

Preventative Detention Law Introduced In House

posted (May 13, 2011)

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And while Cardona's strange seating situation was the hot button issue at today's house sitting, there was some very serious government business at hand, namely a raft of stringent anti crime legislation.

It's five pieces of legislation, the Crime Control and Criminal Justice Amendment Bill, The Belize Constitution Eighth Amendment Bill, the Indictable Procedure Amendment Bill, the Juries Amendment Bill and the Supreme Court of Judicature Amendment Bill.

Those will legalize - among other things - preventative detention, trial without jury in certain criminal cases, and admission of statements as evidence so that witnesses don't have to appear to testify.

Preventative detention is the most controversial one. That would allow government to detain persons for possibly as long as 21 days, instead of the standard 48 hours, providing certain conditions are met.

That requires a change in the constitution - which means it requires the supports of three-fourths of the house, or 24 of the 31 representatives after 90 days of public consultation.

Prime Minister Barrow explained that the first step is passing what's called enabling legislation - which is the constitutional change - followed by implementing legislation which will specify just how long citizens can be detained for. He made it clear that government will change the constitution but is open to an argument on how long and under what terms preventative detention will be permitted:..



PM Dean Barrow

PM Dean Barrow

"If we succeed in changing the constitution, what we are doing is to introduce into the constitution and enabling provision. In other words as things now stand you can't have a law that provides for the detention of citizens for longer than 48 hours without a charge being laid - without being taken before a court because the constitution prevents that from happening. If this change goes through that would no longer be the case. The constitution would permit the passage of a detailed bill that would then spell out what the implementing provisions of a

preventative detention regime would be. Under the implementing legislation any detention order that would be possible that the police could secure from the authorities could not last longer than 21 days. If there is a need to extend that under the implementing law that law will provide for an application so to extend to be made to a judge of the Supreme Court. Let me point out Mr. Speaker that there are similar laws in the UK, in India and in other countries, now Mr. Speaker the preventative detention amendment is sure to attract a great deal of debate as it had done on the last occasion when we attempted it. I want to make clear that those that are engaging in the debate - I would want to suggest ought to try to be helpful - try to be constructive - ought to try to make suggestions to help the government and the society to deal with this problem that we are trying to attack. It's not useful as to do what some lawyers have tried to do - simple to get up and criticize and to hurl accusations and to make charges. There is a problem and only a fool would not accept that it is a huge problem that requires efforts of all of us. Nobody is going to stand on this side of the house and suggest that the draft we provide is going to be perfect. we are hoping that that draft will in fact be improve as a consequence of the debate, but what we want to signal is that once we have the numbers on this side we will pass the constitutional amendment and so really I would ask those who don't particularly like it to reserve their thunder to reserve their fire for the actual detailed provisions of the implementing legislation so that they can help to ensure that those detail provisions are all that they should be go only as far as they need to go in terms of helping the government and the society to address the problem."



PM Dean Barrow

PM Dean Barrow

"The government must always be prepared to be flexible. That's the essence of democracy, but I am repeating to you that I am convince based on the little soundings we have done that admittedly are not scientific. I am convince that the opposition to these measures will come only from a small but vocal minority and from some I suppose particular organizations. I know the bar has already started but I think it would be principally a combination of the bar and the constitutional opposition. I've run these notions circle by the chamber of commerce with whom I have quarterly meetings. We had that meeting a week or so ago and they are certainly not opposition. So I am absolutely convince, it is my unshakable conviction, unsinkable conviction that the majority of citizens is behind these measures and I will not be deterred by however vocal the opposition is as long as I can be persuaded or as long as I remain persuaded that it will be a minority opposition."

PUP Calls GOB Anti Crime Measures "Repressive"

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In mid-May the government presented five pieces of legislation in the House Of Representatives, all of them drastic anti-crime measures. The raft of legislation would, among other things, allow preventative detention, trial

without jury in certain cases, and anonymous witnesses.

They are inherently controversial but government's thinking seems to be that desperate times call for desperate measures.

Except that the opposition isn't nearly convinced. Yes, often times, they oppose just for opposing's sake, but this time the party says it has put together a coherent, fairly simple position paper on the proposed legislation. They hope to get enough public support to block most of the legislation - we found out why at a press conference this morning:

Jules Vasquez Reporting:



Hon. Francis Fonseca

Hon Francis Fonseca - Senior Deputy, PUP

"We believe there is absolutely every need for us to be very concerned about these proposed amendments. So we have to do everything in our power to ensure that the Belizean people understand exactly what the Government is proposing."

Hon. Lisa Shoman - Senator, PUP

"This is our way of helping to explain, educate and demystify what is in some of the laws."

The Legal lights of the PUP held the briefing to at Indpenddnce Hall before a small group of supporters and press to discuss the five main pieces of legislation - of which the party strongly opposes four - calling the package repressive:

Hon. Francis Fonseca

"It is a fundamental responsibility of a Government to ensure the safety and personal security of its citizens but repression cannot and should not be justified on a false promise of security."

And the one that ah's excited the most debate is preventative detention:

Hon. Francis Fonseca

"During that period of detention, the detainee will be denied all of those personal liberty rights customarily associated with being detained -and this is very important - or even on remand - such as access to a lawyer, access to family members especially in the case of minors, access to a phone call, access to medical treatment and care, access to a Justice of the Peace and access to the Supreme Court (habeas corpus). The PUP cannot and will not support this proposed amendment to the Constitution of Belize."

The PUP also opposes the amendment which would allow witnesses to remain anonymous:

Hon. Francis Fonseca

"The fundamental, long-standing common law and natural justice right enshrined in our Constitution, of every accused person to know his or her accuser, to face that accuser, and to challenge the veracity of that accuser through cross-examination, should not be so readily sacrificed even on the altar of crisis, much less in a spirit of desperation."

With these objections and a nine page position paper, the party says it will emphatically oppose the amendments:

Hon. Francis Fonseca

"We will be very robust in advancing our position in this issue at the House of Representatives, in the Senate, and the public area - obviously in the public consultations. We believe there is absolutely every need for us to be very concerned about these proposed amendments."



Hon. Lisa Shoman

"Invite us anytime, anywhere, and we will accept any challenge to debate the merits and demerits of these proposed legislations."

According to the opposition, if these laws are passed as is:

Hon. Francis Fonseca

"We would be living in a much more fearful society, a much less freer society."

And they hope they can force the government to backtrack:

Hon. Lisa Shoman

"The Prime Minister uses his super-majority to pass what he wants, but the voice of the people have proven time and again, that when the Prime Minister is forced to

have a hard look at what he has proposed, then there are times when he is forced to walk it back."

The opposition does support one legislative measure and that is the SUPREME COURT OF JUDICATURE (AMENDMENT) BILL, which provides that an appeal against the decision of a magistrate will NOT operate as an automatic stay of execution of the Magistrate's decision. That loophole had recently been exposed when Mexican Jose Luis Robles Beltran pleaded guilty to gun possession in the free zone, filed an immediate appeal - and was free to go - had he not been further detained by authorities.

Preventative Detention Explained

posted (April 6, 2011)

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The Police Minister also spoke about preventative detention. As the Prime Minister had indicated, government is committed to go through with it - but Singh says we've gotten it wrong: the proposal is not for detention of 90 days, it's 21 days. He explained:..



Hon. Doug Singh

Doug Singh, Minister of Police and Public Safety

"First of all, it is not 60 days or 90 days as is being touted there by members of the media, and certainly by members of the Opposition. It certainly is not that; I don't know where that number came from. In the initial piece of legislation that was submitted - that was being proposed - it was 7 days, up to a maximum of 30 days. The

Government is looking at, perhaps, an outside period of 21 days, perhaps may be between 14 to 21 days, certainly with checks and balances, certainly with provisions in there for the protection, and to avoid the abuse."

As currently proposed, a judge would have to give the order to extend it to 30 days. The preventative detention law will require a constitutional amendment which Singh says will necessarily go through the required process of consultation. He says the provisional legislation will detail the safeguards against abuse that will be built into the law.

And for those who aren't quite clear on it, preventative detention means detaining someone for up to three weeks on the suspicion that they are somehow involved in a crime or gang activity, even though police don't have reason to charge them.

PM Discuss Tough New Crime Measures

posted (May 5, 2011)

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And while the crime situation has not abated, Government is going to the House of Representatives next week Friday with a raft of drastic anti-crime measures. They include the controversial preventative detention and trial without jury for murder.

Speaking with the press yesterday, the Prime Minister elaborated on the new measures:



PM Dean Barrow

"The replacement of trial by jury in murder cases, we are looking as well that attempted murder and conspiracy to murder, abetment for murder. In all those instances we want to replace trial by jury with trial by a judge. There is no need for constitutional amendment the way we read the law in order to do that, so that is certainly going, but at the same time we will be introducing the bill to amend the constitution to provide for preventative detention. Finally we will be amending the constitution to ensure that the death penalty is going to be beyond constitutional challenge. We are going to deal with that Pratt and Morgan situation which said in terms of the Privy Council if you are on death row for in excess of 5 years we are going to deal with that. We will still have laws under those constitutional changes that will spell out, that will flesh out how actually for example implement the preventative detention. Now you can't hold somebody for more than 48 hours. The constitution will say you can pass a law that will allow you to hold somebody for 14 or 21 days or whatever but that law will then have to be written up that will say before the police can grab somebody they must make some kind of application to some tribunal - things like that, those details will find themselves in laws that will be drafted in accordance with the constitutional permission that will gain as a consequence of the amendments."

Government will also change the law as it relates to persons who have been convicted at the magistrate's court level but immediately apply for appeal and thus get a stay of the judgment and are free to go pending that appeal.

Government Will Change Laws, Constitution To Toughen Up On Crime

posted (April 5, 2011)

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And on the heels of this weekend's four murders in 24 hours, Cabinet today decided to proceed with the implementation of a package of get-tough anti-crime initiatives.

According to an official release this evening, Cabinet agreed to introduce a Bill in the House of Representative proposing constitutional changes for Preventive Detention, which - as it was originally proposed, would allow the 90 day detention of persons suspected of being involved in gang activity, without them being charged.

But the controversial nature of that proposal pales when compared to the other: Cabinet agreed to present legislation for the provision of Trial by Judge alone in certain limited cases and circumstances - presumably when there is a gang related murder in which witnesses and jurors would be subject to intimidation.

Amendments to the law will also be presented to preserve the anonymity of witnesses in gang-related cases.

Yesterday at a crime crisis press conference, the prime minister discussed these controversial proposals and also another directive to get magistrate's to compose a case file for cases that are dismissed so that they can be appeals:



Prime Minister Dean Barrow

Prime Minister Dean Barrow

"We are going to pass a law that will give Magistrates a time limit in which - and that is the case now - they have to prepare a they have to prepare their reasons for decisions. It's just that now there is the requirement, but it is violated with impunity and nothing happens. Well consequences are going to attach to the failure of any magistrate to prepare the reason for decisions in a timely fashion so that the appeal can be dealt with. So that these people don't simply abuse the system and are allowed to get away scot free. I will go to Cabinet tomorrow, and I will ask that we reintroduce provisions change the constitution to bring into force preventative detention laws. Again, I am very sorry that at the last occasion, there was an outcry. We are at a point now where if all people of good

sense don't realize that the situation is so extreme as to demand a measure like that, then I'm sorry. We will simply - once Cabinet gives me the approval - we will simply have to proceed in the face of whatever opposition there is. The Attorney General is being asked to meet with the Upper Judiciary. The death penalty is still on the books in this country. But in those cases where in fact the court is entitled to pass a sentence of death, we want that sentence in fact imposed. We're going to look at how we can actually preserve the anonymity of such a person. In other words, we will have to disclose the statement that is being made, but we are going to look at how we can fix the law so that we don't have to disclose the name of the person. There will have to be all sorts of safeguards built around this to ensure that there is no violation or abuse, but we have to look at it. I am at a point - I've said that in terms of preventative detention - I am determined to go forward in that. I need to be certain that my Cabinet is of the same mind. Now I am going out on a limb. I for one am certainly prepared to look at removing trial by jury in the case of charges for murder. That is - well as of now - I am flying solo on that one, but I am telling you that I will certainly ensure that this debate at least take place. Although, I can't go as far to as say that as with the preventative detention provision, I am confident that we will at least take those to the National Assembly."

Reports are that there will also be much stiffer penalties for possession of illegal firearms. The official release stresses that all these measures are being taken in the larger context of the social interventions and job creation efforts.

PM Lays Out Crime Plan; Proposes Controversial Measures

posted (April 4, 2011)

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As we showed you in our first segment, this weekend in the city was witness to a panorama of violent crime - and it sent the government and security apparatus scrambling into a round of emergency meetings on Sunday. Coming out of those meetings is a new deployment strategy that will see more personnel, police and BDF on the ground in the city.

The Prime Minister held a press conference at the raccoon Street police station this afternoon flanked by the head of every single security and law enforcement head to say they are treating this latest spate of gang crime as a full blown crisis:...



Hon. Doug Singh

Hon. Doug Singh, Minister of Police

"January and February showed an average of 3 per month murders in the city and I am speaking specifically of Belize City. the month of March however there was an extreme spike, it was a total of 12 murders alone in the month of March and we are now only now a few days into April and we've had 4 murders just over the weekend. The pattern showed that as of March 10th there has been an increase

or a sustain pattern of murder in particular gang violence and gang related murders in the city. An average of about 3 per weekend which has brought us up to that number of 12 for the entire month."

Hon. Dean Barrow, Prime Minister

"We really are beginning to find out or are entering into a new phase in the battle to regain control certainly of Belize City."

Hon. Doug Singh, Minister of Police *"There was a coordinated meeting yesterday and in that meeting a number of reactions have been plan. This is to help to keep the citizens of Belize safer. Those include certainly additional policing and specifically we have had a commitment from the BDF to deploy an additional company - 30 additional officers to work in the sustain operation to boost the police and BDF operations in the city and in specific crime ridden areas. The Belmopan police staff will continue to be deploy in Belize City for the remainder of the week and ongoing which will see a total of 20 additional personnel to conduct foot patrols. In other words the exercise that we had last week will continue, it will be sustain because we have noted that the additional man power on the street had led to some level of success in the apprehension of these individuals."*

"Eastern Division will continue to conduct extra patrols which will see a total of 20 additional personnel's also doing foot patrols. If necessary we will increase those patrol periods from the normal 8 hour patrol to 12 hour patrol so that we can have more officers on the ground. We will conduct more shut down operations and that specifically the vehicle check points. Certainly we want to this countrywide because the problem isn't just restricted to Belize City but we are going to focus this directly in certain zones in Belize City to restrict the movements and monitor the movements of certain criminals who may come out of their neighborhoods in order to commit these criminal activities."

And more than just putting boots on the ground - the Prime Minister says he is ready to impose some very serious laws which will no doubt be criticized as draconian.

First among them is the roundly condemned preventative detention. We say roundly condemned because when it was first proposed in April of

2008 - there was vocal opposition. The law would empower the courts to order the detention of persons suspected of being involved in gang activity, or in the commission of murder, but upon whom no charge has been laid.

Now that's against the entire presumption of innocence until guilt is proven and against so much more in the lawbooks. Which is why it was scrapped last time. But this time, the PM said he is ready to take it to its logical conclusion, no matter the political cost - in fact he's prepared to even go further:..



PM Dean Barrow

Hon. Dean Barrow, Prime Minister

"I will go to Cabinet tomorrow and I will ask that we re-introduce the provisions to change the constitution to bring into force preventative detention laws. Again I am very sorry on the last occasion, there was an outcry, we are at a point now where if all people of good sense among us don't realize that the situation is so extreme as to demand a measure like that then I am sorry. We will simply, once Cabinet gives me the approval, we will simply have to proceed in the face of whatever opposition there is. We are going to look at how we can actually preserve the anonymity of such a person. In other words we will have to disclose the statement that's been made but we are going to look at how we can fix the law so that we don't have to disclose the name of the person. It will have to be all sorts of safeguards built around this to ensure that there is no violation or abuse but we have to look at that. I am at a point - I've said that in terms of the preventative detention, I am determine to go forward with that. I need to be certain that my Cabinet is of the same mind. Now I am going out on a limb - I for one am certainly prepared to look at removing trial by jury in the case of charges for murder. That is, as of now I am flying solo on that one but I am telling you that I will certainly ensure that that debate at least takes place although I can't go as far as to say that as with the preventative detention provisions I am confident that we will at least take those to the national assembly."

"Really we seem to be confronting a degree of nihilism on the part of these young men that is obliging us to go where we haven't thought of going before."

No date yet for when those proposals will be tabled - and there's no telling yet if the second one, for trials without juries will even be tabled....

PM Barrow talks to *Amandala* on “preventative detention” proposals

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Author: Adele Ramos - adelescribe@gmail.com

The Barrow administration first proposed preventative detention in April 2008, but scrapped those plans about a month later, in the face of vocal public opposition. With a spike in wanton murders this weekend, Prime Minister Dean Barrow promptly announced on Monday, April 4, that his administration would push through those preventative detention proposals, regardless of opposition to them.

“It is admittedly a draconian move,” Barrow asserted.

When preventative detention was first proposed, the plan was for an initial detention of 7 days, with a possible extension to 30 days. Speaking with *Amandala* Wednesday evening, Barrow said, “For sure it will not be as little as 7 days” this time around.

He told us that the time for detention will have to be increased—to a minimum of 14 days, although he is proposing a 21-day detention period, during which a person, and specifically a gang member, could be held without being charged for any crime.

Cabinet announced after its meeting this Tuesday, April 5, that it supports the introduction of a Bill in the House of Representatives for changes to the Belize Constitution which would make preventative detention legal, subject to the appropriate safeguards.

Another major decision endorsed at this week’s Cabinet meeting but not disclosed in the press release, was a decision to hire a foreign Commissioner of Police, a post for which applications would be taken from across the Commonwealth. ComPol Crispin Jeffries would be retained until the replacement comes within the next 3 to 6 months.

A further measure announced in Cabinet’s Tuesday release is the introduction of laws to allow trial by judge alone, rather than judge and jury, in cases of murder.

Fourthly, Cabinet agreed to amendments to preserve the anonymity of witnesses in gang-related cases.

As the law now stands, the names of witnesses are disclosed to the defense before or during trial, and witness intimidation and even the killing of witnesses have occurred.

Amandala did wide research on the Internet to see where preventative detention has been used and in what fashion it has been applied.

Formal application is rare within our region. However, we found cases from Costa Rica, where reports of preventative detention are frequently in the media for anything from suspicion of money laundering to allegations of wife beating, but also for persons accused of gang-related crimes. Detention in Costa Rica can be ordered for up to a year. Countries like the UK had introduced preventative detention provisions in anti-terrorism strategies. The UK organization, the National Council for Civil Liberties (also known as Liberty) documents that, “Until January 2011, for individuals suspected of terrorism, the

maximum period of pre-charge detention was 28 days – more than seven times the limit for someone suspected of murder.”

The system began to be introduced in 2000, when the time for detention was 7 days, but it was increased in 2003 to 14 days. A proposal in 2006 to implement preventative detention for 90 days was scuttled, and it was then increased to 28 days. The time limit has, this year, reverted to 14 days.

We asked Prime Minister Barrow what model Belize is following. His response: the UK model.

As the law of Belize now stands, suspects can be held for 48 hours (2 days), and if they are not charged, they must be let go. The introduction of the new preventative detention laws would mean that persons could be held seven times longer, at a minimum, without being charged.

Barrow, who said the proposal to introduce preventative detention in 2008 and again in 2011 was his idea, told our newspaper that whereas he is proposing not less than 14 days and up to 21 days, he would be guided by the recommendations of the professionals in the security forces.

He told us that apart from amending the Constitution to allow for extended preventative detention, an ordinary law would have to be passed before the government implements preventative detention. This ordinary law would spell out the process to be engaged in by law enforcement authorities.

Barrow said that the targets of preventative detention would be persons in gangs whose names are on an official list.

The recent killings, said Barrow, were said to have been a message to police, who had locked up a gang leader—a message that the gangs could operate with impunity.

In order to avoid this in the future, said Barrow, the police would have to lock up all the known players to ensure that none of them will act.

All known “shooters” would be picked up in the future to prevent an escalation in crime or a retaliation, said Barrow. He added that they would be held in custody until things “cool off.”

7 News archives online contains three stories that detail past efforts by the Police Department to do this type of preventative detention, albeit for a much shorter time, due to restrictions that limit how long a suspect can be held without being charged for a crime.

In February 2006, the news station had reported that police had rounded up 100 boys and men from the City, as a part of “pro-active policing” efforts. Police has said the persons had been taken in to talk—never locked inside a cell. Women relatives were furious at the police for the sudden and sweeping round-up.

In June 2007, it had been reported that armed police had been rounding up key gang figures from George Street and Back A Town, to try and diffuse tensions.

In August 2007, it had been reported that about 60 young men from the City had been detained, but released the following morning.

Preventative detention, where it is formalized, can either be ordered by the executive (Central Government) or by the judiciary (the courts.)

Apart from crime prevention, such orders have been used internationally to hold key persons for extended interrogation while an investigation is ongoing.

In a paper titled, "Preventive Detention in the War on Terror: A Comparison of How the United States, Britain, and Israel Detain and Incapacitate Terrorist Suspects," Stephanie Cooper Blum wrote: "Although difficulty in convicting a person in ordinary criminal proceedings is not a reason for employing administrative detention, if evidence is classified and cannot be disclosed, administrative detention becomes an option."

Preventative detention usually sparks concerns over human rights abuses against persons who may innocently fall into the net of the security forces.

We asked the Prime Minister whether the legislation would be specifically worded to say that the persons to be subject to preventative detention are gang members—he said yes, since he is "not interested in another single solitary soul," and he is not interested in using the provisions as a net to catch drug traffickers, except where they, too, are involved in gang activities.

Barrow said that the detainees would be limited to people on a police list and named with supporting documentation.

When we asked him to what extent democratic liberties would be preserved, he said he would not "ring fence" the laws to the extent that preventative detention would be rendered a failure.

When we asked him about the administration of detention orders, Barrow indicated that the initial thought is to have a 3-person committee, perhaps Senator Godwin Hulse and two others, who the police would make a case to before they get a preventative detention order against suspects.

He said, however, that it may conversely be decided that the order should be issued through the court.

Barrow said that he wants to have the proposed amendments and laws, including the laws to permit anonymity of witnesses, introduced no later than the end of April or the first week in May.

"Are you concerned that this strategy will backfire?" we asked the Prime Minister.

He said that he does not think introducing preventative detention will make the crime situation worse. "If we do nothing, except increase police presence, I don't think we will have any effect," he commented.

Barrow closed by saying that the package of measures has been expanded to also focus on the provision of more jobs infrastructure. He said that the government is also exploring options for financing to boost private sector growth, which would, in turn, create jobs.

We asked the Prime Minister if he has decided to not pursue recommendations, made separately by Wayne Uter and C.B. Hyde, for a conscription or mandatory labor, usually for

military service but not limited to that, and Barrow said it is something he would shortly review.

He told us that he would have his legal drafts-people put together a summary of what would be required, and also ask a finance team to look at the costing, depending on the persons to be targeted.

He indicated that while Government cannot afford a full-blown national draft program, a limited version to target a few hundred people in the first instance, could be considered.