

COMMUNITY-BASED ALTERNATIVES IN SENTENCING

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I. INTRODUCTION

Punishment in the modern context has acquired a profound, new meaning. It has evolved into a concept encompassing traditionally favoured principles of deterrence, retribution, prevention, and the presently popular principles of rehabilitation and restorative justice. In 1965, the dominant sentencing philosophy in Singapore was observed to be retributionist, with greater emphasis given to the objectives of retaliation against the accused and deterrence than to the needs and reformation of the offender.¹ Some fifteen years later, the sentencing philosophy was observed to have remained largely the same.²

Experience has shown that this approach led to an extremely high rate of recidivism.³ Furthermore, such an approach is no longer adequate in light of changing social trends; it does not address the underlying issues in the increasing number of offences arising from those trends, such as attempted suicides, teenage promiscuity and mental illness and disability in offenders.

Therefore, our response has been to adapt our penal philosophy to include rehabilitation as an equally important objective.⁴ In fact, we go as far as to recognize that the need to address the injury caused to the victims and community is also as important as the reformation of the offender. A restorative justice approach which advocates the use of community-based alternatives to custodial sentences was thus factored into the skein of our sentencing principles. The Community Court, which was launched in June 2006, was especially created to give greater scope for the court to give effect to our current penal philosophy.

The ethos of offender rehabilitation is not merely confined to the courts; it permeates the other components of our penal system. Our biggest correctional agency, Singapore Prison Service, has in place a sophisticated and carefully thought through offender rehabilitation programme which continues to assist the offender even beyond the prison walls. For these measures and programmes to be successful, there has to be “a progressive attitude towards ex-offenders”.⁵ The Yellow Ribbon Project was therefore set up in 2004 to educate the public on the need to give ex-offenders a second chance. Recidivism is a key measure of our efforts and I am glad to say that we have one of the lowest recidivism rates in the world.⁶ Our penal system also enjoys the confidence of the public because its approach secures justice, not only for the State and the Community, but also for the offender.

To merely describe the present approach and the measures implemented without first understanding “why punish?”⁷ would be a vacuous exercise because punishment is no longer an end in itself but rather a means to achieving a myriad of objectives. Therefore, an examination of the basis of sentencing an offender is necessary.

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¹ Professor Tommy Koh, “*The Sentencing Policy and Practice of the Singapore Courts*” (1965) 7 Mal. L.R. 291, at p. 294.

² Peter English, “*Sentencing in Singapore*” (1981) 23 Mal.L.R. 1, at p.24.

³ “*Our History*”, Singapore Prison Service, http://www.prisons.gov.sg/our_history.html

⁴ K.Shanmugam, Law Minister, “*Singapore’s Penal Policy (Review)*”, Singapore Parliamentary Report Vol.85 Sitting No.7, Oral answers to questions, 19 Jan 2009 – attached in Annex A.

⁵ Per Chief Justice Chan Sek Keong, Opening address at the Yellow Ribbon Conference 2006, 27 September 2006.

⁶ K Shanmugam, op cit n.4 above.

⁷ Adapted from *Why Punish?* by Nigel Walker, (Oxford University Press, 1991).

II. WHY PUNISH?

The classic principles of sentencing philosophy have been succinctly encapsulated in four words: retribution, deterrence, prevention and rehabilitation⁸ and adopted with much approval by courts in Singapore.⁹ Each principle has generated much theoretical discussion which attempts to find a basis for punishment as a response to the question, “why punish”? Perhaps the most instinctive, if not primal, response to the question is retribution.

A. Retribution

To express the retributive principle simply, punishment is justified because the offender deserves it or as the Old Testament puts it, “an eye for an eye, a tooth for a tooth, and a life for a life”.¹⁰ Within the brutally clear message are overtones of censure as the offender is held accountable for his or her misdeeds. Hence, it has been suggested that retribution is the notion of getting the offender to pay for what he or she owes, that is, his or her debt to society.¹¹ However, this is by no means restorative justice because sentences imposed with retribution as a primary concern generally do not make offenders liable personally to the victim for the injury their actions have caused since the emphasis is on hitting back at the offender¹² rather than to address the injury caused to the victims.

B. Deterrence

Related to the principle of retribution is deterrence. An important component of the retributivist principle, censure when expressed through the imposition of court-sanctioned punishment *deters* people from committing offences since doing so defines them as criminals.¹³ What this incidentally demonstrates is the paramount objective of deterrence: people refrain from committing offences because of their aversion to the consequences.

Two types of deterrence exist: specific deterrence and general deterrence. Specific deterrence focuses on the offender him or herself and aims to deter the offender from repeating his or her criminal conduct¹⁴ by instilling in him or her the fear of reoffending through the threat of punishment he or she will receive for doing so.¹⁵ General deterrence, on the other hand, is directed at educating and deterring members of the general public,¹⁶ either through the form of legislation sanctioning punishment for specific offences or the imposition of a substantial sentence for certain offences, both of which are designed to convey the message that offences of a particular nature will not be tolerated.¹⁷

It is obvious that the emphasis of the deterrence principle is on its ability to benefit the greater good and punishment is therefore justified, even if harm is caused to the offender, so long as the harm it seeks to prevent is greater than the harm caused to the offender when punishment is imposed on him or her. It is accepted that penalties do deter but because scant regard is given to the type of punishment which *ought* to be imposed on the offender, only the symptoms and not the root cause of the problem are dealt with. Kleptomaniacs would keep on stealing and unhappy neighbours would continue feuding even if sentences are enhanced.

C. Prevention

Perhaps the most fearsome principle is the principle of prevention because sentencing based upon prevention as a primary consideration necessarily results in harsher punishment. The policy is that of selective incapacitation: offenders who are deemed dangerous or persistent in reoffending are incarcerated, usually for extended periods, in order to protect the public and to reduce crime. The notion of prevention is

⁸ *R v Sargeant* [1975] 60 Criminal Appeal Reports 74 at p.77.

⁹ *PP v Tan Fook Sum* [1999] 2 SLR 523. *Chua Tiong Tiong v PP* [2001] 3 SLR 425; *PP v Goh Lee Yin* [2007] SGHC 205.

¹⁰ Exodus 21:23 – 27.

¹¹ Nigel Walker, *Why Punish?* (Oxford University Press, 1991), p.73.

¹² “*The Expressive Function of Punishment*”, *A Reader on Punishment*, Joseph Feinberg (ed. Anthony Duff and David Garland, Oxford University Press, 1994) p.76.

¹³ “*Censure and Proportionality*”, *A Reader on Punishment*, A. von Hirsch (ed. Anthony Duff and David Garland, Oxford University Press, 1994) p.120.

¹⁴ *PP v Tan Fook Sum* [1999] 2 SLR 523.

¹⁵ *PP v Law Aik Meng* [2007] 2 SLR 814 per Justice V.K. Rajah.

¹⁶ *Meeran bin Mydin v PP* [1998] 2 SLR 522.

¹⁷ *Xia Qin Lai v PP* [1999] 4 SLR 343.

reflected in punishment policies such as mandatory minimum sentences, preventive detention and corrective training.¹⁸ Such offenders are removed from society for long periods and they are therefore the category of offenders who require more assistance towards reform and reintegration than the average offender.

D. Rehabilitation

Under the rehabilitation principle, crime is perceived to be the symptom of a social disease and the objective of rehabilitation is to cure that disease. Unlike the three sentencing principles discussed thus far, rehabilitation involves an examination of the offence so that the appropriate punishment can be imposed with a view to changing the offender's values so that he or she will learn that such conduct is wrong and refrain from committing offences in the future. After all, it is undisputed that a substantial proportion of the prison population hail from the lower socio-economic strata and because of their social circumstances like poverty and lack of education, they are sometimes led to crime. Recognizing this, the Singapore Prison Service's strategy has been to invest heavily in education and training to keep offenders on the right path after their release.

It is therefore clear that the benefits of rehabilitating offenders accrue not only to the individual, but also to society at large.¹⁹ It is unsurprising that rehabilitation has come to enjoy considerable support as an alternative to conventional methods of punishment since it produces a win-win situation: lower rates of recidivism translate into a safer environment for all to live in, while higher rates of ex-offenders engaging in gainful employment facilitate better economic progress for the nation.

E. Restorative Justice

There has been much emphasis in recent times on restorative justice. However, restorative justice is by no means a recent concept and is in fact "grounded in traditions from ancient Arab and Western civilizations and in Hindu, Buddhist, and Confucian traditions".²⁰ In Arab civilizations, there is the Pentateuch which specified restitution for property crimes in Israel, and the Code of Ur-Nammu (c.2060 BC) required restitution for offences of violence in Sumer. As for Western civilizations, there is the Roman Twelve Tables (449 BC), the Irish Brehon Laws, the German tribal laws under King Clovis I (496 AD), and the English Laws of Ethelbert of Kent (c.600 AD) which all required some form of restitution for offences.

It is obvious by now from the ancient examples that an approach based on restorative justice goes beyond the reform and rehabilitation of the offender. The concept of restorative justice is a fine balance of a multitude of objectives: a balance between the therapeutic and retributive models of justice; a balance between offenders' rights and victims' needs and a balance between the need to rehabilitate the offender and the duty to protect the public.

Recognizing this, the courts started to incorporate restorative justice processes into their sentencing philosophy. These processes are largely non-custodial in nature and include victim-offender mediation, family group conferencing, restorative or community conferencing, community restorative committees and restorative circles which assist the offender in his or her successful transition back to the community.

Community-based alternatives have received the stamp of approval by the United Nations since 1990 through its Standard Minimum Rules for Non-custodial Measures – the Tokyo Rules.²¹ While Singapore is not a signatory to the Rules, the sentencing approach is very much in line with its philosophy which promotes the use of non-custodial measures. A commonly used measure is probation because it rehabilitates the offender effectively, with maximum involvement of the offender's family or the community, and reintegrates the offender into mainstream society as a socially responsible and law-abiding person.²²

¹⁸ Sentencing Practice in the Subordinate Courts, Ch 3: General Objects of Sentencing.

¹⁹ *PP v Goh Lee Yin* [2008] 1 SLR 824, 863.

²⁰ J Braithwaite, "Restorative Justice", *Handbook of Crime and Punishment* (edited by Michael Tonry, NY: OUP, 1998), p.323 – 344.

²¹ United Nations Standard Minimum Rules for Non-custodial measures (The Tokyo Rules) adopted by General Assembly, Resolution 45/100 of 14 December 1990.

²² Chomil Kamal, then Chief Probation Officer, MCYS, "The Probation Service in Singapore", www.unafei.or.jp/english/pdf/PDF_rms/no67/04_Ms.Kamal_p61-p74.pdf

One such example is the approach taken in late 2005 in the case of the 17-year-old blogger²³ who was convicted of making racist remarks against Malays. Instead of imposing a custodial sentence, the court imposed 24 months' supervised probation with unique features to address the accused's offending behaviour. The offender was tasked to perform community service at centres specifically catering to the needs of Malays, the very people he insulted.

A very different fate befell the 18-year-old offender²⁴ with an IQ of 58 whose appeal was decided in the High Court just three weeks before the blogger's case. The teen was a repeat offender and was once again convicted for molestation in the Subordinate Courts. The unrepresented teen then appealed against his sentence to be spared the cane. However, in view of the seriousness of the offence, he was not spared the cane and his sentence of imprisonment and caning was enhanced. The decision drew much public attention and even sparked off a parliamentary debate on how the courts should treat mentally disabled offenders.

The call for a more updated sentencing approach which does more than merely punish finally culminated in the setting up of the Community Court, the symbol of Singapore's endorsement of the ethos of using community-based alternatives to custodial sentences.

III. THE COMMUNITY COURT

A. Profile

The Community Court was set up in June 2006 as a specialist court to respond to the needs of the community²⁵ and social trends which have translated into crime. More teenagers are engaging in sexual activities. Neighbourhood spats have increased. There is also the disturbing increase in attempted suicides. As demonstrated before, there was also the call for rehabilitation or sentencing options which provide help rather than mere punishment for offenders with mental disabilities and disorders.

Conventional custodial sentences or fines would clearly not make these problems go away since they do not strike at the heart of the 'disease'. Therefore, the Community Court's approach is "a problem-solving one that combines criminal justice and community resources for a comprehensive response" to deal with such social problems. Cases under the Community Court include youthful offenders aged 16 to 18 whom by reason of their age are not within the purview of the Juvenile Court, carnal connection offences by youth offenders, offenders with mental disabilities or disorders, neighbourhood disputes, attempted suicides, animal cruelty, cases which have impact on race-relations and selected cases involving offenders above 65 years old.

B. Sentencing Options

The Community Court is like any other court of law in Singapore. However, as its sentencing considerations are different, it makes use of sentencing options such as probation, deferred sentences, conditional discharge and community service orders in addition to conventional sentences of imprisonment or fine. Other features of the restorative justice model are employed by the Community Court to achieve its desired goal in sentencing. Through Community Court Conferences facilitated by a case manager, issues such as victim-offender mediation, family group conferencing and restorative conferencing are addressed.

C. Proposal to Increase Community-Based Sentencing Options

There has been encouraging public support for the efforts of the Community Court and its innovative and sensitive treatment of offenders and victims of crime, an approach which is endorsed by the Government.²⁶ In fact, the Community Court's efforts have been so successful that the Ministry of Law recently announced its proposal²⁷ to increase community-based sentencing options to include:

²³ *PP v Gan Huai Shi*, reported 24 November 2005 in "Today".

²⁴ *Iskandar Muhamad Nordin v PP*, [2005] SGHC 207, decided on 4 November 2005.

²⁵ Chief Justice Chan Sek Keong, Keynote Address, 15th Workplan 2006/2007.

²⁶ Associate Professor Ho Peng Kee, Senior Minister of State for Law for the Deputy Prime Minister and Minister for Law, "Criminal Procedure Code and Probation of Offenders Act (Review)", Singapore Parliamentary Report, Vol.83, Sitting No. 9, Start Col: 1328; End Col: 1331, 27 August 2007.

²⁷ Public Consultation on Criminal Procedure Code Bill, 2009 http://notesapp.internet.gov.sg/_48256DF20015A167.nsf/LookupContentDocsByKey/GOVI-7M6ETJ?OpenDocument

1. Mandatory Treatment Orders

To allow the Courts to order an offender to undergo psychiatric treatment in lieu of imprisonment. No such power exists currently.

2. Short Detention Orders (SDO)

To give first time low-risk offenders a short experience (about one week) of detention. The SDO is less stigmatizing than imprisonment and limiting the detention period will prevent contamination. More importantly, the SDO will not dislodge the offender from his family and job. At the same time the “clang of the prison gates” helps deter reoffending.

3. Day Reporting Orders (DRO)

To require an offender to report to a Reporting Centre on a regular basis and be electronically tagged, if necessary. This imposes some discipline and aids in rehabilitation as the offender’s progress is monitored closely. It can be used very effectively in combination with an SDO. Other countries have used such orders to positive effect.

4. Community Work Orders (COMWO)

Modelled after the “Corrective Work Order” for litterers, to allow for a wider range of offences and types of work to be mandated. The type of community work should have some nexus to the offence committed. The proposed maximum length of the COMWO is up to 40 hours.

5. Expanded Community Service Orders (CSO)

To allow offenders aged 16 and above to make reparation to the community while being punished for their misdeeds. This will require tying up with Voluntary Welfare Organizations which can put the offenders’ service to good use. The proposed length of the CSO is 40 to 240 hours.

6. Expanded Conditional Discharge

To allow the Courts to specify conditions such as participation in programmes or an MTO as a requirement. The maximum term for a conditional discharge is proposed to be extended from the current 12 months to 24 months to allow sufficient time for participation in programmes.

The proposals reflect the intention to enhance the present approach of using community-based rehabilitation options by introducing greater flexibility and allowing more graduated sentencing options for minor offences. Offenders can be imprisoned for short terms yet be adequately punished without disruption to family life or loss of job.

D. Two Years On: The Cases dealt with Thus Far

Please refer Annex B.

IV. BEYOND THE COMMUNITY COURT

A. The Singapore Prison Service: Complementing the Objectives of the Modern Approach

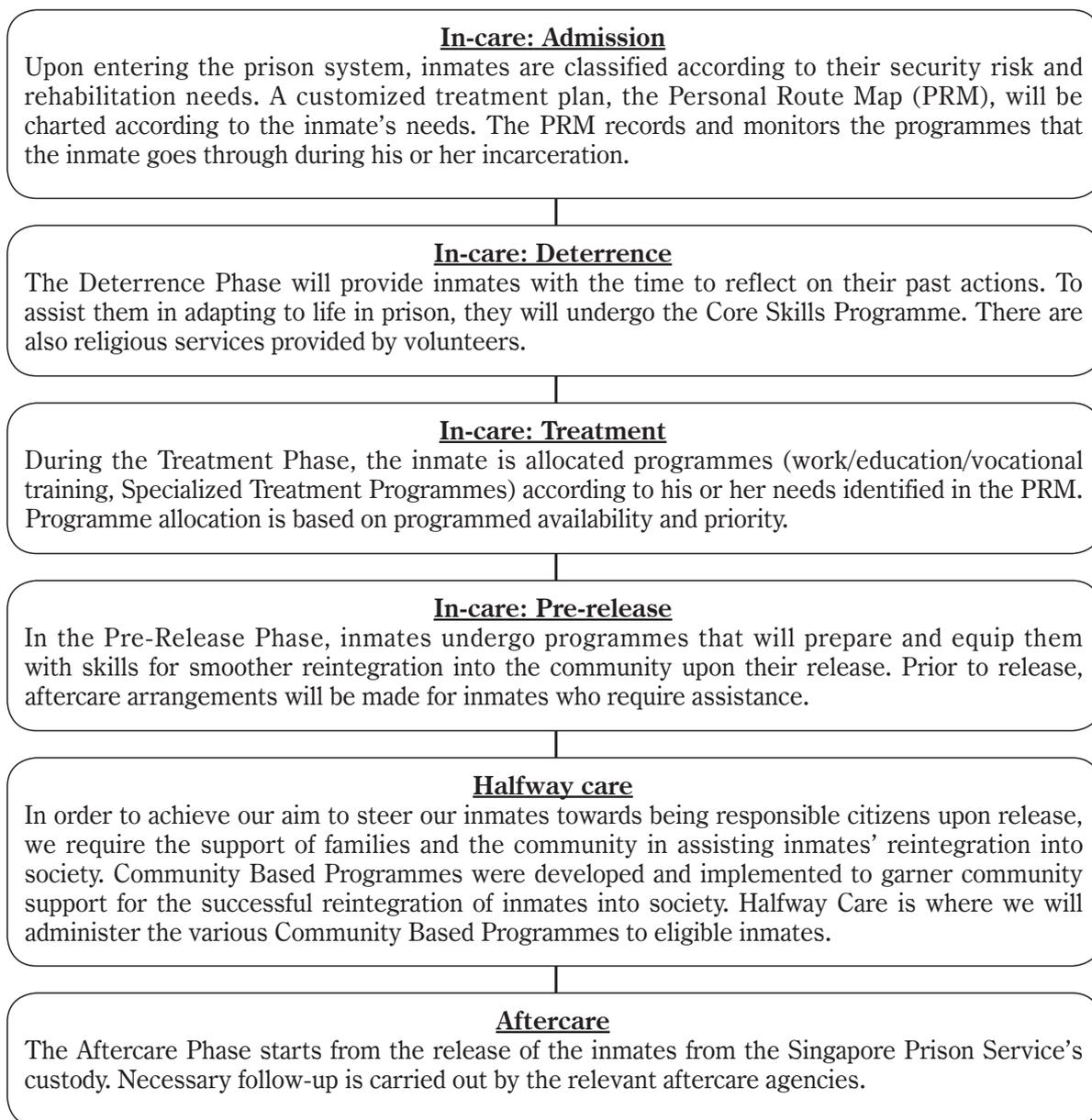
1. Integral to the success of reform is the criminal justice system, the chief components of which are the police, the prosecution, the courts and the correctional agencies.²⁸ Prison is by far the most important component in the system towards achieving the objectives of prevention and rehabilitation since it is the biggest correctional agency and the most direct agency which enforces the sanctions imposed by the courts.
2. Rehabilitation was recognized as equally significant as punishment and correction as early as 1895 by the very people who created prisons – the British. In 1895, the Gladstone Committee was formed to survey the effectiveness of prisons. Unsurprisingly, it found that a prison system created solely for the purpose of punishment reduces neither crime nor recidivism. In fact, it only “made for the deterioration and degradation of the prisoners and their eventual release into society neither

²⁸ K.V Veloo, *Rehabilitation of Offenders in Singapore: Volume 1* (Department of Social Work and Psychology, Faculty of Arts and Social Sciences, National University of Singapore, 2004) at p.10.

deterred nor reformed, but brutalized and embittered".²⁹

3. Since its institutionalization in 1946, the Singapore prison system has evolved progressively from a basic facility adopting chiefly Victorian punitive methods into one providing a comprehensive rehabilitation service which can "stand proudly with some of the better [prisons] in other parts of the world".³⁰ An overview of the rehabilitation process in diagram 1 reveals a rigorous programme put in place for the offender at every stage from the very moment of his or her admission to the period after his or her release.

DIAGRAM 1
Singapore Prison Service's Rehabilitation Process³¹



²⁹ *The Treatment of Offenders in Britain*, Central Office of Information Reference Pamphlet, London, (Her Majesty's Stationery Office, 1960) at p.5.

³⁰ Foreword to *Rehabilitation of Offenders in Singapore: Volume 2*, K.V Veloo, (Department of Social Work and Psychology, Faculty of Arts and Social Sciences, National University of Singapore, 2004) at p.3.

³¹ Singapore Prison Service, Rehabilitation Process, <http://www.prisons.gov.sg/restart.html>

4. The contemporary system is not meant to make life any easier for the offender than traditional methods which only focused on the punitive aspects. Rather, it is a sophisticated system which not only serves to reduce crime and recidivism but also to deliver justice to the offenders by treating them not as criminals but worthy individuals capable of having better lives.
5. A cursory examination of the prison's programmes will reveal that the underlying objectives complement that of the Community Court and the Tokyo Rules, that is, to promote among offenders a sense of responsibility towards society and encourage greater community involvement.
6. Brief Profile of Singapore Prison Service's Schemes and Programmes.

(i) Education

It is undisputed that a substantial part of the prison population is made up of offenders from the lower socio-economic strata³² and are sometimes led into crime because of their circumstances. In line with rehabilitation objectives, further education is offered to the offenders with a view to increasing opportunities and creates a new pathway for them. This way, the offender's ability to reintegrate into the community is enhanced, which in turn should keep them from lapsing into their old ways and returning to prison. Hence, the Singapore Prison Service has been keenly investing in education.

Programmes available in prison are diverse: formal academic courses - GCE 'N', 'O' and 'A' levels, vocational courses, e.g. computer literacy and technology courses, enrichment activities e.g. choir, drama, etc., religious and moral education, social skills courses, family-focussed courses and community reintegration courses.

To accelerate and enhance inmates' literacy level, the Literacy Education Accelerated Programme (LEAP) was implemented in April 2004. The following table³³ shows a consistent enthusiasm in participation thus far.

Educational levels/course	Apr 2004 to Dec 2004	Jan 2005 to Dec 2005	Jan 2006 to Dec 2006	Jan 2007 to Dec 2007	Jan 2008 to Dec 2008
Basic Literacy Courses	NA	650	983	1366	585
BEST	45	402	185	178	79
GE	531	995	462	145	87
GCE N	126	160	171	147	117
GCE O	93	135	154	131	127
GCE A	33	33	33	34	22
Total	828	2375	1988	2001	1017

(ii) Work

Work is an important, if not the most important, component in the rehabilitative process for offenders.³⁴ It instils discipline, responsibility and work ethics which will help them rejoin the workforce and reintegrate into the community upon release. Through the Singapore Corporation of Rehabilitative Enterprises (SCORE), offenders receive a variety of on-the-job training based on their interests. Offenders typically receive vocational training in the areas of electronics, food preparation, cleaning, etc.

In fact, some of the workshops within the prisons are leased to and run by private firms who work with SCORE³⁵ e.g. "Connect Centre", a call centre operating in Changi Women's Prison since 2005 which

³² Chief Justice Chan Sek Keong, op cit n.5 above.

³³ Courtesy of Singapore Prison Service.

³⁴ Singapore Prison Service, Rehabilitation Process, <http://www.prisons.gov.sg/restart.html>

³⁵ <http://www.score.gov.sg/Industrial%20Space%20Leasing.html>

employs about 40 inmates.³⁶

The Prison Service continues with the offender's work programme even after his or her release. Under the 'Place and Train' Scheme, industries which require manpower support and are keen to hire ex-offenders are identified so that offenders upon their release will be able to find employment. The Prison Service together with SCORE has engaged companies such as NTUC, NParks and Building & Construction Association. Another scheme which provides aftercare support in relation to work is the 'Prepare and Place' Scheme which is essentially a job fair. All these measures are aimed at facilitating the offender's integration with the community after his or her release.

(iii) Early Release

(a) Home Detention Scheme

Another measure which involves the community is the Home Detention Scheme (HD). Offenders on this scheme would be less likely to find themselves coming back to the community as an alienated individual. Under the HD Scheme, which was implemented in May 2000, offenders who are about to be released and identified as suitable will be released early to be detained at home and will be monitored through electronic tagging. The offenders are to abide by the curfew hours stipulated in the HD Order. They will be able to commute to work or further their studies during the period that they serve out their sentence at home.

Offenders convicted of serious and violent crimes are not released on home detention.³⁷ Maximum placement on the scheme is 12 months and an offender has to be sentenced to a minimum of four weeks' imprisonment to be eligible. Eligibility also depends on an offender's progress and response to rehabilitation and level of family support.

(b) Completion & Recidivism Rates

Since 2000, a total of 11,534 inmates have been placed on the HD scheme and as of 2008, 10,995 inmates had successfully completed the programme. As can be seen from the following table,³⁸ recidivism rates have steadily fallen among offenders as compared with the general population. Thus, the scheme has been lauded as an example of the success of the sound and practical principles of our penal system, which advocates rehabilitation and reintegration.³⁹

Recidivism rates of HD inmates who have completed the programme		
	HD inmates who have completed the programme	General population
2001 cohort	3.8%	35.3%
2002 cohort	6.1%	31.2%
2003 cohort	10.8%	24.9%
2004 cohort	11.3%	23.7%
2005 cohort	10.3%	24.2%

(iv) Work Release Scheme

The Work Release Scheme (WRS) allows an offender to serve the last months of his sentence in a work release camp or halfway house under supervised conditions. Offenders who lack family support are most suited for this programme. Under this programme, inmates are closely guided by staff at the camp or halfway house. The same objectives adopted by the work programmes in the prison (instilling discipline, responsibility and work ethics which will help offenders rejoin the workforce and reintegrate into the community upon release) also apply in WRS.

³⁶ <http://www.connectcentre.com.sg/security/who.htm>

³⁷ See Schedule to the Prisons Act for the offences for which a person has been convicted will not qualify for home detention.

³⁸ Courtesy of Singapore Prison Service.

³⁹ K Shanmugam, op. cit. n.4 above.

(a) Completion Rates

A total of 3,779 inmates have been emplaced since 2000 and as of 2008, 3,099 inmates had successfully completed the programme. As can be seen from the following table,⁴⁰ recidivism rates have fallen significantly among offenders on the scheme since its inception.

Recidivism rates of WRS inmates who have completed the programme		
	WRS inmates who have completed the programme	General population
2002 cohort	13.3%	31.2%
2003 cohort	22.7%	24.9%
2004 cohort	19.0%	23.7%
2005 cohort	18.9%	24.2%

B. Raising Awareness: The Yellow Ribbon Project

The efforts by the Community Court and the Prison Service cannot exist in a vacuum. Successful rehabilitation of offenders and ex-offenders “must be accompanied by a progressive societal attitude towards ex-offenders”.⁴¹ In 2004, the Yellow Ribbon Project was launched to raise awareness of the stigma faced by ex-offenders and to educate the public to show compassion to them. Efforts to raise awareness include “Wear A Yellow Ribbon Day”, concerts, conferences, exhibitions, etc. The widely successful project has received accolades from international experts and a very honourable mention at the 2007 United Nations Grand Award.⁴² It continues to garner greater acceptance of ex-offenders by the community⁴³ and contributes to the development and implementation of reintegration programmes for ex-offenders.

V. CONCLUSION

Experience has shown that the conventional methods of imposing custodial sentences and fines with only considerations of retribution, deterrence and prevention are not effective in the long run. They also do not satisfactorily deal with crimes which have arisen out of changing social trends. A criminal justice system worthy of public confidence must respond to these needs. Singapore has adapted accordingly as reflected by the efforts of the Community Court and the Prison Service. Thus far, the Community Court’s holistic approach towards its treatment of offenders has yielded positive results and has been well received by the community. The modern approach of combining rehabilitation and restorative justice with the traditional principles of sentencing is set to gain greater use with the likely increase in sentencing options. With that, a low crime rate can be achieved while maintaining custodial sentences as a last resort.

⁴⁰ Courtesy of Singapore Prison Service.

⁴¹ Chief Justice Chan Sek Keong, *op.cit.* n.5 above.

⁴² K Shanmugam, *op.cit.* n.4 above.

⁴³ http://www.yellowribbon.org.sg/pages/conference_2008.html

ANNEX A

I. PP v JOHN ONG GEOK YEOW

The offender was convicted on one count of voluntarily causing hurt to a public officer with the intention of deterring the latter from discharging his duty. In the course of committing the offence, John landed several blows to the body of the police officer.

In sentencing the offender to imprisonment for a period of two months with the added condition that he undergo police supervision for 12 months after the expiration of the sentence, the Court took into account the report from the Institute of Mental Health (IMH). The IMH report stated that John suffered from schizophrenia. Further, the report also indicated that John was likely to have been in a state of acute relapse during the time of the offence.

The sentence imposed by the Court was arrived at after balancing the need for deterrence and the importance of rehabilitation in this case. Incarceration of John – at least for a short period – was required to drive home the message that attacking a public officer constitutes a serious offence. Yet, the short period of incarceration, together with the imposition of police supervision, demonstrates the Court's focus upon the importance of rehabilitating the root cause of John's offence.

II. PP v YEO GEOK HUAY

Mdm Yeo committed the offence of voluntarily causing hurt to a police officer with the intention of deterring the officer from discharging his duty. At the time of the offence, the police officer was responding to a complaint from Mdm Yeo's neighbour that the music from her home was too loud. Upon arrival at Mdm Yeo's unit, the police officer was charged upon by Mdm Yeo and punched in the head and body.

The Court had called for a report from the IMH prior to sentencing. The report reflected Mdm Yeo's psychiatric history dating back to 2003. The psychiatrist's diagnosis stated that the offender suffered from Major Depressive Disorder: a condition which causes heightened levels of aggression. Noting that Mdm Yeo's offences were all inextricably linked to her depressed mood, the Court recommended that she undergo medical treatment upon her release from six weeks' imprisonment.

Just like in the preceding case involving John's assault on a public officer, Mdm Yeo was similarly sentenced to a short period of imprisonment. Considerations of deterrence aside, the focus upon rehabilitation is evident by the Court's recommendation that she undergo medical treatment upon her release.

III. PP v CHEONG AH SIEW

Mdm Cheong was convicted of committing a rash act so as to endanger the personal safety of others. Her actions in throwing several items out of her ninth storey flat constituted the criminal offence in question.

The IMH report called for by the Court diagnosed Mdm Cheong as having a long history of Schizoaffective Disorder. One characteristic of this disorder is to cause sufferers to act rashly and impulsively.

The judge ordered conditional discharge for 12 months. In his judgment, the district judge stated that the existence of a serious mental disorder is a relevant factor in determining the type of sentence which an offender receives. His Honor also stated that in the process of coming to his decision, he had considered the impact of the disorder upon the offender. Further, he was of the view that rehabilitation – through psychiatric treatment – was the predominant sentencing consideration in this case as it was fundamental to preventing Mdm Cheong from committing offences in the future.

IV. PP v HONG CHEE MENG

Mr. Hong was convicted of the same offence as Mdm Cheong. He was arrested for throwing several items out of the kitchen window of the HDB flat. He had a history of previous admissions into IMH, and had been diagnosed as a danger to the public due to alcohol induced brain damage. Prior to sentencing, the Court called for an IMH report. The diagnosis of Mr. Hong stated that alcohol intoxication and brain damage caused him to have impaired judgment and loss of impulse control during the time of the offence. The report also stated that in the absence of alcohol consumption, it was likely that he would not have committed the offence.

The judge granted Mr. Hong conditional discharge for a period of 12 months in view of his potential for rehabilitation. Further, his parents were bound in the sum of \$1,000 to ensure his good behaviour throughout the duration of those 12 months.

V. PP v MOHAMAD SANI MD SAID

The accused person pleaded guilty to one count of committing a rash act so as to endanger the personal safety of others. He had thrown several items, including a BMX bicycle metal frame, from the 4th floor of a HDB block.

The IMH report called for by the Court stated that he had been suffering from Schizophrenia since 1984, and that his IQ level of 67 rendered him mildly retarded. Unable to work, he was a vagrant sleeping in a HDB corridor and begging for food. The psychiatrist's recommendation was that the accused be placed in a Welfare Home.

The judge ordered conditional discharge for 12 months and for the accused's aunt to execute a bond amounting to \$1,000. The Court opined that a custodial sentence would fail to achieve the aims of general deterrence. Further, the judge also stated that punishment or probation would be inappropriate in this case as the accused did not have the financial means to support himself, much less pay a fine. Taking into account the accused person's medical condition, and the need for psychiatric treatment, the judge consulted with the IMH psychiatrist to work out a treatment plan for the accused. In relation to his destitution, liaison with the MCYS resulted in a programme under which the accused person would be admitted into a Welfare Home for six months while he underwent rehabilitative and vocational training.

From the outcome of the sentencing process, it is evident that the main objective of the Court in this matter was to ensure that the accused gains access to the services necessary for him to be a useful citizen integrated into society.

VI. PP v CHONG KUET CHIEN

The accused person pleaded guilty to using criminal force on the victim with the intention to outrage her modesty. He had used his right index finger to touch the victim's thigh.

The IMH report reflected that the accused suffered from schizophrenia, and was in a state of relapse during the time of the offence. In the psychiatrist's opinion, the illness probably contributed to the accused's criminal conduct during the time of the offence. The psychiatrist also recommended that the court mandate long term treatment of the illness as part of the sentence imposed.

Having considered the report from the IMH, the judge sentenced Mr. Chong to five weeks' imprisonment and police supervision for 12 months following the expiration of the term of imprisonment. On top of which, the accused agreed to reside at the Helping Hand Halfway House under the supervision of a social worker by the name of Freddie Ho. Further, he was to adhere strictly to a treatment plan prescribed by Dr. Kenneth Koh of the IMH.

From the sentence imposed, it is evident that retribution for the suffering of the victim – in the form of a custodial sentence – was balanced by the aims of reformation of Mr. Chong through psychiatric treatment.

VII. PP v MUHAMMAD FAUZI BIN MASOOD

The accused was 17. He committed the offence of housebreaking when he and an accomplice decided to look into flats for any items which could be stolen. Fauzi chanced upon a hand phone near the window and he took the phone by sliding his hand through the open window. Despite his youth, the accused had previously committed several offences including snatch theft and housebreaking by night to commit theft. For those offences, he had been ordered to reside in the Muhammadiyah Welfare Home for three years. It must be noted that the offence in question was committed when he had absconded from the Home.

The MCYS was requested to provide a psychological report on the accused. Their assessment was that the accused was within the mild intellectual functioning range. Given his condition, he was susceptible to negative influence from his peers. Other than his intellectual condition, lack of parental supervision and management, as well as lack of personal responsibility, contributed to his risk of engaging in future criminal conduct. The psychologist made several recommendations to alter the course of his future. First, that he attends offence specific treatment programmes which are tailored to his learning ability. Secondly, it was pertinent that he be taught peer refusal skills. Finally, in order to ensure greater parental supervision over him, the accused's father was asked to attend parenting sessions.

The Court took heed of the recommendations by the MCYS and imposed a sentence of 18 months' supervised probation. Attached to the probation order were the following conditions: firstly, that the accused resides at the Muhammadiyah Welfare Home; secondly, he was to remain indoors from 9pm to 6am; thirdly, that he be enrolled in a suitable educational institution and abide by all rules and conditions imposed by the school and relevant authorities; fourthly, that he be taught peer refusal skills and lastly, that his father executes a bond of \$5,000 to ensure that the accused person's conduct is in compliance with all conditions of the probation order.

The sentence aimed to rehabilitate the accused person by ensuring that he was placed in environments conducive to reformation. Mandating that he reside at the Welfare Home as well as attend an educational institution not only ensured that he received education in a disciplined environment, it also prevented him from being exposed to negative influences. Further, enlisting the help of his father certainly increased the probability that the accused would have access to greater parental control – which is an indispensable element in nurturing good behaviour.

VIII. PP v LIM KENG SENG

The accused person was a male aged 62. He pleaded guilty to a charge of being in possession of a knife without lawful authority or purpose.

The IMH assessed that at the time of the offence, Mr. Lim was suffering from depression. He had been brooding over the fact that he had been diagnosed with cancer.

The Court ordered that the accused be given a conditional discharge for 12 months. In light of the need to ensure his good behaviour, the accused person's son was ordered to execute a bond of \$1,000, on top of which the latter also undertook to send his father for treatment for his depression.

ANNEX B

Parliament No: 11
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 Section Name: ORAL ANSWERS TO QUESTIONS
 Title: SINGAPORE'S PENAL POLICY (Review)
 MPs Speaking: Mr Lim Biow Chuan; The Minister for Law (Mr K Shanmugam)

SINGAPORE'S PENAL POLICY (Review)

5. **Mr Lim Biow Chuan** asked the Minister for Law whether there is any need to review Singapore's penal policy in view of the statement in the latest issue of the *Law Gazette* by the President of the Law Society of Singapore Mr Michael Hwang that Singapore is sadly lacking a principled and transparent penal policy.

The Minister for Law (Mr K Shanmugam): Sir, I thank Mr Lim for his question. Mr Hwang, the President of the Law Society, in his article in the *Law Gazette* asserts that detailed statistics on crime and punishment should be published and that not publishing such statistics has prevented social scientists from undertaking adequate research on the causes of crime and the effects of current penal policies on prisoners. And he says that this has resulted in our system being unprincipled, and rigorous regular research with full access to relevant information will help us decide on issues like the effectiveness of capital punishment.

I will deal with each of the three assertions.

About statistics not being published - this assertion is questionable for two reasons. First, Mr Hwang does not make clear what data (which would help in penal research) that he is referring to as not having been published. Second, law enforcement agencies such as the Singapore Police Force and Central Narcotics Bureau do publish crime and drug offence statistics regularly. Where there is public interest to be served, additional relevant information is collected and disseminated.

In addition, it should be noted that Home Team departments also undertake qualitative and quantitative research, often in collaboration with independent researchers, on topics relating to crime, punishment and criminal behaviour. Further, as a matter of practice, assistance is also given to researchers, including students, who wish to do serious research and such research has been done. To suggest to that, there are inadequate published statistics and that that has prevented proper research is therefore quite untenable.

I will now deal with the second of his assertions - has a lack of statistics led to our penal system being unprincipled?

Since the basis of his assertion - that we do not publish statistics - is itself not clear, this further conclusion is equally questionable. Further, any objective analysis of our penal system will show that the system is based on sound practical philosophy and principles, which have been made clear several times.

While we take a tough stand on crime, we also believe strongly in compassion and rehabilitation. These principles underpin our approach to:

- (i) principles of prescribing punishment and sentencing;
- (ii) treatment and rehabilitation of prisoners when they are in prison; and
- (iii) reintegration of ex-offenders back into society.

Let me deal with punishment and sentencing. The Government's approach to prescribing punishments

is a matter of public record. During the Second Reading (in 2007) of the amendments to the Penal Code, our approach was again restated clearly. In brief summary, these are:

- (i) the type and quantum of punishment should provide sufficient flexibility to the Courts to mete out an appropriate sentence in a particular case;
- (ii) the prevalence of the offence;
- (iii) the proportionality of the penalty to an offence, taking into account its seriousness; and
- (iv) the relativity in punishment between related offences.

On sentencing, our Courts have set out the applicable principles. Our former Chief Justice, Mr Yong Pung How, had published over 882 judgments during his time on the Bench, several of which relate to criminal offences. Our current Chief Justice has been equally prolific. Subordinate Court judges publish *Sentencing Practice in the Subordinate Courts*, which is a sentencing guide, making accessible the sentencing approach for a wide range of offences. This approach is not based exclusively on either deterrence or retribution alone. Rather, the approach to sentencing an offender is to consider both these aspects, and also take into account other considerations such as potential for rehabilitation, suitability of the punishment for each individual offender and the nature of the offence committed.

Hence, both in prescribing punishments and sentencing offenders, much thought has been given to how justice can be best secured for each individual offender. The Government is also at present exploring Community Based Sentencing options, which will further equip our penal framework with the best tools to advance justice in each particular case.

Let me deal with treatment and rehabilitation of prisoners in prison. As stated earlier, we believe strongly in rehabilitation and we believe that that process should start even while the sentences are being served. Thus, during incarceration, inmates who are genuinely willing to change are given education, training and rehabilitative opportunities that will better help them reintegrate into society after their prison sentences.

Our focus on reintegration of ex-offenders back into society continues after the prisoners are released. The Yellow Ribbon Project (YRP), set up to create awareness on giving second chances to deserving ex-offenders and generate acceptance of ex-offenders back into the community, has been widely lauded by international experts, and has received an honourable mention at the 2007 United Nations Grand Award. Coupled with the YRP was the setting up of a Yellow Ribbon Fund which contributes to the development and implementation of reintegration programmes for ex-offenders.

A key measure of the success of our rehabilitation and reintegration programmes is our recidivism rate, which is now one of the lowest in the world.

Another example of the successful rehabilitation and reintegration programmes for offenders is the Home Detention Scheme. Deserving inmates are released earlier, at the tail-end of their sentences and placed on electronic monitoring to work or study. Prisoners on Home Detention have lower recidivism rates compared to the general population.

Thus, far from being unprincipled, our penal philosophy has been carefully thought through and has been articulated publicly several times. Theoretical arguments on our penal policy, bereft of any reference to these key aspects in our system, may make for good sound bites. But they do not have any real merit. In evolving our policies, we take into account the views of parties involved in the administration of justice, including the courts, law enforcement agencies, civic interest groups, the legal profession, academia and the Law Society.

I will now deal with Mr Hwang's final assertion relating to capital punishment. His suggestion is that publication of detailed statistics will lead us to a possibly conclusive answer to the debate on capital punishment.

The debate on capital punishment, Sir, is not going to be settled on the basis of statistics. Leaving aside the fact that it is not clear, from what Mr Hwang says, as to what statistics are said to be lacking, I should point out that all capital punishment cases are matters of public record in Singapore and the media usually

widely covers such cases. Each criminal case heard before a court is also a matter of public record.

On the issue of capital punishment itself, the reality is that there is no universal consensus on such punishment, and there is unlikely to be any such consensus, anytime soon. Serious and bitter debate on capital punishment has raged on in many countries. The philosophical and ideological chasms that separate the proponents and opponents of capital punishment are quite unbridgeable. Both sides marshal powerful arguments.

On an issue like this, the Government has to take a stand. And the Government believes that death penalty should be retained. A *Straits Times* survey conducted a few years ago reported that 95% of Singaporeans supported the retention of the death penalty.

Our firm position on crimes and the considerable benefits of such a stand to our society can be illustrated by reference to the drug situation. In a region where drug is a very serious problem, Singapore has kept the problem very much under control and is in fact almost unique in battling it successfully so far. Members know that in the last 15 years, the drug situation has been getting from bad to worse in many countries, both in this region, and in the world.

Why have we succeeded so far, when so many others have not? It is because we took a practical, hard headed approach to the problem and tackled it decisively. In this context, the introduction of the death penalty for drug trafficking has, we believe, had the deterrent effect. There are no widely prevalent syndicated drug activities linked to organised crimes in Singapore, in contrast to the hierarchical and organised drug syndicates and cartels in various countries. As a result of our policies, thousands of young people have been saved from the drug menace.

Singaporeans appreciate the safe environment here. And the international community has taken note of our success in maintaining law and order. In 2008, the Institute for Management Development (IMD) World Competitiveness Yearbook ranked Singapore first in personal security and private property.

Sir, in closing, let me assure Members that our approach to penal policy is both principled and transparent. And, quite fundamentally, the approach has been shown to work, ensuring the safety and security of our citizens. We will continue to review our approach and ensure that it remains relevant and effective.