding members of society. The Community Service Order provides a means whereby Offenders can offer something to the community as a direct

recompense for their earlier behaviour. It requires the support of a wide range of organisations, both public and private. It is important that it is structured alongside activities aimed at other sectors of the population. For example, voluntary work organisers in hospitals or the social services might incorporate community service into their programmes. Private or municipal bodies could consider the possibility of using Community Service as a route to possible employment. We were impressed by the commitment of the Director of Parks Services to using community service in this way, and, in particular, with the involvement and support that was maintained with the Bermuda Industrial Union. Community Service requires community confidence if it is to work at all and it is essential that interested parties in organisations where it is used are kept fully informed as to its effect on others.

We recommend that Community Service Orders be introduced as a major non-custodial sanction in Bermuda, and that both statutory and voluntary agencies be invited to present programmes for different schemes for such service for consideration and approval. (Recommendation 32)

Traffic Laws and the Environment of Young people in Bermuda

34 We have noted that many of the issues which we have been analysing, and which have an impact on the criminal justice system, have to do with the suitability of the environment of Bermuda as a place to grow up. Young people have problems with mobility in that they break the traffic laws; problems with authority in that they are not encouraged to take part in the decision making processes of the Island; problems with education in that they have to go overseas to obtain higher education; and the problems besetting every country in the world associated with

drugs and AIDS. We have considered how to address this problem without oversimplifying what is a complex and common situation in many modern societies.

35 Bermuda has many strengths. Its size, wealth and diversity of population located in a superb part of the world could combine to make it one of the most stimulating societies in which to live. We believe that many people and organisations obtain a great deal of benefit from their presence on the Island. Many skills are represented. We believe that ways could be found in which young Bermudians could receive benefit by involvement with local organisations in programmes designed to enable them to participate in activities which otherwise they would not be able to share. Diving and yacht clubs and other sporting organisations have a great deal to offer. A requirement for entry is normally wealth, and possibly status. Young people have neither and we believe it is time that Bermudians recognised that young Bermudians are an asset to be developed for the sake of the population as a whole.

We recommend that statutory and voluntary agencies, together with business operations on the Island should consider ways in which young people may be encouraged to contribute to life and the contribution that such organisations can make to facilitating this. (Recommendation 33)

Attitudes to the Law in Bermuda

36 Race has been the continual feature in the submissions made to us. Less than 30 years ago apartheid existed in Bermuda. By any standards the country has moved a considerable distance since desegregation. It is clear however that problems remain, and occasionally erupt in public discontent. Young black males predominate in the custodial population in Bermuda. Young black males are the main occupants of the magistrates court each day. There are still places on the Island where black people do not feel comfortable, and some organisations which either impose segregation or find themselves segregated. Perceptions that

persons of different races and background are treated differently by the system are commonly held throughout Bermuda. Partly this is based on the disproportionate number of black persons in custody. These issues need urgent consideration over a long period. The Human Rights Commission seems to us to be the body which should be given the authority and resources to do this.

37 The Human Rights Commission should incorporate a Race Relations Division with responsibility for dealing with racial issues and research. It should have the support of both Government and the community for initiating small and large racially balanced focus groups to discuss the problems of race relations and to find ways of solving them. An outline of its style of operation and suggested functions is included at Appendix 4.

We recommend that the Human Rights Commission should incorporate a Race Relations Division with responsibility for dealing with racial issues. (Recommendation 34)

38 In this report we have focused on the impact of the criminal justice system on young people who commit relatively minor offences. However, it is also true that there is serious crime on the Island. We were aware that there was a strong public perception, reflected in the press, that there was an increase in violent crime. In particular there were a number of disturbing reports of violence towards women. We believe that it would be helpful if this subject could be examined in detail and without delay so that the extent of the problem can be assessed.

39 Finally, we wish to emphasise, in accord with the National Drug Strategy Report of 1991, that the criminal justice system in Bermuda needs examination followed by action. The action taken then needs to be monitored so that changes and developments can be made in the light of experience. Policy related research is needed in Bermuda on the subjects we have examined, and we urge Government not to overlook its importance.

CONCLUSIONS

1. In examining community and custodial alternatives, you need to pause for a moment to determine what prisons are for. The Prison Department Transition Team have prepared (26 June 1992) a substantial and useful statement of beliefs, product and mission, in which perhaps training of inmates and staff and community involvement predominate.
2. For our purposes we have worked on something shorter. The English statement, which hangs prominently in every English prison is short indeed. "Her Majesty's Prison Service serves the public by keeping in custody those committed by the Courts. Our duty is to look after them with humanity and to help them lead law-abiding and useful lives in custody and after release." The duty is based on holding prisoners securely - otherwise it is no prison - caring for them, and giving them the chance - which it is for them to take if they choose - to prepare for return to the community. Some prisoners are held to whom this statement cannot fully apply. There is the dangerous long-term prisoner who is unlikely to be discharged in the foreseeable future. There is the remand who is unconvicted and has to be treated separately as such, perhaps in conditions which are as near as possible to a secure hostel. We are not proposing any particular formula to be adopted as a mission statement in Bermuda; the Bermudian Prison Service will want to work through the process of creating its own statement.
3. But for the great majority of prisoners, security, care and preparation are the chief duties of any Prison Service. Preparation is wider than training in employment skills. It may include remedial or even more advanced education; and training in how to cope with drink, drugs, Aids and very often, with the demands of personal relationships. It may include teaching men how to look after themselves with hygiene and on low incomes and to appreciate the harm done by them to victims of crime.

4. The duty of the Prison Service is proud and demanding. It contrasts with the quite different function of the Courts. It is for the Judges and Magistrates to determine questions of punishment and how punishment is to fit the crime. The Courts have to take into account many factors: the need to record publicly the community's disapproval, the need to try and deter others, the need to give the offender, where just, the chance to improve. But questions of punishment are for the Courts and not for the Prison Service, and to keep these functions separate seems essential in determining what prisons are for.

5. This report began with an open letter to the Premier setting out the nature of the Bermudian problems as seen by a curious visitor. The report is short and intended for use. At the end of it there are recommendations. They are designed to provide for better integration between black and white, old and young. At their heart are these:

- a. a change of attitude to sentencing the young, particularly in relation to traffic offences and custody, and the length of disqualification;
- b. the adaption to Bermudian needs of the range of non-custodial sentencing set out in the Criminal Justice Act 1991, with especial reference to Community Service Orders;
- c. the use of videos and tape recorders and consideration of other concepts from the Police and Civil Evidence Act 1984, in all Courts and in all police stations where statements are taken;
- d. the ending of such offences as 'Wandering abroad' which dates from a past history and culture, the ending of mandatory sentences for traffic offences, and the ending of corrective training;

e. the establishment of a standing committee on criminal justice, of which the Attorney General, the Commissioners of Police and Prisons, representatives of the judiciary, and leaders of every branch of the criminal justice are members. The Committee would ensure greater knowledge of the system by each department: encouraging, for example, visits by the judiciary to the prison.

6. Those matters and the other recommendations are mixed issues of changes of attitude and changes of law. They will work to help integrate society only if they are vigorously pursued by Government and widely accepted by the public. We repeat the quotation from Dr Johnson, cited in the open letter:

"How small of all that human hearts endure,
that part which Laws or Kings can cause or cure."

His Honour Judge Stephen Tumim
September 1992

SUMMARY OF RECOMMENDATIONS

The recommendations from Chapter Six are listed under the Review Team's terms of reference as follows:

- To review the Criminal Justice System and the primary legislation which impacts on prisons .

We recommend the adoption to Bermudian needs of the code of non-custodial sentences contained in part 1 of the Criminal Justice Act 1991 (UK). (Recommendation 8)

We propose that the work be done by a small working party, headed by a Supreme Court Judge or the Attorney General. (Recommendation 9)

We recommend that a Cabinet Committee consider the possibility that the delegated powers of the Police, Probation and the Prison Services be brought under the same ministry. (Recommendation 10)

We recommend the establishment of a Criminal Justice Committee, responsible to Parliament, to keep under review and make recommendations on any issues that impact on the maintenance of a fair and impartial criminal justice system in Bermuda. (Recommendation 12)

We recommend that mandatory prison terms for Road Traffic Offences be abolished. (Recommendation 13)

We recommend that the consecutive use of periods of disqualification from driving be discouraged.
(Recommendation 14)

We recommend that the operation of the Legal Aid system be reviewed to ensure that it adequately meets the requirements of justice in supporting those facing criminal charges. (Recommendation 16)

We recommend that no person under the age of 16 years should be held by the Prison Service. (Recommendation 19)

We recommend that the sentence of Corrective Training be abolished. (Recommendation 29)

We recommend that the National Drug Strategy Group be given both the authority and resources to carry out its work.
(Recommendation 30)

- To review the Criminal Justice System procedures and policies and make recommendations for sentencing alternatives.

We recommend that the Police make use of video and tape recordings, when detaining and interviewing people, so that they can be made more accountable and that legislation along the lines of the Police and Criminal Evidence Act in the United Kingdom should be introduced. (Recommendation 4)

We recommend that an independently based procedure should be established for the investigation of complaints against the police. (Recommendation 5)

We recommend that a Working Party be established to design a working structure for the administration of non-custodial sanctions which brings statutory and voluntary agencies responsible for the supervision of such sanctions into a working relationship with each other to ensure that all punishments should be in the community, save where a sentence of imprisonment is ordered as the final alternative. (Recommendation 11)

We recommend that in both Magistrates and Supreme Courts tape recorders, videos or stenographers be used to provide a record of all proceedings which should then be available to all interested parties. (Recommendation 15)

We recommend that training programmes be designed and implemented for prison staff, and that such training should bring staff into professional contact with other agencies within the criminal justice system. (Recommendation 20)

We recommend that consideration should be given to the idea of a half-way house as suggested by Prison Fellowship and the Salvation Army, who have both offered to establish and operate such a facility. (Recommendation 24)

We recommend that young offenders if located at the new prison facility should have separate accommodation and facilities from adults. (Recommendation 25)

We recommend that the work of the Treatment of Offenders Board with regard to the operation of the parole system and the hearing of disciplinary offences should be reviewed so as to ensure that reasons for refusal to grant parole are provided and that there should be limits on the powers of the Board to remove remission. Arrangements should be made for serious offences brought to the Board to be heard in the Courts. (Recommendation 26)

We recommend that Community Service Orders be introduced as a major non-custodial sanction in Bermuda, and that both statutory and voluntary agencies be invited to present programmes for different schemes for such service for consideration and approval. (Recommendation 32)

- To investigate the perceptions that persons of different races and different backgrounds are treated differently by the system.

We accordingly recommend that the Government establishes a Working Party to examine the social conditions within which the country operates. Its purpose should be to examine whether all citizens have opportunities for personal and social development together with adequate structures for support, and to make recommendations. (Recommendation 1)

We accordingly recommend that the work of the Education Planning Team be promoted, and emphasis be placed on developing opportunities to tertiary level for all Bermudian students utilising the potential of the Bermuda College by continuing to foster inter-collegiate links between it and establishments abroad. (Recommendation 2)

We recommend that offences such as wandering abroad or any laws that appear to discriminate on the basis of race or sex should be reviewed by a working party with a view to the abolition of those which are a legacy of an outdated era. (Recommendation 23)

We recommend that the Human Rights Commission should incorporate a Race Relations Division with responsibility for dealing with racial issues. (Recommendation 34)

- To review the Criminal Justice System with a view to recommending how the country can change the emphasis from one of custody to correction.

We recommend that the Commissioner of Police appoints a team to examine the role of the police as a public service with particular attention to developing work in the community and improving public confidence.
(Recommendation 3)

We recommend that the police service examine ways in which they can contribute to the road skills of young people in Bermuda. (Recommendation 6)

We recommend that driver and rider education be added to the school curriculum. (Recommendation 7)

We recommend a study to be undertaken to investigate the feasibility of establishing a Family Court System in Bermuda. (Recommendation 17)

We recommend the establishment of a Government Bookstore to make official documents, including laws, amendments to the laws, and official reports accessible to the public.
(Recommendation 18)

We recommend that the training adviser to the Dependent Territories in the Caribbean be consulted about the training requirements of staff of the prison in Bermuda, and if possible assist in the design of suitable programmes for them. (Recommendation 21)

We recommend that the design of regime activity appropriate to the preparation of prisoners for release should be commenced urgently, and that all agencies, both statutory and voluntary, working with offenders should be involved in discussions as to how this should be done. (Recommendation 22)

We recommend that discussions be continued with the appropriate US authorities to ensure that those with convictions for minor drugs offences are not prevented unnecessarily from travelling from Bermuda to continue education programmes or for other lawful purposes. (Recommendation 27)

We recommend that the work undertaken on AIDS in Bermuda should fully involve the prison authorities, and that public concern about the spread of AIDS through the prison should be addressed as part of the normal education and information programmes applicable to the community as a whole. (Recommendation 28)

We recommend that distinctions be drawn between those who trade in drugs and those who use them and that the criminal justice system be flexible enough to develop non-custodial treatment programmes wherever possible.

(Recommendation 31)

We recommend that statutory and voluntary agencies, together with business operations on the Island should consider ways in which young people may be encouraged to contribute to life and the contribution that such organisations can make to facilitating this.

(Recommendation 33)

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CRIMINAL JUSTICE REVIEW TEAM

Chairman: His Honour Judge Stephen Tumin

Members:

Bermuda Mr Melvyn Bassett
Mr Lowdru Robinson
Mrs Justice Norma Wade

United Kingdom Mr Stephen Bass
Mr Tony French
Mr David Jenkins

The Criminal Justice Review Committee

JUSTICE AND THE PRISONS —
HAVE WE GOT IT RIGHT?

A Public Forum

Thursday, 6th August 1992

St Paul's Centennial Hall, Court Street, Hamilton

7.30—9.30 p.m.

Moderator: Canon Francis

Guest Panelists

Mr Glenn Caines

Prison Fellowship Bermuda

Mrs Shelagh Cooper

National Symposium on Children at Risk

Mr Richard Hector

Barrister-at-Law

Dr Eva Hodgson

National Association for Reconciliation

Mr Lowdru Robinson,

Member of Review Committee

Judge Stephen Tumim

Chairman of Review Committee

Everyone who has something to contribute is
invited to be a part of this important public forum.

Purpose:

To give the Human Rights Commission the mandated responsibility to tackle the historical legacy of racism, prejudice, and discrimination and to promote social integration and equal opportunity in community life for all residents.

Formation:

Amendment to the Human Rights Act 1981 to permit the establishment of a Race Relations Division. The Governor could nominate three or more present Commission members to constitute a Race Relations Division with one member as Commissioner of Race Relations.

Functions:

The functions of the Race Relations Division could include:-

- (i) to initiate investigations into problems based upon discrimination that may arise in the community, and encourage and co-ordinate plans, programmes and activities to reduce or prevent such problems.
- (ii) to inquire into incidents of and conditions leading to tension or conflict based upon identification of discrimination and recommend appropriate action to eliminate the source of tension or conflict.
- (iii) to assist and encourage public or private agencies, organizations, groups or persons to engage in programmes to alleviate tensions and conflicts based upon discrimination.
- (iv) To encourage research into the history, heritage and culture of Bermuda.

THE TRAFFIC OFFENCES (PENALTIES) ACT 1970

SCHEDULE 3

(Sec. 3A) 15/1986

PART A

Speed — Kilometres per hour	Disqualification		
	1st Offence	2nd Offence	3rd or sub- sequent Offence
Up to 54	Up to 3 months	Minimum 3 months but not exceeding 6 months	Minimum 6 months but not exceeding 12 months
Exceeding 54 but not exceeding 59	Up to 3 months	Minimum 6 months but not exceeding 12 months	Minimum 12 months but not exceeding 18 months
Exceeding 59 but not exceeding 64	Minimum 6 months but not exceeding 12 months	Minimum 12 months but not exceeding 18 months	Minimum 18 months but not exceeding 2 years
Exceeding 64 but not exceeding 69	Minimum 12 months but not exceeding 18 months	Minimum 18 months but not exceeding 2 years	Minimum 2 years but not exceeding 3 years
Exceeding 69 but not exceeding 74	Minimum 18 months but not exceeding 2 years	Minimum 2 years but not exceeding 3 years	Minimum 3 years but not exceeding 5 years
Exceeding 74 but not exceeding 79	Minimum 2 years but not exceeding 3 years	Minimum 3 years but not exceeding 5 years	5 years
Exceeding 79 but not exceeding 84	Minimum 3 years but not exceeding 5 years	5 years	5 years
Exceeding 84	5 years	5 years	5 years.

15/1986

PART B

1. For a speed of less than 60 kilometres per hour disqualification shall be discretionary on conviction for a first offence only.

2. For a speed of or above 60 kilometres per hour disqualification for a conviction for a first offence shall be obligatory within the limits laid down in Part A of this Schedule.

3. On a conviction for a second or subsequent offence of speeding at any speed (whether below, at, or above 60 kilometres) within 2 years of a previous conviction for speeding, disqualification shall be obligatory within the limits laid down in Part A of this Schedule.

ELIZABETH II

c. 53



Criminal Justice Act 1991

1991 CHAPTER 53

An Act to make further provision with respect to the treatment of offenders and the position of children and young persons and persons having responsibility for them; to make provision with respect to certain services provided or proposed to be provided for purposes connected with the administration of justice or the treatment of offenders; to make financial and other provision with respect to that administration; and for connected purposes.
[25th July 1991]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

POWERS OF COURTS TO DEAL WITH OFFENDERS

Custodial sentences

1.—(1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law.

Restrictions on imposing custodial sentences.

(2) Subject to subsection (3) below, the court shall not pass a custodial sentence on the offender unless it is of the opinion—

- (a) that the offence, or the combination of the offence and one other offence associated with it, was so serious that only such a sentence can be justified for the offence; or
- (b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him.

(3) Nothing in subsection (2) above shall prevent the court from passing a custodial sentence on the offender if he refuses to give his consent to a community sentence which is proposed by the court and requires that consent.

PART I

(4) Where a court passes a custodial sentence, it shall be its duty—

- (a) in a case not falling within subsection (3) above, to state in open court that it is of the opinion that either or both of paragraphs (a) and (b) of subsection (2) above apply and why it is of that opinion; and
- (b) in any case, to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.

(5) A magistrates' court shall cause a reason stated by it under subsection (4) above to be specified in the warrant of commitment and to be entered in the register.

Length of custodial sentences.

2.—(1) This section applies where a court passes a custodial sentence other than one fixed by law.

(2) The custodial sentence shall be—

- (a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it; or
- (b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.

(3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it, the court shall—

- (a) state in open court that it is of the opinion that subsection (2)(b) above applies and why it is of that opinion; and
- (b) explain to the offender in open court and in ordinary language why the sentence is for such a term.

(4) A custodial sentence for an indeterminate period shall be regarded for the purposes of subsections (2) and (3) above as a custodial sentence for a term longer than any actual term.

Procedural requirements for custodial sentences.

3.—(1) Subject to subsection (2) below, a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in subsection (2) of section 1 or 2 above.

(2) Where the offence or any other offence associated with it is triable only on indictment, subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

(3) In forming any such opinion as is mentioned in subsection (2) of section 1 or 2 above a court—

- (a) shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to it; and
- (b) in the case of any such opinion as is mentioned in paragraph (b) of that subsection, may take into account any information about the offender which is before it.

PART I

(4) No custodial sentence which is passed in a case to which subsection (1) above applies shall be invalidated by the failure of a court to comply with that subsection but any court on an appeal against such a sentence—

- (a) shall obtain a pre-sentence report if none was obtained by the court below; and
- (b) shall consider any such report obtained by it or by that court.

(5) In this Part “pre-sentence report” means a report in writing which—

- (a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by a probation officer or by a social worker of a local authority social services department; and
- (b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State.

4.—(1) Subject to subsection (2) below, in any case where section 3(1) above applies and the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

Additional requirements in the case of mentally disordered offenders.

(2) Subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court shall consider—

- (a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and
- (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(4) No custodial sentence which is passed in a case to which subsection (1) above applies shall be invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—

- (a) shall obtain a medical report if none was obtained by the court below; and
- (b) shall consider any such report obtained by it or by that court.

(5) In this section—

“duly approved”, in relation to a registered medical practitioner, means approved for the purposes of section 12 of the Mental Health Act 1983 (“the 1983 Act”) by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder;

1983 c. 20.

“medical report” means a report as to an offender's mental condition made or submitted orally or in writing by a registered medical practitioner who is duly approved.

(6) Nothing in this section shall be taken as prejudicing the generality of section 3 above.

PART I
Suspended and
extended sentences
of imprisonment.
1973 c. 62.

5.—(1) For subsection (2) of section 22 (suspended sentences of imprisonment) of the Powers of Criminal Courts Act 1973 (“the 1973 Act”) there shall be substituted the following subsections—

“(2) A court shall not deal with an offender by means of a suspended sentence unless it is of the opinion—

- (a) that the case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence; and
- (b) that the exercise of that power can be justified by the exceptional circumstances of the case.

(2A) A court which passes a suspended sentence on any person for an offence shall consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine or the making of a compensation order.”

(2) The following shall cease to have effect, namely—

- (a) sections 28 and 29 of the 1973 Act (extended sentences of imprisonment for persistent offenders); and
- (b) section 47 of the Criminal Law Act 1977 (sentence of imprisonment partly served and partly suspended).

1977 c. 45.

Community sentences

Restrictions on
imposing
community
sentences.

6.—(1) A court shall not pass on an offender a community sentence, that is to say, a sentence which consists of or includes one or more community orders, unless it is of the opinion that the offence, or the combination of the offence and one other offence associated with it, was serious enough to warrant such a sentence.

(2) Subject to subsection (3) below, where a court passes a community sentence—

- (a) the particular order or orders comprising or forming part of the sentence shall be such as in the opinion of the court is, or taken together are, the most suitable for the offender; and
- (b) the restrictions on liberty imposed by the order or orders shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it.

(3) In consequence of the provision made by section 11 below with respect to combination orders, a community sentence shall not consist of or include both a probation order and a community service order.

(4) In this Part “community order” means any of the following orders, namely—

- (a) a probation order;
- (b) a community service order;
- (c) a combination order;
- (d) a curfew order;
- (e) a supervision order; and
- (f) an attendance centre order.

7.—(1) In forming any such opinion as is mentioned in subsection (1) or (2)(b) of section 6 above, a court shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to it.

PART I
Procedural
requirements for
community
sentences.

(2) In forming any such opinion as is mentioned in subsection (2)(a) of that section, a court may take into account any information about the offender which is before it.

(3) A court shall obtain and consider a pre-sentence report before forming an opinion as to the suitability for the offender of one or more of the following orders, namely—

- (a) a probation order which includes additional requirements authorised by Schedule 1A to the 1973 Act;
- (b) a community service order;
- (c) a combination order; and
- (d) a supervision order which includes requirements imposed under section 12, 12A, 12AA, 12B or 12C of the Children and Young Persons Act 1969 ("the 1969 Act").

1969 c. 54.

(4) No community sentence which consists of or includes such an order as is mentioned in subsection (3) above shall be invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—

- (a) shall obtain a pre-sentence report if none was obtained by the court below; and
- (b) shall consider any such report obtained by it or by that court.

Probation and community service orders

8.—(1) For section 2 of the 1973 Act there shall be substituted the following section—

Probation orders.

"Probation

Probation
orders.

2.—(1) Where a court by or before which a person of or over the age of sixteen years is convicted of an offence (not being an offence for which the sentence is fixed by law) is of the opinion that the supervision of the offender by a probation officer is desirable in the interests of—

- (a) securing the rehabilitation of the offender; or
- (b) protecting the public from harm from him or preventing the commission by him of further offences,

the court may make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for a period specified in the order of not less than six months nor more than three years.

For the purposes of this subsection the age of a person shall be deemed to be that which it appears to the court to be after considering any available evidence.

PART I

(2) A probation order shall specify the petty sessions area in which the offender resides or will reside; and the offender shall, subject to paragraph 12 of Schedule 2 to the Criminal Justice Act 1991 (offenders who change their residence), be required to be under the supervision of a probation officer appointed for or assigned to that area.

(3) Before making a probation order, the court shall explain to the offender in ordinary language—

- (a) the effect of the order (including any additional requirements proposed to be included in the order in accordance with section 3 below);
- (b) the consequences which may follow under Schedule 2 to the Criminal Justice Act 1991 if he fails to comply with any of the requirements of the order; and
- (c) that the court has under that Schedule power to review the order on the application either of the offender or of the supervising officer,

and the court shall not make the order unless he expresses his willingness to comply with its requirements.

(4) The court by which a probation order is made shall forthwith give copies of the order to a probation officer assigned to the court, and he shall give a copy—

- (a) to the offender;
- (b) to the probation officer responsible for the offender's supervision; and
- (c) to the person in charge of any institution in which the offender is required by the order to reside.

(5) The court by which such an order is made shall also, except where it itself acts for the petty sessions area specified in the order, send to the clerk to the justices for that area—

- (a) a copy of the order; and
- (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.

(6) An offender in respect of whom a probation order is made shall keep in touch with the probation officer responsible for his supervision in accordance with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.

(7) The Secretary of State may by order direct that subsection (1) above shall be amended by substituting, for the minimum or maximum period specified in that subsection as originally enacted or as previously amended under this subsection, such period as may be specified in the order.

(8) An order under subsection (7) above may make in paragraph 13(2)(a)(i) of Schedule 2 to the Criminal Justice Act 1991 any amendment which the Secretary of State thinks necessary in consequence of any substitution made by the order."

PART I

(2) Section 13 of that Act (effect of probation and discharge) shall cease to have effect so far as relating to offenders placed on probation.

(3) For the purpose of rearranging Part I of that Act in consequence of the amendments made by subsections (1) and (2) above, that Part shall have effect subject to the following amendments, namely—

- (a) after section 1 there shall be inserted as sections 1A to 1C the provisions set out in Part I of Schedule 1 to this Act;
- (b) sections 7 and 9 (which are re-enacted with minor modifications by sections 1A and 1B) shall cease to have effect;
- (c) sections 8 and 13 (which, so far as relating to discharged offenders, are re-enacted with minor modifications by sections 1B and 1C) shall cease to have effect so far as so relating; and
- (d) immediately before section 11 there shall be inserted the following cross heading—

"Probation and discharge".

9.—(1) For sections 3 to 4B of the 1973 Act there shall be substituted the following section—

"Additional requirements which may be included in such orders.

3.—(1) Subject to subsection (2) below, a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers desirable in the interests of—

Additional requirements which may be included in such orders.

- (a) securing the rehabilitation of the offender; or
- (b) protecting the public from harm from him or preventing the commission by him of further offences.

(2) Without prejudice to the power of the court under section 35 of this Act to make a compensation order, the payment of sums by way of damages for injury or compensation for loss shall not be included among the additional requirements of a probation order.

(3) Without prejudice to the generality of subsection (1) above, the additional requirements which may be included in a probation order shall include the requirements which are authorised by Schedule 1A to this Act."

(2) After Schedule 1 to that Act there shall be inserted as Schedule 1A the provisions set out in Part II of Schedule 1 to this Act.

10.—(1) In subsection (1) of section 14 of the 1973 Act (community service orders in respect of offenders), the words "instead of dealing with him in any other way" shall cease to have effect.

Community service orders.

PART I

(2) In subsection (1A) of that section, for paragraph (b) there shall be substituted the following paragraph—

“(b) not more than 240.”

(3) For subsections (2) and (2A) of that section there shall be substituted the following subsections—

“(2) A court shall not make a community service order in respect of any offender unless the offender consents and the court, after hearing (if the court thinks it necessary) a probation officer or social worker of a local authority social services department, is satisfied that the offender is a suitable person to perform work under such an order.

(2A) Subject to paragraphs 3 and 4 of Schedule 3 to the Criminal Justice Act 1991 (reciprocal enforcement of certain orders) a court shall not make a community service order in respect of an offender unless it is satisfied that provision for him to perform work under such an order can be made under the arrangements for persons to perform work under such orders which exist in the petty sessions area in which he resides or will reside.”

(4) In section 15(1) of that Act (obligations of persons subject to community service orders), for paragraph (a) there shall be substituted the following paragraph—

“(a) keep in touch with the relevant officer in accordance with such instructions as he may from time to time be given by that officer and notify him of any change of address;”

Orders combining probation and community service.

11.—(1) Where a court by or before which a person of or over the age of sixteen years is convicted of an offence punishable with imprisonment (not being an offence for which the sentence is fixed by law) is of the opinion mentioned in subsection (2) below, the court may make a combination order, that is to say, an order requiring him both—

(a) to be under the supervision of a probation officer for a period specified in the order, being not less than twelve months nor more than three years; and

(b) to perform unpaid work for a number of hours so specified, being in the aggregate not less than 40 nor more than 100.

(2) The opinion referred to in subsection (1) above is that the making of a combination order is desirable in the interests of—

(a) securing the rehabilitation of the offender; or

(b) protecting the public from harm from him or preventing the commission by him of further offences.

(3) Subject to subsection (1) above, Part I of the 1973 Act shall apply in relation to combination orders—

(a) in so far as they impose such a requirement as is mentioned in paragraph (a) of that subsection, as if they were probation orders; and

(b) in so far as they impose such a requirement as is mentioned in paragraph (b) of that subsection, as if they were community service orders.

Curfew orders

PART I

12.—(1) Where a person of or over the age of sixteen years is convicted of an offence (not being an offence for which the sentence is fixed by law), the court by or before which he is convicted may make a curfew order, that is to say, an order requiring him to remain, for periods specified in the order, at a place so specified. *Curfew orders.*

(2) A curfew order may specify different places or different periods for different days, but shall not specify—

- (a) periods which fall outside the period of six months beginning with the day on which it is made; or
- (b) periods which amount to less than 2 hours or more than 12 hours in any one day.

(3) The requirements in a curfew order shall, as far as practicable, be such as to avoid—

- (a) any conflict with the offender's religious beliefs or with the requirements of any other community order to which he may be subject; and
- (b) any interference with the times, if any, at which he normally works or attends school or other educational establishment.

(4) A curfew order shall include provision for making a person responsible for monitoring the offender's whereabouts during the curfew periods specified in the order; and a person who is made so responsible shall be of a description specified in an order made by the Secretary of State.

(5) Before making a curfew order, the court shall explain to the offender in ordinary language—

- (a) the effect of the order (including any additional requirements proposed to be included in the order in accordance with section 13 below);
- (b) the consequences which may follow under Schedule 2 to this Act if he fails to comply with any of the requirements of the order; and
- (c) that the court has under that Schedule power to review the order on the application either of the offender or of the supervising officer,

and the court shall not make the order unless he expresses his willingness to comply with its requirements.

(6) Before making a curfew order, the court shall obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender).

(7) The Secretary of State may by order direct—

- (a) that subsection (2) above shall have effect with the substitution, for any period there specified, of such period as may be specified in the order; or
- (b) that subsection (3) above shall have effect with such additional restrictions as may be so specified.

PART I
Electronic
monitoring of
curfew orders.

13.—(1) Subject to subsection (2) below, a curfew order may in addition include requirements for securing the electronic monitoring of the offender's whereabouts during the curfew periods specified in the order.

(2) A court shall not make a curfew order which includes such requirements unless the court—

- (a) has been notified by the Secretary of State that electronic monitoring arrangements are available in the area in which the place proposed to be specified in the order is situated; and
- (b) is satisfied that the necessary provision can be made under those arrangements.

(3) Electronic monitoring arrangements made by the Secretary of State under this section may include entering into contracts with other persons for the electronic monitoring by them of offenders' whereabouts.

Orders: supplemental

Enforcement etc.
of community
orders.

14.—(1) Schedule 2 to this Act (which makes provision for dealing with failures to comply with the requirements of certain community orders, for amending such orders and for revoking them with or without the substitution of other sentences) shall have effect.

(2) Sections 5, 6, 16 and 17 of, and Schedule 1 to, the 1973 Act (which are superseded by Schedule 2 to this Act) shall cease to have effect.

Regulation of
community orders.

15.—(1) The Secretary of State may make rules for regulating—

- (a) the supervision of persons who are subject to probation orders;
- (b) the arrangements to be made under Schedule 3 to the 1973 Act for persons who are subject to community service orders to perform work under those orders and the performance by such persons of such work;
- (c) the monitoring of the whereabouts of persons who are subject to curfew orders (including electronic monitoring in cases where arrangements for such monitoring are available); and
- (d) without prejudice to the generality of paragraphs (a) to (c) above, the functions of the responsible officers of such persons as are mentioned in those paragraphs.

(2) Rules under subsection (1)(b) above may in particular—

- (a) limit the number of hours of work to be done by a person on any one day;
- (b) make provision as to the reckoning of hours worked and the keeping of work records; and
- (c) make provision for the payment of travelling and other expenses in connection with the performance of work.

(3) In this Part "responsible officer" means—

- (a) in relation to an offender who is subject to a probation order, the probation officer responsible for his supervision;
- (b) in relation to an offender who is subject to a community service order, the relevant officer within the meaning of section 14(4) of the 1973 Act; and

(c) in relation to an offender who is subject to a curfew order, the person responsible for monitoring his whereabouts during the curfew periods specified in the order.

PART I

(4) This section shall apply in relation to combination orders—

- (a) in so far as they impose such a requirement as is mentioned in paragraph (a) of subsection (1) of section 11 above, as if they were probation orders; and
- (b) in so far as they impose such a requirement as is mentioned in paragraph (b) of that subsection, as if they were community service orders.

16. Schedule 3 to this Act shall have effect for making provision for and in connection with—

Reciprocal enforcement of certain orders.

- (a) the making and amendment in England and Wales of community orders relating to persons residing in Scotland or Northern Ireland; and
- (b) the making and amendment in Scotland or Northern Ireland of corresponding orders relating to persons residing in England and Wales.

Financial penalties

17.—(1) In section 37 (standard scale of fines) of the Criminal Justice Act 1982 ("the 1982 Act") and section 289G of the Criminal Procedure (Scotland) Act 1975 (corresponding Scottish provision), for subsection (2) there shall be substituted the following subsection—

Increase of certain maxima.
1982 c. 48.
1975 c. 21.

"(2) The standard scale is shown below—

<i>Level on the scale</i>	<i>Amount of fine</i>
1	£200
2	£500
3	£1,000
4	£2,500
5	£5,000"

(2) Part I of the Magistrates' Courts Act 1980 ("the 1980 Act") shall be amended as follows—

1980 c. 43.

- (a) in section 24(3) and (4) (maximum fine on summary conviction of young person for indictable offence) and section 36(1) and (2) (maximum fine on conviction of young person by magistrates' court), for "£400" there shall be substituted "£1,000";
- (b) in section 24(4) (maximum fine on summary conviction of child for indictable offence) and section 36(2) (maximum fine on conviction of child by magistrates' court), for "£100" there shall be substituted "£250"; and
- (c) in section 32(9) (maximum fine on summary conviction of offence triable either way), for "£2,000" there shall be substituted "£5,000";

and in section 289B(6) of the Criminal Procedure (Scotland) Act 1975 (interpretation), in the definition of "prescribed sum", for "£2,000" there shall be substituted "£5,000".

PART I

(3) Schedule 4 to this Act shall have effect as follows—

- (a) in each of the provisions mentioned in column 1 of Part I (the general description of which is given in column 2), for the amount specified in column 3 there shall be substituted the amount specified in column 4;
- (b) in each of the provisions mentioned in column 1 of Part II (the general description of which is given in column 2), for the amount specified in column 3 there shall be substituted the level on the standard scale specified in column 4;
- (c) in each of the provisions mentioned in column 1 of Part III (the general description of which is given in column 2), for the amount specified in column 3 there shall be substituted a reference to the statutory maximum;
- (d) the provisions set out in Part IV shall be substituted for Schedule 6A to the 1980 Act (fines that may be altered under section 143); and
- (e) the provisions mentioned in Part V shall have effect subject to the amendments specified in that Part, being amendments for treating certain failures as if they were summary offences punishable by fines not exceeding levels on the standard scale.

Fixing of certain
fines by reference
to units.

18.—(1) This section applies where a magistrates' court imposes a fine on an individual—

- (a) for a summary offence which is punishable by a fine not exceeding a level on the standard scale; or
- (b) for a statutory maximum offence, that is to say, an offence which is triable either way and which, on summary conviction, is punishable by a fine not exceeding the statutory maximum.

(2) Subject to the following provisions of this section, the amount of the fine shall be the product of—

- (a) the number of units which is determined by the court to be commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it; and
- (b) the value to be given to each of those units, that is to say, the amount which, at the same or any later time, is determined by the court in accordance with rules made by the Lord Chancellor to be the offender's disposable weekly income.

(3) In making any such determination as is mentioned in subsection (2)(a) above, a court shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to it.

(4) The number of units determined under subsection (2)(a) above shall not exceed—

- (a) 2 units in the case of a level 1 offence;
- (b) 5 units in the case of a level 2 offence;
- (c) 10 units in the case of a level 3 offence;
- (d) 25 units in the case of a level 4 offence; and

- (e) 50 units in the case of a level 5 offence or a statutory maximum offence;

PART I

and in this subsection "level 1 offence" means a summary offence which is punishable by a fine not exceeding level 1 on the standard scale, and corresponding expressions shall be construed accordingly.

(5) Subject to subsection (6) below, the amount determined under subsection (2)(b) above in the case of any offender shall not be—

- (a) less than 1/50th of level 1 on the standard scale (£4 at the commencement of section 17 above); or
 (b) more than 1/50th of level 5 on that scale (£100 at that commencement).

(6) Where the fine is payable by a person who is under the age of 18 years, subsection (5) above shall have effect as if for any reference to a fraction or amount there were substituted—

- (a) a reference to 1/20th of that fraction or amount in the case of a fine payable by a person who is under the age of 14 years; and
 (b) a reference to 1/5th of that fraction or amount in the case of a fine payable by a person who has attained that age.

(7) Nothing in subsection (2) above shall prevent any of the following, namely—

- (a) in the case of an offence in relation to which a compensation order is made, the reduction of the amount of the fine in pursuance of section 35(4A) of the 1973 Act;
 (b) in the case of a fixed penalty offence (within the meaning of Part III of the Road Traffic Offenders Act 1988), the increase of the amount of the fine to the level of the fixed penalty; and
 (c) in the case of an offence of installing or using any apparatus for wireless telegraphy except under a licence granted under section 1 of the Wireless Telegraphy Act 1949, the increase of the amount of the fine by an amount not exceeding the sum which would have been payable on the issue of such a licence.

1988 c. 53.

1949 c. 54.

(8) Where the offender—

- (a) has been convicted in his absence in pursuance of section 11 or 12 of the 1980 Act (non-appearance of accused); or
 (b) has failed to comply with an order under section 20(1) below,

and (in either case) the court has insufficient information to make a proper determination under subsection (2)(b) above, it may, within the limits set by subsection (5) above, make such determination as it thinks fit.

(9) In section 41 of the Criminal Justice Act 1988 ("the 1988 Act"), subsection (7) (Crown Court sentencing powers in relation to summary offence dealt with together with either way offence) shall have effect as if this section had not been enacted.

1988 c. 33.

19.—(1) In fixing the amount of a fine (other than one the amount of which falls to be fixed under section 18 above), a court shall take into account among other things the means of the offender so far as they appear or are known to the court.

Fixing of fines in other cases.

PART I

(2) Subsection (1) above applies whether taking into account the means of the offender has the effect of increasing or reducing the amount of the fine.

Statements as to
offenders' means.

20.—(1) Where a person has been convicted of an offence by a magistrates' court, the court may, before sentencing him, order him to furnish to the court within a period specified in the order such a statement of his means as the court may require.

(2) A person who without reasonable excuse fails to comply with an order under subsection (1) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If a person in furnishing any statement in pursuance of an order under subsection (1) above—

- (a) makes a statement which he knows to be false in a material particular;
- (b) recklessly furnishes a statement which is false in a material particular; or
- (c) knowingly fails to disclose any material fact,

he shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale or both.

(4) Proceedings in respect of an offence under subsection (3) above may, notwithstanding anything in section 127(1) of the 1980 Act (limitation of time), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier.

(5) Without prejudice to the generality of subsection (1) of—

1981 c. 54.

- (a) section 84 of the Supreme Court Act 1981; and
- (b) section 144 of the 1980 Act,

the power to make rules under each of those sections shall include power to prescribe the form in which statements are to be furnished in pursuance of orders under subsection (1) above; and rules made by virtue of this subsection may make different provision for different cases or classes of case.

Financial penalties: supplemental

Remission of fines
fixed under
section 18.

21.—(1) This section applies where, in the case of a fine the amount of which has been fixed by a magistrates' court under section 18 above, the determination of the offender's disposable weekly income—

- (a) would have been of a lesser amount but for subsection (5)(a) of that section; or
- (b) was made by virtue of subsection (8) of that section.

(2) In a case falling within subsection (1)(a) above, the court may, on inquiring into the offender's means or at a hearing under section 82(5) of the 1980 Act (issue of warrant of commitment for default), remit the whole or any part of the fine if the court considers that its payment by the offender within twelve months of the imposition of the fine would cause the offender undue hardship.

PART I

(3) In a case falling within subsection (1)(b) above, the court may, on inquiring into the offender's disposable weekly income or at such a hearing as is mentioned in subsection (2) above, remit the whole or any part of the fine if the court thinks it just to do so having regard—

- (a) to the amount of that income as determined by the court under this subsection in accordance with rules made by the Lord Chancellor; and
- (b) if applicable, to the provisions of subsection (2) above.

(4) Where the court remits the whole or part of a fine under subsection (2) or (3) above after a term of imprisonment has been fixed under the said section 82(5), it shall also reduce the term by an amount which bears the same proportion to the whole term as the amount remitted bears to the whole fine or, as the case may be, shall remit the whole term.

(5) In calculating the reduction in a term of imprisonment required by subsection (4) above, any fraction of a day shall be left out of account.

22.—(1) Where default is made in paying a fine the amount of which has been fixed under section 18 above without applying paragraph (b) or (c) of subsection (7) of that section, this section shall have effect, in place of Schedule 4 to the 1980 Act, in relation to any committal of the defaulter to prison.

Default in paying fines fixed under that section.

(2) Subject to subsection (3) below, the maximum period of imprisonment applicable in the case of a fine fixed on the basis of a number of units specified in the first column of the following Table shall be the period set out opposite to it in the second column of that Table.

TABLE

Not more than 2 units	7 days
More than 2 units but not more than 5 units	14 days
More than 5 units but not more than 10 units	28 days
More than 10 units but not more than 25 units	45 days
More than 25 units	3 months

(3) Where the amount of a fine due at the time the imprisonment is imposed is so much of the fine as remains due after part payment, then, subject to subsection (4) below, the maximum period given by subsection (2) above shall be reduced by such number of days as bears to the total number of days in it the same proportion as the part of the fine paid bears to the whole fine.

(4) In calculating the reduction required under subsection (3) above, any fraction of a day shall be left out of account and the maximum period shall not be reduced to less than 7 days.

(5) In this section "prison" includes a young offender institution and "imprisonment" includes detention in such an institution.

PART I

Default in other cases.

23.—(1) In the Tables in section 31(3A) of the 1973 Act and paragraph 1 of Schedule 4 to the 1980 Act (maximum periods of imprisonment for default in paying fines etc.), for the entries relating to amounts not exceeding £5,000 there shall be substituted the following entries—

“An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days
An amount exceeding £2,500 but not exceeding £5,000	3 months”.

1975 c. 21.

(2) For the Table in section 407(1A) of the Criminal Procedure (Scotland) Act 1975 (maximum period of imprisonment for failure to pay fine or find caution) there shall be substituted the following Table—

<i>“Amount of fine or caution</i>	<i>Maximum period of imprisonment</i>
An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days
An amount exceeding £2,500 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding £10,000	6 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years.”

(3) In Schedule 16 (repeals) to the 1988 Act, the entry relating to subsection (8) of section 41 of the Administration of Justice Act 1970 shall cease to have effect; and that subsection (discretion of Crown Court to specify extended period of imprisonment in default of payment of compensation) shall have effect as if that entry had not been enacted.

PART I
1970 c. 31.

24.—(1) The Secretary of State may by regulations provide that where a fine has been imposed on an offender by a magistrates' court, or a sum is required to be paid by a compensation order which has been made against an offender by such a court, and (in either case) the offender is entitled to income support—

Recovery of fines
etc. by deductions
from income
support.

- (a) the court may apply to the Secretary of State asking him to deduct sums from any amounts payable to the offender by way of income support, in order to secure the payment of any sum which is or forms part of the fine or compensation; and
- (b) the Secretary of State may deduct sums from any such amounts and pay them to the court towards satisfaction of any such sum.

(2) The regulations may include—

- (a) provision that, before making an application, the court shall make an enquiry as to the offender's means;
- (b) provision allowing or requiring adjudication as regards an application, and provision as to appeals and reviews;
- (c) provision as to the circumstances and manner in which and the times at which sums are to be deducted and paid;
- (d) provision as to the calculation of such sums (which may include provision to secure that amounts payable to the offender by way of income support do not fall below prescribed figures);
- (e) provision as to the circumstances in which the Secretary of State is to cease making deductions;
- (f) provision requiring the Secretary of State to notify the offender, in a prescribed manner and at any prescribed time, of the total amount of sums deducted up to the time of notification; and
- (g) provision that, where the whole amount to which the application relates has been paid, the court shall give notice of that fact to the Secretary of State.

(3) In subsection (1) above—

- (a) the reference to a fine having been imposed by a magistrates' court includes a reference to a fine being treated, by virtue of section 32 of the 1973 Act, as having been so imposed; and
- (b) the reference to a sum being required to be paid by a compensation order which has been made by a magistrates' court includes a reference to a sum which is required to be paid by such an order being treated, by virtue of section 41 of the Administration of Justice Act 1970, as having been adjudged to be paid on conviction by such a court.

1970 c. 31.

PART I

(4) In this section—

“fine” includes—

1971 c. 10.
1979 c. 2. (a) a penalty imposed under section 8(1) or 18(4) of the Vehicles (Excise) Act 1971 or section 102(3)(aa) of the Customs and Excise Management Act 1979 (penalties imposed for certain offences in relation to vehicle excise licences);

(b) an amount ordered to be paid, in addition to any penalty so imposed, under section 9, 18A or 26A of the said Act of 1971 (liability to additional duty);

1970 c. 31. (c) an amount ordered to be paid by way of costs which is, by virtue of section 41 of the Administration of Justice Act 1970, treated as having been adjudged to be paid on a conviction by a magistrates' court;

1986 c. 50. “income support” means income support within the meaning of the Social Security Act 1986, either alone or together with any unemployment, sickness or invalidity benefit, retirement pension or severe disablement allowance which is paid by means of the same instrument of payment;

“prescribed” means prescribed by regulations made by the Secretary of State.

(5) In the application of this section to Scotland—

(a) references in subsections (1) and (2) above to a magistrates' court shall be construed as references to a court; and

(b) in subsection (3) above, for paragraphs (a) and (b) there shall be substituted the following paragraphs—

1975 c. 21. “(a) the reference to a fine having been imposed by a court includes a reference to a fine being treated, by virtue of section 196(2) of the Criminal Procedure (Scotland) Act 1975, as having been so imposed; and

1980 c. 62. (b) the reference to a compensation order having been made by a court includes a reference to such an order being treated, by virtue of section 66 of the Criminal Justice (Scotland) Act 1980, as having been so made.”

Miscellaneous

Committals for sentence.

25.—(1) For section 38 of the 1980 Act there shall be substituted the following section—

“Committal for sentence on summary trial of offence triable either way.

38.—(1) This section applies where on the summary trial of an offence triable either way (not being an offence as regards which this section is excluded by section 33 above) a person who is not less than 18 years old is convicted of the offence.

(2) If the court is of opinion—

(a) that the offence or the combination of the offence and other offences associated with it was so serious that greater punishment should be inflicted for the offence than the court has power to impose; or

- (b) in the case of a violent or sexual offence committed by a person who is not less than 21 years old, that a sentence of imprisonment for a term longer than the court has power to impose is necessary to protect the public from serious harm from him, PART I

the court may, in accordance with section 56 of the Criminal Justice Act 1967, commit the offender in custody or on bail to the Crown Court for sentence in accordance with the provisions of section 42 of the Powers of Criminal Courts Act 1973. 1967 c. 80.
1973 c. 62.

(3) Paragraphs (a) and (b) of subsection (2) above shall be construed as if they were contained in Part I of the Criminal Justice Act 1991.

(4) The preceding provisions of this section shall apply in relation to a corporation as if—

- (a) the corporation were an individual who is not less than 18 years old; and
(b) in subsection (2) above, paragraph (b) and the words 'in custody or on bail' were omitted."

(2) In Schedule 3 to the 1980 Act, paragraph 5 (provisions relating to committal to Crown Court for sentence not to apply to a corporation) shall cease to have effect.

26.—(1) In section 7 of the Theft Act 1968 (theft), for the words "ten years" there shall be substituted the words "seven years". Alteration of
certain penalties.
1968 c. 60.

(2) For subsections (3) and (4) of section 9 of that Act (burglary) there shall be substituted the following subsections—

"(3) A person guilty of burglary shall on conviction on indictment be liable to imprisonment for a term not exceeding—

- (a) where the offence was committed in respect of a building or part of a building which is a dwelling, fourteen years;
(b) in any other case, ten years.

(4) References in subsections (1) and (2) above to a building, and the reference in subsection (3) above to a building which is a dwelling, shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is."

(3) In section 10(2) of the Badgers Act 1973 (enforcement, penalties etc.), for the words preceding the proviso there shall be substituted the following— 1973 c. 57.

"(2) Any person guilty of an offence under this Act shall be liable on summary conviction—

- (a) in the case of an offence under section 1 or 2, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both;
(b) in the case of an offence under section 3 or 4, to a fine not exceeding that level; and

PART I

(c) in the case of an offence under section 5, to a fine not exceeding level 3 on that scale;"

and in the proviso for the words "paragraph (b)" there shall be substituted the words "paragraph (a) or (b)".

1977 c. 45.

(4) In section 51(4) of the Criminal Law Act 1977 (penalties for bomb hoaxes)—

(a) in paragraph (a), for the words "three months" there shall be substituted the words "six months"; and

(b) in paragraph (b), for the words "five years" there shall be substituted the words "seven years".

(5) The power saved by subsection (1) of section 70 of the 1982 Act (vagrancy offences) shall not include, in the case of an offence mentioned in paragraph (b)(i) of that subsection (sleeping rough), power to impose a fine which exceeds level 1 on the standard scale.

Treatment of
offenders under
1983 Act.

27.—(1) After section 39 of the 1983 Act there shall be inserted the following section—

"Information to
facilitate
guardianship
orders.

39A. Where a court is minded to make a guardianship order in respect of any offender, it may request the local social services authority for the area in which the offender resides or last resided, or any other local social services authority that appears to the court to be appropriate—

(a) to inform the court whether it or any other person approved by it is willing to receive the offender into guardianship; and

(b) if so, to give such information as it reasonably can about how it or the other person could be expected to exercise in relation to the offender the powers conferred by section 40(2) below;

and that authority shall comply with any such request."

(2) After section 54 of that Act there shall be inserted the following section—

"Reduction of
period for
making hospital
orders.

54A.—(1) The Secretary of State may by order reduce the length of the periods mentioned in sections 37(4) and (5) and 38(4) above.

(2) An order under subsection (1) above may make such consequential amendments of sections 40(1) and 44(3) above as appear to the Secretary of State to be necessary or expedient."

(3) In section 143(2) of that Act (general provisions as to regulations, orders and rules), after the words "this Act" there shall be inserted the words "or any order made under section 54A above".

Supplemental

Savings for
mitigation and
mentally
disordered
offenders.

28.—(1) Nothing in this Part shall prevent a court from mitigating an offender's sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence.

(2) Without prejudice to the generality of subsection (1) above, nothing in this Part shall prevent a court— PART I

- (a) from mitigating any penalty included in an offender's sentence by taking into account any other penalty included in that sentence; or
- (b) in a case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.

(3) Any mitigation of a fine the amount of which falls to be fixed under section 18 above shall be effected by determining under subsection (2)(a) of that section a smaller number of units than would otherwise have been determined.

(4) Nothing in this Part shall be taken—

- (a) as requiring a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender; or
- (b) as restricting any power (whether under the 1983 Act or otherwise) which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances.

29.—(1) An offence shall not be regarded as more serious for the purposes of any provision of this Part by reason of any previous convictions of the offender or any failure of his to respond to previous sentences. Effect of previous convictions etc.

(2) Where any aggravating factors of an offence are disclosed by the circumstances of other offences committed by the offender, nothing in this Part shall prevent the court from taking those factors into account for the purpose of forming an opinion as to the seriousness of the offence.

30.—(1) Any power of the Secretary of State or the Lord Chancellor to make rules, regulations or orders under this Part— Rules, regulations and orders.

- (a) shall be exercisable by statutory instrument; and
- (b) shall include power to make different provision for different cases or classes of case.

(2) A statutory instrument containing any rules, regulations or order under this Part (other than an order under section 12(4) above) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

31.—(1) In this Part—

- "attendance centre order" means an order under section 17 of the 1982 Act;
- "combination order" means an order under section 11 above;
- "community order" has the meaning given by section 6(4) above;
- "community sentence" has the meaning given by section 6(1) above;
- "curfew order" means an order under section 12 above;
- "custodial sentence" means—

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(a) in relation to an offender of or over the age of twenty-one years, a sentence of imprisonment; and

1933 c. 12.

(b) in relation to an offender under that age, a sentence of detention in a young offender institution or under section 53 of the Children and Young Persons Act 1933 ("the 1933 Act"), or a sentence of custody for life under section 8(2) of the 1982 Act;

"mentally disordered", in relation to any person, means suffering from a mental disorder within the meaning of the 1983 Act;

"pre-sentence report" has the meaning given by section 3(5) above;

"responsible officer" has the meaning given by section 15(3) above;

"sentence of imprisonment" does not include a committal or attachment for contempt of court;

1956 c. 69.

1960 c. 33.

1967 c. 60.

1977 c. 45.

1978 c. 37.

"sexual offence" means an offence under the Sexual Offences Act 1956, the Indecency with Children Act 1960, the Sexual Offences Act 1967, section 54 of the Criminal Law Act 1977 or the Protection of Children Act 1978, other than—

(a) an offence under section 12 or 13 of the Sexual Offences Act 1956 which would not be an offence but for section 2 of the Sexual Offences Act 1967;

(b) an offence under section 30, 31 or 33 to 36 of the said Act of 1956; and

(c) an offence under section 4 or 5 of the said Act of 1967;

"supervision order" means a supervision order under the 1969 Act;

"violent offence" means an offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).

(2) For the purposes of this Part, an offence is associated with another if—

(a) the offender is convicted of it in the proceedings in which he is convicted of the other offence, or (although convicted of it in earlier proceedings) is sentenced for it at the same time as he is sentenced for that offence; or

(b) the offender admits the commission of it in the proceedings in which he is sentenced for the other offence and requests the court to take it into consideration in sentencing him for that offence.

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(3) In this Part any reference, in relation to an offender convicted of a violent or sexual offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him.

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