

# **Criminal Justice Committee**

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

### **Written submission by COSLA Communities Team, October 2024**

Following the call for views on the 'proposals for the automatic early release of prisoners and prosecution policy on public safety and prison population', COSLA has sought to pull together a range of views from Elected Members and the local authorities Community Justice Peer Network. It is important to caveat that the call for views provided only a very short window to pull this information together. We would therefore stress that the following view is not a thorough representation of all local areas.

- 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?**

#### **General Feedback**

- Generally, there is support for the shift from custodial to community justice, in particular the focus this will have on reintegration and rehabilitation.
- A view was shared that this is potentially more manageable than some other aspects of the proposals. The group of people who this applies to is less likely to be in the high-risk category, but more likely to be in the high-need category requiring partner input from key services such as housing, drug and alcohol support and mental health.
- Broadly a permanent change to automatic early release for short term sentences would be welcomed. This may also lead to embedding improved practice in relation to the presumption against the use of short-term custodial sentences.

#### **Resourcing**

- Whilst the move from custody to community has support, there are equal concerns in relation to resources. We worry that statutory and third-sector services will struggle to provide adequate support to individuals leaving or diverted from custody, as resourcing continues to be a challenge. Adequate resourcing has been flagged as key to enabling success in a smooth and robust liberation for prison leavers, their families, victims and witnesses.
- We note the potential significant impact for larger authority areas where greater numbers of individuals will be released and choose to reside. Local

authorities are keen to understand the proposals for pre-release planning and the mechanisms that will enable local areas and services to cope with the increased demand.

### **Liberation Transition**

- Questions arose over disruption of medical interventions on release, and how this will be prepared for and managed. If early release impacts on a substance use programme, there needs to be a seamless transition to a community equivalent, and timely prescriptions; or if someone has other health and social care needs, there also needs to be a smooth transition to support services.
- The impacts of imprisonment and release on children and families must be recognised and risks managed appropriately. Pre-release planning through working with families is a crucial part of the liberation process.

### **Exclusions and Risk Management**

- The exclusion of domestic and sexual violence is strongly welcomed. However, where the crime committed is not a domestic or sexual offence, but there is a history of this behaviour, we are concerned that there will be a gap in identifying and managing the risk posed to women and children.
- Other crimes of serious violence or serious and organised criminality should also ideally be included, including terrorism offences and those with a Supervised Release Order (SRO). These exclusions relate to the need for robust risk management strategies to be in place in response to the potential for further serious harm offending. Also, consideration of impact on victims of these offence types must be acknowledged, given the potential to cause further harm.
- It has been queried whether the use of a veto could apply to this group of prisoners, similar to the previous emergency early release processes. If this is not possible, can discretion be used to ensure appropriate risk assessment and management is undertaken?

### **Victims and Witnesses**

- There are concerns that the proposal will deter or prevent victims and witness coming forward if sentences do not appear to reflect the seriousness of the crime. There is also a significant risk of victims' losing confidence in the justice system and prosecution outcomes, which in turn could impact on the likelihood of reporting future offences.
- There is also a call for further investment in victim support services along with being appropriately briefed on the plans to mitigate the impacts of early release on victims, witness and survivors.

## **Community-based Disposals**

- Awareness, understanding and use of alternative community-based disposals, which are of a duration and composition proportionate to the offence committed can assist with mitigating the impact on victims e.g. using a community-based disposal with a non-Harassment Order, which provides protection to the victim, and electronic monitoring, rather than a short-term custodial sentence.
- We support the use of Home Detention Curfew which would restrict someone to an address and allow for additional conditions attached to HDC, to protect the victim.

## **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.**

- The provision of more opportunities for programmes and resettlement, would be positive.
- However, this will also have an impact on Justice Social Work through an increase in higher risk cases being transferred to the community teams. Community teams are already under pressure in terms of managing higher risk cases with a smaller number of experienced staff.
- Our members are concerned about the pressure and risk that is being shifted from the Scottish Prison Service to the community. This expects the community to hold the increased workload and risk without appropriately matched resource. Nationally there would also need to be access to training for community-based staff to manage these higher risk cases. Any changes, therefore, need to be supported with additional resource, increased access to training and support for staff.
- Our members are concerned about the risk assessment part, and the potential for there to be a lot of work at an earlier point in terms of TARR/Licence conditions. Those individuals who aren't eligible for parole but are released earlier are likely to have increased risks. There would be concerns over such people even if they were being released at the time under existing arrangements. There would need to be sufficient time to: risk assess; consider MAPPA; hold meetings; licence considerations, so that all would be factored in.
- It is not clear whether this scheme would impact on parole hearing timings for people who are not at the non-parole stage yet. There is also a query whether there is another population of prisoners who would be safer to

release\manage on release, and whether there would be consideration to applying a VETO.

- It has also been highlighted that there is a potential impact on Police resources, SOPU, and a potential increase in cases managed under MAPPA. Has this been considered in resource requirements.

**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?**

- There may be benefits to bail review to reducing the number of people on remand but resourcing the review needs to be considered. JSW services must receive additional funding for the additional work and expertise required.
- Feedback on the effects of resourcing applies across all three questions. There is a need for further investment in services to cope with those who are being released earlier, or bailed. Services cannot be expected to manage this increase within existing resources, which are already struggling to meet existing demands.
- One area referenced a recent review of females held on remand. It was identified that these were not cases where bail supervision would have been considered appropriate. In most cases, a bail / electronic monitoring suitability assessment had already been completed and not assessed as suitable.
- Reviewing longer-term remands to consider whether court schedules can be brought forward would be welcomed. This may lead to the reduction in unplanned releases due to back-dated sentences and also reduce the remand population. It was expressed that while understandable, the Crown cannot continue to rely on the temporary extension of time limits put in place during the pandemic for people being held on remand.
- In relation to pre-conviction warrants not being used unless there is no other alternative; where this is due to a repetitive failure to attend court, there should be arrangements made for Justice Social Work to be notified and court support to be provided, to support attendance.
- In terms of early intervention, access to the most up to date undertaking list would allow for Justice Social Work to carry out assessments for Diversion and for pre-Court attendance support to be put in place, which could inform early disposals and prevent non-appearance.
- The use of Structured Deferred Sentences between sentences can help to provide a period of stability prior to sentencing. This would help evidence individuals' ability to adhere to a community-based disposal as opposed to a custodial sentence.

- While these measures will not have an impact on remand levels, they will impact on other areas of the justice system, freeing up capacity to deal with more serious cases within a community setting.