

Criminal Justice Committee

Automatic early release of prisoners and prosecution policy on public safety and prison population

Written submission by the Criminal Justice Voluntary Sector Forum

Purpose of this paper

The Criminal Justice Voluntary Sector Forum (CJVSF) is pleased to respond to the Scottish Parliament's Criminal Justice Committee invitation to share our views on the content of the two statements made in Parliament on 10th October 2024 by:

- the Cabinet Secretary for Justice¹ and;
- the Lord Advocate.²

These statements focused on automatic early release of prisoners and prosecution guidance on public safety and the prison population.

About the CJVSF

The Criminal Justice Voluntary Sector Forum (CJVSF) is a collaboration of voluntary sector organisations working within justice in Scotland. It is hosted by the Coalition of Care and support Providers in Scotland (CCPS) and is funded by the Scottish Government and membership fees.

Our response to this call for views reflects the feedback we have received from our members, all of whom are working with people affected by Scotland's justice system. CJVSF members deliver a wide range of services for individuals and families in prisons and in the community.³ Members work across a range of policy areas, including youth justice, children and families, community justice, social care, employability, health and housing.

Views on the content of the Cabinet Secretary's Statement

Views on proposed changes to short term sentences

The Committee asked for our views on: *“the pros and cons of bringing forward the point of automatic early release from 50% to 40% of the sentence; whether prisoners serving sentences for certain offences be excluded from this and if so which ones; what other measures aimed at mitigating the impact of the change on victims, etc should be included; whether the change should be permanent or temporary?”*

Given the current (and further potential) problems associated with prison overcrowding, we agree that this measure is needed in the short term to reduce the

¹ [Meeting of the Parliament: 10/10/2024 | Scottish Parliament Website](#)

² [Meeting of the Parliament: 10/10/2024 | Scottish Parliament Website](#)

³ A full list of organisations that are members of the Forum can be found on the [CJVSF website](#).

prison population and mitigate the damaging impacts of overcrowding for individuals in prison, their families and prison staff.

Before offering a view on whether this change should be permanent, CJVSF would welcome further information on any projections or analysis being done in how these changes could result in various scenarios or unintended consequences in the system, such as impacts on court backlogs and/or sentencing approaches. For example, members have queried whether there could be a risk of up-tariffing, with longer sentences for individuals potentially being imposed at the point of sentencing in response to a future earlier release point. When the presumption against short term sentences was initially introduced, for example, evidence given to the then Justice Committee suggested this led to some 'up-tariffing' of sentences to just over three months.⁴

To effectively implement the proposed changes if the Bill does go ahead, members have highlighted the following areas where potential risks will need to be considered and adequately mitigated:

The impact on people affected by crime: Members highlighted the importance of victims being kept appropriately informed about any changes to release dates and trauma-informed support being available to them. Following the Scottish Government's recent response to the Independent Review of the Victim Notification Scheme, we would welcome further information about the timescales for any of the planned improvements to the scheme.⁵

The impact on individuals experiencing a change of release point: It is important that people have sufficient notice of any new release date they are being given. Members have stressed the importance of ensuring individuals still receive the same level and types of support in release planning and that this transition support is not compromised by this change, to give people time to both mentally prepare and to be able to work with support services to put adequate arrangements in place. These include having access to the prison to rehabilitation pathway, adequate housing on release, registration with a GP and benefit claims. This is essential to enable smooth transition to the community and reduce the risks associated with the transition period after leaving prison, such as being at higher risk of a drug-related death or homelessness, as well as reducing the risk of reoffending.

The impact on families of those experiencing a change in their release point: Families will also be impacted by the changes, and we would welcome family and child impact assessments being embedded within the process. It is also important that families are kept informed about any changes that will affect them and are appropriately supported. CJVSF would also be keen to see appropriate structures, processes and support put in place to enable families to engage in pre-release planning where appropriate.

⁴ [Presumption Against Short Periods of Imprisonment \(Scotland\) Order 2019](#)

⁵ [Annex - Victim Notification Scheme - Independent Review: SG response - gov.scot](#)

The impact on community services: It is crucial that lessons learned from the emergency release programme of June and July 2024 are carefully considered and implemented, including in relation to information sharing, adequacy of support on release, recidivism rates, people’s lived experience and third sector and statutory agencies’ experiences. Appropriate structures, processes, and timescales, with information sharing arrangements and clear referral routes, along with adequate resourcing, will need to be in place to enable effective multi-agency planning and delivery of support across both prisons and the community. Members also emphasised the importance of ensuring synergy and cohesion with community services, particularly around implementation of the Medication Assisted Treatment (MAT) Standards.

Examples of good practice highlighted by members were from HMP Grampian, where a pre-release multi-disciplinary planning approach is in place, and from HMP Kilmarnock where a ‘departure lounge’ was set up to support the development of necessary links with GP services, DWP, housing etc, during the emergency early release programme.

One of the questions that we are hoping the Bill will be able to answer is whether the initial releases of those newly eligible could occur in a series of staged tranches. Knowing the timing of the initial cohort is critical from a third sector perspective in terms of being able to put plans in place to support (i) individuals being released and their families (where relevant), and (ii) people who have been harmed by crimes committed by those individuals. Depending on the numbers of additional individuals being released at any one time, plans and resources need to be in place to enable a surge response in the short to medium term, along with clarity about longer-term resourcing.

We note the question from Maggie Chapman MSP in Parliament about whether:⁶

“community justice services, mental health services and broader community support organisations have sufficient skilled staff and the required resources to ensure that, with the earlier release point for short-term prisoners, they can properly support the latter and the communities that receive them?”

This was followed by along the Cabinet Secretary’s response:⁷

“As she will know, it is imperative that all long-term prisoners be subject to statutory supervision and that voluntary aftercare be available to those who are released from short-term periods of custody. That also speaks to the importance of third sector support, which is why we are launching a new third sector contract for throughcare services next year.”

The current uncertainty over the future provision of the national third sector throughcare contract is creating additional challenges for the sector and its ability to

⁶ [Meeting of the Parliament: 10/10/2024 | Scottish Parliament Website](#)

⁷ [Meeting of the Parliament: 10/10/2024 | Scottish Parliament Website](#)

be able to plan future support provision. The new contract is due to commence on 1st April 2025. Indicative timelines suggest that implementation of this legislation and the transition to the new third sector contract for throughcare could coincide, which could place significant and additional pressures on the sector.

Members also highlighted the need for broader community support organisations, such as housing, mental health and addiction services, to be adequately resourced to be able to support people in the lead up to and post release. There is also a need for transparency about how any community justice funding for the third sector will be administered via Local Authorities through section 27 funding.

Views on proposed changes to long term sentences

The Committee asked for our views on: *“the issues that were covered in the Scottish Government’s consultation, including the time and resources required to prepare for and deal with more prisoners under supervision in the community for longer.”*⁸

CJVSF responded to the Scottish Government’s consultation in the summer and a copy of our full response is available.⁹ As we noted in our response, in principle, we are supportive of the general proposal to shift the balance between the two elements of longer-term sentences, as long as:

- The policy is effectively resourced, so that individuals and families have the support, services and programmes they need during both parts of the sentence, and the workforce do not experience unnecessary additional pressures.
- Sufficient timescales are available for building relationships between those being released and staff from community-based services ahead of any liberation date.
- Appropriate structures and processes, incorporating information sharing arrangements and referral routes, are developed to enable effective multiagency planning and delivery of support in both prison and community.

In response to current pressures, we understand that additional resources are being allocated to Justice Social Work to support increases in their capacity. We do have concerns, however, that there appears to be a working assumption amongst statutory partners that third sector support will also be available to deliver these policy proposals. We would therefore welcome clarification from the Scottish Government on the role and the extent to which third sector support is expected to be a part of this process, along with details of how this support would be resourced in line with fair funding arrangements.¹⁰

⁸ [Long-term prisoner release process: consultation - gov.scot](#)

⁹ [Response 765155078 to Long-term prisoner release process: consultation - Scottish Government consultations - Citizen Space](#)

¹⁰ [What is Fair Funding? - SCVO](#)

The need to ensure fiscal sustainability for alternatives to imprisonment is critical to preventing an implementation gap and is also part of one of the UNODC recommendations arising from the lessons learned from the emergency release programmes undertaken across the world during the early stages of the Covid-19 pandemic.¹¹

Views on the Lord Advocate's statement

The Committee asked for our views on: *“the non-legislative proposals set out in her statement and how this may work out in practice, and what impact you consider this may have on remand levels?”*

As we stated in our response at Stage 1 of the Bail and Release from Custody (Scotland) Bill, we are supportive of the new legal test for bail which the (now) Act will introduce in order to narrow the grounds upon which a court may decide to refuse bail.¹² From the Lord Advocate's statement, we understand that this change is not due to come in to force until 1st February 2025. Given the current situation, we agree with the Lord Advocate's view that action is required pending that legislation. We support the decision to update the guidance so that Prosecutors should oppose bail generally only where there is a substantial risk of harm to the public, victim or witnesses, and this risk cannot be mitigated by imposition of bail conditions.

In some instances, third sector providers (and other agencies) that are working with the individuals concerned may be well placed to also provide up-to-date, credible information which could help to inform bail decisions. To support the implementation of the proposals, we would therefore be keen to see clear processes put in place so that third sector partners are able to provide relevant information to the bail decision-making process, where appropriate, in line with GDPR legislation. CJVSF members are also keen for child and family impact assessments to be used and for there to be routes for families to be able to feed information into the process where relevant and appropriate.

We are also supportive of efforts to enhance early intervention approaches. In relation to diversion, specifically, we note the Lord Advocate's comment that necessary programmes will need to be available. As the recent joint review of diversion from prosecution carried out by HM Inspectorate of Prosecution in Scotland, HM Inspectorate of Constabulary in Scotland, HM Inspectorate of Prisons for Scotland and the Care Inspectorate found, *“Third sector organisations also played a vital role in some areas in providing either all, or some elements of, the intervention”*.¹³ The national Community Justice Strategy also highlights the importance of ensuring effective services provided by both Justice Social Work and the third sector are in place across Scotland for those who have been diverted from

¹¹ [Guidance Note ER.pdf](#)

¹² [Response 1055440900 to Bail and Release from Custody \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)

¹³ [Introduction - Diversion from prosecution: joint review - gov.scot](#)

prosecution.¹⁴ Along with resourcing for statutory partners, it is critical that the third sector's vital role is appropriately resourced in line with fair funding arrangements.

We understand from the Lord Advocate's statement that the changes made to the prosecution guidance are temporary and will be kept under review. We would encourage the Lord Advocate to engage with third sector partners as part of the upcoming review, to ensure that any intelligence third sector partners may have about the impact that the changes are having on individuals and families is also considered as part of the review process.

Key reflections on the current situation and the statements made in Parliament

In 2019, in their pre-budget scrutiny report, the then Justice Committee picked up on CJVSF's calls for a more preventative approach to be adopted, quoting from our response that year that, *"while there are certainly steps that can be taken to relieve the pressure on prisons, such as increasing the use of Home Detention Curfew and parole, any long term solution to the current problems will require a reduction in the prison population and a focus on prevention and community based approaches to stop people entering the justice system in the first place"*.¹⁵ Five years on, our view on the need to prioritise preventative measures in line with the Christie principles and to focus on long-term solutions has not changed.¹⁶

In the 2024/25 Programme for Government, The Scottish Government set out its intention to, *"Continue to progress and deliver actions that support a sustainable reduction in the prison population, aiming to shift the balance between the use of custody and justice in the community."*¹⁷ It is essential that these new proposals are aligned with existing reform work, such as the implementation of the Bail and Release from Custody (Scotland Act) 2023, and that other crucial preventive measures do not lose momentum.

We also note the evidence previously provided to the Criminal Justice Committee in 2021, from The Scottish Centre for Crime and Justice Research, that identified the need to address all three ways in which prison populations can be reduced, notably by:¹⁸

- Sending fewer people to prison
- Sending people to prison for shorter times
- Releasing people earlier.

Whilst we appreciate the need to reduce current pressures on the prison estate, members are also very clear that the solution to that problem cannot simply be to transfer pressures in the justice system on to community services, which themselves are already stretched. Finding a way through the current crisis will require a

¹⁴ [Supporting documents - National Strategy for Community Justice - gov.scot](#)

¹⁵ [Pre-budget scrutiny of the Scottish Government's draft budget 2020/21: justice and policing](#)

¹⁶ [Christie Commission on the future delivery of public services - gov.scot](#)

¹⁷ [Programme for Government 2024-25: Serving Scotland - gov.scot](#)

¹⁸ [Scottish-Centre-for-Crime-and-Justice-Research -CJ-Committee-Evidence.pdf](#)

collective response. Below are the actions that CJVSF is calling for as a matter of urgency:

1. Meaningful engagement with the third sector at a national level around the crisis response

As the Cabinet Secretary noted in her statement, *“it is vital that partners collaborate to ensure the system works effectively and in the shared understanding of the critical risk that an increasing prison population poses to the entire justice system”*.¹⁹ The Scottish Government must lead by example on this, to ensure that the sector can effectively support a collaborative response to the current crisis. CJVSF has some concerns about the lack of engagement with third sector partners in relation to crisis response measures to reduce the prison population, particularly in the period between the summer 2024 emergency release programme and the new measures announced on 10th October.

2. Ensure a swift announcement of the outcome of the current throughcare commissioning process

The current uncertainty over future throughcare provision is causing additional instability in the sector and poses risks for a number of the crisis-response actions that the Scottish Government has outlined would be expected to come in to force in early 2025. For the third sector to be able to support people effectively during any transition arrangements, it is imperative that the sector has clarity over what the new throughcare arrangements will be as soon as possible. The most recent cascade communication regarding the throughcare commissioning process (published in July 2024) stated that a decision on future throughcare arrangements was expected in October, but no announcement has yet been made.²⁰ Clarity is urgently needed to enable a smooth and timely transition and to prevent people falling through the gaps at such a critical time.

3. Implementation of third sector “Fairer Funding” actions

As discussed above and in our recent Pre-budget Scrutiny response to the Committee, we continue to have concerns about the current lack of fair funding arrangements in place for many third sector services. These concerns are reflected more broadly across the third sector as well as amongst third sector justice services, as shown by the recent findings from SCVO’s Third Sector Tracker.²¹ There is a need to ensure that organisations are fairly funded to be able to cover the actual costs that they incur in delivering public services.

4. Bring section 12 of the Bail and Release (Scotland) Act 2023 in to force to enable and support multi-agency planning arrangements

¹⁹ [Justice Secretary: Statement on Scotland's prison population - gov.scot](https://www.gov.scot/Topics/justice/secretary-statement-scotland-prison-population)

²⁰ [CJS-Commissioning-Cascade-Communication-April-June-24.pdf](#)

²¹ [Scottish Third Sector Tracker - SCVO](#)

The Bail and Release (Scotland) Act 2023 offers real opportunities for strengthening collaborative working around pre-release arrangements and members are increasingly frustrated that, despite many requests, there has still been no involvement of third sector partners in the design of the new multi-agency planning process. We are also concerned that no date appears to have been set for section 12 to be brought in to force. The emergency early release programme over the summer highlighted the importance of having strong pre-release planning arrangements in place and, in light of the upcoming proposed changes to release points and the potential for a further round of emergency early releases, it is imperative that third sector partners are enabled access to prisons now to begin building relationships with individuals who may be released in the new year. This would mean that, even if release dates were to change at a later point, the foundations of a trusting relationship will already have been laid which will enable more effective pre-release planning to take place.

We would therefore welcome clarification from the Scottish Government on when section 12 will come into force, as well as how the third sector will be involved in the rapid design of the new multi-agency planning process that will be required to support future releases. As part of this, we would also be keen to see the Bail and Release (Scotland) Act 2023 Implementation Group restarted as soon as possible.

5. Develop plans to support a potential surge in releases

Proposed changes to both the long- and short-term release points, as well as the prospect of a further round of emergency early releases possibly being required, means that there is a risk of a further surge in releases that would again impact on caseloads for both third sector and statutory partners. We urge the Scottish Government to work with third sector partners, as well as statutory partners, to plan for different scenarios and to explore what options may be available in terms of both (i) flattening the curve of releases at any one time (ii) allocating additional resource to support a surge response.

6. Utilise international guidance and evidence-based practice to reduce prison over-crowding

CJVSF has previously drawn attention to UN Handbooks and Guidance which set out clear recommendations and strategies for reducing overcrowding in prisons;²² implementing basic principles and promising practices on alternatives to imprisonment²³ and improving emergency release mechanisms.²⁴ Information from the Scottish Government that accompanied new proposed measures to reduce the prison population on 10 October 2024 acknowledged that “*The UN and international NGOs are clear that more community-based disposals should be pursued to reduce prison overcrowding and reoffending.*”²⁵ There continue to be recommendations within UN Handbooks and Guidance that, as far as we know, are not being explored/

²² [Handbook on strategies to reduce overcrowding in prisons](#)

²³ [07-80478 inner mm.qxp](#)

²⁴ [Guidance Note ER.pdf](#)

²⁵ [Prison population - proposed bill on release point for short term prisoners: information note - gov.scot](#)

progressed in Scotland and we would be keen to work with Scottish Government and other partners to see what else may be feasible and practical in order to develop longer term, sustainable solutions to the current problems associated with high prison population levels.