



Legal Aid, Sentencing & Punishment of Offenders Bill

House of Commons Report Stage - 31 October, 01 & 02 November

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform.

Overview

The Prison Reform Trust welcomes the reforms to sentencing included in Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Bill. The Bill presents an opportunity to get to grips with a distorted, often ineffective, system which places too much store on what imprisonment can achieve.

The Ministry of Justice Green Paper *Breaking the Cycle* presented a coherent programme of legislative reform to reduce unnecessary use of imprisonment. Such reform is designed to make better use of scarce public funds and ameliorate the damaging effects of populist criminal justice legislation from the past fifteen years or so.

With Government amendments to reform indeterminate sentences of Imprisonment for Public Protection (IPPs), the Bill contains many important features of the Green Paper. It has, however, lost some of its clarity of purpose. We hope that the Report Stage debates on the suggested amendments included within this briefing will enable the Bill to be strengthened to help create a fairer and more effective justice system.

This briefing therefore focuses on key clauses and amendments to Part 3:

- Community Sentences (Clause 54)
- Child Curfews (Clause 68)
- Remand (Clause 73 & Schedule 10)
- Electronic Monitoring (Clauses 77 & 78)
- Remands to youth detention accommodation (Clauses 81,82, 83 & 84)
- Imprisonment for Public Protection (New Clauses 31-34)
- Women in Prison (New Clause 28)
- Restorative Justice (New Clause 35)
- Knife Crime (Clause 113)

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Community sentences (Amendment 144)

Page 39, line 30 [*Clause 54*], at end insert —

- (3A) The court has a duty when passing a sentence of imprisonment for a term not exceeding 6 months to only pass said sentence where the court considers that no other method of dealing with the person is appropriate and must —
- (a) state its reasons for the opinion that no other method of dealing with the person is appropriate, and
 - (b) have those reasons entered in the record of the proceedings.”

Summary

This amendment would require the court to state its reasons for passing a sentence of less than six months and have those reasons entered into the record or proceedings. The Prison Reform Trust strongly supports the Make Justice Work campaign for better use of community sentences and welcomes this proposed amendment.

The evidence is clear that community penalties, treatment for addicts, mental healthcare and sorting out housing and employment all work better than a short prison sentence. In 2008, community sentences were more effective (by 8 per cent) at reducing one year proven reoffending rates than custodial sentences of less than 12 months for similar offences.¹ This is achieved at a fraction of the budget for incarceration.

A report published by the National Audit Office² in 2010 revealed that 60 per cent of short-sentenced prisoners commit another crime within a year of getting out, costing the country between £7 billion and £10 billion a year. The main findings of the report were:

- Prisoners on short-term sentences are left idle in their cells for much of the day.
- Overcrowding means that despite having an average of 16 convictions each, little is done to tackle their reoffending.
- Activities for prisoners are "inadequate" and prison bosses know little about how well the schemes they do run work.
- Around 60,000 prisoners are jailed for less than twelve months each year, costing taxpayers £300 million.
- Often they are homeless, unemployed and addicted to drugs or alcohol.
- The majority spend 45 days or less in custody and are not given "appropriate assistance" to help them turn their lives around.
- The National Offender Management Service (NOMS) has little information on the quality, cost or effectiveness of its rehabilitation activities.

Edward Leigh, chairman of the Public Accounts Committee, said the report showed the short prison terms served, *"little purpose over and above taking the offenders in question out of the community for a short time. The uncomfortable truth is that they are not working, studying or doing almost anything constructive with their time. Indeed, half of them spend all day, every day sitting in their cells."*³

1 *Compendium of reoffending statistics and analysis*, Ministry of Justice (2010)

2 *Managing offenders on short custodial sentences*, National Audit Office (2010)

3 'Prisoner reoffending costs economy £10bn annually', The Daily Telegraph (10 March 2010)

Child Curfews (Amendment 106)

Leave out Clause 68

Summary

This amendment deletes both the extension of curfews for children from 12 to 16 hours a day and the increased maximum duration from six to 12 months. The Prison Reform Trust has serious concerns about these proposed increases, which we believe could result in courts setting children up to fail and an increased occurrence of breach of Youth Rehabilitation Orders (YRO).

Paragraph 14 of Schedule 1 of the Criminal Justice Act 2008 gives courts the power to impose a curfew as one of the requirements of a YRO. This requires the offender to remain at a specified place for specified periods. Most curfew requirements are monitored by electronic tag. The Ministry of Justice estimates that around 24,000 adults and children are being electronically monitored at any one time.

Curfews are a form of house arrest and should be considered within the spectrum of forms of incarceration and so used proportionately. Research published by the National Children's Bureau⁴ suggests that many children have difficulties complying with curfews as a result of factors including lack of parental support, domestic violence and living in unsafe accommodation. That is why the Prison Reform Trust supported the previous Labour Government's decision to limit a curfew to a maximum of 12 hours a day and last no longer than six months.

The *Breaking the Cycle* Green Paper outlined the Coalition Government's intention to "make curfews tougher to punish offenders and give communities respite from their criminal behavior."⁵ The Government's subsequent response to the consultation contained no analysis of the views of stakeholders and no more detail, for example, on the number of people who might be subject to more stringent curfew requirements. Instead, the Minister simply confirmed the Government's decision, saying:

"These tougher curfew conditions will keep offenders off the street for longer, stop them socialising in the evenings and keep them away from situations that could land them in trouble again."⁶

Interestingly, the press release included a case study featuring "Stephen" who had recently been subject to a daily curfew from 7pm to 7am for a period of five months. He described the curfew as a punishment that made him understand what he had done wrong and a turning point in his life. Stephen's experience demonstrates that the current limit of 12 hours a day for up to six months can achieve the objectives Ministers want.

If the Ministry of Justice is unable to provide sufficient reassurance as to how this measure will reduce reoffending, we believe this clause should be deleted from the Bill. Failing that, we hope the Government will at least be persuaded not to increase the maximum number of hours from 12 to 16.

⁴ *Into the Breach: The enforcement of statutory orders in the youth justice system*, Prison Reform Trust and National Children's Bureau (May 2011)

⁵ *Breaking the Cycle*, Ministry of Justice (December 2010)

⁶ Ministry of Justice Press Release (08 August 2011)

Remand (Clause 73 & Schedule 10)

Over 55,000 people are sent to prison each year to await trial. By law, someone appearing before a court to face charges is entitled to a presumption in favour of bail, unless they are charged with serious offences such as murder, manslaughter or rape. However, unlike sentencing, which is proportionate to the seriousness of the offence, bail decisions can be based on the perceived risk that the defendant will fail to appear for trial, intimidate witnesses, or commit further offences. Many are currently sent to prison, charged with offences which would not merit a custodial sentence.

- In 2009, an estimated 39 per cent of people remanded into custody did not go on to receive a custodial sentence, including around 11,000 who were acquitted.⁷
- Just under two-thirds of people received into prison on remand awaiting trial are accused of non-violent offences.
- Last year, three-quarters of children remanded by the magistrates' court, and one-third by the Crown court, were subsequently acquitted or given a community sentence.⁸
- In the year up to March 2011, 4,421 women were remanded in custody to await trial.⁹ Women on remand make up 18 per cent of the female prison population.¹⁰
- Remand prisoners make up around 15 per cent of the prison population, but they accounted for 50 per cent of self-inflicted deaths in 2010.¹¹

Time on remand is a punishment with harmful effects that go beyond the loss of liberty. In 2009, the average time spent on remand, awaiting trial, was 15 weeks.¹² As remand prisoners are held in local prisons, which are typically older and more overcrowded than those for sentenced prisoners, they are more likely to be locked up for most of the day, more likely to be confined two to a cell designed for one, and less likely to have opportunities to work. Moreover, even a relatively short period in custody can result in homelessness, increased debt, family breakdown and loss of employment. Those acquitted will receive no compensation for their time behind bars.

Unnecessary remands are a waste of public money. Clause 73 and Schedule 10 remedy the misuse of custodial remand by establishing a test of a reasonable probability that the offence is imprisonable as a criterion of whether the court can deny bail. The no real prospect test would mean that defendants should not be remanded to custody if the offence is such that the defendant is unlikely to receive a custodial sentence. The test will not restrict custodial remand for serious crimes, nor where there is a risk that the person will, if released on bail, engage in domestic violence.

We hope MPs from across the political spectrum will support this necessary reform to Bail Act to ensure people are only held on remand where necessary.

For further information, please see our recent briefing at:

<http://www.prisonreformtrust.org.uk/ProjectsResearch/Remand>

⁷ House of Commons, Official Report, 11 July 2011: column 76W

⁸ *Ibid*, 05 September 2011: column 297W

⁹ Offender Management Statistics Quarterly Bulletin, January to March 2011, Table 2.1c Ministry of Justice (2010)

¹⁰ *Ibid*, Table 1.1c

¹¹ Safety in Custody 2010, England and Wales, Table 8, Ministry of Justice (2011)

¹² Judicial and Court Statistics, 2009, page 102 Ministry of Justice (2010),

Electronic Monitoring - minimum age (Amendments 107 & 108)

Clause 77, page 58, line 16, leave out 'twelve' and insert 'fourteen'

Clause 78, page 59, line 17, leave out 'twelve' and insert 'fourteen'

Summary

These amendments raise the minimum age at which a child remanded to local authority accommodation is eligible for electronic monitoring from 12 to 14 years. Younger children are likely to find compliance with conditions such as electronic monitoring more difficult due to developmental immaturity and lack of understanding of the consequences of their actions. The Prison Reform Trust believes the minimum age at which a child on bail or remand is eligible for electronic monitoring should be raised from 12 to 14 years.

Expecting the youngest children aged 12 and 13 to understand the ramifications of non-compliance is, we believe, unrealistic and can have the effect of setting children up to fail. Prison Reform Trust research has shown that breach offences account for a disproportionate number of younger children in custody. Last year, for example, one in six 10-14 year olds in custody was imprisoned primarily for breach.

Home Office research has raised concerns that electronic monitoring can also prevent children from participating in legitimate activities, like team sports, or restrict the amount of time tagged children can spend with family members who do not live at the same address, increasing the likelihood of breach.¹³ It can also have the unintended consequence of confining a child to an address in which they are unsafe for long periods. One boy in constant conflict with his mum said:

*"On anger management, they taught me to walk away but I can't because I'm on a tag. I just have to stay there – in the situation."*¹⁴

Many children in the youth justice system have a learning disability, learning difficulty or communication problem.¹⁵ The Prison Reform Trust is concerned that conditions such as electronic monitoring and curfews are routinely applied to children without adequate assessment to determine their ability to understand such requirements or how they are expected to comply. For example, a boy with special needs in custody for breaching the terms of his curfew was assessed by a clinical psychologist:

*"...he was asked if he was able to tell the time. He replied no, he could not. He had never had a watch and had never been able to tell the time, but no-one had asked when the curfew was set."*¹⁶

We believe the desired outcomes of conditional bail or remand to local authority accommodation are better achieved by encouraging positive engagement than the imposition of onerous conditions. Supporting children to continue with education and training placements and to participate in positive activities is likely to deliver better outcomes than punitive requirements that restrict children's ability to lead a normal life.

¹³ *Understanding electronic monitoring of juveniles on bail*, Home Office (2005)

¹⁴ *Into the Breach: the enforcement of statutory orders in the youth justice system*, Prison Reform Trust (2011)

¹⁵ *Seen and Heard: supporting vulnerable children in the youth justice system*, Prison Reform Trust (2010)

¹⁶ *Into the Breach*, Prison Reform Trust (2011)

Remands to youth detention (Amendments 109, 110, 111 & 112)

Clause 81, page 61, line 25, leave out 'twelve' and insert 'fourteen'

Clause 82, page 62, line 21, leave out 'twelve' and insert 'fourteen'

Clause 83, page 63, line 41, leave out 'twelve' and insert 'fourteen'

Clause 84, page 64, line 39, leave out 'twelve' and insert 'fourteen'

Summary

These amendments would raise the minimum age for remand to youth detention accommodation from 12 to 14 years.

One third of children remanded to youth detention accommodation are subsequently given community sentences, and so the Prison Reform Trust strongly supports the reforms in clauses 81, 82, 83 and 84, placing two clear sets of conditions on the court before a child can be remanded. We also support the simplified Single Remand Order to address the anomaly of 17 year-olds being treated as adults in remand legislation.

However, in conjunction with raising the minimum age at which a child can be subject to electronic monitoring, we believe the minimum age for remand to youth detention accommodation should be raised from 12 to 14 years. Where there are significant concerns of risk of harm to the public associated with releasing children under the age of 14 on bail, the court can use a secure placement under welfare legislation as is currently the case for 10 and 11 year olds.

During the Bill Committee debate, the Minister stated that "*it is the case that 12 to 13-year-olds sometimes commit serious offences and present such a risk of harm that remanding them to a secure establishment is the most appropriate way of dealing with them.*" We would not disagree with him that such children should be held in a secure place, merely that any such placement should be made under welfare, rather than criminal justice, legislation. Imprisoning a child under the age of 14 who poses no risk to the public is inappropriate and not in keeping with the principle of last resort.

The UN Convention on the Rights of the Child, of which the UK is a signatory, states that child imprisonment should be used as a last resort and for the shortest possible period. The UN Committee has raised concerns that the number of children on remand in England and Wales is high, with 1 in 4 children in custody held on remand, a higher proportion than equivalent in the adult prison population.¹⁷

Raising the minimum age at which a child can be remanded to youth detention accommodation from 12 to 14 would go some way towards tackling the overuse of remand and would encourage local authorities to make appropriate provision available in the community for children awaiting trial or conviction and would bring England and Wales into line with its European counterparts.¹⁸

¹⁷ <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

¹⁸ *Lessons from abroad: reducing child imprisonment in England and Wales*, Prison Reform Trust (2009)

Imprisonment for Public Protection (IPP) (New Clauses 31-34)

These amendments will abolish the IPP sentence and the equivalent DPP sentence for under-18s.

The indeterminate sentence of Imprisonment for Public Protection (IPP) was created by the Criminal Justice Act 2003 and introduced in 2005. A similar sentence of Detention for Public Protection was introduced for children. These sentences enable the courts to imprison for an indefinite period those convicted of 'specified' violent and sexual offences who are deemed to be dangerous, but whose offending is not so serious that they qualify for a life sentence.

This poorly-drafted legislation has left thousands of people sentenced to a bureaucratic limbo with little or no hope of gaining legitimate release. Of particular concern are people suffering from a mental illness and those with an IQ below 80, who are barred from attending offending behaviour programmes and consequently cannot attest to their reduced risk.

- As of November 2010, there were 6,375 prisoners serving an indeterminate IPP or DPP sentence.
- 3,173 of these prisoners are held beyond their tariff expiry date.¹⁹
- As of December 2009 over half of those IPP prisoners who were over tariff were still awaiting a Parole Board review of their case or a decision from a review.²⁰
- Of the 2,468 people being held beyond tariff on 19 January 2010, 466 had completed no accredited offending behaviour programmes.²¹
- Since 2005 just 202 people serving IPP sentences have been released from custody.²²

Following widespread criticism from, amongst others, the senior judiciary, the Prison Governors Association and the National Council of Independent Monitoring Boards, changes were made to the legislation limiting the availability of IPP sentences to those with a minimum tariff of two years and over (equivalent to a determinate sentence of four years). This came into effect in July 2008. However, a study published in 2010 revealed that IPPs were still being passed by the courts at a rate of around 75 per month.²³ It is estimated that, at the present rate, by 2015, about 10 per cent of the entire prison population will be serving IPP sentences.²⁴

The Coalition Government's Justice Green Paper, *Breaking the Cycle*, consulted on reform of the IPP and DPP sentences and the Ministry of Justice conducted a review over the summer. The Prison Reform Trust welcomes the Government's decision now to abolish the IPP and DPP and to reform the release test for prisoners serving these sentences. We are in favour of replacing IPPs and DPPs with determinate sentences which will provide greater clarity and transparency. Parliamentarians will need to scrutinise whether the proposed new measures for mandatory life sentences and extended determinate sentences meet the demands of fairness and proportionality.

¹⁹ House of Commons, Official Report, 29 March 2011: column 234W

²⁰ Letter from Maria Eagle MP to Andrew Stunnell MP, 19 January 2010

²¹ House of Commons, Official Report, 26 January 2010: column 732W

²² Table A3.4, Offender Management Caseload Statistics 2010, Ministry of Justice (2011)

²³ *Unjust Deserts: imprisonment for public protection*, Table 3.1 Prison Reform Trust (2010)

²⁴ House of Commons, Official Report, 23 November 2010: column 147

Women in Prison (New Clause 28)

- (1) The Secretary of State shall –
- (a) in each year, publish a strategy designed to promote the just and appropriate treatment of women in the criminal justice process.
 - (b) appoint a person with responsibility for leading and co-ordinating the implementation of that strategy.
- (2) Publication under subsection (1)(a) shall be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the strategy to the attention of persons engaged in the administration of criminal justice and of the public.’

Summary

This New Clause introduces a requirement for the Secretary of State to publish a strategy designed to promote the just and appropriate treatment of women in the criminal justice process and appoint a “champion” to co-ordinate its implementation.

Over the last 15 years, there has been a 114 per cent increase in women’s prison numbers. Most women serve short sentences for non-violent crime and for those serving less than 12 months, almost two-thirds are reconvicted within a year of release. The Home Office commissioned review by Baroness Corston in 2007, made it clear that there are sound social and economic reasons to reform women’s justice.²⁵

When women are sentenced to custody it has a profound impact on family life and can lead to inter-generational crime. Imprisonment will cause a third of women to lose their homes, reducing future chances of employment and shattering family ties. Many women offenders have children or are the primary carer for disabled or elderly dependents. Each year almost 18,000 children are separated from their mothers by imprisonment.

Many have themselves been victims of serious crime, domestic violence and sustained sexual abuse. In 2009, there were 24,114 recorded incidents of self-harm in prisons. Women accounted for 43 per cent of all incidents, despite representing just 5 per cent of the total prison population. Women’s imprisonment is not only ineffective in many cases; it is also expensive. The average cost of a women’s prison place is £56,415 a year. An intensive community order or a women’s centre placement costs less than £15,000.

With clear leadership and accountability at the national and local level it should be possible to reduce offending by women and to drive down prison numbers. Addressing the multiple and complex needs of women offenders requires close cooperation across government departments and between national and local agencies.

The recent report of the independent Women’s Justice Taskforce calls for greater ministerial accountability and a cross-government strategy to divert women from crime and reduce the women’s prison population, which includes measures of success and a clear monitoring framework.²⁶ This is very unlikely to happen without a legal requirement and so we hope Ministers will be persuaded to accept this amendment.

²⁵ *The Corston Report: Women with Particular Vulnerabilities in the Criminal Justice System* Home Office (2007)

²⁶ *Reforming Women’s Justice*, Prison Reform Trust (July 2011)

Restorative Justice for Victims (New Clause 35)

(1) Subject to subsection (2), where –

- (a) at his first hearing a defendant pleads or has pleaded guilty to an offence, and
- (b) there is an identifiable victim of that offence,

the court must remand the defendant either on bail or in custody in order that the victim shall be offered the opportunity to participate in a process of restorative justice involving contact between the offender and any person or persons affected by the offence.

(2) The court need not remand the defendant either on bail or in custody for the purpose specified in subsection (1) where it is of the opinion that the offence was so serious that this would be inappropriate.’

Summary

This New Clause introduces a requirement for restorative justice to be offered to victims of crime when an offender pleads guilty in court at first appearance. Restorative justice brings victims and offenders into communication, so that victims can tell offenders the real impact of their crime and receive an apology; and so that offenders are encouraged to take responsibility and make amends.

The last Government successfully embedded restorative justice within the youth justice system. However, according to Victim Support, fewer than 1 per cent of victims of adult crime currently have access to restorative justice. The Home Office and Ministry of Justice seven year research study of restorative justice showed that, for adult offenders and serious offences (robbery, burglary and violent offences):

- The majority of victims chose to participate in a face to face meeting with the offender, when offered by a trained restorative justice facilitator;
- 85 per cent of victims said they were satisfied with the process;
- Participation in restorative justice, pre- or post-sentence, reduced the frequency of re-offending by 14 per cent.²⁷

The Restorative Justice Council has estimated that using restorative justice pre-sentence, with 70,000 adult offenders convicted of burglary, robbery and violence, would produce cost-savings to the Criminal Justice System of £185 million from reductions in re-offending alone. In its 2010 Report, *Cutting Crime: The case for justice reinvestment*, the Justice Select Committee, chaired by Rt Hon Alan Beith MP, concluded:

“We urge the Justice Secretary to take immediate action to promote the use of restorative justice and to ensure that he puts in place a strategy which facilitates national access to restorative justice before the end of this Parliament.”²⁸

The Government voiced its commitment to pre-sentence restorative justice in its *Breaking the Cycle* Green Paper and the Justice Minister, Crispin Blunt MP recently said, “We are committed to increasing the use of restorative justice throughout the criminal justice system”. This amendment is the best means of expanding the availability of restorative justice pre-trial and so we hope all MPs will support it.

²⁷ *Breaking the Cycle Evidence Report*, Ministry of Justice (December 2010)

²⁸ *Cutting Crime: The case for justice reinvestment*, Justice Select Committee (January 2010)

Knife Crime (Amendments 154-161)

These Government amendments would introduce a mandatory minimum four month Detention and Training Order (DTO) for aggravated knife possession for 16 and 17 years olds convicted of using a knife or offensive weapon to threaten and endanger. The Government has already announced proposals for a mandatory minimum six month sentence for adults convicted of the same offence.

The Prison Reform Trust believes that MPs may wish to raise concerns about mandatory prison sentences and does not support proposals to extend the new offences of threatening with a weapon/bladed point to under-18s. There is little evidence to suggest that mandatory sentencing works with children, custodial sentences have the worst outcomes of all the sentencing options available (with almost three-quarters of children reconvicted within a year of release²⁹). The courts already have the power to sentence an under-18 year old to a maximum term of four years in prison for possession in a public place.³⁰

The latest Ministry of Justice knife possession statistics show that the number of such offences committed by children in the last quarter reduced by more than 27 per cent compared to the same period 2 years ago.³¹ A focus on how this was achieved should inform justice policy and practice. Imposing conditions which have been designed for adults on to children is an inappropriate, disproportionate and potentially ineffective response to the problem of knife crime.

²⁹ Ministry of Justice (2011) Reoffending of juveniles: results from the 2009 cohort MoJ: London

³⁰ Violent Crime Reduction Act 2006 c.38

³¹ <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/knife-possession-bulletin-q2-2011-tables.xls>