

Bail and Release from Custody (Scotland) Bill

Written evidence to the Criminal Justice Committee from Scottish Women's Aid

About Scottish Women's Aid

Scottish Women's Aid ("SWA") is the lead organisation in Scotland working towards the prevention of domestic abuse and plays a vital role in campaigning and lobbying for effective responses to domestic abuse. SWA is the umbrella organisation for 34 local Women's Aid organisations across Scotland; they provide practical and emotional support to women, children and young people who experience domestic abuse. The services offered by our members include crisis intervention, advocacy, counselling, outreach and follow-on support and temporary refuge accommodation.

SWA welcomes the opportunity to submit comments on the provisions within the Bail and Release from Custody (Scotland) Bill to the Criminal Justice Committee. Our response reflects comments and opinions from women using the services of our local Women's Aid groups and the workers supporting them. SWA would be pleased to provide further oral evidence to the Committee and to support the Committee's engagement with local Women's Aid groups and the women using their services.

Introduction

In our response to the consultation forming the basis of this Bill¹ we stated that under international human rights law, governments must act with "due diligence" to protect women from domestic abuse and other forms of gender-based abuse. This bears repeating in terms of the nature and provisions of this Bill, particularly this matter highlighted by the UN Committee on the Elimination of all forms of Discrimination Against Women (CEDAW): *"The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations."*²

Further emphasis on the Scottish Government's duty toward victims of crime is that set out in the EU Directive³ establishing minimum standards on the rights, support and protection of victims of crime, which was incorporated into Scots law via the Victims and Witnesses Scotland Act 2014. This states that "...Victims of crime should be protected from secondary and repeat victimisation, from intimidation and

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https://consult.gov.scot/justice/bailandreleasefromcustody/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&q_text=scottish&uuld=756774402

² UN Committee on the Elimination of all forms of Discrimination Against Women, General Recommendation 35 on Gender-Based Violence Against Women, para 24(b)

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice..."

What this means in practice, and especially in relation to this Bill, is that where a perpetrator of domestic abuse is before the courts charged with offences relating to that abuse, all the actors in the process will be, or should be, very well aware of the risk that individual poses to women, children and young people; therefore, related decisions around bail or remand should be made accordingly, upholding the government's human rights obligation to women experiencing domestic abuse.

It is important, at this point, to address certain assumptions in the Policy Memorandum and associated Bill papers around the causes of offending which inform the Bill's intended impact on offending and desistance. Firstly, gender-based violence and abuse against women and children is not a direct consequence of multiple social disadvantages, addiction, poverty, ACEs, stress, etc, the factors most commonly cited as the drivers for "mainstream offending." Gender-based violence and abuse is both a cause and consequence of men's privileged access to power. Effective responses require gender-competent assessments of children's and women's risk in that context and the failure to recognise and appropriately respond to such violence and abuse allows abusive men act with impunity. Therefore approaches to addressing offending relating to gender-based violence and abuse and minimising/removing the risk that perpetrators pose to women and children are quite different, by necessity, from those employed when dealing with other crimes.

Elements of the Bill covering bail decisions, early release procedures and throughcare support may prove helpful when used for women offenders entering the criminal justice system who have experienced domestic abuse, particularly those with histories of physical disability, mental health and addiction problems caused by, often, long-term domestic abuse perpetrated by men, where the woman's offending has been orchestrated by perpetrator as part of the abuse and/or is a consequence of the impact of the abuse on her. We would refer you to the report of the 2012 Angiolini Commission on Women Offenders⁴, the 2017 Prison Reform Trust paper "*There's a reason we're in trouble*" *Domestic abuse as a driver to Women's Offending*"⁵ and the Prison Reform Factsheet "*Why focus on reducing women's imprisonment?*"⁶.

The Scottish Government's obligations around the rights of accused persons to liberty must be firmly balanced by fulfilling victims' rights to protection from harm. SWA urges careful consideration of how the Bill will work in practice in relation to domestic abuse offending.

CONSULTATION QUESTIONS

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

⁴ <https://www.webarchive.org.uk/wayback/archive/3000/https://www.gov.scot/Resource/0039/00391828.pdf>

⁵ <https://prisonreformtrust.org.uk/publication/theres-a-reason-were-in-trouble/>

⁶ <https://prisonreformtrust.org.uk/publication/why-focus-on-reducing-womens-imprisonment/>

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 relation to the use of bail and remand? Please provide your response in the box provided.

It is of concern that the provisions relating to bail narrow, and effectively interfere with, the court's discretion to refuse bail, focussing the outcome on the reduction of the remand prison population as opposed to the safety of women, children and young people experiencing domestic abuse. This constriction of judicial decision-making will undoubtedly lead to the safety of victims of crime and their families being compromised.

Paragraph 76 of the Policy Memorandum argues that *"At the pre-conviction stage of a criminal court process, a person has not been convicted of a crime and important questions of principle arise about the appropriate use of custody, which involve fundamental decisions over a person's liberty."* Taking into account our comments above, while this is used to justify release on bail, there is, however, no corresponding discussion about not only the rights of victims of crime to be protected from the time that they report the offence to the police but also the appropriate response of, and fundamental obligations on, the State and criminal justice system to ensure that victims of crime are not further offended against and their human rights and safety also given equal consideration in this process.

It is also important to emphasise that at the "pre-conviction stage," the accused is not simply randomly brought before the courts without justification or due process having been followed and the appropriate legal checks and balances carried out. The police will have already undertaken an assessment in relation to satisfying themselves that there is reasonable cause to suspect, not only that a crime has been committed but that there is sufficient evidence available to charge the suspect and therefore it is appropriate to refer the matter to the COPFS for consideration of prosecution. Similarly, before instigating prosecution, the Procurator Fiscal will have first assessed and satisfied themselves there is sufficient corroborative evidence that a crime has been committed.

We know from the experience of the Women's Aid network across Scotland that there are numerous problems with the current system of decision making and assessment of risk in relation to decisions around bail. Both women, and the local Women's Aid groups supporting them, report that perpetrators who, prior to COVID, would have been remanded in custody prior to trial, are routinely being allowed out on bail by the courts, subject to conditions that are neither appropriate nor adequate to operate as any meaningful or enforceable form of protection. In particular, spurious "child contact" and "childcare responsibilities" are being advanced by perpetrators as reasons for them to have contact with their partner while they are on bail; this is often simply a fiction and prevents police from arresting perpetrators who are, in fact, contacting their partners simply to further abuse them and the children.

This position is reflected in the findings of a recently published report ***"Domestic Abuse (Scotland) Act 2018 and the Criminal Justice System; Women's experiences two years in; the emerging findings; January 2022"***⁷, wherein women respondents reported that perpetrators continue to exploit the processes and procedures of the criminal justice system to further their abuse and that perpetrators

⁷ <https://www.sccjr.ac.uk/publication/domestic-abuse-scotland-act-womens-experiences/>

were able to breach their bail, interdicts and Non-Harassment Orders without criminal justice intervention. Women who participated commented:

- *“Didn’t stick to bail conditions. I feel no point in having them they are more like guidelines, and it makes no odds if the perpetrator breaks these numerous times.”*
- *My husband was not allowed in my street but could have access to me anywhere else making me feel like I couldn’t leave home even with bail conditions in place with a non- harassment order it didn’t make it any safer.”*
- *“Anyone charged with dv to be remanded. When they are on bail, they all worm their way back into victims lives leading to [a lack of cooperation] and dropped charges. Victims need the right intervention after arrest to ensure they don’t go back.”*

The Policy Memorandum explains at paragraph 9 that “The overall policy intention of refocusing the bail decision-making framework in this way is to limit the use of remand to those who may be said **to pose a risk of serious harm**, (our emphasis) making bail (with appropriate support and supervision in the community as needed) the option for those accused of offences who do not pose such a risk.” This does not demonstrate an understanding of domestic abuse offending and we have concerns about the application of this threshold in relation to determining protective responses toward offences of violence against women, particularly domestic abuse, a matter we have repeatedly raised. Where thresholds such as “significant” and “serious” are employed, the focus inevitably shifts toward the presence of physical abuse, as opposed to coercive, controlling behaviour or emotional and physical abuse, thus minimising the harm and threat that coercive control poses to women, children and young people experiencing domestic abuse.

This is confirmed by findings of recently published Scottish Government research on decision making on bail and remand in Scotland⁸, which noted, on page 5, that in relation to judicial decision making on refusing bail “... *assessment of ‘level of seriousness’ typically involves reference to the level of violence used in the index offence, whether weapons were used, the level or harm caused and wider impact of the offence on the general public... a history or no/low risk offending as well as a history of compliance with bail are most likely to feature in decisions to grant bail alongside the Section 23B presumption in favour of bail.*”

Importantly, in relation to assessing seriousness and factors considered relevant in determining the ‘level of seriousness’ of the offences before the court in relation to Section 23C (2)(a)(i), the report goes on to note, at page 23, that specifically in relation to domestic-abuse related offending, the “*level of violence*” by perpetrators, not the levels of coercive control, is what is considered by the court “... *Most Sheriffs and Senators suggested that considerations would include a combination of factors including: ... the general nature of the current offence... whether or not a weapon had been used... level of violence shown (particularly in domestic cases) and whether violence was unprovoked... damage/injuries to the complainer/impact on complainer;.. relationship to the victim(s).*”

A key point here also is that current professional, domestic abuse -related risk assessment criteria for identifying “serious harm” are not appropriately sensitive to

⁸ Decision-Making on Bail and Remand in Scotland: Interim Findings Report <https://www.gov.scot/publications/decision-making-bail-remand-scotland-interim-findings-report/>

non-physical abuse, that is coercive and controlling behaviours, and therefore likely to greatly underestimate risk of releasing accused whose offending has not resulted in injury.

The statistical analyses of recorded crime levels and victimisation set out in paragraphs 51- 64 of the Policy Memorandum do not acknowledge the increasing levels of domestic abuse recorded by the police in Scotland or issues around bail - related offending. The Police Scotland Quarter 4 Performance Report for January to March 2020/21⁹ noted, bearing out the experiences of women as reported to SWA and local Women's Aid groups *"During 2020/21 six domestic murders occurred compared to five the previous year. Assault, threatening and abusive behaviour and bail offences accounted for the highest proportion of domestic abuse crimes. Both assault and threatening and abusive behaviour decreased compared to last year however the number of domestic bail offences increased by 41.4%..."*

Similarly, the ¹⁰Police Scotland Quarter 1 Performance Report April to June 2021/22 notes *"... Assault, threatening and abusive behaviour and bail offences continue to account for the largest proportion of domestic abuse crimes."*

In relation to use of bail, we also note on page 8 of the published statistics on criminal proceedings in Scotland for 2021-21 ¹¹, that *"The number of bail orders issued decreased by 34% from 37,516 in 2019-20 to 24,545 in 2020-21. Whilst the latest change is likely to be predominantly a reflection of the impact of COVID on the justice system, the longer-term reducing trend is consistent with the longer-term decline in volumes of cases coming to court.... The proportion of bail-related offences as a percentage of all bail orders granted in 2020-21 was 26%, which is the highest percentage in the last ten years, up from 18% in 2019-20."*

The Policy Memorandum states at paragraph 336 that an Equality Impact Assessment (EQIA) has been carried out on the policies in the Bill. This does not appear to be part of the suite of papers produced to accompany the Bill and we would ask that this be publicly available.

Similarly paragraph 197 states that *"As part of the Scottish Government's work in considering the data protection implications of this Bill, it has developed a Data Protection Impact Assessment. That assessment explains that it is the intention that a data sharing agreement will be put in place between SPS and VSOs to support the new scheme by which they will be able to request, receive and process information relating to prisoner release."* Again, we have not seen this paper and would ask that it be made publicly available.

Finally, there does not seem to have been any modelling or projection carried out by the Scottish Government on the increase in numbers of additional offences, including bail breaches and further offending by accused on bail, likely to result from increased numbers of offenders, particularly perpetrators of domestic abuse, being released early or on bail. With regard to the latter, we would draw the Committee's attention to a recent FOI release from the Scottish Government in relation to statistics on convictions of breach of bail conditions¹² which revealed thousands of people were

⁹ <https://www.scotland.police.uk/spa-media/zrmixxpv/q4-performance-report-final-quarter-4.pdf>

¹⁰ <https://www.scotland.police.uk/spa-media/uutmvyv2/q1-performance-report.pdf>

¹¹ <https://www.gov.scot/publications/criminal-proceedings-scotland-2020-21/pages/24/>

¹² <https://www.gov.scot/publications/foi-202200283333/>

convicted of a breach of bail conditions or convicted of committing other crimes and offences whilst on bail.

Do you have any comments on the general approach taken in the Bill to the arrangements for the release of prisoners? Please provide your response in the box provided.

SWA has concerns about the implications of this for domestic abuse offenders. While these arrangements may be appropriate for some other categories of prisoner posing little or no risk to victims and the public, perpetrators of domestic abuse, however, continue to present a risk of some degree to women, children and young people for long periods following their involvement in the criminal justice system and this must be taken into account when determining suitability for release.

Victim safety should be paramount in all decision-making on whether an offender is remanded or serves a sentence in the community. Women's Aid workers commented that they see little or no assessment of the impact of the abuse on women and their protection in relation to consideration of perpetrators' "rehabilitation" and "reintegration" and that the risk perpetrators pose toward women and children is not being assessed appropriately.

Do you have any comments on the practical implementations of the proposed changes in the Bill, including resource implications? Please provide your response in the box provided.

SWA envisage that there would be further resource and cost implications for our membership of local Women's Aid groups undertaking additional work in both supporting women to engage with criminal justice organisations and also directly engaging themselves with criminal justice organisations on behalf of women, children and young people, as this will involve a two-way flow of information to courts in order to inform their decision making on bail; to the SPS and the PBS prior to perpetrators' release from prison and to women ahead of perpetrators' release under the provisions of section 11 of this Bill.

At this point, we are unable to quantify the resource and cost implications for our membership of local Women's Aid groups in undertaking additional work until the Bill progresses, at which point we would wish to consult further with our network around the service implications for them and impact on women and their engagement with services making proactive approaches.

Section 1-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? Please provide your response in the box provided.

The policy intention for this section, as indicated by paragraph 157 of the Policy Memorandum, is given as enhancing the role of social work but it is not entirely clear how this person, defined in the Explanatory Notes as likely to be a Criminal Justice Social Worker (CJSW), will positively contribute to the information required by the court for its assessment of risk, what information they will provide to the court and whether it is envisaged that this information is intended to support the release of the accused on bail, or alternatively, remand of the accused.

The Bill and accompanying papers are also contradictory and confusing in relation to the role of CJSW. Paragraph 10 of the Explanatory Notes states "...Like the parties to the proceedings, a justice social worker is not obliged to give a view on potential

*risks.” The Policy Memorandum at paragraph 160 further advises- “...This would be from the perspective of a general right to be heard **rather than to make submissions for or against bail, recognising the role of justice social work in informing in a neutral manner the decision to be made by the court** (SWA emphasis in bold) The provision does not require justice social work to provide information but ensures the court must give them an opportunity to do so, enabling the court to have access to as full information as possible at this stage.”*

It is hard to see the utility of any input from the CJSW if they are unable to provide information of this nature and effectively give a view on the efficacy of bail without being able to alternatively comment on, and clarify, the risk that a perpetrator poses to women and children. Disproportionately focussing on a “*holistic picture of the accused*” and the impact of detention on them, as opposed to the concerns around the victim’s safety and wellbeing and the effect on them of the accused’s release on bail does not fit with the shift towards a similar “holistic, trauma-based” approach to victim safety, especially that of women, children and young people experiencing domestic abuse

The matter is further confused since the presumption that CJSW will hold a “neutral” position is then contradicted by Policy Memorandum paragraph 164, which clearly states that the CJSW may provide an opinion or view on matters the CJSW considers relevant to the court “...*Relevant information which justice social work may be able to provide, or which the court may proactively request from justice social work, could include matters about the accused, such as addiction issues, home life, **what a remand decision might mean for parental responsibilities etc.*** (SWA emphasis in bold) ... Elevating the role of justice social work better empowers the court to receive a more holistic picture of the accused person prior to fundamental questions being determined that impact on an accused person’s liberty.”

We note from page 18 of the research paper mentioned above on decision making on bail that “*Other factors mentioned by just one or two judiciary respondents each in relation to Section 23C (1)(d) focused of minimising risk of harm to others and included any particular risk to the public, the complainer, women and children if a domestic incident, if the accused cannot be trusted if at liberty (Including where the offender has said something which would indicate this), and whether a custodial sentence is the likely disposal.*” Page 25 of the same paper goes on to say that in relation to considering the character of the accused ...“*Among the judiciary, the main factors (in order of frequency with which they were mentioned) included: ... family support available (and caring responsibilities) ...*”

Therefore, this particular aspect of CJSW input raises immediate concerns in relation to courts’ consideration of bail in domestic abuse cases involving children and child contact, a specific issue raised by women and their Women’s Aid support workers who attended discussion fora during the prior consultation exercise, as follows: -

Comments from women

- “...there was no consultation. It should definitely consider children and their feelings. My ex saw my children as a threat and they were at risk...”
- “I was protected with a NHO but my two daughters are not. He is as much a risk to them as he was to me. “

Comment from Women's Aid workers

- "... what about evidence of the impact on children and need to protect children..."
- "a man with no Parental Responsibilities and Rights has bail conditions allowing access to the children; a method of manipulation, even though the court was told that the perpetrator had no Parental Responsibilities and Rights."

Decisions on bail and bail conditions need to be made with regard to the safety of children and, particularly in cases of domestic abuse-related offending, it is assumed that the courts would be obliged to have regard to the best interests of the child, which includes their safety, noting that this, or consideration of risk to other victims, does not appear to specifically be one of the grounds in the existing section 23C.

Guidance and standards will inevitably be required to support this role and address the matters above and additional areas where clarity is required, namely :-

- It is not clear from which local authority the CJSW will be provided; that in which the court is located or which the accused resides?
- Additional duties arising from other areas such as bail supervision schemes, use of EM and supervising Community Justice disposals may increase pressure on CJSW and impact on their ability to provide all the necessary information to the court, particularly at short notice for accused appearing from custody, meaning that the bare minimum may be provided, and judiciary may not always have a full and accurate picture of the accused's risk.
- How the voice of the victim be heard in this process, or can be relayed to the court via CJSW, particularly around information to the court on special conditions that the court should impose on a perpetrator released on bail. The Scottish Government's 'Vision for Justice,' states, on page 6, that "We must hear the voices of victims. To support victims in their journey to healing and recovery we must offer approaches to justice which place victims at the heart."¹³. Women's Aid groups have repeatedly raised issues around accuracy of information provided to the court, particularly around suitability for bail and protective conditions relating to the address of the complainer. Our position is that where the court asks for information, particularly where the prosecution opposed bail, specialist domestic abuse support services such as Women's Aid groups should be able to provide meaningful and relevant information about the perpetrator's risk and particular issues of safety for women and children, noting that this would probably require information sharing protocols and processes to be put in place between them, the SCTS and the COPFS to facilitate this process without causing additional risk to victims.

Section 2 -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? Please provide your response in the box provided.

¹³ <https://www.gov.scot/publications/vision-justice-scotland/>

The Explanatory Notes to the Bill, as paragraph 14 state that “...New section 23B(1A) sets out the sole basis on which the court may determine that there is good reason for refusing bail. Although it involves a similar two-part test to the one that currently applies under section 23B(1), it narrows the court’s discretion to refuse bail.”

The narrowing of the court’s discretion causes us concern in relation to how the courts will adequately protect women, children and young people experiencing domestic abuse in matters relating to bail, despite the new, specific requirement to consider victim safety. The Bill also “adjusts” section 23B of the 1995 Act to specifically include the concept of “victim safety” (referred to in the Bill as “complainer safety”) as a factor for the court’s consideration within public safety when making a determination on a person’s entitlement to bail and the Bill makes clear that determining “victim safety” should involve an assessment by the court of any substantial risk of both physical and psychological harm to the alleged victim.

While we hope the latter will change and improve how the judiciary weigh safety of women, children and young people experiencing domestic abuse in their decision making, there are existing, endemic problems in how current provisions on victim safety are implemented by the justice system, specifically how courts understand and assess domestic abuse perpetrators’ patterns of behaviour in relation to release on bail

- *“Why do we not have any say in what is happening to me. I am not being asked about the important things that are being missed”* **Survivor quote**
- *“Sometimes we don’t know if he has been picked up or not; sometimes it takes 3 weeks and we get told we just have to go to court. There is not the communication between those who are dealing with the case and those who are victims. We didn’t know if we should leave the house or go to school, if we would be safe.”* **Survivor quote**
- *“The man is a danger to the woman and the public and already hits the criteria for being remanded...what else has to happen before someone will remand this man?”* **Quote from Women’s Aid worker**

We have commented above, in relation to section 1, how children can be used by perpetrators to engineer release of perpetrators on bail; in particular, spurious “child contact” and “child care responsibilities” are being advanced by perpetrators as reasons for them to have contact with their partner while they are on bail; this is often simply a fiction and prevents police from arresting perpetrators who are, in fact, contacting their partners but simply to further abuse them and the children.

This is a concern given the findings on page 25 of the research document on decision making around bail referred to above. In relation to consideration of “associations and community ties of the accused”, Crown respondents noted “...that community ties were more likely to be an issue used by defence solicitors to seek bail rather than for the prosecution to oppose it. In particular, it was felt that the impact which bail/remand might have on other family members (such as children) and/or where an accused had specific caring responsibilities might be a consideration.” The paper goes on to say that in relation to the same issue “Among

the judiciary, the main factors (in order of frequency with which they were mentioned) included: family support available (and caring responsibilities).

Page 42 also advises that “...*family commitments/caring commitments of the accused...*” were also among the three main reasons given by the defence for requesting bail and page 56 underlines the lack of consideration of the safety of victims and the impact and interference to their lives of inappropriate bail decisions - “...*The nature of the allegations, criminal record, likely length of a custodial sentence if found guilty and interference with the accused’s family/work/housing and wellbeing were all important in such considerations, but may not of themselves dictate a grant of bail (with public interest concerns still remaining).*”

Until there are improvements in provision of information about risk and routine domestic abuse competent decision-making, we will continue to have grave concerns how any changes to bail and bail supervision will operate and whether they would be effective in upholding the rights of victims of domestic abuse

Further, the protective aspects of the “adjusted test” in relation to public safety are effectively diminished by the qualifications imposed in terms of determining thresholds of harm posed to victims, by repeated references to “*serious harm.*” This is not defined and, despite paragraph 139 of the Policy Memorandum emphasising that the “...*concept of victim safety should involve an assessment by the court of any substantial risk of both physical and psychological harm to the alleged victim...*” “serious harm” could inevitably be interpreted to mean physical harm, which, of course is not in keeping with the definition of domestic abuse in the Domestic Abuse (Scotland) Act 2018 and creates a hierarchy demeaning and diminishing women and children’s experiences.

SWA is also concerned about the continued application of thresholds of “substantial risk,” particularly the instruction in the Policy Memorandum, at paragraph 139, which states “*The Bill makes clear the concept of victim safety should involve an assessment by the court of any substantial risk of both physical and psychological harm to the alleged victim.*” This use of “substantial” in relation to the assessment of risk to the victim is not reflected in the wording of section 2 itself, so the Policy Memorandum has effectively created a higher threshold than is actually provided for in the Bill.

There is also a contradictory and confusing position expressed in Explanatory Notes 16 and 17 around protecting victims and “victim safety” versus “public safety” and “public interest.” These seem to suggest that the wider “public interest” will trump the rights and consideration of victim safety where the court considers that the “public interest,” not the complainant’s safety, could be safeguarded by imposing bail conditions, EM being part of this safeguard. We cannot envisage a situation where, if the public safety test was not met, particularly in relation to the risk posed to a specific victim by the accused, it could possibly then be considered “in the public interest” to release an accused, particularly a perpetrator of domestic abuse, on bail.

We have, in our comments above on the general principles, made reference to research on how assessments are made by judiciary on of the level of seriousness also note from the same research that “*bail is also likely to be granted in cases where a custodial sentence would not be anticipated, if guilty.*” This will have a

worrying impact on cases where accused, particularly domestic abuse offenders are, sentenced to Community Payback Orders as an alternative to custody.

The implications for Governments in failing to act appropriately in terms of their obligations to victims are considerable and constitute potential violations of women's, children's and young people's human rights. Safety of victims must be central to all decision making on bail and we would reiterate comments made by survivors at a discussion forum during the consultation preceding this Bill-

- *"Public safety is one expectation, but how will you measure what becomes public safety."*
- *"They might not be a threat to public safety but they are a threat to the victim."*
- *"Someone might not pose a risk to the general public but absolutely be a risk to their victim and their children and their family"*

Decision making by courts in response to breaches of bail is another issue also crucial to women's safety and confidence in the justice system. Women's Aid support workers reported that since COVID, they are seeing dangerous and serial perpetrators being admitted to bail including after numerous breaches of previous bail conditions. Breach of bail was a consistent and pernicious issue for women, with some perpetrators breaching bail conditions up to 18 times without sanction by the court. Women and workers routinely report that perpetrators were neither remanded after repeated breaches, nor were the bail conditions made more robust by the court.

Women reported conditions that were unhelpful and did nothing to protect them-

- *"The conditions don't really apply when they are put in place. They were no use to me in my situation." **Quote from survivor***
- *"...really, really disappointing; impact on the women when telling women yes, he's out again. They are just in disbelief, and it rocks their whole belief in the system. Leads to under-reporting because they have no faith. **Quote from Women's Aid worker***
- *"Women simply give up reporting breaches of bail because nothing is done, nothing happens- don't get called by the Fiscal, nothing is done by the court. Women give up and don't report because of this **Quote from Women's Aid worker***

Legislative change must be accompanied by associated revision to protocols, guidance, court rules, etc to both support reform and create a system where the current problems do not occur.

The research on judicial decision making, referenced above noted that "... most judicial decision makers reported that they were 'always' considerate of the views of the Crown and defence in assessing suitability of an accused for bail, but there were some reported limitations with the information provided by justice partners; and respondents were largely unassisted in their assessment of risk, and commented that professional risk assessments, especially in cases involving vulnerable accused, would be welcomed."

Taking this into account, for the Bill's provisions to work effectively and not contribute to increasing risk to victims of domestic abuse, it is essential that the following is in place to support implementation:

- The court has all the necessary information from all relevant sources, including from victims and victim support organisations, with which to conduct

its risk assessment. This could be an issue where CJSW does not give a view on the risk posed by the perpetrator or any other relevant information. In the absence of any info from the CJSW, how would the court challenge any “positive” case for bail put forward by the defence

- The research report on bail decision making notes, at page 43, “... *there can sometimes be a lack of information in domestic cases from agencies involved with domestic matters, including social work.* This wholly underlines the importance of providing the court with information from women themselves and support organisations such as Women Aid groups. Therefore, an appropriate and efficient process must be put in place to take cognisance of, and pass to the court, the views of women, since women themselves are in the best position to give important and relevant information on safety issues around bail provisions designed to keep them safe and also to obtain information from support organisations and valuable justice stakeholders such as Women Aid groups about the risk posed by the perpetrator, so that can be fed into this process
- Noting our comments above on the issues around risk assessment of “serious harm”, the underestimation of non-physical abuse and associated minimisation of the risk posed by abusers whose offending has not resulted in injury, there is a need for appropriate risk assessment tools that comprehensively consider the perpetrator’s behaviour; avoid focussing solely on physical abuse, and fully include the impact of coercive control, psychological and emotional abuse; the impact of the abuse on, and risk the perpetrator poses to, children. The bail research referred to, at page 43, *Professional Risk Assessments- Members of the judiciary were asked how important, if at all, professional risk assessments were in their bail decision-making. Feedback suggests that these were rarely sought and rarely made available (particularly post-pandemic). Several, however, commented that professional risk assessments may, if more routinely available, be of great use, especially in cases involving significant sex offences...*”.
- All personnel involved assessing sources and content of information relevant to a risk assessment, and those conducting risk assessments, must have a full understanding of the dynamics of domestic abuse and the ways that abusers may manipulate the criminal justice system to further their abuse
- We reiterate that all judges making bail decisions in domestic abuse cases need to fully understand the dynamics of domestic abuse and the potential consequences of their decisions for victims. Work has been done by the JIS in relation to delivering education and training¹⁴ to raise awareness amongst all judges of the 2018 Act. We would urge that education on institutional risk associated with the criminal justice system is added to the JIS portfolio, and that courses on both subjects continue to be delivered to all new judiciary and as regular refresher courses.

Section 3-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,

¹⁴ https://judiciary.scot/docs/librariesprovider3/judiciarydocuments/judicial-institute-publications/jifs---annual-report-2021.pdf?sfvrsn=2df77a34_2

violence, sexual offending or domestic abuse. What are your views on this proposal? Please provide your response in the box provided.

We have significant concerns regarding the removal of the restriction on granting bail for certain solemn offences and do not support this proposal. The system for gathering information on risk, and assessing risk posed by accused to victims of domestic abuse does not function effectively and SWA has heard about women being subjected to abuse by dangerous perpetrators who were on bail for offences prosecuted under solemn procedure.

The bail research referred to above noted on page 36 that in terms of how frequently respondents indicated 23D ground featured in judicial decisions to refuse bail in solemn cases “... *Just under two thirds said that it featured either ‘frequently’, or ‘very frequently’ (60%, n=17) and a further third (36%, n=10) said that it featured ‘occasionally’. Only one respondent said that this featured ‘very rarely’ in their decision-making (4%). ... One member of the judiciary commented that existing legislation was seen to be “perfectly satisfactory” and another commented that Judges are expected to evaluate the weight to be given to any and all considerations of the particular case before the court to inform their decision-making. Another stressed that protection of community was likely to be something which featured more in solemn cases..*”

The statutory provision in favour of remand (section 23D) was inserted to emphasise the seriousness and risks associated with cases involving gender- based offending and domestic abuse and serve as an additional safeguard to remind judges of this matter, noting the reasons given by the then Justice Secretary when domestic abuse was added to section 23D: [These are] “*important additions to the protections that the bill offers victims of domestic abuse. They are consistent with the approach that is taken elsewhere in the bill, where we have extended to victims of domestic abuse and related offences protections that our legal system already offers victims of sexual offences.... We want the availability of bail for repeat offenders who are accused of domestic abuse to be limited in a similar fashion and the link between domestic abuse offences and sexual or violent offences, which we have made elsewhere in the bill, to be made here, too.*”¹⁵

Far from acting as a protection to victims, the proposal in the Bill would, in effect, allow bail to be granted to convicted repeat and serial abusers of domestic abuse, including those who have perpetrated sexual assaults against women and who present a particular danger to women’s safety. Given women’s experiences of abusers being given bail, women need as much protection as the law can afford them. The safety of victims should be at the heart of any decision to release a person on bail so the removal of this restriction and reliance on the new all-encompassing bail test does little to show victims of these types of crime that their safety is being protected under the law.

Section 4 -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? Please provide your response in the box provided.

¹⁵ Column 16 – Official Report Justice committee ; 21 November 2017
<https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=11218>

The Bill places a duty on the court, when bail is refused, to state the grounds on which it has determined there is good reason for refusing bail and these reasons are entered in the record of the proceedings.

While this will contribute to transparency in judicial decision-making around bail and will be of benefit to victims of crime, the provisions of the Bill need to go further so that written reasons on the granting of bail are also provided.

During the consultation sessions SWA held with women and workers from local Women's Aid groups, lack of information available to women explaining the court's reasoning was a common and repeated issue of frustration and concern for women.

"Lack of transparency on bail decisions by the court- perpetrator bailed for the 14th time despite repeated breaches and can't give the woman any reasons for that- ...reasons for bail would help women". **quote from Women's Aid worker**

Paragraph 181 of the Policy Memorandum states that placing a duty on the court to give reasons for the refusal of bail "...helps further align with what may be described as a more general move towards setting out reasoning of decisions made by the court." "Therefore, in furtherance of this position, ensuring transparency of proceedings for participants, to assist in enforcement of bail conditions and safety planning, the reasons for refusal must also be communicated in writing to the victim, particularly women experiencing domestic abuse, in order to assist, including, where the court has instructed the use of EM as a condition of bail, reasons why the court considers the use of EM will protect victims.

Where courts record that EM was not suitable due to concerns about victim safety, providing this information to women may be useful in bolstering women's confidence in the ability of the system to protect them and in demonstrating understanding of the impact of domestic abuse on their safety. Statistically, it could also be used to support judicial decision making and training on the use of EM and appropriateness in cases involving domestic abuse and other gender-based offending.

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? Please provide your response in the box provided.

SWA disagree that the court should be required to "have regard" to any period of time spent on bail subject to a qualifying EM curfew condition, with the court being required to determine if some, all or none of that time should count as time served against a custodial sentence. EM is only a partial inconvenience to the movements of the accused, is not in any way comparable to time spent on remand and should not be treated any differently from any other form of bail. Consequently, we would not support that time spent on bail with EM by those assessed as posing a risk be taken into account when sentencing.

The Policy Memorandum at paragraph 196, effectively suggests that since EM conditions are more enforceable, an accused should be rewarded where they have complied with EM bail, despite the fact that compliance with a court-imposed

requirement should be carried out by an accused as a matter of course. Paragraph 198 goes on to say that “... *use of electronically monitored bail provides a degree of certainty of compliance with conditions, (namely curfew conditions)* ...” While the use of EM can provide a degree of certainty around compliance with restrictive curfew conditions, where breaching such a condition would be immediately apparent, it does not provide any degree of certainty around compliance with other conditions, such as not harassing witnesses. Therefore, it will not prevent perpetrators of domestic abuse from contacting women and children by phone, letter, social media, using third parties, and being in the proximity of the victim during those times when they are not subject to a EM – monitored curfew.

While it is suggested that time spent on bail with EM could be interpreted as being more limiting to the accused, this is an artificial and inaccurate construction. The reasons for the court imposing EM as a restriction on the movements of the accused are based on the risk that the accused poses to public safety or victim safety, especially in relation to domestic abuse. Rather than this being a disadvantage for the accused, it is a consequence of needing to protect victims.

The fact that the court chooses to release an offender into the community with a degree of risk it assesses can be controlled by EM is actually, in fact, of considerable benefit and preference to the accused because they are still at liberty; they have been allowed into the public domain instead of being remanded in prison pre-trial.

Section 6 -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? Please provide your response in the box provided.

We support this proposal for the protection of women, children and young people experiencing domestic abuse, as it means that perpetrators of domestic abuse will be more likely to have access to CJSW either that day, or the next, as opposed to waiting two days over a weekend. Further, this will allow police and CJSW to respond immediately should the abuse continue post –release. However, this support comes with the proviso that notice of any such adjustment to the release dates must be communicated several weeks in advance to women experiencing domestic abuse and their support organisations, and this should form part of the information provided under the provisions in section 11 of this Bill.

Section 7 -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? Please provide your response in the box provided.

We note that this section amends the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“ the 1993 Act”) by specifically removing long-term prisoners (those serving four years or more) from the Home Detention Curfew (“HDC”) mechanism, establishing a new approach to temporary release for them via a new “reintegration licence”, enabling a prisoner to be released on reintegration licence in advance of their Parole Qualifying Date (PQD) or release at subsequent review if not released at PQD.

We reiterate that the government’s human rights obligations related to gender-based abuse, including domestic abuse, are to protect victims from harm that the government knows or should know about. Harm to a victim from an abuser released following an inadequate risk assessment is likely to constitute a human rights violation. While we can see merit in the proposal that those imprisoned for non-domestic abuse- related offending and who do not pose a risk could be released earlier, subject to monitoring, we have serious concerns that this would not work effectively in practice for domestic abuse offenders.

Domestic abuse abusers serving custodial sentences of four years or more will likely have likely perpetrated profound and long-lasting physical and mental damage on women and children. It is not at all clear how giving these abuser early release ahead of their PQD will support the women, children and young people who are victims of such crimes and how this will prevent perpetrators re-abusing their victims.

Procedures around reintegration and desistance for perpetrators of domestic abuse and crimes of gender-based abuse do not operate in the same way as for those offenders serving custodial sentences for different crimes. As we have stated above, domestic abuse offending, causes, drivers and effects are quite different from other criminal activity. Attempts at preventing further perpetration of abuse is not about allowing perpetrators to “integrate” into communities; the issue is appropriately protecting their victims. This means by either preventing early release in the first instance. Where an abuser is released, imposing strict and robust meaningful licence conditions that are rigorously enforced. Any post-release programmes must be similarly appropriate, non-complicit, gender-informed, challenging behaviours and attitudes that perpetuate women’s inequality and violence against women and must include partner and children’s workers to support the women, and children, whose abusive partner may be engaging with such a programme on release as a condition of their licence.

We would comment on the new sections created by the Bill as follows:

Section 7(5) inserts new section 3AB into the 1993 Act

1) New section 3AB (1)- this provides that Scottish Ministers (the Scottish Prison Service in practice) may release certain long-term prisoners on a reintegration licence in advance of their PQD or in advance of a subsequent review if not released at PQD, where release has not been recommended by the Parole Board for Scotland (“PBS”). There are further issues raising concerns for SWA that require clarification around the operation of this proposed provision: -

- It is not clear as to the circumstances under which Scottish Ministers deem it appropriate to release an abuser who is a long-term prisoner up to six months before their PDQ dates and where this will be explained. Given that the PBS decision to refuse release will, hopefully be based on the perceived risk of the

abusers re-offending, this provision essentially allows Scottish Ministers to over-ride the decision making and risk assessment processes of the PBS and release an abuser potentially against the advice of the PBS. There is no explanation as to why Scottish Ministers are considered to be in a better position on making such a judgement on the risk posed by an abuser.

- The form and model this risk assessment will take, what information will be gathered to inform this and how the PBS, and more importantly, Scottish Ministers will ensure that they have obtained information from the police, the victim and any organisations supporting the victim on issues that will inform the risk assessment and the SPS/ PBS decision making.
- We note that new section 3AB (4) indicates that “...*Scottish Ministers or, as the case may be, the Parole Board must have regard to considerations of-(a) **protecting the public at large** (b)preventing re-offending by the prisoner, and (c) Securing the successful re-integration of the prisoner into the community.*” There is no mention of the need to consider the protection of a specific victim or victims and the section must be amended to include this information.
- It is not clear how, in this process, victims will be advised that release of the perpetrator via an integration licence was being considered and how far in advance of this consideration will they be advised, noting the changes under section 11 around information provision to victims on prisoners’ release and how victims will be given the opportunity to object to release of an abuser on an integration licence. This section must intersect with section 11 of the Bill and information on this new form of release made available to victims and their support organisation. Also, there is no indication that they will be told if the abuser is not required to return to prison after expiry of the integration licence and is then released at the PQD
- It is noted that this provision is intended to replace HDC and that in the existing HDC Guidance for Agencies, in addition to the statutory exclusions, there is a presumption against granting HDC to imprisoned individuals who fall into certain listed categories, including where the index offence involved an act of violence, possession or use of an offensive weapon or blade. The list of specific offences “*indicative of these points and there may exist a presumption*” includes threats and cruel and unnatural treatment of children but not the offence under the Domestic Abuse (Scotland) Act 2018. Given the risk perpetrators of domestic abuse pose to women and children, we are not confident that the system would work in practice in domestic abuse cases and therefore, the list of exclusions should include both offences aggravated by the domestic abuse aggravation introduced by the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 and offences under the Domestic Abuse (Scotland) Act 2018.
- There must be a statutory duty on Scottish Ministers to undertake monitoring and evaluation of released prisoners’ compliance with licence conditions particularly given that an abuser could immediately be re- released or remain out on licence at his PQD date
- There must be a statutory duty on Scottish Ministers to produce guidance and put in place training, so that all personnel involved in assessing what information is relevant to a risk assessment, and those conducting risk assessments must have a full understanding of the dynamics of domestic abuse and the ways that abusers may manipulate the criminal justice system and the license process in order to further their abuse

2) New section 3AB(3) -This provides that following the PBS' recommendation to release a long-term prisoner at PQD, the PBS may direct Scottish Ministers to release a long-term prisoner on a reintegration licence where the PBS has already recommended the prisoner for release at the prisoner's PQD.

Again, we have a number of observations about the operation of this section that require clarification

- The circumstances under which the PBS would direct Scottish Ministers to release an abuser who is a long-term prisoner on a reintegration licence for a period of up to six months before the abuser's PDQ dates
- We would reiterate that the questions and requirements noted above in relation to section 3AB(1) also apply here, and further that new section 3AB (4) must be amended to include consideration of protecting specific victims. Also, the intersection with section 11 must also be clarified and information on this new form of release made available to victims and their support organisation.
- Similarly, the questions and points noted above in relation to advance notice of consideration of release on reintegration licence given to women; opportunities to object by women; notification of release on reintegration licence all apply here also
- Licences granted under section 3AB(3) must include a curfew condition but not the standard licence conditions, imposition of which will be left to the discretion of the PBS. It is not clear why this discretion is allowed as exercise of this power will not provide victims with the same degree of protection as a release under section 3AB(1).
- We note that statutory exclusions under 3AB(1) will not apply to this cohort of offenders so emphasise our position that perpetrators of domestic abuse should not be eligible for this form of early release
- The statutory duties on Scottish Ministers around undertaking monitoring and evaluation of released prisoners' compliance with licence and the production of guidance should be replicated and include the PBS

3) New sections 3AB(5) & (6) and section 3AC

These appear to give Scottish Ministers the power to both increase the period of time under 3AB(5) from 180 days to a longer period of time, and to also increase 3AB(6)(a) so that the re-integration licence could release prisoners for periods more than 180 days if the period under 3AB(5) was also increased. This is not acceptable and cannot be done without Ministers firstly undertaking research evaluating the operation and impact of the re-integration licence provisions on re-offending and victim safety. Any extension must also be subject to both public and parliamentary scrutiny or consultation and not doing so would be unacceptable and of concern to SWA. The Bill should be amended to reflect these matters accordingly.

Section 7(12) amends section 21A of the 1993 Act requiring that Scottish Ministers prepare and keep under review an operating protocol covering the risk assessments and other matters that are involved before a prisoner is released on HDC and the procedures for monitoring persons so released. That protocol will now also be required to cover release of prisoners under new section 3AB but section 21A does not mention public consultation or consultation with victims or organisations supporting victims around the preparation and review of this protocol. Therefore, in the spirit of trauma-based and person-centred approaches for victims, section 21A requires to be amended accordingly to include victims and organisations supporting victims as parties who must be consulted

Section 8- 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? Please provide your response in the box provided.

It is positive that exclusions to this emergency release under subsection (5) cover the following categories of prisoner

- *serving a sentence of imprisonment or detention for an offence—(j)that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, or under section 1(1) of the Domestic Abuse (Scotland) Act 2018*
- *serving a sentence passed under section 210A of that Act (extended sentences for sex, violent and terrorist offenders),*
- *subject to the notification requirements of Part 2 of the Sexual Offences Act 2003,*

We also note and welcome the terms of subsection (4) “A person is not to be released from prison by virtue of regulations under this section if the person falls within subsection (5), or(a)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.” This complements the safety mechanism in place under subsection (5) and also replicates additional procedures previously put in place during the COVID emergency release process, the outcome of which will be to provide protection for women and children from those perpetrators of domestic abuse imprisoned for index offences other than domestic abuse but who nonetheless have a history of domestic abuse convictions, including those where a NHO relating to domestic abuse offending was still live, and who still pose a danger to women and children.

Section 9 -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? Please provide your response in the box provided.

Paragraph 21 of the Policy Memorandum makes reference to partnership working in supporting the aims of the Bill provisions but a clear statement that this should, at all stages, include working with victims and organisations supporting them as important partners and stakeholders, is missing from this commitment.

Victims and their supporters are, inevitably, neither routinely consulted nor involved in developments of initiatives intended to address offending, particularly those focussed on violence against women and children, specifically domestic abuse, a deficit which must be addressed nationally and locally by Community Justice Partnerships. Along with the creation of a credible evidence base, victims and support organisations must be involved in consultation, design, evaluation, safety planning and monitoring processes and guidance of all and any approaches

promoting and establishing alternatives to remand, imprisonment and integration of offenders.

A “release plan” involves “*preparing a relevant individual for release and facilitating their reintegration into the community*” but the Bill is silent on the process of “preparation.” There is no mention of how this work will engage and feed into safety planning with victims and victim support organisations supporting them, noting that this is a different proposition from the proposals to share information in section 11 of this Bill.

Pre-planning is an absolute necessity to properly address risk assessment in relation to safety planning and managing perpetrators of domestic abuse-related offending. Public services should have a duty to ensure pre-release planning includes consideration of victim safety, particularly women experiencing domestic abuse. This will involve victims and victim support organisations in the discussions and planning proposals that the Community Justice Partnerships undertake in both post release support and pre-release planning “*at an early point in an individual’s release.*” This may involve the mechanisms for transferring tenancies contained within the Domestic Abuse (Protection) (Scotland) Act 2021; securing alternative accommodation for women or advance engagement from Social Work and Housing to contact women experiencing domestic abuse to give advance notice and help with safety planning.

This must be statutory and must explicitly involve engagement with specialist domestic abuse and GBV services supporting women and children such as Women’s Aid, Rape Crisis Scotland and specialist domestic abuse court advocacy services. Therefore, the section should be amended accordingly to provide for this engagement,

SWA also considers that there is a need for greater communication and engagement by community justice services with local Women’s Aid services and other specialist domestic abuse services to help monitor perpetrators’ behaviours and their impact on the safety of victims.

“Need for joined up systems so WA can feed into systems around bail and early release.” **Quote from Women’s Aid worker**

The new section, at 34A(2) gives a list of “persons” who must “comply” with any request by Scottish Ministers to engage in the development, management and delivery of a release plan and 34A(4) states that these persons “*must have regard to the role which third sector bodies are able to play in this process.*” However, given that this will likely to be interpreted as meaning organisations supporting offenders, section 34 must therefore be amended to explicitly provide that victims of crime and victim support organisations will be involved and consulted at all stages of the development, management and delivery of a release plan.

Another issue is that there is no mention of guidance or minimum standards in relation to this release plan, unlike the proposals for throughcare under section 10 below. These are crucial particularly in relation to gender- based offending and should provide that timely engagement is undertaken with women and their support organisations, that women must be informed what is proposed in any release plan around re-housing of perpetrators, contact with children, post release control

requirements and should facilitate the exchange of information about safety issues relating to these and other matters.

Section 10 -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? Please provide your response in the box provided.

SWA support the publication of statutory minimum standards applying to throughcare support for both sentenced and remand prisoners and that these are kept under review. It is particularly important in relation to perpetrators of domestic abuse that minimum standards for throughcare should be statutory, given the risks to women

As the Policy Memorandum notes at paragraph 307 “... *the Bill proposes to establish minimum standards for the delivery of throughcare, which partners must comply with when providing throughcare support to people before, during and after release from prison in order to support greater consistency of delivery, and equity of access.*” It is important that this “support” must be safely appropriately designed and delivered to perpetrators of domestic abuse. This support process must also address the needs of victims that will arise on the release of offenders; thus, provision of support services for women experiencing domestic abuse on the release of the perpetrator direct from court since they may need immediate support with safety planning. Information sharing with women on court proceedings, remand, sentencing etc. is important, as are links with police, CJSW and support organisations such as local Women’s Aid groups

The new section, at 34B(4) gives a list of “persons” with whom the Scottish Ministers, effectively the SPS, must consult and engage with in preparing, reviewing and revising the standards, either generally or in relation to specific classes of offenders such as perpetrators of domestic abuse. Although 34(B)(4)(g) includes third sector bodies, these will essentially be those working with offenders and there is no specific reference to engagement with victims of crime or their support organisations, or that these standards will be put out for public consultation and review.

While 34(B)(4)(h) allows Scottish Ministers to “*consult other persons as they consider appropriate*” this does not go far enough and does not impose any duty on Ministers to consult victims of crime and victim support organisations. Therefore, the list in 34(B)(4) must be amended to explicitly include both victims of crime and victim support organisations as persons who must be consulted.

Since these standards will also be of considerable interest to members of the public, in addition to the above, the Bill must place a duty on Ministers to undertake public consultation on the preparation, review and revision of the standards.

Section 11 -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? Please provide your response in the box provided.

SWA strongly supports this provision as we have previously commented at length on the need for women experiencing domestic abuse to have timeous advance notice of timing of the release of perpetrators and other information relating to license conditions, location, supervision and monitoring that will assist in their own safety planning. In relation to this section, we would further comment as follows: -

New section 16ZA(1)(b)

- While supporting section 11, the wording of section 16ZA(1)(b), introduced by section 11(2) of the Bill), seems to suggest that a victim support organisation (VSO) acting as a “supporter” can, on their own volition and without the victim’s consent, can ask for information under this section. Having considered the implications of this, we cannot envisage any circumstances where it would be appropriate and to do so would undermine women’s agency, override their autonomy and consent, undermine her trust in professionals and make her less willing to engage in future. If the VSO is no longer supporting the woman, then they have no reason to seek this information. Alternatively, if a victim was still being supported by the VSO and had previously not given such consent, the VSO could revisit this matter with the woman but absolutely cannot go against the express wishes of the victim if they again refuse.
- SWA would not support this particular provision which should be removed from the Bill and the Bill amended to explicitly state that a VSO can only obtain the relevant information if express permission to do so, either on the victim’s behalf or on behalf of themselves and the VSO.
- Information on the new forms of temporary release being introduced by section 7 must be available to victims and VSOs under section 11.

New section 17ZA(1)(b)

- Introduced by section 11(3) of the Bill, this will allow VSOs acting as supporters to obtain information around the victim’s right to make representations to PBS where a prisoner is being considered for release on licence.
- The wording of this section is similarly problematic and raises the same issue as that discussed above, so again, this must be removed from the Bill.
- Information on the new forms of temporary release being introduced by section 7 must be available to victims and VSOs under section 11

information about dates of temporary release

Section 16(3)(a) of the Criminal Justice (Scotland) Act 2003 currently excludes information about dates of temporary release from the category of information being given to a victim of crime. This means that victims signing up to Part 1 of the VNS will only be informed when the offender first becomes **eligible/considered** for temporary release, they will not be told about each individual period of temporary release. Given that temporary release means a prisoner is given unescorted access to the community, which can for one day or as long as a period of 8 days, the protection and safety considerations of victims of crime, particularly women experiencing domestic abuse cannot be taken into account if they are not even advised that this release will be happening. Section 16 should therefore be amended to provide that information about **dates** of temporary release is also given to victims

of crime signing up to Part 1 if the VNS and also to those seeking information on prisoners serving less than 18 months.

Definition of support services under 16ZA(2) and (5)

We note that support services under 16ZA(2) and defined under 16ZA(5) will be prescribed by Scottish Ministers in regulations and would comment that this must specifically include local Women's Aid groups. Also, it is not clear whether the requirements listed under 16ZA(5)(b)(i) – (iii) are mutually exclusive, meaning “or” should be inserted between them, or that all of these require to be met.

Section 11(7)- amends section 27B of the 2014 Act

- This is positive, allowing the provision of the same information above around release to victims and VSOs where prisoners are serving less than 18 months. However, the same problem raised above about victim consent also applies and any provision replicating 16ZA(1)(b) must be removed from the Bill.
- Again, in relation to the definition of support services, we would comment that this must specifically include local Women's Aid groups

Other views-Do you have any other views on the Bill? Please provide your response in the box provided.

We note that there is no duty imposed on Ministers to monitor, evaluate and report back to the Parliament on the impact of these legislative reforms and this must be included in the Bill.

It will be important to record statistics around

- Any changes to levels of re-offending-, numbers of bail breaches, the number and nature of offences committed by accused during release on bail and by offenders after early release from a custodial sentence
- the operation of EM as a condition of bail and any positive or negative impact on the safety of victims of crime and re-offending levels
- the operation of bail supervisions schemes and any positive or negative impact on the safety of victims of crime and re-offending levels
- information from the Lord President and SCTS on the operation of the revised bail test.
-
- how the role of the CJSW has contributed, or otherwise, to victim safety and the imposition of appropriate bail conditions.
- Numbers of offenders released early under the provisions of the Bill, offender profiles, engagement with victims and VSOs around throughcare, safety planning and other aspects of the Bill pertaining to early release
- Whether the provisions around provision of information to victims and their VSOs under the Bill operated as intended

This will necessitate research being carried out with victims of crime on their experiences of increased numbers of accused on bail and the efficacy of the court's risk assessment and also with VSOs on their experiences of the impact of the Bill's provisions on victims, particularly women, children and young people experiencing domestic abuse.