

Citizen Participation and Public Petitions Committee

4th Meeting, 2021 (Session 6), Wednesday
22 September 2021

PE1882: Remand anyone charged with a
sexual offence against a child

Note by the Clerk

Petitioner Laura Steel

**Petition
summary** Calling on the Scottish Parliament to urge the Scottish Government
to ensure that any person charged with a sexual offence against a
child is remanded in custody.

Full petition <https://petitions.parliament.scot/petitions/PE1882>

Introduction

1. This is a new petition that has been under consideration since 22 June 2021.
2. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe A**.
3. Whilst not a formal requirement, petitioners have the option to collect signatures and comments on their petition. On this occasion, the petitioner elected to collect this information. 597 signatures have been received.
4. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. This response is included at **Annexe B** of this paper.

Scottish Government submission

5. In its written submission, the Scottish Government explains that the European Court of Human Rights has developed case law that requires decisions on the remand of individuals accused of offences to be made on a case-by-case basis.

6. The Bail, Judicial Appointments etc (Scotland) Act 2000 provides for judicial discretion in relevant cases, where previously remand would have been mandatory.
7. The submission notes that, within this context, it would not be possible for the Scottish Parliament to legislate so as to require that all individuals accused of certain offences such as sexual offences to always be remanded in custody prior to trial.
8. The Scottish Government explains that the Criminal Proceedings etc (Reform) (Scotland) Act 2007 forms basis of the current law on bail. This legislation was drawn up with the requirements of the ECHR specifically in mind.
9. As a result of this act, there is a general presumption in favour of bail. It ensures, however, that courts would have good reason to remand an individual where there is a substantial risk that they—
 - might abscond or fail to appear at court;
 - commit further offences; or
 - might interfere with witnesses or otherwise obstruct the course of justice.
10. The court could also remand an individual where there is any other substantial factor which appears to the court to justify keeping that person in custody.
11. Although there is a general presumption in favour of bail, the submission highlights that when an individual is accused on indictment of drugs, sexual, violent or domestic abuse offences, and they already have a conviction in solemn proceedings on such a charge, the presumption is to remand that individual.
12. The submission stresses that this presumption does not remove judicial discretion but indicates that such individuals should be awarded bail only in exceptional circumstances.
13. In its submission the Scottish Government also explains that when someone is released on bail, they have 'standard conditions' imposed on them.
14. These conditions state that they are not to—
 - commit offences,
 - interfere with witnesses or
 - behave in a manner which causes, or is likely to cause, alarm or distress to witnesses, including the alleged victim.
15. Further conditions may be imposed by the court to enable the standard conditions to be met, such as curfew arrangements or bans from owning devices with which they can access the internet.
16. The submission notes that breach of any condition is itself a criminal offence.

17. It further notes that the prosecutor can request that the court impose special conditions on bail at any time. To do this, the prosecutor would request a bail review and present any material information to the court which was not available when bail was granted.
18. The Scottish Government advises that the prosecutor may also, in any individual case, appeal against a decision to award bail.
19. It stresses that the decision to appeal or seek a review is entirely a matter for the prosecutor, and a matter for the court to decide whether an accused person should be remanded or have additional conditions applied.
20. In conclusion, the Scottish Government states that, within the overall framework, it is ultimately for the independent courts to determine whether a person accused of a sexual offence should be remanded in custody or bailed in the community.

Action

21. The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

PE1882: REMAND ANYONE CHARGED WITH A SEXUAL OFFENCE AGAINST A CHILD

Petitioner

Laura Steel

Date Lodged

20 July 2021

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to ensure that any person charged with a sexual offence against a child is remanded in custody.

Previous action

We have already written to the First Minister and several MSPs. We received a response from Child Protection policy officials from the Scottish Government who advised to make a petition to the Parliament.

Background information

I believe that far too often, people who have been charged with a sexual offence against a child in Scotland are being given bail and released back into the community amongst innocent children. There have been stories recently in the media about individuals that have taken their own lives while on bail awaiting court dates after being charged with sexual offences against children. We have a duty of care to protect our children in Scotland as does the Scottish Government. We ask for our petition to please be considered to keep our children safe.

Briefing for the Citizen Participation and Public Petitions Committee

Petition [PE1882](#): Remand anyone charged with a sexual offence against a child, lodged by Laura Steel

Current law on bail and remand

Whilst waiting for trial, an accused person may be allowed to remain in the community subject to bail conditions or held in custody on remand. The decision is taken by the court (most commonly by a sheriff).

In summary procedure cases, an accused may also be allowed to remain in the community pending trial without the conditions involved in bail. Summary procedure is used in less serious cases, with solemn procedure in more serious ones.

Part III of the [Criminal Procedure \(Scotland\) Act 1995](#) contains relevant provisions on bail and remand, including ones providing that:

- during the first court appearance, the court will decide whether to release an accused on bail or remand them in custody
- the accused (or defence lawyer) and prosecution are entitled to address the court on the issue of bail
- in most cases, bail should be granted unless there is a good reason for refusing it (e.g. a substantial risk that the accused will commit further offences or fail to appear when due back in court if released)
- in some cases, bail should only be granted in exceptional circumstances – including cases where the accused is being prosecuted under solemn procedure for a sexual offence and has a previous conviction under solemn procedure for a sexual offence (or certain other offences)

- both the accused and prosecution have rights of appeal in relation to decisions on granting bail.

The current provisions of the Criminal Procedure (Scotland) Act 1995 reflect changes made by subsequent statutes, including the:

- Criminal Proceeding etc. (Reform) (Scotland) Act 2007 – e.g. inserting the above restrictions on granting bail where the accused is being prosecuted under solemn procedure for a sexual offence
- Bail, Judicial Appointments etc. (Scotland) Act 2000 – e.g. repealing tighter restrictions on the granting of bail where a person is charged with murder or treason.

The changes made on bail in cases of murder and treason sought to ensure compliance with article 5 of the European Convention on Human Rights relating to the right to liberty.

The bail restrictions in sexual offence cases, as inserted by the Criminal Proceeding etc. (Reform) (Scotland) Act 2007, are discussed further below – in relation to the work of the former Justice 2 Sub-Committee. Its work included consideration of whether there should be additional provisions restricting bail where a person is charged with a sexual offence against a child.

Court statistics

The Scottish Government statistical bulletin [Criminal Proceedings in Scotland, 2019-20](#) (published May 2021) includes the following 2019-20 figures for cases where a sexual crime was the main charge:

- 1,700 people were proceeded against, with a charge proved in 71% of cases (tables 2(a) and (b))
- 1,160 bail orders were made (table 14)
- 35% of people convicted received a custodial sentence (table 9(b)).

The category ‘sexual crimes’ is used in the statistical bulletin to cover:

- rape and attempted rape
- sexual assault

- crimes associated with prostitution
- other sexual crimes (e.g. indecent image offences and sexual exposure).

Sexual offences against children fall within more than one of these sub-categories.

Justice 2 Sub-Committee inquiry on child-sex offenders

In 2006, a sub-committee of the Justice 2 Committee was established to carry out an [inquiry on child-sex offenders](#). The [Sub-Committee report on the inquiry](#) was published in December 2006. In relation to the issue of bail, it included the following:

“The Criminal Proceedings etc. (Reform) (Scotland) Bill, currently before the Parliament confirms the general entitlement to bail but also sets out particular serious types of cases in relation to which bail is to be granted only in exceptional circumstances. These include cases where someone is on a charge, to be heard in a solemn (jury) court, with violent or sexual crimes (excluding prostitution) and who have previous convictions in such a court for sexual crimes.” (para 157)

“The Sub-Committee believes that, under the proposals in the Criminal Proceedings etc. (Reform) (Scotland) Bill, sexual crimes against children would be caught by the exceptional circumstances provisions and would, therefore, be unlikely to be bailable. However, for clarity, the Sub-Committee recommends that the Scottish Executive makes explicit in the Bill that those charged with sexual offences against children will only be granted bail in exceptional circumstances.” (recommendation 30)

At the point the inquiry report was published, stage 2 scrutiny of the Criminal Proceedings etc. (Reform) (Scotland) Bill had been completed. The Bill was passed in January 2007.

What subsequently became the [Criminal Proceeding etc. \(Reform\) \(Scotland\) Act 2007](#) inserted various provisions into the Criminal Procedure (Scotland) Act 1995. These included the current restriction on granting bail where the accused is being prosecuted under solemn procedure for a sexual offence and has a previous conviction under solemn procedure for a sexual offence. However,

it did not add specific bail provisions in relation to child-sex offences as suggested in recommendation 30 of the Sub-Committee's report.

The Justice 2 Committee sought a written response from the Scottish Executive on the Sub-Committee's report. This was provided and considered at the [Committee's meeting on 6 March 2007](#) (papers include the response). In relation to recommendation 30 of the Sub-Committee's report, the written response said:

"The Committee is correct in its assertion that, under the provisions contained in the Criminal Proceedings etc. (Reform) (Scotland) Bill, where an individual is charged under solemn procedure with a sexual offence against a child and that individual has a previous solemn conviction for a violent or sexual offence, bail will only be granted by the court in exceptional circumstances.

The Criminal Proceedings etc. (Reform) (Scotland) Bill was passed unanimously by Parliament on 18 January 2007. The recommendation would, therefore, require to be considered further, especially in terms of its compatibility with ECHR."

The recommendation was also raised in questioning of the then Minister for Justice (Cathy Jamieson) at the meeting:

"Mr MacAskill: The Sub-Committee recommended that people charged with sexual offences against children be granted bail only in exceptional circumstances. Why does the Criminal Proceedings etc. Reform (Scotland) Act 2007 apply that restriction only to individuals who have a previous solemn conviction for a sexual or violent offence?

Cathy Jamieson: During the passage of the Bill there was considerable discussion of bail. Ultimately, it is for the courts to decide who is bailable in particular circumstances. I know that the Committee has expressed concerns about the issue, but there was some uncertainty about what the Sub-Committee was getting at in its recommendation. Did it intend that everyone who is charged with a sexual offence against a child at either summary or solemn level should be granted bail only in exceptional circumstances, and that that test should apply regardless of whether the accused has previous convictions? Or was the recommendation that the exceptional circumstances

test should be extended to summary procedure and should apply to those with analogous summary convictions?

It is not in doubt that, as stated in our response to the sub-committee, the exceptional circumstances provisions in the Criminal Proceedings etc. Reform (Scotland) Act 2007 will apply in the most serious child sex offence cases, where an accused has been charged with a child sex offence under solemn procedure and has previous solemn convictions for child sex offences. Those are the serious circumstances that concern us.” (Official Report, col 3260)

Justice Committee inquiry into the use of remand

During the last parliamentary session, the Justice Committee held an [inquiry into the use of remand](#). The [inquiry report](#) was published in June 2018. The inquiry was held in response to concerns that too many people are remanded in custody and about the impact which remand can have on them and their families. It did not have a focus on the use of bail and remand in relation to particular types of offence.

Other reports relating to the prosecution of sex offences

Various aspects of the prosecution of sex offences are considered in other reports. These include:

- HM Inspectorate of Prosecution in Scotland reports on the investigation and prosecution of sexual offences – [2017 report](#) and [2020 follow-up report](#)
- Lord Justice Clerk’s Review Group – [2021 report on improving the management of sexual offences cases](#)

Key organisations

- [Crown Office and Procurator Fiscal Service](#)
- [Faculty of Advocates](#)
- [Law Society of Scotland](#)
- [Scottish Government](#)
- [Senators of the College of Justice](#)
- [Sheriffs’ Association](#)

- [Victim Support Scotland](#)

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13/07/2021

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Scottish Government submission of 20 July 2021 PE1882/A

Thank you for your email of 22 June, in which you requested the Scottish Government's written response to the issues raised in petition PE1882.

The Petitioner, Laura Steel, calls on the Scottish Parliament to “urge the Scottish Government to ensure that any person charged with a sexual offence against a child is remanded in custody.”

The Scottish Government acknowledges the bravery of victims of sexual abuse and appreciate that it takes great courage to come forward and report crimes of this nature. We are committed to tackling the sexual and physical abuse of children, young people and adults. These crimes can have a devastating impact on victims and their families and will not be tolerated.

Supporting victims is a priority for the Scottish Government and I have attached a link which lists a number of organisations that may offer help and emotional support: <https://www.mygov.scot/rape-assault/support-for-female-victims/>.

It may be helpful to the Committee's consideration of this petition for me to set out the current law as it relates to decisions on remand and bail, and the reasons it has developed as it has. The European Court of Human Rights has developed case law that requires decisions on the remand of individuals accused of offences to be made on a case-by-case basis.

While individuals can of course be remanded, individual consideration of the circumstances of each case is required. The Scottish Parliament therefore enacted the Bail, Judicial Appointments etc (Scotland) Act 2000 to provide for judicial discretion in relevant cases where previously remand would have been mandatory.

Within this context, it would not be possible for the Scottish Parliament to legislate so as to require that all individuals accused of certain offences such as sexual offences to always be remanded in custody prior to trial.

Following these events, the then Scottish Executive enacted the Criminal Proceedings etc (Reform) (Scotland) Act 2007, on the basis of the Sentencing Commission for Scotland's 2005 report. This Act forms the basis of the current law on bail. It was drawn up with the requirements of the ECHR specifically in mind.

Within an overarching presumption in favour of bail, the current law provides that courts are explicitly informed by statute that they would have good reason to remand an individual for various reasons. These are:

- there is any substantial risk that the person might abscond or fail to appear at court; any substantial risk of the person committing further offences;
- any substantial risk that the person might interfere with witnesses or otherwise obstruct the course of justice; or
- where there is any other substantial factor which appears to the court to justify keeping the person in custody.

In addition, the presumption in favour of bail is reversed in the case of individuals who are accused on indictment of drugs, sexual, violent or domestic abuse offences, and they already have a conviction in solemn proceedings on such a charge. Crucially, this law does not remove judicial discretion, but does indicate that such individuals should be awarded bail only in exceptional circumstances.

Any person who is released on bail has what are called the 'standard conditions' imposed on him or her. These include conditions not to commit offences, interfere with witnesses or behave in a manner which causes, or is likely to cause, alarm or distress to witnesses. "Witnesses" include the alleged victim. There may be further conditions imposed by the court to enable the standard conditions to be met. Breach of any condition is itself a criminal offence.

I can also advise that the Crown Office and Procurator Fiscal Service (COPFS) may seek to vary bail conditions, including having special conditions imposed. Providing these special conditions are imposed to ensure that the standard conditions are complied with, what they may be is a matter for the court. They may include curfew arrangements or bans from owning devices with which they can access the internet. COPFS would seek to do so by means of a bail review, which may take place at any time after a court has granted bail to a person, where the prosecutor

puts before the court any material information which was not available to it when it granted bail to that person.

In any individual case the prosecutor may also appeal against the decision to award bail. It is entirely a matter for the prosecutor to decide whether to appeal, or to seek a review; and in the event that the prosecutor does so, it will be a matter for the court to decide whether an accused person should be remanded or have additional conditions applied.

Within this overall framework as described above, it is ultimately for the independent courts to determine whether a person accused of a sexual offence should be remanded in custody or bailed in the community. The Scottish Government supports courts having such powers to make decisions in individual cases.