



Bail and Release from Custody (Scotland) Bill
Evidence to the Criminal Justice Committee – Victim Support Scotland
supplementary submission

Background

Victim Support Scotland (VSS) is the leading charity dedicated to helping people affected by crime across Scotland. Victim Support Scotland provides information, practical help, emotional support and guidance through the criminal justice system. We offer support to people who directly experience any type of crime including murder, terrorism, rape and sexual assault, domestic violence and hate crime. Our support also extends to friends and families of victims.

VSS are grateful to the Criminal Justice Committee for the opportunity to provide evidence to the Committee on the 11th of January 2023. During the session we were advised that some additional questions would be requested in writing regarding Part 2 provisions of the Bill, which unfortunately we did not have time to get to during the session. We look forward to answering those questions when received. We also felt it would be appropriate to submit some additional information to the Committee in relation to some of the questions that were asked, and to provide some statistical information that we quoted during our evidence to the Committee. The Committee may find this useful during further evidence sessions.

Input from justice social work in relation to bail decisions

We were asked during the session about good practice and which other agencies should be involved in collating information to be presented to the court to assist in reaching a decision. We would draw attention to current practice in Glasgow where ASSIST who are a domestic abuse advocacy service and are part of Glasgow City Council provide information to the procurator fiscal on the views of victims regarding bail conditions. We strongly believe that victims' voices should be heard when making bail conditions or completing risk assessments that affect them. We would advocate that similar approaches to that taken in Glasgow in relation to the work of ASSIST could be taken in all areas of the country.

Grounds for refusing bail

During the session we were asked to make comment on the academic research submitted to the Committee that states, ***"The available international evidence makes clear that decarceration – whether through efforts at the front end with bail reform, or at the back end with release from prison – need not be causally associated with increases in crime"***.¹ This appeared to be in contrast to the VSS position that there are significant numbers of people who currently offend in Scotland whilst on bail. We highlighted that a significant portion of these crimes are not minor crimes as they include Murder/Culpable Homicide and serious violence and sexual violence within the statistics. These crimes and offences committed whilst on bail are outlined in a Freedom of Information (FOI) response from

¹ [Response 168334052 to Bail and Release from Custody \(Scotland\) Bill - Scottish Parliament - Citizen Space](#)

the Scottish Government². This FOI response highlights that there are thousands of individuals charged with breaching their bail conditions or convicted of committing other offences whilst on bail. The figures from this are outlined in note 1 and note 2 below.

We do agree, however, that significant reoffending rates would not be inevitable if there was proper risk assessment (so that bail was only granted to those individuals who did not pose a risk), support, supervision and proper management and oversight of individuals who are released on bail. This form of support and management does not currently exist as the figures below evidence in our opinion.

Note 1

Number of people convicted of a breach of bail conditions under the section 27(1)(B) of the Criminal Procedure (Scotland) Act 1995.

	2017 - 2018	2018 - 2019	2019 - 2020
CRIMINAL PROCEDURE (SCOTLAND) ACT 1995 SECTION 27(1)(B)	3,735	3,485	3,851

Note 2

Number of people convicted of a crime whilst on bail, excluding people convicted of a breach of bail conditions under the section 27(1)(B) of the Criminal Procedure (Scotland) Act 1995, where main crime, 2017-18 to 2019-20.

	2017 - 2018	2018 - 2019	2019 - 2020
Murder / culpable homicide	11	7	11
Causing death by dangerous or careless driving	2	0	1
Attempted murder and serious assault	169	199	189
Robbery	132	110	130
Domestic Abuse (Scotland) Act	0	0	26
Other non-sexual crimes of violence	13	21	13
Rape and Attempted Rape	4	9	6
Sexual assault	14	11	16
Crimes associated with prostitution	9	1	0
Other sexual crimes	42	47	53
Housebreaking	254	220	237
Theft by opening lockfast places	52	34	34
Theft from a motor vehicle	21	36	28
Theft of a motor vehicle	51	56	50
Shoplifting	2166	2199	1942
Other theft	451	390	399
Fraud	64	38	50
Other dishonesty	180	181	149
Fire-raising	21	25	19
Vandalism etc.	351	340	318

² [Convictions of breach of bail conditions statistics: FOI release - gov.scot \(www.gov.scot\)](https://www.gov.scot/Information/FOI/Releases/2019/20190901-convictions-of-breach-of-bail-conditions-statistics)

- **The sentenced population remained at very similar levels in 2020-21 and 2021-22**, falling by 61 people in 2021-22 (-1% to 5,597). Over the same period, the untried population increased by almost 14%, from 1,384 in 2020-21 to 1,571, while the convicted awaiting sentence (CAS) population increased by 41 people (+16% to 291).
- **The overall (average daily) remand population (untried + Convicted Awaiting Sentence) increased by 14% between 2020-21 and 2021-22** (from 1,634 in 2020-21 to 1,862).
- **On the average day in 2021-22, 1,862 prisoners were on remand. This is the highest annual level recorded to date and, at 25% of the population, the largest proportion on remand on record.**

Profile of remand population

- As highlighted above, specifically in relation to remand statistics **we acknowledge that the prison remand population rose 14% from 2020-21 to 2021-22. On the average day in 2021-2022, 1,862 prisoners were on remand. This is the highest annual level recorded to date and, at 25% of the population, the largest proportion on remand on record.**
- However as mentioned, this rise is not observed across all of the index offences. The following offence types rose during this period:
 - Group 1 non-sexual crimes of violence - There were **continued increases in the remand population accused of group 1 offences between 2020-21 and 2021-22. This population increased by 9%** from around 911 to 989. This group comprised 53% of the remand population.
 - **Group 2 sexual offences also increased, rising 23% from around 170 in 2020-21 to 209 in 2021-22.**
 - **The population accused of index Group 5 (Crimes against society) also increased from 288 to 386 (+34%),** remaining the second largest population group at 21% of those held on remand on the average day in 2021-22.
 - Taken together, around **60% of the average daily remand population in 2021-22 were accused of index Group 1 (Violence) and 2 (Sexual crimes) offences.**
 - The remand populations accused of index offences in Group 3 (Dishonesty), group 4 (Damage and reckless behaviour), Groups 6 (Antisocial offences),
 - Group 7 (Miscellaneous offences) and Group 8 (Road Traffic Offences) remained broadly stable between 2020-21 and 2021-22.

As can be seen from the above statistics the remand population increases over the last year are mainly due to the prison population seeing significant rises in violent offence accused and sexual offence accused persons being placed on remand.

We therefore have concerns that any significant reductions in the number of people on remand may lead to people being placed at increased risk given this.

Whilst we do not want remand to be used inappropriately, we are concerned that these proposals and any reduction in a judge's decision-making discretion may lead to increased danger to victims of crime and their families.

We acknowledge that victims of crime (complainers) are specifically mentioned in the public safety test when considering a decision to refuse bail. We argue that the legislation should have victim (complainer) safety as a primary consideration in the public safety test that judges must consider.

Removal of bail restrictions

We were also asked about the removal of restrictions currently contained within Section 23D of the Criminal Procedure (Scotland) Act 1995⁶ on granting bail for certain solemn offences involving Violence Against Women and Girls. As has been highlighted during the various sessions there is concern about the lack of clarity on the definition of the public safety test. We would argue that the restrictions currently contained within section 23D are unique in nature designed to tackle the significant issue of violence against women and girls in our society. Any diminution of these restrictions may in our opinion be dangerous for victims of these types of crimes and offences and potentially leave victims exposed to danger if the presumption of remand is removed. We would therefore that without significant clarification as to what the public safety test means for VAWG type cases the presumption should stay.

Victim Support Scotland has also been asked the following questions by Jamie Green MSP by email as he indicated he would do at the previous Committee session on the 11th of January. The section that follows outlines these questions.

Q. Are you familiar with Kay's law which the UK Government have implemented down south and requires victims to be consulted before deciding to release someone on bail. Would you support similar provisions being implemented in this Bill?

Victim Support Scotland understands that Kay's Law is intended to change the way pre charge bail powers in England and Wales are dealt with by the police there. VSS recognise that the legal powers for police officers in Scotland differs from officers in England and Wales in relation to pre charge bail. From our knowledge the police in Scotland have a similar power to that of pre charge bail called Investigative Liberation, which was introduced in Scotland as a result of the Criminal Justice (Scotland) Act 2016. These powers can be used to impose restrictions on those suspected of committing crimes for a period of 28 days, whilst the crime is under investigation.

In relation to domestic abuse cases, we believe that these powers are underutilised by the police in Scotland. We would strongly advocate the police in Scotland using these powers more widely in Domestic Abuse cases and imposing restriction on the accused which keep the victim safe whilst the investigation into the crime takes place. The powers do not allow the police to impose curfew conditions, but they can restrict the suspect from going near a witness or where the witness lives whilst the investigation is ongoing.⁷

As we have shown in our earlier answers to the Committee, we believe that the victim of crime can best advise the police on which conditions are appropriate to protect them. We therefore think it is vital that the police look to engage with them to get their views prior to imposing any conditions against a suspect of crime.

Q. The Scottish Government originally consulted on reducing the automatic early release period as part of this Bill's proposals and that was thankfully dropped but in order to give victims greater protection wouldn't it be better if criminals had to prove good behaviour before being released early rather than the current system where they are automatically released regardless of their behaviour in prison?

Victim Support Scotland believe that any decision to release an individual early should be based on the risk that they pose to individuals or the wider public. The gravity of the crime they have committed

⁶ [Criminal Procedure \(Scotland\) Act 1995 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁷ [Criminal Justice \(Scotland\) Act 2016 \(legislation.gov.uk\)](https://legislation.gov.uk)

should also be a key factor as opposed to the time they have served in prison. In our opinion their good behaviour or otherwise whilst serving a sentence should not be a deciding factor.

Q. Do you think there are enough restrictions on the power for Scottish Ministers to release prisoners early as set out in the Bill? In particular the fact that prisoners could be released without any vote in parliament?

In relation to the specific powers of Scottish Ministers that is a matter for the Scottish Parliament to agree.

What we would say is that lessons need to be learned from where emergency release powers have been used. In that scenario where 348 prisoners were released as a result of Covid 19 pressures there was no consideration of engaging with victims of crime during that process. Furthermore, a considerable number of these people reoffended after release.

We also have some concerns regarding the wording around the early release provisions. In the new 3C to be inserted into the 1993 Act it states:

(4) A person is not to be released from prison by virtue of regulations under this section if—

(a) the person falls within subsection (5), or

(b) the governor of the prison within which the person is detained considers that the person would, if released, pose an immediate risk of harm to an identified person.

How a person poses an immediate risk is not defined and the legislation is too narrow in our opinion as it talks about an immediate risk to identified person. We believe that a person should not be released if they pose a risk to an identifiable individual or anyone else and that risk does not have to be classified as immediate. We do not believe there should be a requirement for governors to be able to identify the person. For example, there may be sexual offender that governors consider to be a danger to woman if released, not necessarily an identifiable woman. We strongly recommend that these criteria are adapted to allow governors to prevent release through these provisions in these circumstances.

Q. Would you want to see a wider cohort of prisoners excluded from those who would be eligible for early release by ministers under the terms of this Bill?

We would like to see a presumption against certain cohorts of prisoners being eligible for early release. These should include cases involving violence, stalking and sexual violence and any other crime where a victim or witness is potentially at risk.

Q. Do you agree with the Bill's provisions which would enable Scottish Ministers (in practice the SPS) to release a long-term prisoner on licence even when the Parole Board has not recommended the release of that prisoner?

We would like more information on the circumstances that are envisaged as applying here. We would want to be satisfied that victims, witnesses and the wider public safety was safeguarded in reaching that decision.

Victim Support Scotland

17/01/2023