

Prison Reform Trust Briefing – Offensive Weapons Bill Report stage, House of Commons, 15 October 2018

There is understandable public concern about the recent spate of acid attacks and rise in knife crime in some inner-city areas. As the government's serious violence strategy recognises, many of the solutions lie in preventative rather than punitive measures. These include better regulation and control of supply and increased investment in early intervention, education, trauma-informed and public health responses. Many children and young adults caught up in gangs are subject to coercion by older adults and responses by public agencies need to be mindful of underlying welfare and safeguarding concerns. Provisions which unnecessarily criminalise children and young people risk driving the problem underground and could result in more vulnerable individuals being drawn into the criminal justice system, instead of putting them in contact with the treatment and support they need.

This briefing relates to amendments and new clauses tabled for the House of Commons report stage of the Bill. **We encourage MPs to support the following amendments and new clauses:**

- **Amendments 12 & 13** would replace the custodial sentences for the new offence of sale of corrosive products to under-18s with community sentences
- **Amendment 14** would make it an offence to have a corrosive substance in a public place only with the intent to cause injury to someone.
- **Amendments 15 & 16** would remove mandatory custodial sentences for a second conviction
- **Amendments 17, 18 & 19** would retain the current definition of risk for offences of threatening with an offensive weapon.
- **NC6** would require the Secretary of State to review the causes behind youth violence with offensive weapons.

We encourage MPs to oppose the following amendments:

- **NC7, NC15 and NC16** would have similar impacts of making it an offence to threaten someone in a private place.
- We also have concerns about the necessity and proportionality of NC20, 21 and 22.

About the Prison Reform Trust: The Prison Reform Trust (PRT) 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. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for prisoners and their families. For more information about this briefing contact: Mark Day | Head of Policy and Communications | Prison Reform Trust, Tel. 020 7689 7746, Email mark.day@prisonreformtrust.org.uk

Amendments

Clause 1

Amendments 12 & 13

Summary: These amendments would replace the custodial sentences for the new offence of sale of corrosive products to under-18s with community sentences. **We encourage MPs to support amendments 12 & 13.**

Explanation: We agree that the use of corrosive products should be tightly regulated and that this could include the creation of new offences relating to their sale and delivery, including appropriate grounds for defence. We question, however, whether a short prison sentence of 51 weeks (or six months under current enacted legislation) is an appropriate sanction, particularly when a large fine or regulatory penalty, such as a restriction on the ability of a retailer to trade in specific products, is likely to be an effective deterrent for any large or small trader. The Justice Secretary David Gauke has recently expressed a desire to limit the use of short prison sentences of less than 12 months and increase the use of community orders.¹ In an interview in the Times on May 26 2018, David Gauke was asked whether he would prefer there not be short sentences except in exceptional circumstance. He said: “Yes. There are exceptions but in terms of effectiveness at reducing re-offending it isn’t that effective”. He added: “I think custodial sentences should be very much a last resort”. His comments were made in response to evidence published by the Ministry of Justice which showed that for matched offenders a community order was more effective than a short prison sentence at reducing reoffending.² In view of this, it is illogical to have one government department legislating for a sanction which another has deemed counterproductive. Therefore, we would like to see custody removed as an option for punishment for the offences specified in clauses 1 and replaced with an upper limit of a high-level community order.

Clause 6

Amendment 14

Summary: This amendment would make it an offence to have a corrosive substance in a public place only with the intent to cause injury to someone. **We encourage MPs to support amendment 14.**

Explanation: Clause 6 creates a new offence of possession of a corrosive substance in a public place. Possession of a corrosive substance can already be prosecuted under section 1 of the Prevention of Crime Act 1953, and this can result in a custodial sentence, including a mandatory custodial sentence for a second offence.

¹ Sylvester, R et al (2018) ‘Under a year must be a last resort, says justice chief David Gauke’, The Times, May 26 2018. Available at: <https://www.thetimes.co.uk/article/under-a-year-in-jail-must-be-last-resort-says-justice-chief-david-gauke-msdbmfmbb>

² Ministry of Justice (2018) Analytical Summary 2018: Do offender characteristics affect the impact of short custodial sentences and court orders on reoffending?, London: Ministry of Justice. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/706597/do-offender-characteristics-affect-the-impact-of-short-custodial-sentences.pdf

Therefore, there is no need for new legislation to criminalise possession of a corrosive substance. The only rationale for this provision is that it does away with the need to prove intent to cause injury and puts the onus on the individual to prove that they had good reason for the possession of the substance. In addition, in contrast to the provisions of chapter 1 where restricted “corrosive products” are specified in schedule 1, in clause 6 a “corrosive substance” is loosely defined as any substance “which is capable of burning human skin by corrosion”. This creates a very broad and ill-defined offence, and one that will lead to unjust prosecutions, convictions and custodial sentences. At the very least, a much higher bar should be placed on prosecution. This amendment would make it an offence to have a corrosive substance in a public place only when there is intent to cause injury.

Clause 8 and 9

Amendments 15 & 16

Summary: These amendments would remove mandatory custodial sentences for a second conviction. **We encourage MPs to support amendments 15 & 16.**

Explanation: Clause 8 provides that, where a person who is 16 years of age or older is convicted in England and Wales of the offence set out in clause 6 and has at least one relevant conviction (as set out in clause 9) then the Court must impose an appropriate custodial sentence of at least 6 months for an offender aged 18 years or older or 4 months for a 16 or 17 year old. We are opposed to the use of mandatory sentences, particularly for children. There is no evidence which shows that mandatory sentences act as an effective deterrent. Research suggests that it is the prospect of being caught which has the most effective deterrent effect and not the severity of the punishment imposed.³ These provisions will limit judicial discretion and result in vulnerable children and young people being exposed to more serious offenders in prison. In July 2017 the Chief Inspector of Prisons Peter Clarke told MPs that not a single custodial establishment in England and Wales was safe to hold children and young people.⁴ It is particularly concerning that the government is legislating for mandatory penalties for an offence which is so poorly defined in the legislation, as this is likely to lead to the unjust incarceration of large numbers of children and young people.

Clause 29

Amendments 17, 18 & 19

Summary: These amendments would retain the current definition of risk for offences of threatening with an offensive weapon. **We encourage MPs to support amendments 17, 18 & 19.**

³ Nagin, D (2013) Deterrence in the Twenty-first Century: A Review of the Evidence, Pittsburgh: Carnegie Mellon University. Available at:

<https://pdfs.semanticscholar.org/c788/48cc41cdc319033079c69c7cf1d3e80498b4.pdf>

⁴ Bentham, M (2017) ‘Not a single young offender institution is safe: prison inspector’s dire warning’, The Evening Standard, July 18 2017

Explanation: Clause 29 amends existing offences of threatening with an offensive weapon or bladed product, to replace the requirement of the threat causing immediate risk of physical harm to the accused, with a requirement that the threat is such that a reasonable person who was exposed to it would think that they were at risk of immediate physical harm. There is a mandatory minimum custodial sentence of a four-month Detention and Training Order (DTO) for children aged 16 and 17 and a custodial sentence of at least six months for an adult convicted under the existing legislation. Removing the requirement that there is any objective risk of physical harm, and basing the test purely on the victim's "reasonable fears", substantially reduces the conviction threshold for this offence. Given the mandatory custodial penalties attached, we believe this is far too low a threshold to impose, which will result in children and young people being unnecessarily sent to prison. As they are still maturing, children and young adults can be impulsive and lack empathy and may find it difficult to anticipate the impact of their behaviour on others. Therefore, these proposals could place young people at a particular disadvantage for behaviour whose consequences they did not foresee and which did not put anyone at an objective risk.

New Clauses

NC6 would require the Secretary of State to review the causes behind youth violence with offensive weapons. The government's serious violence strategy recognises the importance of investment in preventative measures in tackling serious violence, including early intervention, education, trauma-informed and public health responses. Therefore, it would be helpful for the government to review the legislation six months after it receives Royal Assent in order to assess whether the government has achieved an appropriate balance between prevention and enforcement. **We encourage MPs to support NC6.**

NC16 makes it an offence to threaten someone in a *private* place. The intention behind NC7 and NC15 appear to be similar - they would make the threatening offence applicable in a public or private place. Given the concerns highlighted above in relation to clauses 8 and 9, these new clauses would be likely to increase the use of mandatory custodial sentences for children and young people. **We encourage MPs to oppose NC16, NC7 & NC15.**

NC20 would make it an offence to threaten with a non-corrosive substance: "A person commits an offence if they threaten a person with a substance they *claim or imply is corrosive*." This is particularly problematic for children and young adults, whose lack of maturity may result in them saying reckless things in the heat of the moment without considering the consequences. While the disposal is limited to a fine, it would nonetheless risk bringing more children and young people needlessly into the criminal justice system.

NC21 and 22 create a specific offence for possessing and threatening with a corrosive substance on school etc. premises. It is unclear why a specific new offence is needed or how it relates to the existing provisions of the bill.