

Criminal Justice Committee

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

Written submission by Families Outside, October 2024

1. *Short-term sentences* – 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?

Families Outside welcomes the Cabinet Secretary's continued commitment to take steps to tackle the prison population crisis, and we are broadly supportive of the proposals detailed in her statement of October 10th. Specifically in terms of the proposal to bring forward the point of automatic early release from 50% to 40% of the sentence for short-term sentences, we are supportive of this measure as a means of reducing the prison population. It should help to alleviate the increasingly unsustainable pressures on the prison estate and to mitigate the damaging impact that overcrowding has for people in prison, their families, staff, and the wider community. We are in favour of this change being made on a permanent basis to help ensure the measure can play a longer-term role in delivering a sustainable reduction in the prison population rather than simply being used as a short-term emergency response to the prison population crisis.

Whilst we are acutely aware that this measure will not in and of itself address the prison population crisis, we believe it can certainly play a role in doing so as a part of a package of measures that encompass the evidence-based, radical approaches required to achieve longer-term changes to how we deliver justice effectively, including prevention.

However, a number of pressing issues require consideration to help ensure that the success of this proposal for the individuals concerned, their families, and indeed wider society. Firstly, it is crucial to ensure that adequate support is available in the community for those being released. In this regard, we draw the Committee's attention to the [submission](#) from the Criminal Justice Voluntary Sector Forum to the Scottish Government's consultation on Long-term prisoner release process, which highlighted the importance of ensuring measures around early release are effectively resourced so that people have the support, services, and programmes they need both during their sentence and upon release; that the workforce, both statutory and third sector, does not experience unnecessary additional pressures; and that appropriate structures, processes, and timescales, with information sharing arrangements and clear referral routes, are developed to enable effective multi-agency planning and delivery of support across both prisons and the community. It is our view that any proposals relating to early release, whether regarding short-term or

long-term sentences, require these issues to be carefully considered and addressed prior to bringing measures into place.

Secondly, we would like to draw the Committee's attention to a key issue that is unfortunately often overlooked when changes are being considered and decisions being made with regard to the operation of our criminal justice system, namely the impacts for families of any changes made and the vital role they can play in helping ensure the success of such changes.

Considering first the role families can play in helping ensure the success of such changes: a wealth of research demonstrates the role families play in supporting desistance from offending, with the [Social Exclusion Unit in 2002](#) reporting that people in prison are up to six times less likely to reoffend if they maintain family contact during imprisonment. In addition, [Lord Farmer's Review](#) in 2017 described families as the 'golden thread' that should run through the prison system, highlighting that relationships are fundamental if people are to change. This evidence illustrates the importance of ensuring that families are recognised and meaningfully involved in the decisions relating to the support their loved one receives both whilst in prison and upon release.

However, alongside recognition of the role families can play in reducing reoffending, it is crucial that families are considered in their own right and not simply as a tool to support rehabilitation and resettlement. The impact of imprisonment on children and families is, without question, significant. Wide-ranging challenges face families, including issues with housing, financial concerns, family dynamics, lack of information, victimisation, media intrusion, and stigma, in addition to the emotional impacts of having a loved one in prison. Families are often left to deal with these challenges with little or no support. These issues do not simply end upon release. Indeed, release can bring with it a host of other issues, particularly where families are the primary, or sole, source of support - emotional, practical, and financial - for their loved one. It is vital, therefore, that the direct impacts for families of any proposals around early release, be that in relation to short-term or long-term sentences, are considered.

So how should, and indeed how could, families be better considered? Broadly speaking, there is a need for the valuable role of families to be recognised and for families to be listened to and offered opportunities to engage in decision-making processes. A specific example is around the lack of family involvement in pre-release planning, including license conditions where applicable. This is an area where changes in both policy and practice could be made to ensure better, consistent opportunities for meaningful family involvement.

There is also a need to ensure improved communication and information sharing with families. Pre-release planning is again an area requiring improvement. A further key example can be found in relation to Home Detention Curfew (HDC). Currently, there is no official process of communication to families relating to the outcome of a decision around HDC. Theoretically (as it may not happen in practice), this is provided via the person in prison; no information is provided to families directly. This is wholly unsatisfactory where families are an integral part of the process and directly impacted by decisions made. Given that the Cabinet Secretary made reference to

the increased use of HDC, which we fully support, we would urge that improvements are made at pace to the consideration of families throughout the HDC process.

Finally, there is a need to ensure the impacts on families are better considered in decision-making processes across both policy and practice. A specific example of how this could be ensured is through the use of Family and Child Impact Assessments. Families Outside has long called for family and child impact assessments to be embedded across criminal justice processes to ensure the wider impacts on families are considered and supported accordingly. In relation to children, we would direct the Committee's attention to the ['This Is Me' toolkit](#) developed by the Prison Reform Trust.

Put simply, our overarching message for the Committee is that families must be considered: not only do they play a critical role in supporting individuals involved in the criminal justice system and therefore a critical role in ensuring the success of any new measures, but also the devastating impacts they endure associated with imprisonment mean they both require and deserve support in their own right to navigate the impacts of any measures.

2. *Long-term sentences* – your 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.

As set forth in our [response](#) to the Scottish Government consultation, we agree with a general proposal that the point of release on non-parole licence for those serving a long-term sentence should be at an earlier point, that the point of release should be proportionate to sentence length (as opposed to a fixed point), and that extending the period that some people serving long-term sentences spend in the community before the end of their sentence from 6 months to one-third of the sentence length (consistent with the pre-2016 position) is appropriate, *where adequate support is in place*.

We noted in our response that we are concerned that currently neither statutory services nor the third sector is sufficiently resourced to ensure that adequate support is in place for individuals leaving custody. We also highlighted the need to have robust measures in place to ensure the meaningful and effective involvement of the third sector. This is crucial given that the third sector played a vital role in supporting the implementation of the recent emergency early release of people serving short-term sentences, in terms of supporting individuals upon release and their families.

We were pleased to see that the consultation analysis and the Cabinet Secretary's statement recognise these concerns and acknowledge the time and resources required to prepare for and deal with more people under supervision in the community for longer. Work to address these challenges must begin and proceed at pace, but the level of work required to ensure preparedness for moving forward with proposals to change release processes for those on long-term sentences must not be underestimated. It will take significant time and resource and must occur in consultation and collaboration with all stakeholders, including statutory and third sector services. Moreover, we reiterate our response to Question 1 above around

the importance of ensuring families are actively considered in decision-making processes relating to both the design and implementation of any proposals relating to the release processes for those serving long-term sentences.

3. *Lord Advocate's statement* – 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?

Families Outside is again broadly supportive of the non-legislative proposals set out in the Lord Advocate's statement but would like to offer comment regarding where we feel the role of families and the impacts they endure could once again be better recognised and supported.

Firstly, we are supportive of the proposal to ensure greater use of social work assessments to inform bail decisions, although mindful of the obvious implications this will have for already overstretched criminal justice social work services. In relation to families, we urge that social work reports take account of information provided by families in relation to the accused, and also that account is taken of the impact for families of a bail decision. The use of child and family impact assessments could support such consideration.

Secondly, we support work to improve the information received from the police to help inform decisions about whether to prosecute or oppose bail. In particular, the Lord Advocate noted additional information is now received from police in relation to mental health issues that may be relevant to the accused's offending and personal wellbeing. Once again, we highlight the important role that families can play in providing valuable information to agencies in the criminal justice system about the health and wellbeing of the accused. Concerningly, many families have told us of the difficulties they have had engaging with agencies, including the police, to share information about their loved one's health and wellbeing, and have reported being dismissed and ignored when trying to do so. The value of information provided by families should be recognised, and families should be listened to and provided with opportunities to share information with criminal justice agencies.

Overall, the role that families can play not only in supporting the individual involved in the criminal justice system, but also in providing information to support the decision-making processes of criminal justice agencies, cannot be overstated. This role must be recognised, valued and supported, to help ensure the greatest chance of success for proposed changes, both legislative and non-legislative, to address the prison population crisis.

Finally, prison overcrowding is not a new problem and requires more drastic, longer-term considerations to prevent a recurrence. In 2008, the McLeish Commission referred to prison population as a choice: what kind of country do we want to be? The examples of Finland, which made a deliberate decision to reduce its prison population by half; of The Netherlands, in which the prison population is reducing due to increased public awareness that prison is more damaging than it is beneficial; and of many other countries in which options such as waiting lists or suspended sentences are utilised are worth an Inquiry to explore sustainable solutions to combat overcrowding. Families Outside commends the Scottish Government's move

in the Bail and Release from Custody (Scotland) Act 2023 to reserve the use of remand for cases in which the accused poses a risk to public safety, for example. We must be able to do more.