

Stage Three Debate

Bail and Release from Custody (Scotland) Bill

Victim Support Scotland, Scottish Women's Aid and ASSIST

Victim Support Scotland, Scottish Women's Aid and ASSIST have consistently expressed concerns with the Scottish Government, the Criminal Justice Committee and MSPs regarding the impact the Bail and Release from Custody (Scotland) Bill could have on the safety and wellbeing of people affected by crime, particularly women who have experienced gender-based abuse.

We ask that all MSPs closely consider the impact of all amendments on victims and survivors – perhaps themselves or their constituents having experienced crime. The impact on victims and survivors is traumatic, life-changing and long-lasting. Our organisations seek to support amendments that benefit victims and survivors.

Part One: Bail

Section 1 - Decisions on Bail: Relevant information from officer of local authority

- Concerns that provisions within Section 1 of the Bill do not ensure that Criminal Justice Social Work (JSW) will be able to provide the court with all the necessary information from relevant sources, including victims and victim support organisations (VSOs), to conduct thorough risk assessments.
- This is of particular concern in domestic abuse cases, where the accused may be seeking bail conditions that will allow access to children as a means of controlling the complainer.
- We feel it is vital that the provision of this information is enshrined within legislation to ensure consistency in the voice of the complainer and the accused being represented in JSW risk assessments and bail considerations.

ASSIST and Scottish Women's Aid have previously raised concerns regarding any information on the risk the accused may pose coming directly from the complainer. They have highlighted that this could place the complainer at risk and make them vulnerable to pressure from the defence. As such, it is vital that any amendment which seeks to ensure the representation of risk to the complainer does not involve the complainer directly providing this information to the court.

We ask members to consider supporting the following amendment:

SUPPORT: Maggie Chapman – amendment 15

We ask members to consider NOT supporting the following amendment:

DO NOT SUPPORT: Maggie Chapman – amendment 16

Section 2 - Determination of good reason for refusing bail

- Section 2 of the Bill changes the grounds for refusal of bail to include the new public safety test.
- Our organisations believe the proposed grounds for refusing bail are not sufficient in protecting people affected by crime
- Whilst our organisations remain concerned by the impact the new public safety test will have for people affected by crime, we welcome amendments to the Bill which seek to minimise this risk.

We ask members to consider supporting the following amendment:

SUPPORT: Angela Constance – amendment 18

SUPPORT: Jamie Greene – amendment 20

We ask members to NOT support the following amendment:

NOT SUPPORT: Jamie Greene: amendment 19

Section 3 - Removal of restriction on bail in certain solemn cases

- Our organisations believe the removal of Section 23D presents a serious risk to the safety of people and victims of gender-based abuse in particular.
- Retaining 23D is a vital part of Scotland's commitment to eradicate violence against women and girls.
- The proposed grounds for refusing bail are not sufficient, on their own in protecting people affected by crime and are an inadequate alternative to the additional safeguard contained in Section 23D of the Criminal Procedure (Scotland) Act 1995.
- The proposed removal of Section 23D is of particular concern considering that subsection (3A)(c), which added domestic abuse to the category of offending, was only included within the 1995 legislation in 2017, by the Scottish Government, via a Stage Two amendment during the passage of the, then, Domestic Abuse (Scotland) Bill and was included in the subsequent 2018 Act.
- 23D was intended to serve as an additional safeguard to emphasise the seriousness and risks associated with cases involving gender-based offending.
- When domestic abuse was added to Section 23D as part of the Domestic Abuse (Scotland) Bill, the then, Cabinet Secretary for Justice, Michael Matheson, MSP, noted:
*(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."*

- The proposal in the current Bill to remove 23D could potentially allow bail to be granted to convicted repeat and serial perpetrators of domestic abuse and sexual offending against women. These are individuals who present a particular danger to women's safety.
- Given women's experiences of abusers being granted bail, including the lived experience of survivors given in evidence to the Criminal Justice Committee, 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. 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.
- We believe the removal of this sends a harmful message to victims of sexual abuse and domestic abuse and would undo the progressive work achieved through the Domestic Abuse (Scotland) 2018 Act.
- Retaining Section 23D would not significantly undermine the aim of reducing remand and would be a complementary and supportive measure, both limiting the risk of individuals in serious solemn cases being released on bail and demonstrating the Scottish Government's publicly stated intention to protect women, children and young people experiencing sexual and domestic abuse.
- As additions to 23D of the Criminal Procedure (Scotland) Act 1995 were included as recently as 2018, we propose that this is retained to allow sufficient time to assess the impact on preventing violence against women and girls.

We ask members to consider supporting the following amendment:

SUPPORT: Jamie Greene - 1 Leave out section 3

Section 4 - Refusal of Bail: duty to state and record reasons

- Section 4 of 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.
- This contributes to transparency in judicial decision-making around bail and is of benefit to victims of crime. As such, we are supportive of amendments which seek to increase the provision of information surrounding bail decisions.

We ask members to consider supporting the following amendments:

SUPPORT: Jamie Greene – Amendment 23

SUPPORT: Russell Findlay – Amendment 5

SUPPORT: Russell Findlay – Amendment 6

Section 5 - Time spent on electronically monitored bail

- Our organisations do not believe that any time spent on bail subject to electronic monitoring (EM) should count as time served.
- The sentence received for a serious crime including domestic abuse, sexual violence or rape, should consider the severity of the crime, victim safety and victim protection, rather than time spent subject to EM.
- It is suggested that time spent on bail with EM could be interpreted as being more limiting to the accused, but 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.
- Therefore, rather than the imposition of EM being a disadvantage for the accused, it is a clear consequence of the need to protect victims. Whilst time spent on electronic monitoring is restrictive, the accused is still, albeit subject to the EM restrictions, out in the community, and therefore it is in no way comparable to time spent in prison as part of a custodial sentence.
- As such we are supportive of amendments do not obligate the court to consider time spent on EM when passing a custodial sentence.

We ask members to consider supporting the following amendments:

SUPPORT: Jamie Greene – Amendment 24

SUPPORT: Jamie Greene – Amendment 25

Section 5A - Report on bail and remand

- Our organisations welcome reporting requirements which allow for greater transparency on the use of the bail and the impact this is having on the experiences of people affected by crime. However, we believe this section can go further to include further information around the use of bail and remand in Scotland.
- Of particular concern is the number of accused released on bail following multiple breaches of bail. This issue was highlighted in the lived experiences of women supported by ASSIST and Scottish Women's Aid who reported losing all faith in the bail system following multiple serious breaches.
- It is vital that this information is monitored and made available to the public to ensure that bail and remand is fulfilling its primary purpose, to protect victims and the wider public from harm. Engagement with VSOs on this matter is essential to ensuring the voices and experiences of people affected by crime remain at the centre of our justice system.

We ask members to consider supporting the following amendments:

SUPPORT: Jamie Greene – Amendment 28

SUPPORT: Jamie Greene – Amendment 29

SUPPORT: Angela Constance – Amendment 31

SUPPORT: Angela Constance – Amendment 36

Part Two: Release from Custody

Section 7: Release on licence of long-term prisoner

- Section 7 of the Bill sought to replace the possibility of release on home detention curfew (HDC) for long-term prisoners with a new system of temporary release under licence, referred to as a 'reintegration licence'.
- Throughout the Bill's progression through Parliament, our organisations have advocated for amendments to section 7 and the new Section 3AB, containing further powers to release long-term prisoners on licence, it introduced into the Prisoners and Criminal Proceedings (Scotland) Act 1993.
- The 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 under considerations the Parole Board must have regard to. We acknowledge it may be considered that this is covered by the wording 'protecting the public at large.' However, without explicit reference to the victim, there is significant concern this will not specifically be taken into account.
- This is of particular concern in cases of gender-based abuse, where the perpetrator may not be considered as, or pose a risk to, the wider public but may pose a serious risk to the woman or women they harmed. As such, we believe this represents a significant omission and does not ensure victims remain at the centre of our justice system.
- As such, we are supportive of amendments which seek to ensure that Scottish Ministers or the Parole Board are explicitly obliged to take into account protection of the specific victim or victims of the prisoner.
- We are also supportive of amendments which seek to ensure that consideration is given to any risk the prisoner may pose to particular group of persons. For example, protecting women from dangerous, serial perpetrators of domestic abuse or sex offenders. This would also include LGBTQ+ persons, minority ethnic groups and people with other protected characteristics.

We ask MSPs to consider supporting the following amendments:

SUPPORT: Russell Findlay – Amendment 7

SUPPORT: Russell Findlay – Amendment 8

SUPPORT: Angela Constance – Amendment 37

SUPPORT: Angela Constance – Amendment 38

SUPPORT: Angela Constance – Amendment 39

SUPPORT: Angela Constance - Amendment 40

SUPPORT: Angela Constance - Amendment 41

After Section 7 - Powers to block release in cases of undisclosed information

- Our organisations are strongly supportive of Jamie Greene’s proposed amendment to the Prisoners and Criminal Proceedings (Scotland) Act 1993.
- This amendment would provide the Parole Board with powers to only give direction to release long-term prisoners convicted of murder where they are satisfied the prisoner holds no information around where or how their victim’s remains were disposed of which they have not disclosed.
- This amendment represents a variation of the so-called “Suzanne’s law” – proposed legislation which sought to deny parole to prisoners convicted of murder who fail to disclose the location of a victim’s remains.
- Victim Support Scotland’s Support for Families Bereaved by Crime Service are acutely aware of the suffering and anguish victim’s families face when they are denied this information by the perpetrator.
- As such, this amendment has the potential to have a significant impact on the experiences of families bereaved by crime.

We ask members to support the following amendment:

SUPPORT: Jamie Greene – amendment 84

Section 8 - Power to Release Early

- Our organisations have previously expressed concerns regarding the permanent enshrining of emergency release powers within the Bail and Release from Custody (Scotland) Bill.
- Use of the proposed power would be restricted to situations where the Scottish Government is satisfied that it is a necessary and proportionate response to the impact of an emergency situation on prisons.
- When these powers were first enacted during the COVID-19 pandemic, there were significant concerns noted around the consequences for victims’ vulnerability, particularly due to failures in notifying victims of release under these provisions.
- As such, we are supportive of amendments which seek to set clear parameters and guidance around the appropriate use of these powers, and to minimise the release of prisoners to where it is absolutely necessary.

We ask members to consider supporting the following amendment:

SUPPORT: Angela Constance – Amendment 43

SUPPORT: Jamie Green – Amendment 45

Section 9 - Duty to Engage in Release Planning

- Victims and their supporters are, inevitably, neither routinely consulted nor involved in developments of initiatives intended to address offending. This is of particular issue for those focused on violence against women and children, specifically domestic abuse. This presents 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 the consultation, design, evaluation and safety planning. They must also be involved in monitoring processes and guidance of all and any approaches promoting and establishing alternatives to remand, imprisonment and integration of offenders.
- As such, we are supportive of amendments which seek to ensure that victim support organisations are involved in the development, review and revision of guidance surrounding release planning.

We ask members to consider supporting the following amendment:

SUPPORT: Angela Constance – Amendment 48

Section 10 - Throughcare Support

- Section 10 of the Bail and Release from Custody bill Section 10 would require the Scottish Government to publish, and keep under review, minimum standards applying to throughcare support.
- As above, we believe it is vital that victim support organisations and people affected by crime have voice in reviewing and consulting on these standards.
- It is important that this support must be safely and appropriately designed and address the needs of victims that will arise on the release of offenders. Therefore, these must be informed by the needs of victims and must also incorporate a gendered analysis of sexual violence abuse and domestic abuse.

We ask members to consider supporting the following:

SUPPORT: Angela Constance – Amendment 51

SUPPORT: Angela Constance – Amendment 52

SUPPORT: Angela Constance – Amendment 53

SUPPORT: Angela Constance – Amendment 54

SUPPORT: Angela Constance – Amendment 56

SUPPORT: Angela Constance – Amendment 57

- Whilst we are strongly supportive of the above, which include victim support organisations and people affected by crime in the **first** production of minimum standards of throughcare support standards, this commitment on engagement must also extend to any subsequent revision or review of minimum standards of throughcare support. We are therefore concerned by additional amendments which seek to exclude victims' voices and those of organisations supporting them from work on the revision of these standards.

- It is vital that people affected by crime are represented in the consultation process and revision of these standards at all stages and not simply the first publication.

We ask members to consider voting against the following:

NOT SUPPORT: Angela Constance – Amendment 55

NOT SUPPORT: Angela Constance – Amendment 58

NOT SUPPORT: Angela Constance – Amendment 59

After Section 11 - Report on Operation of Part 2

- Our organisations believe reports on the operation of the modifications of enactments made by Part 2 of the Bill are essential to ensuring effective monitoring and evaluation of legislative changes.
- We are supportive of the inclusion of victim support organisations in the list of services and official bodies Ministers must consult with.

We ask members to consider supporting the following amendment:

SUPPORT: Angela Constance – Amendment 60

Part 3: Final Provisions

Section 14 - Commencement

- We are supportive of amendment 66 as it seeks to prevent early release powers being brought into force until Scottish Ministers have published a report detailing the current Scottish Prison Service procedure for responding to incidents where these powers may be used.
- We believe this amendment is important to ensuring that the implementation of these powers is based on tried procedures which have been thoroughly reviewed and are in line with current standards of practice.

We ask members to consider supporting the following amendment:

SUPPORT: Jamie Greene – Amendment 66