A STATEMENT

ON SOME ASPECTS OF

PENAL POLICY

Traffic Courts

Preventive Detention

Periodic Detention

Made by

The Minister of Justice

to a

Conference of Magistrates

on 27 May, 1966

It gives me great pleasure to have the opportunity of spending a short time with you this morning at the commencement of your conference.

I am well aware of the increasing pressures on the Magistrates' Bench particularly in the main centres, and am deeply appreciative of the manner in which these and demands also for special duties, have been met by you. The volume of work grows substantially each year. Traffic cases are making serious inroads on the time of Magistrates, so much so, that in some Courts it is becoming difficult to give sufficient time to civil business.

We have reached a point when we must look afresh at the disposal of traffic cases. The Standard Fines Procedure is now used in respect of a number of offences where it can be considered just and reasonable to fix a standard penalty but I doubt whether much more can be gained from this procedure. Clearly, however, the less serious type of traffic case does not call for the judicial competence of a Magistrate. I accordingly invite your consideration at this conference of proposals for the establishment of a special tribunal to deal with certain categories of traffic offences. These are the essentials of what I have in mind:

(1) The establishment of tribunals of Traffic Commissioners to hear charges in respect of all traffic offences where the penalty does not provide for imprisonment.

As an indication of the scope, let me say that for the year 1964, there were 21,754 convictions entered in respect of offences where punishment by imprisonment is provided, and 105,554 convictions in respect of offences where punishment by imprisonment is not provided.

(2) Traffic Commissioners be specially selected from persons of suitable calibre and experience, appointed by the Minister of Justice and trained by the Magistracy.

(3) Remuneration be paid on a daily fee basis.

(4) The Bench consist of one Commissioner sitting alone.

(5) It may be that the right of appeal against conviction and/or penalty should be to a Magistrate in stead of direct to the Supreme Court.

These are the bare bones of what is proposed but I think I have given you sufficient as a basis for discussion. Suitable sitting places would of course have to be provided. Obviously much would depend on finding suitable persons for the job and much will be expected of Magistrates in their training. I am, however, assured by Mr Sinclair that the Auckland Magistrates are prepared to give it a go, and for that I am most grateful. I am convinced that something must be done and if a start be made on a trial basis in Auckland, that will enable us to iron out any difficulties before extending the scheme to other centres. Legislative sanction will be necessary and what form that should take will depend upon the approach finally adopted. I imagine, however, that there would be little prospect of introducing legislation during the coming session.

I now want to talk to you about some aspects of penal policy. Much has been said and written about the causes of crime but despite all the research that has been done and all the discussions that have taken place we have to admit that we still are far from understanding why it is that certain people offend against the law. Without this knowledge our methods of dealing with crime must to a considerable extent be experimental and when we meet failure we have to try again.

This has been the case with preventive detention. The concept of preventive detention was of course not new when the sentence was established by the Criminal Justice Act 1954. It replaced the old habitual criminal and habitual offender declarations which had also had as their object the prolonged detention of persons regarded as a menace to society by reason of repeated offending.

At the time the Criminal Justice Act was passed it was said that it was designed to ensure that everything possible was done to divert an inexperienced offender from a criminal career but that once he had shown himself determined to continue a life of crime he could be treated with severity. This meant the sentence of preventive detention – involving possible incarceration for a period of 14 years (in the case of repeated sexual offenders against children, life) subject only to the Parole Board's authority to recommend release once it was satisfied the man was not likely to revert to crime.

Why then do we now regard preventive detention as a failure?

In the first place for one category of offenders liable to the sentence it has come to appear much too severe. These are the petty offenders who, despite the fact that they must have a very long record to qualify, are a nuisance rather than a real danger to the community. It was largely I think because of these people that the minimum period of detention was made as low as 3 years, but this has, it seems, increased the difficulties of the sentence by encouraging its use in cases where it was not appropriate. It is true that the primary purpose of the sentence is preventive, not punitive, but the effects are nonetheless severe for all that.

Secondly the test that the Parole Board is required to apply in deciding to recommend an offender's release is that if released he is not likely to continue his criminal career. This is an extremely difficult test to apply in an institution setting – indeed any test that would be appropriate to a sentence of this type would be extremely difficult to apply in an institution setting. How does one judge how a man will behave when free when he has been living for years in a completely controlled and supervised environment? The model prisoners may be the one most likely to return to prison.

The last of our criticisms of preventive detention has been the one that all indeterminate sentences suffer from – that they have an unsettling and adverse effect on inmates. This arises from the emotional conflict that a forthcoming Board meeting engenders in inmates, to be followed in so many cases by disappointment at the result, and the feelings of injustice that are produced by the unavoidable appearance of inconsistency in Board decisions. In the case of preventive detention these effects are aggravated by the wide difference between the maximum and the minimum period of detention.

It is interesting to note that the United Kingdom has experienced much the same problems as we have in relation to sentences like our preventive detention. There have, as here, been two attempts to deal with the problem of the persistent offender in this sort of way and both of these have foundered on what I think it is true to say are the same rocks as we have encountered.

It seems that the English intention is to try again with a different variety of the same thing. My inclination is to abolish preventive detention altogether, except for the sexual offender, and to leave it to the Courts to impose a long enough finite

sentence to give the community adequate protection where it is necessary. Where the offence is serious and involves personal violence this may well mean a very lengthy period of detention, but the maximum penalties available to the Supreme Court in these cases are in my view sufficient for the purpose. Some of these cases will quite possibly be tried in the Magistrate's Court but they can of course be referred to the Supreme Court for sentence if it appears that the maximum penalty which a Magistrate may impose is too low.

The effect of the abolition of preventive detention in the case of the petty offender would in most cases be to make him liable to a comparatively short sentence only, but it seems to me that his nuisance value in the intervals between sentences is insufficient to justify translating several short sentences into one lengthy one.

I have indicated that I think preventive detention should be retained for the sexual offender. This may appear illogical, but I would not at present be prepared to recommend the abolition of the sentence for this group because they do constitute such a serious menace to the rest of the community, particularly those whose victims are little children, and I cannot see any alternative. Should we find a better method of dealing with them the question might be reconsidered, but meanwhile I think the sentence should be retained to this extent. I am satisfied however, that to avoid some of the difficulties of the sentence and the better to mark the gravity both of the offence and of the penalty, the minimum period of detention should be raised to seven years. It would still be open to the Judge to impose a finite sentence where such a lengthy period of detention was not called for.

Another important question that is under consideration at the moment is the possibility of reducing the time spent in prison by many of our prisoners .

Over at least the last 50 years there has been a substantial reduction in the number of people (proportionate to the population) sent to prison. And it seems clear that this reduction mirrors a change in the general attitude towards imprisonment as a method of dealing with lawbreakers, both on humanitarian grounds and from the point of view of its efficacy. As you know we are always looking out for alternative forms of sentence which offer hope of being more effective than imprisonment, while avoiding its obvious disadvantages. But it seems to me that this is not enough. Even

where a sentence of imprisonment has to be imposed I think we should aim at reducing the actual period spent in prison under it, provided we can do so without prejudicing the community's interests in any way.

This means that we have to bear in mind two things. First of all, we must accept the fact that there are some people we cannot afford to release from prison ahead of time – namely those people who offer a real threat to the safety of others. Secondly, we must not forget that, unsatisfactory though imprisonment may be, it cannot be said to have no purpose or function whatever and it can be dispensed with in any case only to the extent that a more satisfactory method of dealing with the offender is provided.

I see the answer to any difficulties in this respect in hostels which are now being established by the Prisoners Aid and Rehabilitation Society on the lines of the Norman Homes in England. These are places of residence for ex-prisoners, which allow them the advantages of life and work in the community while still subjecting them to the large measure of supervision and control that they need. An effective substitute for detention in prison in the later stages of a sentence could, it seems to me, be provided by the imposition of a condition of residence in one of these hostels as a normal accompaniment of a direction for release.

How then can we achieve the object of permitting the early release of offenders to a hostel in those cases where this course can safely be followed, while ensuring that the dangerous criminal is retained in prison as long as possible for the protection of other members of the community? It must be remembered that if preventive detention is abolished this group will in future include many of those who would now receive that sentence, though even so the numbers are not likely to be large.

I think the solution is to be found in the Parole Board. Since the Criminal Justice Act came into force a person subject to a finite sentence of imprisonment has been outside the normal jurisdiction of the Parole Board, being instead entitled to remission of a part of the sentence for good conduct. A special provision enables his case to be considered by the Parole Board on the request of any member of the Board, but the legislation gives no indication of the circumstances where such a request is appropriate and the provision is little used.

The suggestion I am at present considering is that the Board's normal jurisdiction be enlarged to include all finite sentences of imprisonment of six years or more, the first review to take place after the end of 3½ years. The Board's function would, as now, be to consider the date of release of the offender but it is certainly not envisaged that there would be many who would be released soon after the first review. For the majority of cases the purpose of that review would be to enable the Board to plan a programme for the inmate's ultimate rehabilitation. Some cases there would be, however, where the Board would recommend release even at that early stage of the sentence. I can see nothing objectionable in this provided release is to the controlled environment of a P.A.R.S. hostel.

I realise that the effect of this proposal is to introduce an element of indeterminacy into all the longer finite sentences and that one of the objections to preventive detention arises from this very factor of indeterminacy. Nevertheless I think the element is slight and I think its disadvantages are more than outweighed by the very considerable benefits it would have in assisting in the rehabilitation of offenders and in reducing our prison population. I do not contemplate that there be early legislation revising preventive detention. It is desirable that any proposals which are far reaching in their character should be fully considered.

There is one other proposal that I wish to refer to and in this case we hope to have the necessary amendment passed this Session. You will all be familiar with the provisions relating to periodic detention for young offenders, even though they are not in force throughout the country. This is one experiment which appears to have been very successful and we are therefore considering lifting the age restriction and allowing the provisions to be made applicable to any age group at all. I think it might prove a very effective method of dealing with such diverse forms of conduct as drunken driving, default under a maintenance order and non-payment of a fine. These three groups of offenders are ones for whom ordinary imprisonment is a particularly unsatisfactory form of penalty and a sentence involving loss of liberty only at weekends or in the evenings seems likely to provide a quite effective alternative.