

# Criminal Justice Committee

**32nd Meeting, 2022 (Session 6), Wednesday 14  
December 2022**

## **Bail and Release from Custody (Scotland) Bill**

### **Note by the clerk**

#### **Background**

1. The Committee is beginning to take evidence on the [Bail and Release from Custody \(Scotland\) Bill](#) at [Stage 1 of the Parliament's legislative process](#).
2. The Bill proposes changes to the law in two main areas:
  - decisions about granting bail to people accused of a crime
  - arrangements for the release of some prisoners and the support that is provided to those who leave prison
3. When a person accused of a crime appears in court, the court has to decide whether they should be remanded in custody or remain in the community on bail while they await their trial.
4. Part 1 of the Bill makes changes to the current law relating to bail in four areas:
  - requiring justice social work to be given the opportunity to provide information to the court when making decisions about bail
  - changing the test that the court must apply when making decisions about bail
  - requiring the court to record reasons for refusing bail
  - allowing time spent on electronically monitored bail to be counted as time served against a custodial sentence
5. Part 2 of the Bill makes changes to some prisoner release arrangements and the support provided to those being released. These include:
  - preventing prisoners from being released on:
    - Fridays or the day before public holidays (adding to the existing requirement that prisoners are not released on Saturdays, Sundays and public holidays)
    - Thursdays in some circumstances

- replacing home detention curfew for long-term prisoners with a new system that will allow them to be temporarily released to support their reintegration – subject to risk assessment and consultation with the Parole Board
- giving the Scottish Ministers power to release certain prisoners early in emergency situations to protect the security and good order of prisons or the health, safety or welfare of those in prison
- requiring certain public bodies (for example local authorities and health boards) to engage in release planning for prisoners
- requiring the Scottish Ministers to produce minimum standards for throughcare support, provided to prisoners throughout their time in prison and during their transition back into the community
- allowing victim support organisations to receive certain information about prisoners, including about the release of prisoners

## **Finance and Public Administration Committee**

6. The Finance and Public Administration Committee is responsible for scrutinising Financial Memorandums (FMs) to Bills. The Committee ran a call for views on the FM for the Bail and Release from Custody (Scotland) Bill between July and September 2022 and received three responses, from Victim Support Scotland, Police Scotland and Glasgow City Health and Social Care Partnership.
7. The Finance and Public Administration Committee [wrote to the Criminal Justice Committee](#) to highlight the contents of these responses and refer them for its consideration as part of evidence taking at Stage 1.
8. These responses have been [published on the Scottish Parliament's call for views website](#).

## **Today's meeting**

9. At today's meeting, Members will hear from the following witnesses—

### Panel 1

- **Charlie Martin, Stakeholder and Policy Lead, Wise Group** – *see below for submission*
- **Lynne Thornhill, Director of Justice Services, SACRO** – *see below for submission*
- **Tracey McFall, Member of Executive Committee of the Criminal Justice Voluntary Sector Forum** – *see below for submission*

### Panel 2

- **Gillian Booth, Justice Service Manager, South Lanarkshire Council** – *see below for submission*
- **Sandra Cheyne, National CIAG Policy & Professional Practice Lead, Skills Development Scotland**

**CJ/S6/22/32/1**

- **Rhoda Macleod, Head of Adult Services (Sexual Health, Police Custody & Prison Healthcare), Glasgow Health & Social Care Partnership**

Panel 3

- **Sharon Stirrat, Justice Social Work Policy and Practice Lead, Social Work Scotland – see below for submission**
- **Keith Gardner, CJS Specialist Adviser, Community Justice Scotland – see below for submission**
- **Suzanne McGuinness, Executive Director of Social Work, Mental Welfare Commission for Scotland**

10. Where an organisation has provided a submission to the Committee's call for views on the Bill, this can be found below at the Annex.

**Clerks to the Committee  
December 2022**

# Annex: Written Submissions

## Panel 1

### Written submission from the Wise Group

The Wise Group is a leading social enterprise, working to lift people out of poverty across Scotland and North East England. Every day we are proud to support our customers into jobs, work to lift people out of fuel poverty, and help people coming out of prison to build a better future. We work with a range of partners across all sections of society to make a real and lasting difference to the lives of thousands of people and families every year.

### General approach

#### **Do you have any comments on the general approach taken in relation to the use of bail and remand?**

When viewed from a Human Rights perspective, the removal of a person's liberty must be wholly justified. In consideration of the impact on an individual's employment, family relationships, accommodation and often detrimental effect on their Mental Health, custodial remand must surely be an option of last resort after careful consideration of ALL other appropriate alternatives whilst ensuring public safety is considered.

It is important to note that to ensure equity, consistent alternatives need to be made available nationally. At present, alternatives to remand, such as Supervised / Supported bail are not available consistently across all 32 Local Authorities. Electronic Monitoring in appropriate cases provides a credible and cost-effective alternative to custodial remand nullifying the potential negative impact to an individual placed on remand.

Individuals subjected to Electronic Monitoring, however, must be provided with appropriate wrap around support to help them comply with EM order. The Scottish Working Group on Electronic Monitoring also made this recommendation in its 2016 report. Notably, a high proportion of those subjected to remand, do not go on to receive a custodial sentence.

#### **Do you have any comments on the general approach taken in the Bill to the arrangements for the release of prisoners?**

Unless we want to set people up for failure, there needs to be a holistic support service automatically provided to all individuals prior to and on release to help their re integration and to comply with any licence conditions and monitoring they are subject to. Clearly, there would be a resource implication in this, but it would be far below the cost of continuing to hold the individual in custody and is more likely to produce improved and sustained outcomes.

Wise Group experience in supporting the Scottish Government and SPS with the Emergency Early Release programme during the pandemic showed the value of effective advanced planning and inter organisational communication in ensuring the smooth and effective transition from prison to the community for those granted early release. The co-ordination of such planning is further referred to in later parts of this expression of views.

**Do you have any comments on the practical implementations of the proposed changes in the Bill, including resource implications?**

Funding of third sector services who provide the vast majority of voluntary throughcare services in Scotland continues to be stretched to the full and it must be recognised that the goodwill and commitment of such organisations in providing their services under financially straightened circumstances is not limitless. Proposals within this bill, particularly in providing throughcare services to remand prisoners, the additional workload for an already stretched Justice Social Work system will undoubtedly require the injection of additional resource to make the proposals become a reality.

Whilst acknowledging that budgets are under pressure across all public services, clarity of thinking and action is required to recognise that if we are bold enough to use a model of preventative spending in this regard, dividends and savings will come down the line thereby releasing future budget pressures within the Justice System.

**Specific proposals**

**Input from justice social work in relation to bail decisions**

This proposal is likely to be one of the most difficult parts of the proposed bill to implement mainly due to the question of resource. Even in those courts where Justice Social Workers have a regular presence, the time scales required by court business are challenging to say the least. The Court Social Worker may have had no prior contact with an accused person and perhaps would have to spend valuable time trying to track down colleagues to obtain relevant information. Again, in the case of a first time accused, Social Work Teams are unlikely to have knowledge of an individual and therefore may have no useful input with which to provide the court in forming any bail decision.

It may well be though, that an individual is already in receipt of support from a third sector organisation, so perhaps consideration might be given in the proposed bill, that the absence of useful input from Justice Social Work need not necessarily preclude an individual from being granted bail, if a relevant intervention by third sector could be recognised by the court as a supportive measure in granting of bail.

**Stating and recording reasons for refusing bail**

In the interests of transparency and equity, the provision of bail refusal reasons both orally and in writing will be likely to provide consistency of, and confidence in the shrieval decisions. Such reasons must be provided in clear, understandable language which can be easily understood by those upon whom the decision impacts.

Additionally, the recording of these reasons this would provide a richer and accurate seam of data than is currently available regarding bail decisions which has been identified as a gap for many years.

### **Consideration of time spent on electronically monitored bail in sentencing**

In the same way that time spent on remand is taken into account when a custodial sentence results from a case, it should naturally follow that a period of restriction on bail subjected to Electronic Monitoring should also be taken into account. Bearing in mind that even if granted bail with an EM order, an individual remains innocent until proven guilty, therefore having to spend a period on bail with an EM requirement must be viewed as having a punitive element and should not put an individual at a disadvantage in the event of a custodial disposal. One suggestion would be that for each day an individual spends on an Electronic Monitoring Order, then 0.5 of a day could be deducted from any eventual custodial sentence imposed by the court.

### **Prisoners not to be released on certain days of the week**

Legislation from the Prisoners (Control of Release) (Scotland) Act 2015 already exists to facilitate early release by up to two days for a prisoner due to be released on a Friday if it can be shown that such early release would help in their re-integration considering issues of access to universal support services such as housing, health and finance matters. There is inequity in this, insofar as the application for such early release needs to be made by an agency supporting the prisoner, and not all prisoners have such support in place. The dilemma of having a blanket ban on Friday releases is that there would then be even more numbers being released on a Thursday. Scheduled Thursday releases then being moved to Wednesday may not be provide a simple answer either.

That being said, these proposals are absolutely a step in the right direction in terms of supporting individuals to have a smoother re-integration with their families and communities, reducing the chances of them slipping back to offending and further incarceration at an early point. Of more importance to tackle this "issue" on a long term basis, is the provision of properly co-ordinated release planning across public sector and universal services. It seems clear that if prisoners are released early morning, say around 8:00am, there are far less problems in helping them navigate those crucial first hours where attendance at appointments is paramount, however, as court cases take precedence, this all too often results in prisoners being liberated much later in the day and that is when the problems start to mount up thorough "playing catch up".

The provision of equitable access to services such as New Routes Mentoring would go a long way to realising that the problem of Friday releases is not actually a problem if the resources are in place to properly co-ordinate, plan and implement a prisoner's release irrespective of the day of the week. "One man, one plan, one consistent support service".

There may also be further considerations of the ability of third sector providers such as New Routes being able to cope with the increased numbers of prison liberations in a shorter timeframe, essentially moving five days liberations into a four-day timeframe. That could potentially jeopardise the "gate pick up service" which is a crucial element of our service that ensures individuals get to a positive destination at the earliest

opportunity after leaving the prison gates. There may well of course be further difficulties in accessing the universal services such as housing, benefits, health services etc, if all of these are also going to be busier Monday-Thursday.

### **Release of long-term prisoners on reintegration licence**

In terms of equity, human rights and transparency, all categories of prisoners should be made eligible for early release whether that be under a reintegration licence or HDC. The process at the moment appears to be extremely under-utilised. As of 5th August 2022, only 60 individuals (0.8% of total population) were on HDC. This would suggest that less than 1% of the total prison population are classified as “low risk” which seems unlikely and requires further investigation as to why the use of HDC is at such historically low levels.

Far better that all prisoners are eligible for a form of early release, each case is decided on its merits and where prisoners are refused, the reasons are communicated to them clearly, with an action plan agreed that can help them to address any issues raised, and progress to the point of a future re-consideration. This may also be a useful tool in affecting attitudes and behavioural change as well as supporting sentence planning.

### **Emergency power to release prisoners early**

If the pandemic has taught us anything, it is that we can never be complacent or unprepared for what exceptional circumstances may befall society, so it makes complete sense to have an executive power of release to be used in extenuating circumstances, particularly if there is a risk to the safety or good order of prisons or a threat to the health and safety of staff and prisoners.

Given the Victorian fabric of some of the SPS estate, failure of infrastructure or services cannot be ruled out, therefore, such a power might be necessary to manage such an issue. This proposal will also require full governance and scrutiny to ensure that the public faith in the Justice System is not compromised, and indeed that this regulation is not there to be used simply as a solution to poor planning or under-investment in the prison estate.

### **Duty to engage in planning for the release for prisoners**

The lack of co-ordination between public services such as housing, health and DWP needs to be addressed. It is vital that partnership working is galvanised between public and third sector organisations to create better and sustained outcomes. The need for all to understand and harness the value and importance of each other’s contributions to the successful re-integration of prisoners to their communities to ensure a seamless transition between prison and community cannot be underestimated.

Forward planning for release in a coordinated “can do” manner is the key to giving prison leavers the best possible chance of successful re-integration and contributes to reducing reoffending. Failure to do so vastly increase the chances of setting people up for failure and a rapid return to the revolving door at the prison gates.

In terms of New Routes, it is our prison-based mentors across the SPS estate who coordinate the support for all our eligible customers. To effect that “one man, one plan” concept, placing a specific duty on public services to engage with our pre-release planning including relevant ISPs should be mandated to ensure that exactly, “the right plan, for the right man at the right time” is fully populated and agreed at least four weeks ahead of the liberation date. This will remove much of the anxiety for the prisoner, ensure that all required needs have been planned for and allow enough time closer to liberation date for any unexpected last-minute adjustments to be planned for.

Cognisance must be taken of the fact that the vast majority of voluntary throughcare in Scotland is not provided by statutory partners, rather it is provided in the main by third sector organisations, so there is a clear need for statutory partners to make improved efforts to engage and collaborate with the third sector.

### **Throughcare support for prisoners**

Statutory minimum standards for throughcare can only be a positive contribution in the work to reduce re-offending, recidivism and reduce the prison population but there must be a clear delineation between Statutory and Voluntary Throughcare, and the required investment be provided in what is shown by evidence to work most effectively.

Currently, throughcare provision for remand prisoners is almost non-existent, so an expectation that such a service can be mobilised as part of the proposed bill, will require a full review of how this will be funded. As an example, the New Routes Throughcare Mentoring Service which is available to convicted short term prisoners has supported 30% more individuals in the last financial year than it receives funding for. We have managed this demand through the commitment and goodwill of our mentoring team, but it is not sustainable in the long term without driving down the quality of the service provided.

This is the experience of all other third sector providers, so to add even more numbers (remand prisoners) to the demand would fly in the face of the proposed minimum standards unless the appropriate resource is allocated. If the expectation is that more can be provided for less, then unfortunately the Scottish Government ambitions around reducing re-offending and the prison population with undoubtedly suffer.

This bill presents a rare opportunity to tackle the issues of a stubbornly high prison population and the re-offending agenda by taking the long-term view of preventative spending. The simple fact is, that re-offending can only be stopped by offenders... providing they are given the right type of targeted holistic support that guides them to the pathway of desistance, helps them become net contributors to society and to get the life they want, but it doesn't come without costs.

It is also important that if Scottish Government are to publish and keep under review, minimum standards for throughcare of all prisoners, then they must include the third sector (who provide the vast majority of voluntary throughcare) in their discussions and any workgroups associated with the formation of said minimum standards.

### **Provision of information to victim support organisations**



It is right that victims should be protected from re-traumatisation and victim support organisations play an important part in ensuring this. We do already have a Victim Notification Scheme operating in Scotland and it may be that this scheme needs to be updated to become more effective. In this respect, it may be worth considering making the scheme an opt-out rather than an opt-in process. Of course, it is imperative that any changes to either the scheme or the organisations party to such information are fully compliant with current data protection legislation. It is noted also that prisoners are entitled to protection of their privacy and that needs to be considered under any new proposals.

### **Other views**

#### **Do you have any other views on the Bill?**

This bill presents a rare opportunity for Scotland to re-set its relationship with Bail and Custody and we believe that it is incumbent on all actors within the Justice Landscape to maximise the opportunities it will undoubtedly afford. We believe that our views are well represented in this submission and have tried to keep within our areas of expertise to provide the committee with an informative and pragmatic view of the considerations of this bill from the perspective of both a service provider, and the views of many of the customers of the New Routes Throughcare Mentoring service who have been widely consulted on the proposed legislation. Should the committee find it useful, we would be more than happy to participate in any evidence sessions in this bill, or perhaps, facilitate a round table discussion with the committee and customers of New Routes, whom this proposed legislation will affect.

**Written submission from Sacro**

Sacro is a Scottish community justice organisation which works to deliver life changing services that empower people, give hope and protection, and help to build safe communities. Sacro provides a wide range of direct, innovative services in Community Justice, Public Protection, Care and Housing.

**General approach**

**Do you have any comments on the general approach taken in relation to the use of bail and remand?**

Sacro is supportive of the approach - Remand should be used in a targeted way, directed at those who represent a serious risk to public protection.

**Do you have any comments on the general approach taken in the Bill to the arrangements for the release of prisoners?**

Sacro is supportive of the approach - Through-care is critical and can determine the success or the failure of reintegration back into the community.

**Do you have any comments on the practical implementations of the proposed changes in the Bill, including resource implications?**

There needs to be preparation in place for the impact of having more individuals in the community with appropriate support in place whether on bail supervision or through-care support. There are financial implications particularly for JSW who are being asked to provide reports prior to BSO being made and to provide information and supervision for LTP released on the new proposed licence. There are a number of areas where the Third sector can support the work of statutory services and deliver voluntary through-care services.

**Specific proposals**

**Input from justice social work in relation to bail decisions**

Sacro is supportive of JSW providing information in order to support decisions regarding pre-trial bail. This is consistent with taking a human rights approach, as the person is un-convicted, and removing their liberty at this stage, should not be taken lightly, therefore, proportionate information from JSW will support this process. There is a challenge in having relevant information available at the time, when a person appears from police custody, and there is a very short time period in which to prepare a report. This report should take account of issues around trauma.

**Grounds for refusing bail**

Broadly agree - Perhaps there should be a presumption against the use of remand, apart from under certain exceptional circumstances, such as in the interests of public protection. The decision to refuse bail should also take account of the impact on children within families and those with other caring responsibilities.

**Removal of bail restrictions**

Agree - Provided there is a risk assessment taking account of the implications of granting bail. The victim's perspective is important, taking account of situations where the offending is familial, or the victim lives in close proximity to the individual being considered for bail. It needs to be underpinned by public and community safety.

**Stating and recording reasons for refusing bail**

Agree - This is consistent with a human rights approach and may be beneficial at a later stage for individuals, as they do not always understand why they have been remanded. It may also support an appeal if and when appropriate. It provides a level of accountability when someone is being deprived of their liberty.

**Consideration of time spent on electronically monitored bail in sentencing**

This approach has merit - Perhaps treating the period of EM bail like a back-dated period on remand, whereby the sentencer will take the period on remand, into account and deduct from the overall sentence.

**Prisoners not to be released on certain days of the week**

Agree - This makes sense and will enhance the chance of successful reintegration. The system of earlier release will be more equitable and consistent as the current process involves a decision from SPS, whereby some people get released earlier and some do not for various reasons. Providers of voluntary through-care also need to gear services to take account of a more consistent earlier release.

**Release of long-term prisoners on reintegration licence**

There are resourcing implications for JSW. There needs to be suitability criteria set as well as a risk assessment, to determine whether individuals qualify for earlier release and whether it is in the public interest. There may be conflict to consider in relation to the decision-making process to release by Scottish Ministers who will consult with parole board. There may be differences of opinion to release by SM and PBS. How will these differences be resolved?

**Emergency power to release prisoners early**

Agree - This is sensible and practical and worked well during the pandemic.

**Duty to engage in planning for the release for prisoners**

Agree - if integration into the community is to be successful then there needs to be preparation with the individual at the heart of the process and needs to include universal services so that access to support and practical help is in place on release. The role of the Third sector in the duty to engage in planning should be considered also.

**Throughcare support for prisoners**

**CJ/S6/22/32/1**

Several agencies contribute to the through-care process and should deliver services in line with minimum standards. Standards which apply to those on remand would also be welcome, ensuring that they receive the same or similar services as sentenced prisoners. A definition of through-care would also be welcome as this is a term which can mean different things to different organisations. There are national outcomes and standards for JSW (which are out of date) but are being reviewed and updated. This is an opportunity to provide standards for all organisations who deliver services and contribute to the delivery of through-care.

**Written submission from the Criminal Justice Voluntary Sector Forum (CJVSF)**

The Criminal Justice Voluntary Sector Forum (CJVSF) is a collaboration of over 30 voluntary sector organisations working in criminal justice in Scotland. The Forum is hosted by the Coalition of Care and support Providers in Scotland (CCPS) and is funded by the Scottish Government and membership fees.

Our responses to the questions posed by the Committee have been developed through discussions with our member organisations. CJVSF members deliver a wide range of services for individuals and families in prisons and in the community.

They work across a range of policy areas, including youth justice, children and families, community justice, social care, employability, health and housing. As such, members are well-placed to identify opportunities for joining up responses to tackling challenging issues across different government departments and to highlight areas of good practice as well as areas where further actions are required.

A full list of organisations that are members of the Forum can be found on the CJVSF website: <https://www.ccpscotland.org/cjvsf/cjvsf-members/>

**General approach**

**Do you have any comments on the general approach taken in relation to the use of bail and remand?**

CJVSF supports the ambition set out in the Programme for Government 2021-22 that “As a progressive and humane society, we should be working towards using prison only for those who pose a risk of serious harm”. The issues arising from high levels of remand in Scotland have been well-documented for some time, with the previous Justice Committee completing its own inquiry in to the issue in of remand use in Scotland in 2018. We are therefore supportive of the general ambitions of the bill to try and help tackle this issue by strengthening the legislative basis for bail making decisions.

**Do you have any comments on the general approach taken in the Bill to the arrangements for the release of prisoners?**

There is a clear need to tackle the problems of some people being unable to access appropriate support and services, whether that is due to poor release planning or because of challenges associated with being released on certain days. We are therefore also supportive of the general proposals in the Bill to try and improve arrangements for the release of prisoners.

**Do you have any comments on the practical implementations of the proposed changes in the Bill, including resource implications?**

There are a number of practical considerations which will need to be taken in to account when considering the proposed changes in the Bill. These include:

- Ensuring adequate support and services are available and resourced: The 2018 Report from the Justice Committee’s Inquiry noted that community bail support

options are not consistently available across Scotland. In order for the proposed change to work in practice, sufficient alternative provision will need to be available across the country, with sustainable funding arrangements in place. Similarly, there will be a need to ensure appropriate support is available on release. As discussed in our response to Q8, the proposals relating to Friday releases may have implications for current service providers.

- Resource implications for Justice Social Work: CJVSF members reported that, in some areas Justice Social Work do already provide information to the courts when the prosecution opposes bail, for example members are aware of this taking place in areas that have Bail Supervision Teams such as Glasgow, Edinburgh and Falkirk. Our understanding is that this is not the case in all courts though. It would be helpful replicate good practice and to standardise this across the country, ensuring it is delivered to a high standard. CJVSF recognise that this will have resource implications for local social work teams and this should be factored in to decision making.
- Ensuring processes are in place to enable partners to provide relevant information to the bail decision-making process: CJVSF members also suggested that, in some instances, third sector providers (and other agencies) that are working with the individuals concerned may be well placed to also provide up-to-date, credible information which could help to inform bail decisions. We would therefore be keen to see clear processes put in place to enable this information to be shared, in line with GDPR legislation.
- Addressing language and communication needs: CJVSF believes it is important that the reasons for refusing bail are written so that they can be referred back to by individuals, as well as helping to build the evidence base and our broader understanding about the reasons why people are remanded. The reasons should therefore be recorded in clear, accessible language to make it easy for people to understand.
- Ensuring structures and processes are in place to enable all relevant partners to engage with release planning: Third sector partners can provide useful inputs about an individual's strengths, needs and local service availability and we are therefore encouraged to see the draft bill including a duty for statutory partners to "have regard to the role which third sector bodies are able to play in the development, management and delivery of the release plan". Our experience of the Community Justice (Scotland) Act 2016 suggests that such a legislative requirement is unlikely, in itself, to ensure strong engagement of third sector partners. As well as a legislative requirements, there will need to be:
  - clarity of roles and responsibilities of the various parties in relation to the development and delivery of release plans
  - clear communication routes and processes put in place to enable effective information sharing
  - appropriate resourcing of partners to ensure that they have sufficient staffing capacity to be able to engage in release planning activities.

## **CJ/S6/22/32/1**

- Ensuring processes are in place to enable access to independent advocacy: Members suggested there may also be a role for independent advocacy to ensure the prisoners' views can be heard in the process and their rights are upheld in relation to treatment and care.

### **Specific proposals**

#### **Input from justice social work in relation to bail decisions**

CJVSF agrees in principle that input from justice social workers should be encouraged in relation to court decisions on whether pre-trial bail should be granted. In order to ensure that this is implemented effectively, we would encourage the Committee to consider the following questions:

- Not all courts have court based social workers – How will the risk that people get remanded in order to get a court report be mitigated against?
- As set out in our response to Q2., this is likely to have resource implications for Justice Social Work. How will these resource implications be addressed?
- In some instances, other partners (e.g. defence lawyers, third sector organisations working with individuals and families) may also hold relevant information that could be used by the court to inform decision making. What processes can be put in place to enable this to happen in practice?

#### **Grounds for refusing bail**

We are supportive of the proposals to narrow the grounds upon which a court may decide to refuse bail. The court will also need to be cognisant of UNCRC and the Rights of the Child as this may have implications for court decision-making around refusing bail.

#### **Removal of bail restrictions**

CJVSF agrees with the proposal to remove some existing restrictions on granting bail in solemn procedure (more serious) cases to enable the court to apply tests used a simplified framework.

The proposal would repeal section 23D of the Criminal Procedure (Scotland) Act 1995. We agree that this section is not required, given that the circumstances set out within it would already covered by section 23C (Grounds relevant as to question of bail), which states that the court “must have regard to all material considerations”, including the nature and seriousness of the alleged offences, the probable disposal of the case if the person were to be convicted, previous contraventions of bail orders and the character and antecedents of the person.

#### **Stating and recording reasons for refusing bail**

As set out in our response to Q2, we believe it is important that the reasons for refusing bail are written so that they can be referred back to by individuals, as well as helping to build the evidence base and our broader understanding about the reasons why people are remanded. The reasons should therefore be recorded in clear, accessible language to make it easy for people to understand.

## **Consideration of time spent on electronically monitored bail in sentencing**

CJVSF members agreed that any time already spent with a reduction of liberty should be taken into account at the point of sentencing. In the same way that time spent in custody on remand is taken off a custodial sentence, time spent on bail with Electronic Monitoring should also be taken into account.

Members noted that an individual's compliance with bail EM requirements could also be a useful indicator of an individual's ability to comply with a community order.

## **Prisoners not to be released on certain days of the week**

CJVSF members are supportive of the ambition to improve access to services for prisoners upon release. Currently, the Prisoners (Control Release of Prisoners) (Scotland) Act 2015 does enable people to bring forward release dates if it is deemed that doing so would be better for the prisoner's reintegration in to the community but people need to apply to bring forward their release date and, in members' experience, it is not used on a consistent basis.

We believe the proposed change would make the use of bringing forward release dates where they otherwise fall on other days more equitable, by ensuring the opportunity is accessible for everybody that meets the criteria. Members cautioned, however, that some flexibility will be required to enable a person-centred approach. For example, whilst potentially unlikely, if a situation arose where it was deemed for some reason that a Friday release would actually be preferable to a Thursday release, then this option should still be available to the individual.

Members highlighted that, in addition to the proposed legislative change, there are a number of practical challenges that will need to be addressed to ensure a smooth implementation. This includes establishing clear processes at a local level to ensure:

- Prisoners and their families are aware that the release date is being brought forward and understand the reasons why and that this is communicated in a timely manner.
- Victims understand why release dates may be brought forward and understand the reasons why and this is communicated in a timely manner.
- Local statutory and non-statutory partners are able to work with the individual and families (where relevant) to plan and coordinate delivery of services for people upon release.

Members also cautioned that, whilst they are supportive of the proposal, it will have resource implications for third sector (and other) partners, as it will require them to squeeze 5 days' worth of current liberation support each week (e.g. gate pick-ups, accompanying people to appointments, providing emotional and practical support) in to 4 days of current staffing capacity. Additional staffing resource may therefore be required between Monday to Thursday, to ensure that appropriate levels of frontline support are still available to each individual/family, with knock-on impacts to people's contracts for those that are currently employed to provide liberation support on a Friday.



### **Release of long-term prisoners on reintegration licence**

Members fully support the intention of the proposal, which the policy memorandum states is to, “to better support the reintegration of certain long-term prisoners, for example by providing the individual with the opportunity to make positive connections in their community, including links to community-based support services. It is also intended to provide further evidence to the Parole Board to inform decisions on whether to recommend release of a long-term prisoner under section 1(3) of the 1993 Act.”

They questioned, however, the extent to which the proposed legislative change will achieve the desired change in practice and would welcome further detail around this proposal. They also highlighted the need for appropriate support to be in place for individuals granted a reintegration licence.

### **Emergency power to release prisoners early**

Members raised concerns about accountability and scrutiny, given that this would allow for changes to be made by affirmative procedure, without appropriate parliamentary scrutiny.

### **Duty to engage in planning for the release for prisoners**

CJVSF supports the proposal to introduce a duty for statutory partners to engage in planning for the release for prisoners, given the importance of pre-release planning and early engagement in ensuring that releases are successful and people are appropriately supported and able to access the services they require.

As part of this duty, we would like to see a requirement for statutory partners to engage effectively with:

- the individual concerned
- the individual’s family (where appropriate)
- third sector and community partners (This should include organisations working with the individual in the prison as well as those who can offer support and services in the relevant community that the individual will be returning to).

Along with a legislative requirement, the appropriate systems need to be in place to ensure that practical considerations are in place for people coming out of custody to ensure their human rights are met. This should include processes to ensure:

- People are informed of their rights and the processes/steps they will go through prior to release.
- A full release plan is developed with the individual and relevant organisations, which includes ensuring they have a safe place to go/ accommodation on release, benefits in place, bank accounts set up, transport links in place, access to prescriptions etc.
- The time of release takes into account personal circumstances -e.g. if an individual needs to catch a ferry to get home, then the time of release should allow for this to be feasible.

## **Throughcare support for prisoners**

We welcome the proposal to publish and keep under review minimum standards applying to throughcare support for both sentenced and remand prisoners.

Sub-section 2 of 34C in the Bill suggests that the minimum standards would apply to the following statutory partners:

- Local authorities,
- Health boards,
- Skills Development Scotland
- Integration joint board
- Scottish Ministers (which, in practical terms, we understand to be Scottish Prison Service staff acting on behalf of Ministers)

Given the current role that third sector partners play in providing a range of throughcare services, CJVSF members are keen to understand what role, if any, third sector partners will be expected to play in delivering new Throughcare Standards. They would also be keen to engage in any discussions relating to the development of the new Standards, to be able to feed in learning and evidence from their own experiences of working with people as they prepare for and transition back into the community.

## **Provision of information to victim support organisations**

We welcome victims being in receipt of knowledge around liberation of the perpetrator and for them, if they wish, to intimate that this information be given to an organisation supporting them as well as (or instead of) themselves. CJVSF members would welcome more detailed information on part b of the proposal, regarding information going directly to supporting organisations, before providing a view on this.

## Panel 2

### Written submission from South Lanarkshire Council

#### General approach

#### **Do you have any comments on the general approach taken in relation to the use of bail and remand?**

At the present time we believe that remand is used too often and should only be used when there is evidence that there is a risk in terms of public protection with a risk of serious harm.

People can often be subject to bail for significant periods of time, and some can have difficulties complying with stringent bail conditions for a range of reasons. It is our view that there are insufficient resources and services available at present to help support people subject to bail. It is a welcome opportunity that in the future there will be a requirement for assessment request from social work to inform the options for bail. This will increase the likelihood of bail supervision and electronic monitoring.

Housing partners welcome reducing short term prison sentences and allowing for tenancy sustainment. It stops the cycle of being in out of prison, disrupting life in terms of family support, employment, routine etc.

#### **Do you have any comments on the general approach taken in the Bill to the arrangements for the release of prisoners?**

The general approaches are well intended and are likely to reduce the number of individuals likely to be remanded in custody.

It is of note in the Bill; particularly the impact on JSW who will now be required to provide bail information feedback on all applications for bail. In addition, there is likely to be a need for increase throughcare provisions to support people at the point of imprisonment for the duration of their remand, sentence, and community transition. These changes will require significant additional funding and resource.

#### **Do you have any comments on the practical implementations of the proposed changes in the Bill, including resource implications?**

As in Q2, if the proposals outlined in the bill are to be implemented appropriately there will be a need for a significant increase in social work staff to manage demand.

#### Specific proposals

#### **Input from justice social work in relation to bail decisions**

We believe JSW have a positive part to play in such decision making and could provide valuable information that could allow areas of consideration that may in the past not have been available, when making a decision on bail.

One concern, however, is the practicalities around this and the implications for already stretched JSW services. To be in a position to undertake the volume of assessments that would be required would require significant investment and additional resources. Whilst we reflect that there has been some analysis of additional costings to the service it is not clear what the demand will be in reality. This will make the planning and staffing difficult to gauge initially. It is worth noting that there still remains logistical challenges with virtual custodies and interviewing service users to be able to provide relevant information for bail supervision currently.

### **Grounds for refusing bail**

We consider that this approach will be advantageous on the basis that it will encourage those making decisions regarding the use of remand to consider additional elements prior to making a decision regarding a period of remand. It will also support staff undertaking the assessment to consider the likelihood of bail supervision being considered by a sheriff.

We also believe it is important that only those who pose a risk of significant harm to the public and who cannot be safely and appropriately managed within the community for whatever reason are placed on remand.

### **Removal of bail restrictions**

We think this is a positive addition as there are people being remanded that potentially could be safely and appropriately managed within the community with the right support.

People's circumstances and lives change, and we require to consider the circumstances in the "here and now" when making decisions regarding people's liberty. Research and information available in relation to the impact of complex trauma and ACEs for example evidence that different approaches can achieve different outcomes, even for people who have significant patterns of offending behaviour.

Periods in custody can often cause more harm than good by removing protective factors as well as the negative. Periods on remand also don't help address the root causes or contributory factors that can contribute to risk for certain individuals.

### **Stating and recording reasons for refusing bail**

This requirement will increase accountability and provide a level of justification and reasoning around decision making relating to remand and bail. This will assist community justice partnerships in being able to request this information to identify where additional services could be commissioned, designed and offered to support further opportunities for bail.

Having a better understanding for the rationale and decision-making process may also allow community and support services to better tailor the inputs they provide in order to aid decision makers to have confidence in alternatives.

### **Consideration of time spent on electronically monitored bail in sentencing**

We consider this to be a positive plan and individuals who have had their liberty restricted within the community should have this considered when a custodial period is imposed.

### **Prisoners not to be released on certain days of the week**

We consider to be a very valuable change as we have witnessed first-hand the significant challenges that can occur for those who are released on days and dates that can make it difficult for individuals to access the services and supports, they require (who often are only available during office hours). They can also be booked into suitable accommodation and then able to contact their housing officer the following day should issues arise.

### **Release of long-term prisoners on reintegration licence**

This proposal would be helpful in terms of reducing Scotland's prison population. We do however have concerns in relation to the following section - The Scottish Ministers are to specify the period for which the prisoner is to be released on licence under section 3AB(1) (the "release period") up to a maximum of 180 days. Where they specify a shorter period, they may extend the period later up to that maximum. A long-term prisoner released on licence under section 3AB(1) will be required to return to prison on the expiry of the release period (as a result of amendments made by section 7(6) to section 11 of the 1993 Act). Such a prisoner will also be obliged to return to prison if, while released on licence, the Parole Board decide not to recommend that the prisoner be released on parole licence. That might happen where the Board considers the prisoner's case in the period leading up to the prisoner's parole qualifying date or, where the prisoner was not recommended for release at that date, at a subsequent review. There would be a question around why consideration would be given for release under 3AB if there was a risk of the prisoner not being recommended for release. This could result in placing prisoners at risk of absconding/difficult to locate if they believed they could be recalled.

There will be considerable increase in HDC assessments if we have understood this correctly and this will have an impact on resource for Justice Social Work.

### **Emergency power to release prisoners early**

Whilst we recognise the need in extreme circumstances to release prisoners it is welcomed that there are restricted categories of prisoner that would be exempt from release to support public protection. It is welcoming to see that risk assessment planning will be part of any emergency release planning going forward. However, this proposal would be helpful in terms of reducing Scotland's prison population.

In addition, SLC Housing reacted well to this in 2020, however, this did take up significant resources and it meant that void properties were held, incurring a void rent loss / loss of rental income so if this would be granted then consideration into housing plans, availability of housing stock and housing support officers would require to be considered.

### **Duty to engage in planning for the release for prisoners**

We consider this to be a positive change in theory, however, in reality it is difficult to create opportunities and plans that include access to relevant services (housing, employment, health and social welfare) when services are currently underfunded and understaffed. For example, there is limited housing stock available to offer people and the health service in most areas are already at the point of saturation.

Funding and resources are again areas for consideration as to manage this proposal effectively there would need to be sufficient investments in all areas. SLC Housing and Justice Throughcare already participate in the SHORE Standards and welcome the ongoing review of these procedures which is currently underway. Housing currently attend HMP Barlinnie and HMP Addiewell on a weekly basis and are looking to expand this to Polmont and for women.

### **Throughcare support for prisoners**

We welcome that there will be more structured and detailed national guidance with the responsibility and accountability resting with health boards and IJB's. The Bill introduces a requirement for Scottish Ministers to publish national statutory throughcare standards. This is intended to promote a consistent approach to the provision of throughcare support across Scotland which is welcomed and will require to ensure all partners are committed to this.

### **Provision of information to victim support organisations**

We think this will require a careful and considered approach and should be considered on a case-by-case basis. There will require to be consideration of the views of both the victim and the individual being released, as there can be different implications for both.

There also requires to be consideration given to the support services with whom such information will be shared. and arrangements in place about how this information would be controlled and managed. There are questions around how "support services" will be identified and who they will be deemed to be? If no service is supporting a victim does this mean that the victim has no voice in the process. We think this area needs more consideration.

SLC Housing would like to know how this would be managed, for example people move around so how can we ensure that a prisoner wouldn't be released into the same area as a previous victim?

## Panel 3

### Written submission from Social Work Scotland

Social Work Scotland 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.

#### General approach

#### **Do you have any comments on the general approach taken in relation to the use of bail and remand?**

Social Work Scotland (SWS) supports the general approach and its links both to the Scottish Government's Vision for Justice in Scotland strategy and Community Justice Strategy. The continuing high number of people in Scotland's prisons is well known, including the demographics and wider implications, particularly for families and children.

The use of custody for remand should be a last resort for the court – prison, both for remand and for convicted individuals, will always be necessary but must be restricted for those who pose a risk of serious harm for the reasons set out in the policy memorandum i.e. imprisonment damages the connections that prevent people from offending or reoffending, such as family relationships, accommodation and employment. Short-term imprisonment is not effective in addressing the underlying causes of offending.

However, a decision not to use custody must always be underpinned by appropriate risk assessment to ensure public protection and victims are kept safe.

#### **Do you have any comments on the general approach taken in the Bill to the arrangements for the release of prisoners?**

SWS supports the general approach to focus more on the rehabilitation and reintegration of individuals leaving custody for reasons referred to above.

In principle, although we do have reservations about some aspects of the proposals, increasing the options to test out peoples' readiness to be released from prison to inform The Parole Board for Scotland's decision making is welcome. Better testing should lead to better evidence of a person's readiness to be released and should, therefore, lead to better public protection and keeping victims' safe. Improving the coordination and provision of support is an integral part of helping people reintegrate into their community and reduce the risk of reoffending.

#### **Do you have any comments on the practical implementations of the proposed changes in the Bill, including resource implications?**

## **CJ/S6/22/32/1**

SWS anticipate some logistical, practical and financial considerations that will need to be considered in relation to the increased role of justice social work (JSW) in providing information to courts in respect of bail.

For example, some sheriff courts are located some distance from the JSW office and there is not always a JSW court officer present; criminal courts do not sit every day. This is particularly the case in remoter rural and island local authorities. How will, therefore, JSW be able to fulfil the intention of the Bill that JSW must be able to provide information without impacting on the efficient running of court business?

In respect of reintegration licences, there are potentially practical implications relating to the release of prisoners that do not have access to their own accommodation. For example, in one authority JSW is currently unable to offer pre-release home leave, due to the authority transferring all of its housing stock. Homeless accommodation is limited and Registered Social Landlord's (RSLs) have historically not been willing to enter into arrangements for temporary home leave. They have been trying to make arrangements for the lease of a property for this purpose for some time, without any luck. The risk is that this will result in a post code lottery when considering a reintegration licence release.

There is a related question of funding, too. The financial implications for Local Authorities are that SPS will pay for home leave accommodation as part of a temporary release licence, but only when the prisoner is residing there. This means JSW/the local authority would otherwise have to fund any gaps. In one authority a 2-bedroom property (sheltered accommodation) was reserved for the best part of one year with the intention that they would access this on home leaves and this would have been his permanent tenancy once he was released on licence. It was envisaged that on home leaves he would be supported to furnish the tenancy and create his own living environment. Unfortunately, the individual was downgraded to closed conditions and JSW will have to start planning again prior to his next parole review. Whilst this case is in many ways an exception, the costs are significant particularly where there is mental health, physical health and the risk of serious harm to be considered. Justice social work report an increasing complexity in the nature of the work they are undertaking with people.

We are unclear what the arrangements will be for reintegration licences in respect of planning. We understand that release on a reintegration licence under section 7 of the Bill will be classed as a temporary release licence. The expectation is that SPS would then cover accommodation costs as described above. But it will be important to clarify who is expected to bear any accommodation costs; and how will this be provided in respect of homeless prisoners. This is not covered in the Financial Memorandum, but we are reassured that in early discussion with Scottish Government officials that they are alert to these important technical issues. There will be a need to work with a range of partners - SPS, COSLA and local authorities in particular – about the most appropriate approach and model to use.

In individual cases, housing requirements (including care requirements) and how to resolve them if the individual is assessed as suitable for release would need to be part of the process around release, in line with the SHORE standards.



There is reference in the memorandum, however, to prison-based social work (PBSW) acknowledging “It is difficult to accurately assess what (the) additional requirements might be”. We agree but work related to reviewing the Memorandum of Understanding with SPS that underpins the latter’s purchase of PBSW as referred to (para 127, p22) has yet to start in earnest. There are current serious local authority concerns on the capacity of PBSW to deliver the level of service set out for PBSW in several prisons and we strongly emphasise that factoring in the implications of the impact of reintegration licences on PBSW is crucial. PBSW teams report limited time for engagement with and access to prisoners, often exacerbated by prisoner transfers.

The Financial Memorandum acknowledges several times that assessing the impact on local authorities is “challenging”. We agree. We continue to argue that the true cost of delivering the full suite of justice social work services is essentially unknown. Where unit costs are used as part of the current funding formula (50% of which is made up of workloads to determine the allocations to local authorities from the approximate £108m for JSW annually) these are predicated on historical calculations dating from 2016/17 and are calculated by dividing total recorded expenditure on, for example, bail supervision across the 8 now defunct Community Justice Authorities by the volume of those disposals.

There are, however, many aspects of JSW that currently have no unit cost; this has led to additional targeted funding as referred to in the memorandum to support the development and expansion, for example of bail-related services and alternatives to remand e.g. electronic monitoring assessments for bail. But this is no substitute for properly costing out what is required to deliver aspects of the Bill and then funding that in its entirety, including the cost of delivering justice social work services more widely – this is what is required if Scottish Government wish to establish consistency of service provision and the associated quality, performance and outcomes.

The Setting the Bar for Social Work in Scotland report (Prepared by Emma Miller and Karen Barrie for Social Work Scotland, May 2022 <https://socialworkscotland.org/reports/settingthebar/>) is clear that Social Work Scotland’s members have been reporting increasing concerns that social work workloads have become unmanageable, and that social workers in local authorities and health and social care partnerships are struggling under the weight of their caseloads. This led us to ask: can our workforce realistically work with people in the way that they’re trained to do, and in line with the aims of Scotland’s legislation and policy? How much work is too much for social workers? Where’s the line?

The picture that emerges from the ‘Setting the Bar’ research is serious, and demands attention now. It describes an ageing workforce – some 19% are reaching retirement age – and a staff group who are struggling with administrative burdens, fearful of making mistakes, and living with the moral distress of having to work in a way which doesn’t align with their professional values. One in 4 social workers graduating doesn’t make it to 6 years in the job (Setting the Bar survey, SSSC data, 2022). This includes justice social work staff.

There are two main financial implications for local authorities in the Bill. For the enhanced role envisaged for justice social work in the provision of information to the court, the methodology and calculation of the annual cost (£2.512m) are not unreasonable as a means of trying to achieve this.

However, this must be kept under review with further discussion and agreement in advance of any implementation if the Bill becomes law. The increase in inflation and energy costs coupled with the recent local government pay settlement already render the roughly estimated hourly cost of a social worker in the memorandum as unreliable (£29). There may also be associated costs to be factored in e.g. space in court buildings is often limited and the increase in staffing that will be required may pose related problems. The recruitment and retention crisis is affecting all of social work, including JSW, with several local authorities reporting they cannot recruit to both qualified social worker and paraprofessional posts, often after more than one round of recruitment. Any increase required in the workforce to meet the demands of the Bill, therefore, will potentially be challenging.

In respect of the proposed introduction of the reintegration licence for certain long-term prisoners, and notwithstanding our argument about the historical basis on which this is calculated, the unit cost of statutory throughcare (£9,034) does provide, a “notional cost” (para 130, page 22) to work from.

We accept that until there can be a root and branch review of how justice social work is funded to more accurately quantify this that this is the best way to currently assess the cost for this proposal.

### **Specific proposals**

#### **Input from justice social work in relation to bail decisions**

**SWS support this proposal as set out in the Bill, which reflects our consultation response.**

It is likely in many instances that JSW will hold and be able to provide relevant information to the court about the accused, for example on addiction issues, the implications of remand for parental responsibilities and employment, progress on community orders, risk etc., which the court may find useful in informing and determining its decision.

As noted in the policy memorandum, to a degree courts already seek information from JSW, but this will improve consistency and equity of service provision with the right to provide information (orally or in writing).

#### **Grounds for refusing bail**

SWS agrees with the policy objectives set out in the memorandum that accused persons who do not pose a risk to public safety or the delivery of justice should be admitted to bail. Therefore, the reasons for refusing bail must be in the interests of public safety or preventing prejudice – we support the distinction drawn between the more serious solemn and summary proceedings. It will contribute to reducing the undue use and harmful and negative impact of custody on the accused person and their family whilst balancing the rights of victims and others to be protected. It was reported this week that new figures show more than a quarter of Scotland's prison population consists of people being held on remand.

As of the beginning of August, 2,164 inmates were on remand and untried, with a further 303 convicted but still awaiting sentence, taking the total remand population to 29 per cent. The average time a remand prisoner spends inside is 87 days. We know the percentage subsequently given a custodial sentence, particularly for women, is low. Failing to attend court is not uncommon and is frustrating for justice stakeholders; and there may well be a detrimental impact on victims that is real and can be traumatic. We consider there must always be an option for the court to remand a person where it becomes apparent they will not comply with the direction of the court and in the interests of justice.

Social Work is the practice of promoting human rights and social justice through the duties, powers and rights set out within a detailed and complex legislative background. It is the comprehensive and specialist assessment of a person's circumstances and considerations of how best to support and protect individuals, victims and their community. As referred to above, the Setting the Bar report makes clear that due to workloads social workers do not consider they are able to provide the level of service they would like to. Therefore, to achieve this, social workers need time and the opportunity to build relationships with the people they work with.

### **Removal of bail restrictions**

SWS supports this proposal as it would enhance the role of the court as the decision-maker within a simplified legal framework.

### **Stating and recording reasons for refusing bail**

SWS agrees with the proposals in the Bill, which reflect our response to the consultation, and summarised in the policy memorandum (para 177).

### **As we said in our response:**

"Currently, data simply doesn't exist that can be usefully analysed as to why judges refuse bail. Being able to gather and analyse this data would help to ensure an understanding of the reasons, how tests of public safety are being applied, for example, and promote consistency in decision making.

"The court arena is imposing and intimidating; it does not reflect a trauma-informed approach. Taking in information is difficult under such conditions. Recording information would reflect a greater human rights-based approach and be unambiguous and provide a point of reference."

### **Consideration of time spent on electronically monitored bail in sentencing**

SWS support this proposal.

SWS are working with Scottish Government and other key stakeholders to ensure the assessment of electronic monitoring (EM) is available in all court jurisdictions as soon as possible. Whilst sounding a note of caution about what can be achieved through the various applications of the current model of EM (i.e. radio frequency), we support the additionality it brings, especially when linked to the provision of support, and its potential contribution to reducing the use of remand.

Given the punitive, restrictive and intrusive nature of EM it is right that the court considers this when imposing a prison sentence. There are important human rights and ethical considerations that must be recognised. We think the proposed time to be deducted (one-half) is fair and proportionate and that it is right to provide guidance to the court in respect of how this is applied to ensure a degree of consistency and equity.

### **Prisoners not to be released on certain days of the week**

SWS strongly support this proposal.

As we argued in our consultation response, this will significantly improve the ability of services to plan for the reintegration of people leaving prison, not least in avoiding Friday releases with all the attendant complexity of transport arrangements disproportionately impacting on those returning to remote rural and island authorities and the limited provision of services over the weekend. At every turn our goal must be to maximise the chances of people successfully reintegrating into their local community and avoiding the cycle of short-term prison sentences.

### **Release of long-term prisoners on reintegration licence**

SWS acknowledges the policy intention behind this proposal in providing increased opportunity for structured and monitored temporary release in the community to support successful reintegration for certain prisoners. Prison is an artificial environment. Therefore, the most effective means of testing whether a person can put into practice what they have learned during their time in prison, and whether any risk to the public or previous victims can be safely managed, is through controlled access to the community with safeguards in place e.g. supervision by justice social work; electronic monitoring.

However, we do not support the proposal of release on a reintegration licence in advance of their Parole Qualifying Date (PQD) as it is currently set out in the Bill. There is an assumption that Scottish Ministers, in effect the Scottish Prison Service (SPS), will not decide to release a person on a reintegration licence if The Parole Board for Scotland (PBS), who must be consulted, advise against this. But this cannot be guaranteed and it may not always be the case; nor can it be ruled out that subsequent to a period on a reintegration licence determined by SPS, even when it is seemingly successful, that PBS may decide not to grant parole. An expectation will have been created in the prisoner's mind that then has to be managed. There is the potential for it to be counter-productive. Moreover, if PBS advised against a reintegration licence and SPS chose to proceed and this resulted in serious harm that would create its own complexity and narrative with potential accusations of a system that is not joined up in respect of the more serious prisoners within the prison estate.

To avoid this potential, we think this proposal needs further consideration. For example, consideration could be given to amending the Bill so that there has to be agreement between SPS and PBS in respect of a reintegration licence in advance of their PQD.

There is a lack of detail in the policy memorandum as to how these reintegration licences would work in practice. For example, given JSW would be responsible for supervising individuals on a reintegration licence, what role would JSW have in contributing to the assessment and decision-making?

Planning would be required to manage these individuals and appropriate time to prepare release and risk management plans, including multi-agency processes such as MAPPA. It is understood this level of detail would not be set out in draft legislation; however, through discussion with Scottish Government officials we are reassured they are alert to these important considerations.

Conversely, we support fully the proposal that PBS on hearing a parole application may be of the view that release on a reintegration licence may provide the additional evidence that will support release on parole when the case is further called. There is consistency of both the material on which the decision is made and decision maker as it is firmly with PBS.

### **Emergency power to release prisoners early**

SWS considers this proposal to be reasonable and proportionate and, therefore, support it. It would provide a contingency should an operational emergency arise within the Scottish prison estate.

### **Duty to engage in planning for the release for prisoners**

SWS support this proposal which should lead to greater consistency. It reflects the position we set out in our consultation response. We argued that successful reintegration requires a broad range of partners, including the Third Sector, to contribute equally and meaningfully, but too often justice social work is expected to shoulder the burden of driving the agenda and providing the resource; and too often other public services are not being held accountable for contributing meaningfully to meet prison leavers' needs. SWS supports unequivocally the policy objective of improving the provision of support for people leaving prison that underpin this proposal. It will improve the chances of people successfully making the transition back into their community and reoffending – one less incident of reoffending means one less victim.

Importantly, and reflected to an extent in the Bill, planning for release must happen at an early point in an individual's sentence. This is particularly relevant for short-term and remand prisoners as they are not subject to statutory supervision by justice social work and the majority do not request voluntary throughcare from the local authority; and the inclusion of the latter in the proposal is most welcome.

### **Throughcare support for prisoners**

Justice social work services have delivered services in accordance with the National outcomes and standards for social work services in the criminal justice system (Scottish Government, 2010) and associated guidance since the early 1990s. Work is currently underway to re-write and modernise the National Objectives for Social Work Services in the Criminal Justice System: Standards – Throughcare (Scottish Government, 2004) which are outdated and unfit for purpose. This covers guidance for

long-term prisoners and those subject to statutory supervision and the voluntary Throughcare service provided by local authorities. We fully support this work.

National standards bring consistency and coordination; they are an easy reference point and set clear expectations. Our expectation is that the setting of minimum standards for identified public bodies by placing a duty on identified partners to engage with release planning for all prisoners, particularly short-term and remand prisoners, will similarly lead to improvements and provide a means to measure and benchmark performance. Importantly, we welcome their application for remand prisoners, too often a neglected aspect of the justice system in respect of support on their return to the community.

### **Provision of information to victim support organisations**

If we aspire to truly “hear the voices of victims” (Vision for Justice in Scotland, Scottish Government, 2022 p7) and support them to heal and recover then collectively agencies need to deliver policy and practice in a tangible, meaningful and trauma-informed way. SWS argued strongly for the provision of certain information and to provide this to victim support organisations (VSOs) in our consultation response. We continue to hold this position because it should enable them to proactively plan and provide support to victims and improve safety planning.

The specific points at which information can be provided to the victim or qualifying person are set out under section 17 of the Criminal Justice (Scotland) Act 2003. Given the possibility under the Bail and Release from Custody (Scotland) Bill for prisoners to be released by Scottish Ministers (in effect the Scottish Prison Service) for up to 180 days in advance of their pre-qualifying date subject to a reintegration licence or by The Parole Board for Scotland at a parole hearing, we think consideration should be given to amending the aforementioned Act so ensuring reintegration licences are added – this is a lengthy period of time and whilst we support the intention to test out a person in respect of their readiness for release, in effect it would have the same impact on a victim as a person being released post-parole qualifying date on a parole licence by The Parole Board for Scotland. This equally applies to a reintegration licence agreed by the latter at a parole hearing. We think it would close a likely loophole and provide further support and protection to victims.

## Written submission from Community Justice Scotland

### General approach

[Paragraphs 4 to 13 of the Policy Memorandum](#), written by the Scottish Government, sets out the policy objectives of the Bill.

The Scottish Government states that the proposals in the Bill are underpinned by a commitment to public safety and the protection of victims and are intended to lead to a reduction in the risk of future reoffending, leading to fewer victims in the future.

### Do you have any comments on the general approach taken in the Bill to the following?

#### 1. The use of bail and remand

Community Justice Scotland support the Scottish Government's efforts in this Bill to review and reform the use of bail and remand in Scotland.

The remand population in Scotland has risen to a historic high with around a third of all people in Scotland's prisons being there on remand, giving Scotland one of the highest rates of remand in Western Europe. (See <https://prisonstudies.org/country/united-kingdom-scotland>) While the backlog caused by COVID-19 has undoubtedly played a part in increasing our use of remand, the percentage of remand prisoners has been stubbornly high for some years now. The limited changes to the operation of bail and additional funding for interventions that has been made available to date have done little to affect the numbers or to shift our collective approach to risk and eligibility for bail. We therefore support the proposals put forward by the Scottish Government to more fundamentally change the way bail and remand operate in Scotland, in order to shift the balance further in favour of a presumption that bail be granted in all cases where it is safe to do so.

If the aims of the Bill are to be realised then there must be a greater focus on how people are supported during the period of bail in the community. Where required, people need to be supported to ensure that they attend court as directed, keep appointments, and attend for treatment. We must support every effort to introduce mechanisms of this nature across Scotland, including by supporting approaches rooted in peer mentoring and the third sector. To fail to do so means that the cycle of bail, breach and custody will not be interrupted and many people will continue to be trapped in the justice system.

#### 2. Arrangements for the release of prisoners

Community Justice Scotland support the Scottish Government's proposals to embed person centred planning for release and reintegration at the heart of prison processes. This collaborative approach to identifying and addressing the needs of people sentenced to custodial sentences to improve chances of their desistance and rehabilitation is fundamental to the concept of community justice.

This, combined with the introduction of a reintegration licence and the development of statutory throughcare standards will support the twin ambitions of the Justice Vision for Scotland to embed person centred approaches to justice and support a transition towards a justice system rooted in our communities, rather than prisons.

**Do you have any comments on the practical implementations of the proposed changes in the Bill, including resource implications?**

**Specific proposals**

You may wish to refer [to the detailed proposals in the Bill](#).

**Input from justice social work in relation to bail decisions**

Section 1 of the Bill seeks to encourage input from justice social workers in relation to court decisions on whether pre-trial bail should be granted and under what conditions.

**What are your views on this proposal?**

Community Justice Scotland support the proposals put forward in the Bill to give justice social work the ability to offer information to the court pre-trial and for the court to be able to seek information from justice social work.

Extending the opportunity to justice social work to provide information to the court at the earliest stage of proceedings recognises the unique and expert role of justice social work in assessing the suitability of an individual accused for bail and of determining any risk they may pose in the community. Providing the court with this information at the earliest stage will allow a thorough consideration of all the information relevant to a decision to grant or deny bail.

Similarly, the proposals that clarify the court's ability to seek further information from justice social work in section 1(3) of the Bill, will allow the court to have access to additional information when it deems that necessary to inform its consideration of whether to grant bail or what further conditions to impose on an individual's bail.

When considering the latter, in particular, it is critical that the court considers the personal circumstances of the individual appearing before them and that information compiled by social work details any vulnerability or complexity and, particularly, on the nature of support the person would require in the community to adhere to the court-imposed conditions of bail. These proposals would ensure that, in such circumstances, the court is afforded the opportunity to make a more informed decision when granting bail (with whatever conditions deemed necessary). This would, in turn, help ensure that people are provided with the support they need and are better able to comply with any further conditions placed on them.

In order for these proposals to be used effectively and efficiently, however, there will need to be consideration given to how justice social work can be notified in advance, wherever possible, of any instances where it is likely they will be requested to proffer this information to the court. Justice social work cannot, under current resourcing and



workloads, undertake an assessment and provide a report on a person's suitability for bail in every case that appears before the court. Moreover, in cases where the Crown Office and Procurator Fiscal Service (COPFS) do not oppose bail, it will not be necessary to provide additional information to the court for bail to be granted. It will be in cases where the COPFS intend to oppose bail that justice social work information will be most relevant in helping a court to reach its decision. This will also be the case when COPFS does not oppose bail but makes a recommendation for further conditions to be imposed if bail is granted.

In order to avoid undue delays and to ensure that the court has all the information it requires from the outset, it is necessary for this process to begin as quickly as possible. We would therefore welcome the establishment of information sharing arrangements and processes between COPFS and local justice social work services, through which COPFS would inform justice social work of a decision to oppose bail (and, critically, the reasons for that decision) in advance of any court hearing. This would allow for faster production of relevant information to the court and reduce the need for continuations of hearings and any consequent unnecessary deprivation of liberty.

In order to support the aims of the Bill, any increase in justice social work workload caused by larger numbers of suitability assessment will require a significant investment in justice social work resources to provide such services. This would include increasing the size of physically located court teams, the amount of community-based activity, training, development work in processes and procedures, etc. This will be particularly burdensome for those Local Authority Areas that have multiple courts or particularly high volume courts within their geographical boundaries and who are responsible under current arrangements for providing court based justice social workers; there will therefore need to be consideration given to how any additional resources are allocated across the country.

There will also need to be a similar focus on resources required to support 'Bail Supervision' through the community justice system. While justice social work is the lead service provider, this is an activity that must be a priority for local Community Justice Partnerships (or locally named equivalent structures) under the National Strategy for Community Justice. The support required for people with multiple complex needs requires a coordinated local response from local community justice partners and agencies. Consideration must therefore be given to whether additional funding is required to support local community justice partnerships in achieving this.

### **Grounds for refusing bail**

Section 2 seeks to narrow the grounds upon which a court may decide to refuse bail by:

- adding a specific requirement that reasons for refusing bail must include that this is necessary in the interests of public safety (including the safety of the complainer) or to prevent a significant risk of prejudice to the interests of justice
- limiting the circumstances in which grounds for the refusal of bail in summary procedure (less serious) cases may include a risk that the person might abscond or fail to appear.

**What are your views on this proposal?**

Community Justice Scotland support the proposals in the Bill to alter the test used by the court in determining whether or not to award bail by requiring that the use of remand is considered necessary either on grounds of public safety or to prevent a significant risk of prejudice to the interest of justice.

Given the nature of some crimes and the potential risk posed to the public by an accused person, it is sometimes necessary that the court deprives an individual of their liberty in advance of trial. Remand, however, is a significant interference with the right to freedom of an individual who has not yet been determined to have committed a crime. Spending time in prison on remand can have serious negative consequences for a person and can result in their losing their employment and accommodation, can interrupt medical treatment or education, and can negatively affect their family life. Research in particular highlights the negative impact remand can have on children who are accused of committing a crime (see <https://www.cycj.org.uk/resource/use-and-impact-of-bail-and-remand-in-scotland-with-children/>).

Where an individual is not convicted at court, the harm outlined above represents an unwarranted interference with their human rights and risks leaving them in a considerably worse position than they were previously. Similarly, significant numbers of people who are remanded and are convicted at trial do not go on to receive a custodial sentence. For these people access to employment, accommodation and family support can be powerful preventative factors limiting their future offending behaviour; interrupting them through a period of remand risks driving further offending behaviour and jeopardising any attempt at desistance by the individual.

This is compounded by a widespread lack of support services for those released directly from court, which means that many people leave a period of remand without any onward help to mitigate against its negative effects.

Even those people that do go on to receive a custodial sentence may benefit from continuing to access services and support in the community prior to trial to allow them to begin to address any issues or behaviours and could do so without posing a risk to the public if adequate supervision arrangements were in place. This is particularly important given the restricted prison regime and limited services available to people in prison on remand.

Given the above, we agree that the use of remand should be limited to those circumstances in which it is most necessary and agree with the proposals that this should be when there is a risk to public safety or is necessary to prevent a significant risk of prejudice to the interest of justice.

We believe that all other pertinent considerations that have been historically put forward as reasons used to deny grant of bail to an accused person, for example accommodation issues, ensuring attendance at court, etc., can be managed within the community as part of bail, supported by the use of instruments such as Electronic Monitoring (EM). Similarly, we agree with the proposals to limit the instances in which the court can refuse to grant bail in summary proceedings. Given

the comparatively less serious nature of offending subject to summary procedures, the reduced likelihood of a person subject to summary proceedings receiving a custodial sentence and the operation of the Presumption Against Short Sentences, we believe it is appropriate that the use of remand for these cases is limited only to the instances proposed in the Bill.

CJS believe that when determining what is a risk to the public, that the test used by the court for the refusal of bail could be whether or not an individual poses an imminent risk of serious harm – this would align with the definition used in the Framework for Risk Assessment, Management and Evaluation (FRAME) (Risk Management Authority, 2011) (available online at [https://www.rma.scot/wp-content/uploads/2018/02/FRAME\\_policy.pdf](https://www.rma.scot/wp-content/uploads/2018/02/FRAME_policy.pdf))

### **Removal of bail restrictions**

Section 3 would remove some existing restrictions on granting bail in solemn procedure (more serious) cases; thereby allowing the courts to simply apply the tests used in other cases.

The restrictions currently apply where a person, who is being prosecuted for certain offences, has a previous conviction for such an offence. In those cases, the law provides that bail should only be granted in exceptional circumstances. The relevant offences are ones involving drug trafficking, violence, sexual offending or domestic abuse.

### **What are your views on this proposal?**

Community Justice Scotland support the removal of the existing restrictions proposed by the Bill in order to ensure that the use of remand is reduced, for all the reasons already outlined above.

### **Stating and recording reasons for refusing bail**

Section 4 seeks to expand the current requirements for a court to state its reasons for refusing bail and to require the recording of reasons.

### **What are your views on this proposal?**

Community Justice Scotland agree with the proposed change. Understanding the use of remand and the reasons why bail is being refused and electronic monitoring technologies are not being utilised is of fundamental importance to ensuring the justice system operates effectively.

Despite the recent publication by Scottish Government of interim research findings on the use of remand, there is currently a dearth of robust or consistent data capture in respect of why remand is used. (See <https://www.gov.scot/publications/decision-making-bail-remand-scotland-interim-findings-report/pages/1/>)

Understanding how sheriffs have come to their decisions will allow local social work services, the judiciary and policy makers at a local and national level to make informed decisions relating to individual cases and to potential changes to the justice system as a whole. Consistent and accessible information on why bail or the use of electronic monitoring are not deemed appropriate will allow services and policy makers to understand any systemic weaknesses or failures in current services and processes that are leading the judiciary to refuse bail and to make adjustments to improve them wherever possible. It may also allow the development of new community based interventions and supports for people on bail by highlighting previously missed opportunities for supporting an individual or managing their risk in the community. It could potentially also help the public to understand how the law works and how courts come to their decisions on whether or not to grant bail.

The key to the effectiveness of this proposal will be in defining what data requires to be recorded, the mechanism for doing so (including timescales) and any onward access to such data (in accordance with the appropriate protections offered under the Data Protection Act 2018). At present the stating of reasons for granting or refusal of Bail orally in court is already a matter of law under Section 24(2)(A) of the Criminal Proceedings (Scotland) Act 1995. However, the only record of the reasons for any decision is often what is manually written down in a Sheriff's notebook or incorporated into a report to the Appeal Court. CJS would therefore support the development of standardised recording of specific data in such circumstances while seeking assurances that all safeguards in terms of fairness, data protection, and judicial process underpin this.

While this would be a welcome development, it has some practical issues for the court and, particularly, the judiciary. In a busy custody court there can be dozens of decisions made on any given day, so an effective and efficient way of recording the reasons of those decisions by either the Scottish Courts and Tribunal Service or the judiciary is required that is not overly burdensome.

### **Consideration of time spent on electronically monitored bail in sentencing**

Section 5 would require a court, when imposing a custodial sentence, to have regard to any period the accused spent on bail subject to an electronically monitored curfew condition. It generally provides for one-half of the period to be deducted from the proposed sentence, whilst allowing a court to disregard some (or all) of the time on bail where it considers this appropriate.

### **What are your views on this proposal?**

Community Justice Scotland fully support this proposal.

We believe that this proposal is necessary to bring Scotland into line with other jurisdictions of the United Kingdom. S.325 of the Sentencing Act 2020 (England & Wales legislation) already allows the judiciary in England and Wales to take account of time spent subject to electronic monitoring through an equation that proportionally reduces the amount of time a person will spend in custody based on the time they were subject to EM on bail.

Release on bail and, in particular, release on bail subject to electronic monitoring is a significant reduction of a person's liberty. Curfew restrictions and geographic limitations can significantly limit the day to day life of the person subject to them and may make normal activities such as work, childcare, and accessing services and support difficult or impossible. A significant body of academic literature considers electronic monitoring and the supervision and surveillance it entails to be an application of punishment in the community and research shows, moreover, that it is experienced as such by those subject to it (see, for example, McNeill, F. (2019) *Pervasive Punishment: Making Sense of Mass Supervision*, Emerald Publishing).

Research also shows the negative impacts electronic monitoring can have on families and cohabitants when someone who lives with them is subject to electronic monitoring (see Vanhaelemeesch, D. & Vander Beken, T. (2014) "Between convict and ward: The experiences of people living with offenders subject to electronic monitoring". *Crime, Law and Social Change* 62(4), 389-415).

All of this means that it is necessary and fair that we recognise the time someone has spent on bail subject to electronic monitoring, in the same way as we do for remand, when considering the length of any sentence they go on to serve.

### **Prisoners not to be released on certain days of the week**

Section 6 seeks to improve access to services for prisoners upon release by bringing forward their release date where they would otherwise fall on certain days (e.g. Fridays).

### **What are your views on this proposal?**

Community Justice Scotland agrees with the proposals in the Bill to end Friday releases and releases on the day before public holidays.

The reality since the passing of Prisoners (Control of Release) (Scotland) Act 2015 has been that there are very few applications for this form of early release made and that the few applications that have been made are predominantly made in relation to people supported by Local Authority Justice Social Work or third sector services.

A significant proportion of people serving short-term sentences do not avail themselves of the reintegration support services in prison; release on a Friday or the day before a public holiday gives people in this group little chance to access services in the community at that juncture.

Moreover, anecdotal evidence from a range of stakeholders and reports by the Drugs Death Taskforce indicate that inappropriate Friday releases regularly take place even when people are engaged in support services; in some instances these releases have even been described as a significant factor in some fatalities of people leaving prison, particularly for people with addiction issues who are unable to access treatment services. (See <https://drugdeathstaskforce.scot/media/1259/drug-law-reform-report-sept-6th-21.pdf>)

Experience also shows that there can be substantial difficulties for some people who return to remote rural and island areas from prison, for example restricted train or ferry services, long journeys, and potentially lengthy delays. It is critical that this is factored into release decisions and equity of service is provided to those whose homes and communities are in remote and island areas, in line with the Islands (Scotland) Act 2018.

Given the shortcomings in the current process and the difficulties in accessing support services and travel for those being released on a Friday, we believe that the most effective way of addressing the problem would be to prohibit any release on a Friday or the day before a Public Holiday. We would also agree that the best way to ensure that this does not put too much of a burden on services on Thursdays is to also bring forward release for those people due to be released on Thursdays by a day.

There must be a whole system approach to ensuring these issues are addressed effectively and people leaving prison need to be able to rely on consistent, quality services available in both the custodial estate and in the community to support the return-to-community processes. To ensure this there must be person centred planning of support and services and effective communication with support agencies, including the third sector – no person should be in a worse position to access support by virtue of their release being brought forward.

### **Release of long-term prisoners on reintegration licence**

Section 7 seeks to replace the current possibility of release on home detention curfew (HDC) for long-term prisoners (those serving a fixed term of four years or more). It would be replaced with a new system of temporary release under what the policy memorandum refers to as a reintegration licence.

Release on reintegration licence:

- would include a curfew condition and be subject to supervision by justice social work
- could not occur earlier than 180 days before the half-way point of the sentence (the earliest point at which a long-term prisoner may be released on parole) and could last for up to 180 days
- could be used prior to the Parole Board deciding whether to grant release on parole as well as in the run-up to the start of parole where this has already been granted.

### **What are your views on this proposal?**

CJS support the introduction of a reintegration licence to support long term prisoners in their rehabilitation and re-entry into the community.

Currently, under the Home Detention Curfew (HDC) process, very few long term prisoners are granted a release on HDC. The introduction of a specific licence and process aimed at long term prisoners will help to ensure that those assessed as suitable to do so are able to spend time in the community at the earliest opportunity to support their reintegration. Spending time in the community can have a range of

benefits for people in prison, allowing them to access education, training and support services that may not otherwise be available and it allows them to develop life skills and resilience that will ease their transition back into the community. It is also allows people to spend time with their families, thereby mitigating the potential negative effects of parental imprisonment on children.

The option of spending time in the community as part of a reintegration licence would also support the work of the Parole Board in determining an individual's suitability for release. A temporary release on a reintegration licence would allow an individual to demonstrate that they are capable of complying with the conditions of release on licence and may help them to further demonstrate to the Parole Board that they do not pose a risk of harm to the public.

This is particularly important given longstanding issues relating to the process of progression within prisons, whereby an individual is able to demonstrate that they are suitable to be released on parole. Progression and parole have also been significantly affected by the COVID-19 pandemic, with many key activities either ceasing or being severely restricted in response to outbreaks of the virus in prisons. Her Majesty's Inspectorate of Prisons Scotland is currently undertaking a review of progression in Scottish Prisons and we would recommend that any process for determining a person's suitability for a reintegration licence and how that can be used when considering their eligibility for parole be developed in line with the recommendations of that report. In particular, Community Justice Scotland would welcome tailored training and support for the Scottish Prison Service (SPS) managers that chair Risk Management Team meetings (Depute Governors under current arrangements) and who will likely be responsible for making these decisions.

It will also be necessary when developing the process to consider how decisions not to grant someone a temporary release under a reintegration licence are interpreted by the Parole Board in their consideration of whether or not to grant parole at their Parole Qualifying Date. There is a risk that a refusal to grant a reintegration licence could be seen as a sign of someone's unsuitability for release on parole, when this may not be the case. We would therefore welcome clear guidance and frameworks to support Parole Board decision making in such instance to ensure that introduction of the reintegration licence does not have the perverse effect of preventing an individual's release into the community.

### **Emergency power to release prisoners early**

Section 8 seeks to give the Scottish Government a regulation making power to release groups of prisoners in emergency situations. It could be used in relation to those serving custodial sentences, with various restrictions, but would not apply to prisoners held on remand.

Examples of emergency situations could arise where the spread of an infection might present significant harm to health, or an event leads to part of a prison becoming unusable.

### **What are your views on this proposal?**

Community Justice Scotland would agree that the Scottish Government should reserve the ability to order the release of prisoners in emergency situations by regulation.

During the COVID-19 pandemic, the Coronavirus (Scotland) Act 2020 allowed for a broad spectrum of people to be released to limit the impact of COVID-19 inside Scotland's prisons. The releases excluded specific categories of conviction, including those convicted of sexual offences and domestic abuse, and the process gave SPS Depute Governors at individual establishments a veto on release. The process of release for those c.350 people was viewed largely as a success as local areas reacted effectively by putting in place exceptional measures as a response to the emergency release, and many local partners reported strong and effective partnership working to support those who were released.

While we would support of the Scottish Government retaining powers for emergency release as possibly being required in specific circumstances, we would only do so provided that that power was applied with equity and fairness. In order to ensure that any releases were successful and appropriately managed, there would need to be an adequate level of support in place for people being released under the powers.

This is particularly important as any emergency release might come at short notice and before people have had the opportunity to engage with support services provided by justice social work or the voluntary sector. We would also contend that any exemption from an early release process be on the basis of an individual posing an imminent risk of serious harm to people or groups in the community, and not solely be determined by type of conviction.

### **Duty to engage in planning for the release for prisoners**

Section 9 seeks to facilitate the development, management and delivery of release plans for prisoners – both sentenced and remand. A release plan would deal with:

- the preparation of the prisoner for release
- measures to facilitate the prisoner's reintegration into the community and access to relevant general services (e.g. housing, employment, health and social welfare)

### **What are your views on this proposal?**

Community Justice Scotland support the proposal in the Bill to introduce a duty to engage in pre-release planning. The collaborative planning and delivery of justice service across agencies, including the participation of people accessing justice services, is fundamental to the success of Scotland's local model of community justice.

The CJS Outcome Activity Annual Report (OAAR) has, however, for a number of years highlighted that current service provision and local delivery of services do not meet the needs of people through the scheduled pre-release planning for



prisoners. (See [https://communityjustice.scot/reports\\_and\\_stats/community-justice-outcome-activity-across-scotland-annual-report-2020-21/](https://communityjustice.scot/reports_and_stats/community-justice-outcome-activity-across-scotland-annual-report-2020-21/))

There are consistent challenges for people leaving prison when accessing accommodation, health treatment (including transfer into community health and mental health services), access to benefits, and gaining employment. The planned pre-release process within the SPS, Integrated Case Management (ICM) is largely absent for short term prisoners across the prison estate and, where there are processes, they are inconsistent.

Introducing a duty to engage in pre-release planning on key partners would extend the collaborative ethos that underpins the Community Justice (Scotland) Act 2016 into prison based release processes. In developing this, partners will be able to build on the strong relationships already developed across community justice partnerships to support people in our communities. Future coordinated planning will also be facilitated by the introduction of an Information Sharing Protocol in 2020 between the Scottish Prison Service and each local authority area in Scotland that provides local areas with real time data on both incarceration and scheduled upcoming releases from prison.

The introduction of a duty to engage in pre-release planning would also, crucially, support Aim 3 of the National Strategy for Community Justice to “ensure that services are accessible and available to address the needs of individuals accused or convicted of an offence” and the priority actions that relate to it. In particular, it will support Priority Action 10 to “Enhance community integration and support by increasing and promoting greater use of voluntary throughcare and third sector services” and associated outcomes under the forthcoming revised Outcomes Performance and Improvement Framework.

In this respect CJS also welcome the proposals in section 9 of the Bill that require those developing a release plan to “have regard to the role which third sector bodies are able to play in the development, management and delivery of the release plan” and allowing partners to “commission services from, or co-ordinate with existing services provided by, third sector bodies as the person considers appropriate to meet the needs of the individual to whom the release plan relates.” The third sector are key partners in the delivery of community justice services in general and of services on release from prison in particular.

### **Throughcare support for prisoners**

Section 10 would require the Scottish Government to publish, and keep under review, minimum standards applying to throughcare support for both sentenced and remand prisoners. Throughcare support covers a range of services, provided in custody and during transition back into the community, which can help in the successful reintegration of people on release. The new standards would replace existing ones which are more narrowly focused on services provided by justice social work.

### **What are your views on this proposal?**

Community Justice Scotland support the proposals in the Bill to introduce statutory standards for throughcare services.

Throughcare requires many agencies to come together at the earliest possible stage to address the complex needs of people returning to their communities, in order to ensure that a range of services can be appropriately accessed to deal with not only practical issues such as the availability of accommodation or benefits but also health services and support for well-being. Community Justice Scotland would support minimum national standards to ensure that those returning from custody to community have the same basic provision of service wherever they are in Scotland. This would go some way to tackling the “postcode lottery” of support and reintegration, whilst still allowing local flexibility in the design and delivery of services.

This would also be a welcome development as it provides an opportunity to review and rationalise current provision of throughcare services. At present, the availability and delivery of these services varies considerably across Scotland depending on whether or not a person is a short or long term prisoner, or is engaged with a service provided by the voluntary sector or by justice social work. Statutory national standards would support continuity of practice and raise standards for everyone.

Some key principles for future standards could include:

- A clearer and consistent focus on person-centred planning and preparation for a person’s return to their community which starts from the point of incarceration
- Lawful information-sharing processes based on assessed levels of both risk and need
- Adequate and appropriate resourcing of the return-to-community process which is standardised across the whole of Scotland
- Inter-agency focus on the needs of children and families to support the return- to community process
- Accountability and scrutiny mechanisms to support, review and enforce the effective functioning of return-to-community processes at both local and national levels

In order for the standards to be effective, however, clarification is required, as to what the Bill means by the duty to comply with the standards in relation to “exercising functions relating to the provision of throughcare support”: specifically, whether this relates solely to face to face delivery of such activities or would include the external commissioning and funding of services by public bodies and local community justice partnerships. If the latter is the case, then a clearer statement to that effect in the legislation would be welcome to ensure that persons falling under the act are aware of their duty and clear expectations are established at the outset.

Related to this, part of the challenge facing any new national standards would be how they could be applied and used to support the development of third sector services without unduly restricting the innovation and flexibility that makes these services so effective. The Bill does not propose to make voluntary sector services subject to the national standards as a named “entity” under the legislation and we

would agree that this is the correct approach – placing such a duty on the voluntary sector would not be possible legally or would require significant changes to the regulatory framework for justice services to allow for the inspection and scrutiny of third sector services. If the standards are to apply to commissioned services, however, thought will need to be given to ensuring that commissioning processes and contracts are not overly prescriptive and that innovation and the piloting of new approaches can continue to flourish in the third sector. To support this, we would welcome participation from a range of voluntary sector service delivery and representative organisations in the development of the national standards to ensure that they can be adopted meaningfully by the third sector.

Finally, if these standards are to apply to externally commissioned services, we would suggest that the list of people subject to them should include any public body commissioning throughcare services. This would include Community Justice Scotland, as we have been asked by the Scottish Government to review the commissioning of third sector voluntary throughcare services, with a view to taking over the responsibility, monitoring and evaluation for future throughcare service provision.

Community Justice Scotland are in the process of undertaking a collaborative research and consultation process to establish an evidence base that will be used by the Scottish Government to determine the form of any future delivery. This evidence base will be directly relevant to the development of any future national standards for throughcare and we look forward to supporting partners with their development in future.

### **Provision of information to victim support organisations**

Section 11 seeks to provide that certain information about prisoners that can be given to a victim (e.g. on the planned release of the prisoner) can also be given to a victim support organisation helping the victim.

### **What are your views on this proposal?**

Community Justice Scotland support improving the experiences of victims and their families throughout the justice system. Where people are provided with information under the Victim Notification Scheme, it is essential that this is done in a trauma informed and supportive manner and that they have access to support when they require it. Where victims and others must be protected from an identified and specific risk, it is essential that appropriate mechanisms are in place to manage that risk and ensure effective victim safety planning.

Any provision of information to victim support organisations must be subject to rigorous data protection and safeguarding processes to ensure that the personal information of people released from prison is not compromised and their wellbeing is not jeopardised.

## **Other views**

### **Do you have any other views on the Bill?**

The successful implementation of this Bill will require careful consideration of the extra resources likely to be required by justice social work services and others, including the third sector, to deliver the proposals contained within it.

If the ambitions of the Bill are realised, justice social work services in particular will likely be faced with a number of increased demands on their time and resources. These could include:

- An increase in the number of pre-trial reports prepared
- An increased in cases of bail (and of bail with further conditions) that require monitoring and supervision
- A new caseload of people subject to a reintegration licence
- A potential increase in the number of people they must supervise who have been released from prison on licence following a successful application for parole (if compliance with a reintegration licence is deemed an effective demonstration of suitability for release by the Parole Board)
- Increased participation in pre-release planning processes within prisons (for both prison based and community social workers)
- A greater participation in throughcare services and support for short term prisoners.

The introduction of these additional responsibilities and increases to existing workloads may also coincide with significant additional strains on justice social work capacity brought about by the introduction of the National Care Service (NCS). While legislation to establish the NCS has yet to be passed and there has not yet been a decision on whether or not justice social work will be included within it, the nature of the changes proposed will mean that there will be significant changes for justice social work services, even if they are not included in the NCS. This will especially be the case for those 17 local authority areas with justice social work services are located within Integration Joint Board structures, which the National Care Service (Scotland) Bill is proposing to disestablish.

Community Justice Scotland would therefore welcome consideration at this stage of any potential resource implications for justice social work and of how any potential reductions to justice social work capacity posed by the establishment of the NCS might be mitigated.