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BRIEFING: POLICE, CRIME, SENTENCING AND COURTS BILL – PUBLIC BILL COMMITTEE EVIDENCE SESSION, THURSDAY 20TH MAY

BILL'S KEY THEMES:

1. Protection of police and other emergency workers
2. Reduction of serious violence
3. Tougher sentencing for the most serious violent and sexual offenders
4. Modernisation of criminal justice delivery
5. Strengthening of community sentences
6. Maintenance of public order
7. Criminal damage to memorials/unauthorised encampments

BILL OVERVIEW:

This is a sweeping piece of legislation (and a very political one at that), that covers a significant swathe of the criminal justice system. It is based upon the current Government's 2019 manifesto commitments to *"make the country safer by empowering the police and courts to take more effective action against crime and lead to a fairer justice system".* The purpose of the Bill is to:

- Protect the police and other emergency workers and enhance the wellbeing of police officers and staff
- Protect the public by giving the police the tools needed to tackle crime and disorder, and by addressing the root causes of serious violent crime using multi-agency approaches to prevention
- Ensure that the most serious violent and sexual offenders spend time in prison that matches the severity of their crimes, protects victims and gives the public confidence
- Tackle repeat and prolific offenders through robust community sentences which punish and also address offenders' needs
- Modernise the delivery of criminal justice by overhauling existing court processes to provide better services for all court users

The Bill is split into 13 parts, which we cover in more detail (from parts 1 – 12: part 13 contains a number of final, miscellaneous provisions) following a setting out of our overarching points and key messaging, along with information on amendments tabled to-date.

KEY MESSAGING - OVERVIEW:

1. **SENTENCING AND RELEASE:** time and money is being put in by the Government to increase sentencing, with little evidence that this acts as a deterrence or reduces

reoffending, and would be better spent on housing people on release and giving them the support they need

2. **RACIAL DISPROPORTIONALITY:** a number of proposals in the Bill will increase the disproportionate representation of Black and Minority Ethnic people in the criminal justice system
3. **CRIMINAL RECORDS REFORM:** the Government's direction of travel in reducing the disclosure periods for criminal records for a number of disposals is a positive step. Yet the disclosure system remains overly complex, difficult to navigate and often arbitrary. A fundamental review of the system is needed, as well as the need to end disproportionate disclosure periods (for motoring convictions) and to end indefinite disclosure period of ancillary orders
4. **MISSED OPPORTUNITY TO END FRIDAY RELEASES:** over a third of prison releases happen on a Friday and, combined with the reduced services available (on a Friday and over the weekend), those leaving prison are left without access to key resettlement services upon release
1. **FAILURE TO ACT ON MATURITY EVIDENCE:** the MoJ has accepted that maturity is an important factor in sentencing and accepts the evidence 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, yet the Bill proposes to bring older children's sentencing closer in line with adults

KEY MESSAGING – DETAILED:

SENTENCING AND RELEASE:

The Bill represents a continuation of general sentence inflation:

- Increasing the prison population and impacting on the capacity of both prison and probation services to deliver rehabilitation
- Lack of evidence that increased sentence lengths are effective, both in terms of deterrence or in terms of reducing reoffending
- Time and money would be better spent on housing people on release and giving them the support that they need

Continued overuse of ineffective, short 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)

A renewed focus on community sentences is welcome:

- Welcome focus within the Bill on community sentences, which are proven to be more effective at reducing reoffending than short prison sentences
- The key is for there to be a balance to be struck between improving judicial confidence in community sentences, whilst not creating sentences which are too onerous and therefore setting up people to fail

Commitment to the rollout of Community Sentence Treatment Requirement (CSTR) sites:

- Welcome Government commitment for CSTR sites to be rolled out across the country as we believe these sites can have a significant role in enabling multi-agency working and
- Ensure that the judiciary is aware of the orders that can be made and is presented with these options at sentencing
- Combined orders (e.g., drug rehabilitation requirements/alcohol treatment requirements in combination with a mental health treatment requirement) can be really effective and work really flexibly, and the CSTR sites have lead to an increase in the number of MHTR being made (which was very low before)
- Vital that services are commissioned/adequately funded so that treatment options are readily available

"Problem-Solving Courts" a positive step:

- Particularly by giving them the power to regularly review community and suspended sentence orders
- Judicial involvement in community sentences is an important plank in creating judicial confidence (previously they only saw when they failed as that was the only time they came back before the court)
- Collaborative nature of problem-solving courts, with bespoke sentencing catering for individual needs, together with progress monitoring, can encourage participation and compliance

RACIAL DISPROPORTIONALITY:

Proposals contained within the Bill risk further entrenching racial inequality in the CJS:

- The impact on people from BAME backgrounds is recognised by the Government in its equality impact assessment, but is justified as a "proportionate means of achieving the legitimate aim of protecting the public"
- There is no evidence to support this claim, and without an evidential basis to support the position that increasingly punitive sentencing deters

crime/reduces reoffending, the disproportionate impact of these changes cannot be justified

- Flies in the face of the Lammy proposal to 'explain or reform'
- Punitive proposals within the Bill are set to disproportionately impact BAME children
- Children from ethnic minorities are over-policed, more likely to be stopped and search, arrested, less likely to be diverted and therefore disproportionately likely to end up in the CJS
- Careful attention must be paid to the existence of institutional racism/structural disadvantage that contributes to the disproportionate representation and inequitable treatment of BAME children

CRIMINAL RECORDS REFORM:

Government's direction of travel in reducing the disclosure periods for criminal records for a number of disposals is a positive step:

- Includes some community/custodial sentences for adults and Youth Rehabilitation Orders for children

Disclosure system remains overly complex, difficult to navigate and often arbitrary:

- Has a detrimental impact on individuals trying to move on in their life and find a job, get into education or get into accommodation
- Has a significant impact on the chances of getting people into work and away from crime
- Fundamental review of the disclosure system is required

Disproportionate disclosure periods – motoring convictions:

- Automatic disclosure period of five years for motoring convictions should be removed for employment purposes and brought in line with the relevant disclosure period for the sentence

Ending indefinite disclosure period of ancillary orders:

- Ancillary orders (such as restraining orders/compensations orders) have a disclosure period in addition to that of the sentence imposed, but that have no automatic end date (unless the ancillary order has an end date. Some do, but many will say 'until further order')
- This can lead to people having to disclose these indefinitely unless they go back to court to ask for the order to be varied or revoked.

Further amendments: on criminal records disclosure reform:

- We are also seeking an amendment to the 'relevant date' for rehabilitation periods of children who turn 18 between committing an offence and conviction, so the corresponding date is when the offence was committed, rather than the date of conviction
- Children should be removed from the exclusion from rehabilitation periods for certain offences where a custodial sentence of over four years is given
- We also want to ensure that new the conditional cautions should not have a disclosure period

MISSED OPPORTUNITY TO END FRIDAY RELEASES:

Amendment to end the practice of Friday prison releases:

- With over a third of releases happening on a Friday, combined with the reduced services available (on the Friday and over the weekend), can leave people without access to key resettlement services
- Can increase the likelihood of reoffending and simply set people up to fail
- Prison governors must be given the discretion to release earlier in the week, spread evenly between Monday and Thursday
- Friday releases amendment can be found here

FAILURE TO ACT ON MATURITY EVIDENCE:

Evidence on maturity is not reflected in the Bill's proposals:

- The MoJ has accepted that maturity is an important factor in sentencing and accepts the evidence 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, yet the Bill proposes to bring old 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

BILL AMENDMENTS – OVERVIEW:

Labour has focused its amendments on a number of core areas, with a concerted focus on violence and women and girls, with clauses tabled to provide for stronger protections in a wide range of areas. All amendments can be found here.

- **Community cautions –** remove the requirements for community cautions to have conditions attached to them, instead making such conditions discretionary
- **Victim/survivor support -** ensure that victims and survivors are consulted in parole decisions which will affect them
- **Child sexual exploitation –** require the Secretary of State to prepare a list of countries and territories to be at high risk of child sexual exploitation or abuse by UK nationals and residents (currently discretionary)
- **Disclosure –** make the list of offences subject to lifelong disclosure specified in regulations rather than set in primary legislation
- **Harassment (cross-party amendment) –** a clause prohibiting conduct in a public place which amounts to harassment of another (and which he knows or ought to know amounts to a harassment of the other)
  - Harassment includes "causing the person alarm or distress"
  - A person guilty of an offence under this section is liable, upon conviction to imprisonment for a term not exceeding six months
- **Kerb-crawling –** to make it an offence for a person "from a motor vehicle" to engage in conduct which amounts to harassment
- **Restriction on evidence/questions about complainant's sexual history –** would exclude the admission in evidence of any sexual behaviour of the complainant with a third party to show consent, whilst leaving it admissible if it is relevant to any other issue in the case
- **Collecting of data/information relating to proceedings involving rape and sexual assault –** requires the Secretary of State to collect and report to Parliament data/information (relating to proceedings involving rape/sexual assault) on an annual basis
- **Training for relevant public official in relation to the conduct of cases of serious sexual offences –** all criminal justice agencies to be trained and no judge can hear a sexual offence trial of any kind unless they have attended the Judicial College serious sexual offence course

THE BILL:

PART 1 – PROTECTION OF THE POLICE:

Background: a relatively uncontroversial part of the Bill, seeking to bolster Government support for the police and other emergency workers.

- **Creation of a new "Police Covenant"** – new measures for the creation of a "Police Covenant", which the Home Secretary will be obliged to report on, on an annual basis

- The report must focus on the "health and wellbeing and physical protection of members and former members of the police workforce", as well as the support provided for their families
- It must also remove "any disadvantage" faced by members (and former members) of the police as a result of their role
- **Increased penalties for assault on emergency workers –** new provisions increasing the maximum penalty upon conviction for an assault on an emergency worker (from 12 months to two years imprisonment); there will be no retrospective action with regards to this new provision

Comment: there isn't much political heat within new measures to protect the police and other frontline workers. Understandably, Labour is very keen to be seen as standing up for the police, and other emergency workers. There is an argument here that increased penalties will disproportionately impact on girls as they are more likely to come into contact with emergency workers in a 'welfare' capacity which may turn into an assault if there is any sort of restraint.

PART 2 – PREVENTION, INVESTIGATION AND PROSECUTION OF CRIME:

Criminal damage to memorials - background: this has been a particular source of contention within the Bill, with a focus on criminal damage to memorials. Secretary of State for Communities, Housing & Local Government, Robert Jenrick MP, characterised this section of the Bill as an attempt to *"save Britain's statues from the woke militants who want to censor our past".*

New measures will:

- Increase sentencing powers and allow for those cases to be tried in the Crown Court (the justification is the summer 2020 protests, namely the pulling down of various statues)
- The Bill will remove the current rule that limits prison terms to a maximum of three months unless vandals cause more than £5,000 worth of damage
- The penalty is therefore up to 10 years imprisonment and/or a fine of up to £2,500 regardless of the value of the damage to a memorial.

Comment: this will have a disproportionate impact on young people (as they are more likely to be involved in protests). It's interesting that the reason for including this in the Bill is the damage/removal of slave trader statues but the rhetoric largely talks about war memorials

Serious Violence Duty

The Bill will:

- Introduce a Serious Violence Duty on relevant agencies to collaborate, where possible through existing partnership structures, to prevent and reduce serious violence

Comment: such a duty should be focussed on safeguarding and have children's welfare as its primary concern, without this it will have unintentional punitive consequences for children at risk of violence. The Government's response to tackling serious violence should be part of a broader strategy to improve the capacity of the safeguarding system, statutory and voluntary services to protect children at risk of harm outside the home, including but not limited to serious violence – child sexual exploitation, criminal exploitation and other forms of harm should also be considered in a coordinated way.

PART 3 – NON-VIOLENT PROTESTS:

Background: arguably the most controversial part of the Bill, which seeks to strengthen police powers to tackle non-violent protests. This includes provisions to:

- Extend the powers to place conditions on public processions and assemblies
- Amend the offence relating to the breaching of conditions placed on a public procession or assembly
- Replace the common law offence of public nuisance with a new statutory offence
- Amend the legal framework designed to prevent disruptive activities in the vicinity of the Palace of Westminster to ensure vehicular access to Parliament

Comment:

- The Bill proposes to restrict protests that cause 'intimidation or harassment or 'serious unease, alarm of distress' to bystanders, which arguably includes all protests
- The right to protest is an important Human Right, and the restrictions proposed are undemocratic.
- Instead of criminalising protestors, the police are supposed to work with them to use the least restrictive means of interfering with their rights: policing by consent (The Sarah Everard vigil on Clapham Common is a really good example of ineffective police engagement)
- The proposals represent an erosion of the principle of policing by consent (along with principles of the right to protest and freedom of speech)
- These changes are likely to have a disproportionate impact on young people, BAME groups and people who present with non-neurotypical behaviours (as such behaviours are often misconstrued as acts of aggression)
- The impact on young people and children is of particular concern, and we should oppose these new powers on the basis that they are likely to bring more children into conflict with the law.
- Children must not be criminalised for exercising their right to protest

- The Public order provisions in the Bill threaten civil liberties and create harsher sentencing for children who "ought to have known" restrictions were in place

PART 4 – UNAUTHORISED ENCAMPMENTS:

Background: a further controversial part of the Bill, which will make it a criminal offence for someone with a vehicle residing or intending to reside on land, without the consent of the occupier of the land, to fail to comply with a request to leave the land:

- This refers to cases where that person's residence or intended residence has caused or is likely to cause significant disruption, damage, or distress.
- If the person fails to leave the land or, having left, re-enters it, he or she can be arrested and his or her vehicle (i.e., his or her home) can be impounded

Comment: specifically focused on the traveller community. Friends, Families and Travellers concerns are as follows:

- The measures outlined will further compound the inequalities experienced by Gypsies and Travellers, needlessly pushing people into the criminal justice system
- The powers will disproportionately affect specific minority and ethnic communities and are likely to be in conflict with equality and human rights legislation

PART 5 – ROAD TRAFFIC:

Background: the Bill introduces new provisions related to road traffic offences – another uncontroversial part of the Bill. Following a 2016 Government consultation on "driving offences and penalties relating to causing death or serious injury", proposals brought forward here include:

- The creation of a new offence of causing serious injury by careless driving
- Increasing the maximum penalty for causing death by dangerous driving from 14 years to life imprisonment
- Increasing the maximum penalty for causing death by careless driving when under the influence (from 14 years to life imprisonment)

Comment: the only, major comment to make here is that it is further Government "tough on crime" through a stiffening of custodial sentences for a variety of offences. Levelling up the sentencing for dangerous driving with armed robbing, is particularly punitive. Not a section of the Bill that we will be asked to make representations on.

PART 6 – CAUTIONS:

Background: contains provisions creating two tiers of cautions, replacing the existing six

disposals. There will be a lower tier disposal (community caution) and an upper-tier disposal (diversionary caution):

- The Govt/the police conducted a review of the existing Out of Court Disposals (OOCD) framework, with the response setting out plans to reduce the number of disposals from six to two
- This 'two-tier framework' was piloted in three police forces and has been voluntary adopted by additional forces since 2017
- This part of the now Bill now commits the Government to legislate, implementing the two-tier framework, ensuring transparency and consistency of approach for OOCDs across England and Wales

PART 7 – SENTENCING AND RELEASE:

CUSTODIAL SENTENCES:

Background: part 7 is split into two chapters. **Chapter 1 focuses on custodial sentences** and **chapter 2 focuses on community sentences**. The Bill represents further sentence inflation (as noted throughout the briefing)– particularly with reference to the more serious end of offending. This will simply serve to increase the prison population and impact on the capacity of both prison and probation services to deliver rehabilitation.

There is also a distinct lack of evidence that increased sentence lengths are effective, both in terms of deterrence or in terms of reducing reoffending.

There are a number of measures targeting very serious violent and sexual offenders, including:

- **Minimum sentences for particular offences –** the Government is proposing to change the threshold for passing a sentence below the minimum term for offences including a third, class A drug trafficking offence (7 years minimum) and a repeat offence involving a weapon or bladed article (six month minimum)
  - *The Court must impose an appropriate custodial sentence of at least the minimum term unless the court is of the opinion that there are "exceptional circumstances" which relate to the offence or to the offender which could justify not doing so*
- **Comment:** this changes the threshold for passing sentences below the minimum term for certain repeat offences. Seemingly on the basis that judicial discretion is being exercised inappropriately, as a 'large proportion' don't get the minimum term Judicial discretion is important as provides justice which is tailored to the circumstances

- Restricting judicial discretion to the notion of an independent judicial function
- **Whole life order (WLO) as a starting point for premeditated child murder –** remains a release mechanism open to prisoners serving a WLO, as the Secretary of State has the power to release on compassionate grounds in 'exceptional circumstances'
- **Comment:** populist, but not much further to say as the legal status of a WLO is compliant with Article 3 of the ECHR
- **Whole life orders for young adult offenders in exceptional cases –** to imposed on those aged 18 to 20 in exceptional and serious circumstances
- **Comment:** introduced specifically to cover the Manchester Arena bomber)
  - The Government does acknowledge that maturity is an important factor in sentencing (particularly in males, who are still maturing until the age of 25)
  - Those aged 18-25 should be sentenced through a nuanced approach closer to sentencing for children
  - Proposals in this Bill does not act on the evidence that the Government has accepted
  - Being able to sentence an 18-year-old to spend the rest of their life in prison is a very sad situation (rather than looking at what has gone wrong), but this measure is a very political one
- **Life sentence not fixed by law (minimum term) -** Discretionary life sentences may be imposed where a serious offence has been committed
  - The court must set a minimum term (tariff) that must be served in full in custody before the prisoner can be considered for release by the Parole Board
  - Clause 105 will change the way in which the starting point for discretionary life sentence minimum terms are calculated so that there is greater consistency across the sentencing framework as it applies to serious offence
- **Comment:** keep consistency with other sentencing, so only general inflationary sentencing points to be made here

RELEASE:

There are further measures included for the release process.

Abolishing automatic halfway release for certain serious offenders:

- **Background:** offenders sentenced to an adult SDS (standard determinate sentence) of between 4-7 years for certain serious violent/sexual offences (where that offence attracts a maximum penalty of life) will be required to serve two-thirds of their sentence in custody instead of half
- The Bill also changes the automatic release from the halfway to the two-thirds point for those who receive a section 250 sentence (SDS's for youths) of seven years or more (again, where that offence attracts a maximum penalty of life

Comment: the Government claim these measures are to address concerns about the current automatic halfway release of offenders who have committed very serious violent and sexual offences. This will:

- Have a disproportionate impact on men, people with a black or black British ethnicity, as well as younger adult offenders (18-24) and offenders over the age of 50
- In its equality impact assessment, the Government justifies the move as a "proportionate means of achieving the legitimate aim of protecting the public", though there is no evidence to support this claim

Power to refer high-risk offenders to the Parole Board in place of automatic release:

- **Background:** offenders who are assessed as dangerous by the sentencing court may be sentenced to an extended determinate sentence and may only be released before the end of their custodial term if the Parole Board assess they no longer pose a public protection risk
- The Bill introduces a new power for the Secretary of State to prevent the automatic early release of prisoners serving an SDS who are identified as significant public protection concern while they are imprisoned
- Will ensure that prisoners who become dangerous/are identified as dangerous in prison are not subject to automatic release before the end of their sentence
- Will instead by assessed by the Parole Board, who will determine if they can be safely released on licence before this point
- Will provide greater consistency in release arrangements, ensuring they cannot be released early without first being referred to the Parole Board for an assessment of their risk to the public, providing a greater degree of protection to the public

Comment: arguably can lead to 'punishment in advance' and is a slippery slope towards holding people without trial

Increase in requisite custodial period for certain other offenders of particular concern:

- **Background:** to level up the custody times between two different types of offending that might get a SOPC (sentence for offenders of particular concern)
- The Bill will change the earliest release point for all remaining offences which attract a SOPC (sentence for offenders of particular concern), bringing them into line with those terrorist offenders who receive a SOPC

Power to make provision for reconsideration and setting aside of Parole Board decisions:

Background: there is no power in the current legal framework for the Parole Board to re-open a case where they have made a decision, other than under the terms of the reconsideration mechanism which the Government introduced in the Parole Board Rules 2019:

- The Bill provides that the rules the Secretary of State may make, may confer a power on the Parole Board to set aside its own release decisions administratively on application from the Secretary of State without the need for a judicial review of the decision by the High Court

COMMUNITY SENTENCES:

Increases in maximum daily curfew hours and curfew requirement period

- **Background:** to allow for curfews to be more flexible and to be imposed more creatively by courts, increasing the daily maximum (of 16 hours of curfew) to 20 (though will maintain the seven-day period maximum of 112 hours
- Will also increase the maximum of 12 months for a curfew to two years; will increase the punitive weight of a curfew requirement, but also has the potential to support rehabilitation by providing a longer period during which some of the positive effects of curfew could be established

Comment:

- We welcome a renewed focus on community sentences – proven to be more effective at reducing reoffending than short prison sentences
- There needs to be a balance struck between improving judicial confidence in community sentences, whilst not creating community sentences which are too onerous and therefore setting up people to fail
- There is a risk of 'up tariffing' if people are given harsher community penalties than they would have previously got, and so there needs to be care that harsher community penalties are reserved for those that would have otherwise got custody (and this point links with the 'set up to fail' argument as up-tariffing can then lead to people being drawn further into the CJS)
- Repeat and prolific offenders often lead lives characterised by histories of trauma, substance misuse/mental health issues, and it can therefore be difficult for some people in this situation to comply with very restrictive community orders
- The lengthening of curfews and extension of electronic monitoring may therefore prove ineffective for this group
- Further investment in community sentences is a positive step, but 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), with over 30,000 per year still receiving custodial 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)

PROBLEM-SOLVING COURTS

Background:

- Elements of a problem-solving approach have been trialled separately across England and Wales
- The Government has committed to piloting 'Problem-Solving Courts' in up to five locations in a way that incorporates previously tried problem-solving approaches
- The Bill will:
    - Give the court a power to regularly review community and suspended sentence orders and to initiate breach proceedings at a review hearing
    - Expand the power to test for illicit substances outside the provisions of Drug Rehabilitation Requirements; and
    - Enable the court to impose short custodial penalties for non-compliance.

Comment:

- We are pleased that the 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
- Additional work needs to be done to ensure that the judiciary is aware of community options and can see when they work
- We can acknowledge that the CSTR pilot sites (and the extension of those sites) have a significant role to play in improving judicial confidence. Tough on crime government rhetoric has an impact on the public's perceptions of sentencing, and the judiciary is not immune from this
- We are against the proposal of the court being given the power to impose short custodial penalties for non-compliance as these are exactly what we are trying to avoid
- They will be disruptive, counter-productive and should not be in place in a community order where the purpose is to get someone to move away from criminality not to become entrenched in the justice system
- The argument that you should have prison as a last resort option is a poor one. If a community sentence isn't working, then putting in place a custodial sentence (which we also know don't work) is illogical

PART 8 – YOUTH JUSTICE:

YOUTH REMAND

Background: the Bill will amend the LASPO (Legal Aid, Sentencing and Punishment of Offenders Act 2012) to tighten the tests the courts must satisfy to decide when to remand a child to custody**.** It will also amend the tests the courts must apply to determine whether to remand a child into custody

Comment:

- We welcome the steps to reform the legislative threshold for remanding a child to custody, tightening the tests the courts must satisfy to decide when to remand 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 are pleased with the introduction to the LASPO 'Necessity Condition' that for a remand to custody to be deemed necessary, the court must consider the risks posed by the child cannot be managed safely in the community and
- That the legislation will explicitly set out that the court must consider the interests and welfare of the child
- Changes to remand of children, should also apply to remand for police custody

YOUTH REHABILITATION ORDERS (YROs)

Background: the Bill makes the following changes to the YRO:

- A standalone electronic whereabouts monitoring requirement will be added to the list of available requirements
- The curfew requirement will be amended to raise the maximum number of daily hours from 16 to 20 while retaining a weekly maximum of 112 hours
- Youth offending teams or probation staff will be made the Responsible Officers for YROs with electronic compliance monitoring requirements
- The maximum length of the extended activity requirement of a YRO with Intensive Supervision and Surveillance will be extended from 180 days to 365 days
- A mandatory location monitoring requirement will be added to YROs with Intensive Supervision and Surveillance; and
- The age limit of the education requirement will be raised so that it is the same as the age of compulsory education and training, rather than compulsory school age

Comment:

- If tougher community sentences result in reduced numbers of children sent to custody - this would of course be preferable to custody
- However, it is not clear that this will be the case, and there is always the risk of up tariffing with more punitive community orders being used for those who would have always got a community order, rather than genuinely being used as an alternative to custody
- The focus is very much on increasing surveillance and restrictions, rather than on better responding to children's needs and addressing root causes of offending behaviour
- We know from the BYC work that YOTs have an important role in supporting a young person's shift to a more positive, or pro-social, identity – an identity where a young person is empowered to make better choices in their behaviour and with wider life decisions, including relationships
- The young person recognises that they can gain status and security from these positive choices. They are more future-oriented in their motivations and choices. Research shows that when a young person at risk of offending finds a new pro-social identity, it can replace the need to maintain status and peer respect through negative behaviour
- Increasing surveillance and restrictions is not supportive of the creation of a pro-social identity
- Increasingly restrictive community sentences can simply set children up to fail and lead to more children being further criminalised through breaches
- Many of the children who will be the subject of community orders may lead chaotic lives with substance misuse or MH issues, lacking maturity and acting impulsively – these children will find adherence to restrictive orders very difficult
- Increasingly restrictive orders based on surveillance may disproportionately impact certain groups of children due to the over-policing of certain communities, and if there is discrimination in enforcement and decisions around breach proceedings.
- Increasing used of electronic tags is of concern and won't tackle child exploitation (as it's only the child at risk of breach, not the exploiter)

ADDITIONAL COMMENTS ON THE YOUTH ESTATE:

- The Bill fails to address 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 has been proposed in a Private Member's Bill by Rob Butler MP (Con, Aylesbury)
- The Bill is also a missed opportunity to raise the minimum age of criminal responsibility (from 10 to at least 14

PART 9 – SECURE CHILDREN'S HOMES AND SECURE 16 TO 19 ACADEMIES:

Background: Secure 16 to 19 academies are a new type of custodial provision for children and young people remanded or sentenced to detention in relation to a criminal offence. Further details:

- They will be run by child-focused providers and create a therapeutic environment within a secure setting, in line with international evidence that this is the most successful approach in reducing reoffending
- They will be dually established as 16 to 19 academies and SCHs. This means that they must be principally concerned with the provision of education to young people between the ages of 16 and 19. The Government intends that the majority of young people to be accommodated in secure 16 to 19 academies will fall within this age range
- Key to the vision for secure 16 to 19 academies is the autonomy of providers. The market for providers consists primarily of charities at the present time
- This legislative change aims to provide confidence to future secure school providers regarding their ability to autonomously operate secure schools in line with both their charitable objects and the Government's vision

PART 10 – MANAGEMENT OF OFFENDERS:

Background: part 10 makes further provision for the management of offenders, with Chapter 1 focusing on Serious Violence Reduction Orders and Chapter 2 focusing on the management of sex offenders

Serious Violence Reduction Orders can be made:

- If the court is satisfied on the balance of probabilities that a bladed article or offensive weapon was used by the offender in the commission of the offence, or that the offender had a bladed article or offensive weapon with them when the offence was committed
- If the offender convicted of the offence did not use the weapon or have the weapon with them, but another person used a bladed article or offensive weapon or had a bladed article or offensive weapon with them when the offence was committed, and the offender knew, or ought to have known, that would be the case.
- The introduction of 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.

Comment: 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. They are likely to disproportionately impact on BAME young people and children. They give police the power to stop and search those subject to an SVRO without reasonable suspicion. Damaging to police/community relations

PART 11 – REHABILITATION OF OFFENDERS:

Background:

- The Government has set out several progressive measures within the Bill, 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
- The changes will broaden the range of sentences that will no longer be excluded from rehabilitation periods
- Yet there remains an opportunity to rectify two further significant anomalies in the disclosure system which will be even more out of kilter (and disproportionate) when the new proposals come into play (listed in the comment section below)
- Additionally, the disclosure system is still overly complex, difficult to navigate and often arbitrary , which has a detrimental impact on individuals trying to move on with their lives and find a job, or get into education or accommodation
- This will continue to have a significant impact on the Government's ambitions of getting more prison leavers into work, and away from crime, harming Government plans to tackle reoffending
- And is why a fundamental review of the disclosure system is required

Comment - specific areas that need addressing in this Bill are:

1. **Motoring convictions:**
    - Around 50% of all criminal convictions each year are for motoring offences. All motoring convictions which receive an endorsement at court have a five-year rehabilitation period
    - Clearly, insurance companies need to access certain information about offences in order to assess risk and employers recruiting to driving jobs will need to see information about driving offences
    - However, the current rules have an entirely disproportionate impact on people applying for other jobs as they need to disclose these convictions for five years, often far long than for non-motoring convictions which receive the same disposal

- This has always been disproportionate, but with the proposed changes to rehabilitation periods other sentences it is even more so, leaving minor driving offences to be disclosed for the same time as convictions resulting in a one-year custodial sentence
- It also undermines the Government's efforts to shorten disclosure periods for prison and community sentences
- If somebody is convicted of a motoring offence during a community order, for example, the offence resulting in the community order will be dragged into the disclosure period of the motoring offence, leading to it being disclosed for significantly longer

Solution:

- **Insurance purposes –** the rules would stay the same, and insurance companies will be able to receive the information they need when assessing risk through disclosure
- **Employment purposes –** for jobs that involve driving, employers are able to take into account the information about driving offences on driving licenses; for all other employment, the rehabilitation period would match the sentence as with other convictions

2. **Ancillary orders:**
    - The Rehabilitation of Offenders Act defines a sentence as 'including any order made by a court in dealing with person in connection with any offence'
    - This means that orders normally considered ancillary (driving bans, compensation orders, for example), are deal with as sentences in their own right
    - The inclusion of such relevant orders under the ROA lead to the unintended consequence of minor disposals such as conditional discharge orders being subject to significantly long disclosure periods than some custodial or community sentences

Solution:

- By removing ancillary orders from the definition of a sentence, the disclosure period would be set by the disposal given
- Or by setting a maximum disclosure period of five years, this would bring these closer in line with other disclosure periods and take away the disproportionate nature of these disclosure periods

PART 12 – PROCEDURES IN COURTS AND TRIBUNALS:

Background: this part makes several changes to the procedures in courts and tribunals, specifically in relation to the use of sign language interpreters for deaf jurors, the prohibition on unauthorised transmission and recording of proceedings, the regulation of remote observations of proceedings, and the use of live links in criminal proceedings