Police, Crime, Sentencing and Courts Bill

Nacro briefing for the second reading in the House of Commons on 15 March 2021

Nacro is a national charity with over 50 years' experience of changing lives, building stronger communities and reducing crime. We deliver services across each part of the criminal justice system (CJS) – from liaison and diversion services at police custody and court; education in prisons; and prison resettlement services. We deliver the national Bail and Accommodation Support Service (BASS) on behalf of the Ministry of Justice (MoJ), housing prison leavers on Home Detention Curfew and those bailed from court in need of an address.

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Introduction

We support a number of the measures in the Police, Crime, Sentencing and Courts Bill, including:

- The commitment to criminal record disclosure reform
- The piloting of problem-solving courts
- Increasing the threshold for custodial remand of children

However, we are very concerned that a number of the measures in the Bill represent an inflation of sentence lengths, which has characterised much of the approach to justice policy in recent decades. Increasing sentence length lacks an evidence base that demonstrates that it is either an effective deterrent or effective at preventing further offending (and is contrary to much of the evidence that does exists), whilst disproportionately impacting on Black, Asian and minority ethnic (BAME) groups.

There are also a number of missed opportunities that would assist the Government in its ongoing efforts to cut reoffending rates, including:

- The ending of Friday releases from prison, a simple provision that would ensure that prison leavers could access key resettlement services.

- Restricting the use of ineffective and damaging short sentences.
- Ensuring that children who commit crimes but turn 18 before their case is heard are sentenced as children.
- A fundamental review of the rules surrounding the disclosure of criminal records to create a fair and transparent system.

Disproportionality

We are concerned that a number of the proposals contained in the Bill risk further entrenching race inequality in the criminal justice system. The impact on people from Black and Minority Ethnic backgrounds is recognised by the Government in its equality impact assessment but it justifies the unequal impact of these changes as a 'proportionate means of achieving the legitimate aim of protecting the public'. However, it provides no evidence or reasoning in support of this claim, and so without an evidential basis to support the position that increasingly punitive sentencing deters crime or reduces reoffending we believe that the disproportionate impact of these changes cannot be justified.

Sentencing (Part 7 – Sentencing and Release)

The Bill introduces a number of changes which will increase the length of sentences handed down and increase the proportion of the sentence that will be spent in prison. This is despite there being no evidence to suggest that longer prisons sentences will deter crime or prevent re-offending and are likely to disproportionately impact on specific communities. These measures will inevitably increase the size of the prison population, putting further pressure on an already overstretched prison system, at a time when the focus should be on recovery from the impact of the pandemic on the system. Increasing the prison population means that the goal of rehabilitating those who are held is pushed even further out of reach.

We believe that the Bill is a missed opportunity to address the overuse of short prison sentences. Every year, approximately 30,000 people go to prison on sentences of six months or less. It is often during this period that those on short sentences lose the essentials necessary to lead a more stable life, including housing, employment and close relationships.

It is therefore unsurprising that people who serve short prisons sentences are the group most likely to reoffend and to commit more offences. Repeat offending costs society more than £18 billion a year, over and above the immeasurable and devastating impact crime has on victims and those around them. We are pleased that the Bill commits to further investment in community sentences, but in order to ensure that such sentences become the default option, we urge the Government to restrict the use of ineffective short sentences, focusing instead on the root causes of offending. By failing to address the root causes of crime, there will be more victims and crime, and more people stuck in an endless cycle of reoffending.

Ending Friday Prison Releases

The Bill is also a missed opportunity to address the issue of Friday releases from prison. The first day of release from prison is often a race against the clock for people needing to access the services they need. For those released on a Friday this challenge can be almost impossible to complete before services close for the weekend. Over a third of releases happen on a Friday and this high number, combined with the reduced services available on a Friday and over the weekend, can leave people not being able to get vital medication, having to sleep rough and having to survive on a £46 discharge grant until services reopen on Monday. We know from our experience that these factors can increase the likelihood of reoffending and simply set people up to fail. We would therefore seek the insertion of a clause into the Bill to facilitate release earlier in the week and mitigate against the cliff edge that can be presented by release on a Friday.

Community sentences (Part 7 – Sentencing and Release)

We welcome a renewed focus on community sentences, proven to be more effective at reducing reoffending than short prison sentences. We believe that there is a balance to be struck between improving judicial confidence in community sentences whilst not creating community sentences which are too onerous and therefore setting people up to fail. Repeat and prolific offenders often lead lives characterised by histories of trauma, substance misuse and/or mental health issues and therefore it can be difficult for some people in this situation to comply with very restrictive community orders. The lengthening of curfews and extending electronic monitoring may therefore not prove effective for this group. We also remain concerned that replacing human contact with electronic surveillance detracts from the purpose and potential transformative impact of a community sentence, as the benefits of human contact in a community sentence extend far beyond monitoring compliance.

We are pleased that Government remains committed to the roll out of Community Sentence Treatment Requirement (CSTR) sites across the country as we believe that these sites can have a significant role in enabling multi agency working and also in ensuring that the judiciary is aware of the orders that can be made and is presented with these options at sentencing. It is important that services are commissioned and adequately funded in order to ensure that treatment options are readily available.

We are pleased that Government has committed to piloting 'Problem-Solving Courts' and welcome that they will be given the power to regularly review community and suspended sentence orders. We believe that judicial involvement in community sentences is an important plank in creating judicial confidence, and that the collaborative nature of problem-solving courts with bespoke sentencing catering for individual needs together with progress monitoring can encourage participation and compliance.

Civil orders (Part 10 – Management of Offenders)

The introduction of Serious Violence Reduction Orders (SVROs) is a further civil order, which can be imposed on the lower civil standard of proof (the balance of probabilities), but allow for a period of imprisonment of up to two years upon breach. We object to SVROs as they can result in a criminal conviction and even imprisonment without a criminal process in relation to the original, alleged offending behaviour.

Youth Justice (Part 8 – Youth Justice)

We welcome the steps to reform the legislative threshold for remanding a child to custody. The overuse of custodial remands for children is a longstanding issue, and particularly impacts on BAME children. The impact of court backlogs as a result of the pandemic has increased the need for urgent action. We remain concerned that the legislative change does not go far enough, and we refer parliamentarians to the Alliance for Youth Justice for a detailed assessment of the provisions of the Bill relating to the use of custodial remands for children.

We are disappointed to see that the Bill will increase the proportion of their sentence that some children will spend in custody before they may be supervised in the community and removes opportunities for tariff review for those children serving life sentences. This will increase the amount of time that some children spend in custody, when we know that the threat of harsher custodial sentences is unlikely to deter children from offending and that imprisonment is extremely harmful to children, causing disruption to their long-term development.

The Bill fails to address the fact that children who are alleged to have committed an offence as a child but turn 18 before being prosecuted are dealt with and sentenced as adults. This is a simple and common-sense legislative change that should be included within the Bill to eliminate an unfairness which can be caused by court delays. This is particularly salient now as the pandemic has had a significant impact on the speed at which cases are brought to trial.

Government acknowledges that maturity is an important factor in sentencing and accepts the growing evidence on maturity which shows that young adults, particularly males, are still maturing until the age of 25. The starting point for sentencing of those aged 18-25 should be a nuanced approach that is closer to sentencing for children, not adults, and yet the Bill proposes to bring older children's sentencing closer in line with adults. This is the wrong approach, and it is inappropriate for the starting point for tariffs for older children to be set at 90 per cent (17-year-olds) and 66 per cent (15-16-year-olds) of the starting point for adults. The evidence on maturity is also not reflected in the clause which proposes that whole life tariffs can be given to 18-year-olds.

We refer parliamentarians to the Alliance for Youth Justice for a detailed assessment of the provisions of the Bill relating to youth justice.

Criminal records disclosure (Part 11 – Rehabilitation of Offenders)

We welcome the direction of travel of the Government in reducing the rehabilitation/ disclosure periods for criminal records for a number of disposals including some community and custodial sentences for adults and Youth Rehabilitation Orders for children.

We know from our Criminal Records Support Service, which supports both individuals and employers, that the current criminal records disclosure system is overly complex, difficult to navigate and often arbitrary. This has a detrimental impact on individuals trying to move on in their life and find a job, get into education or get into accommodation. And it also impacts on employers who we know when faced with such a complex system can opt for a risk averse approach and not employ people with criminal records. Together this has a significant impact on the chances of people getting into work and moving away from crime.

Whilst we welcome the changes and direction of travel, we have long called for a fundamental review of the criminal records disclosure system as a whole to rectify the existing complexity and anomalies.

Specific areas we believe also need addressing in this Bill are:

- **Motoring Convictions** – where an endorsement is received at court there is an automatic disclosure period of five years, which is completely disproportionate to other disclosure periods. We believe this automatic period should be removed for employment purposes and brought in line with the relevant disclosure period for the sentence, as with other disclosure periods.
- **Ancillary Orders** (such as Restraining Orders, Compensation Orders, Disqualification from Driving etc) – these orders have a disclosure period in addition to that of the sentence imposed but have no automatic end date. This can lead to people having to disclose these indefinitely unless a specific action is taken. We receive many inquiries to our advice service from people who are not aware that they still need to disclose these and in some cases are unable to take the action required and therefore need to disclose the offence indefinitely.

Example

In 2016, Brandon was convicted of a drink driving offence. He was given a fine and a ban 'until further test'. Due to medical reasons, Brandon is now unable to drive. He is physically unable to re-take his driving test, so his convictions remain unspent for the rest of his life.

He has lost a job and had three offers withdrawn because of his criminal record.

We believe that Ancillary Orders and endorsements should be removed from the definition of a sentence under the Rehabilitation of Offenders Act so the disclosure period is determined by the actual sentence.