

Criminal Justice Committee

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

Written submission by Social Work Scotland, October 2024

Request for views on: Statements by Cabinet Secretary for Justice and Home Affairs and Lord Advocate to Parliament on 10 October 2024 regarding impact of automatic early release of prisoners and prosecution policy on public safety and prison population.

Introduction

Social work Scotland (SWS) is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We have been active and fully engaged with partners in considering solutions to the prison population crisis.

The negative impact of prison cannot be understated, exacerbating problems with mental health, trauma, substance use, relationships, employment and housing. There needs to be adequately funded community resources in order to be responsive to the needs of individuals, providing a community and social justice alternative to imprisonment. Prison is an expensive resource which should be reserved for those presenting with serious and imminent harm to communities. Improving public awareness of different sentences and their impact should be a consideration.

Question 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

Response: The short-term prison population needs to be viewed within the context of PASS- presumption against short sentences (12 months and under) and what has been the learning from this process. Short sentences achieve little, reconviction rates amongst this group are of concern and the impact for individuals and their families is significant. Bringing forward the release point from 50%-40%, while likely to be welcome by most individuals in prison, leaves less time for planning for release for those seeking voluntary through-care. This service is delivered mainly by Local Authority Justice Social Work Services (JSW) and the Third Sector. There is also a presumption in favour of Home Detention Curfew (HDC) for short term prisoners which means that at an early stage in the sentence, preparations need to begin, either for release on HDC or as part of the 40% release point. For example, 15 month sentence, 40% point would be at 6 months, at which time HDC will also be under

consideration. The disruption to an individual's life is significant as a result of imprisonment. The needs of individuals leaving prison are multiple and complex, including an ageing prison population and those with neurodivergent complications.

On release such individuals are likely to need and benefit from services from Adult Social Work as well as Health and Social Care Services.

There will be individuals in prison who will qualify for immediate release if the point of release changes from 50%-40%. This will need to be managed in a phased way to ensure that those who want support are able to get it. Community Justice alternatives to custody, that are responsive to needs, are more effective at dealing with this cohort of people.

Exclusions- Public protection must direct decision-making around release from custody. Consideration should be given to those who pose a risk of harm to victims, communities and to themselves. This is likely to include index offences of a sexual nature and domestic abuse. However, it is also important to note that under current provisions, these individuals would be released automatically at the 50% stage, with no supervision unless requested as part of voluntary through-care or as a requirement of HDC (or short- term sex offender licence). There will also be some individuals whose index offence is not part of the exclusion categories, but they may have previous convictions for this type of offending in their background. The use of curfews, electronic monitoring and GPS may mitigate some of the risk.

The impact of earlier release on victims should be taken into account, ensuring good communication and use of notification processes where appropriate. Victims may be members of the same household or live in close proximity to the release address, so this should also be a consideration prior to release. Restorative approaches may be considered in some cases, if requested by the person who has been harmed.

Question 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.

Response: SWS agrees that release at six months prior to sentence end date provides little or no incentive or motivation for individuals who need to prepare for release, perhaps after long periods of incarceration. Six months is a very short time to engage an individual in a programme of work, once released. There is also a likelihood that this population is less compliant, not having qualified for parole for a number of different reasons. A robust and considered plan needs to be in place in order to work effectively with the individual and their family, assisting them to access universal and specialist services, as required. Automatic release at 2/3 of sentence worked in the past. There may be some learning from the process which could inform the way forward in 2025.

The point of release on non-parole licence (NPL), should be determined by the Parole Board for Scotland. This is a well-established practice which is informed by

the Throughcare Assessment for Release on Licence (TARL) report which contains risk assessment and risk management information and informs release planning.

Currently, if an individual has less than 18 months between parole qualifying date and sentence expiry date, then they will not be subject to a further parole review, rather, release planning will be determined between PBSW and JSW in the community. This can be problematic as some individuals do not engage with PBSW, programmes in prison, psychologists in prison or the ICM processes. Under these circumstances, the PBS should determine release plans for those subject to NPL, since often these individuals present with greater risk to the community.

Collaboration between PBSW and JSW in the community is essential in order to have a smooth transition from custody to community. This also allows for safeguarding and other mechanisms to be put in place in order to maximise public safety. The supervision process can then take account of risks, victim issues but also the needs of the individual. Additional conditions can be considered also in order to enhance supervision arrangements, such as electronic monitoring/GPS.

Resourcing: There requires to be a lead in time in order to plan, create posts, recruit staff and train them as appropriate. This area of work, dealing with higher risk individuals and mitigating harm to the public, requires qualified social workers alongside other support staff. Some modelling on numbers and arrangements to be put in place in order to supervise additional cases is needed. Certain individuals will require joint working and in exceptional cases there may be a need to consider "intensive support packages". A sliding scale of costs is likely, starting off with more intensive supervision and if work is going well, then the level of contact should reduce over time. The intensity of supervision needs to be proportionate to risk and needs. Initial scoping, (following discussion with partners), indicates that a unit cost for non-parole licence cases may range from around £2,000-£5,000, depending on the intensity of service required. The ISP(intensive support packages), service requires to be commissioned outwith this arrangement and is more likely to cost around £250,000 for six months, where the service is double staffed.

Question 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?

Response:

The Lord Advocate was clear that prosecutorial decisions are made by COPFS, based on what is in the public interest and public protection is a key consideration. It is for Sentencers to make decisions based on a range of information presented to the court. However, SWS would agree that where there is no risk to the public or the risk is manageable, then bail should be a consideration. Bail arrangements can be tailored to individuals and proportionate to risk through the provision of bail support, bail supervision and electronic bail. There is a danger that lower level offending can escalate to repeat offending if

the default is to remand in custody. The Lord Advocate referred to the new test for bail (from February 2025) which may assist, as consideration will be given to whether there is a risk to the public and/or complainer.

JSW are involved in the assessment for bail supervision suitability with individuals at court and in police custody suites. Assessments take place at weekends in some areas in order to allow for more time to complete the assessment in preparation for the case calling in court. This task is normally undertaken by a paraprofessional. SWS agrees that attention needs to be given to the large numbers of people who fail to attend court and where warrants are then issued, as well as assessment of the current remand population who may have encountered a material change in circumstances while in custody. Diversion from prosecution is also another key measure that has had success where there are identified needs which can be addressed and may reduce the likelihood of further offending. JSW works collaboratively with COPFS in relation to diversion from prosecution referrals. Some local authorities may not be in a position to meet some of the needs outlined within certain referrals due to resource limitations or not having access to appropriate interventions.

It is important to get a better understanding of why courts refuse bail and what proportion of the remand population are accused of non-violent offences. Closer scrutiny of the data on those who are remanded but do not go on to get a custodial sentence may help to inform the way forward. Why are they remanded in first place, particularly if they do not pose a risk of harm to communities? Community justice focused solutions should be considered.

It is important to bear in mind that the remand population are not convicted but have lost their liberty and have little or no access to programmes and education in custody. The disruption to lives and relationships is high, while compounding isolation and mental health concerns. There is also a significant pressure on the families of those remanded as they try to make regular prison visits.

Taking account of gender and justice is also key to understanding how individuals behave and cope with periods on remand as well as short sentences.