

Criminal Justice Alliance

Coroners and Justice Bill 2009

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About the Criminal Justice Alliance

The Criminal Justice Alliance (formerly the Penal Affairs Consortium) is a coalition of organisations committed to improving the criminal justice system. It has 46 members - including campaigning charities, voluntary sector service providers, research institutions, staff associations and trade unions (for a full list of members see <http://criminaljusticealliance.org/organisations.htm>) - bringing together a wide range of organisations involved in policy and practice across the criminal justice system.¹

Context: Prison facts and figures

- The prison population on 17 April 2009 was 82,757, of whom 78,521 were male and 4,236 female.
- In 2007, 125,880 people entered prison in England and Wales.
- The number of prisoners in England and Wales increased by 30% in the decade from 1997 to 2007.
- The increase in the prison population is not a result of a significant increase in people being sentenced by the courts. The total number of offenders sentenced in 2007 was 1,414,700, an increase of only 2% from 1997. In 1997 the average prison population was 61,114.
- The Ministry of Justice has projected that by June 2015 there will be up to 95,800 people in prison.
- Following Lord Carter's review of the prison system, published in December 2007, the Government has committed to increasing prison capacity to 96,000 by 2014, including building five 1,500-place prisons (which have replaced proposals for three 'Titan' prisons, each providing up to 2,500 places).
- HM Prison Service defines 'the good, decent standard of accommodation that it aspires to provide all prisoners' for each prison, called the Certified Normal Accommodation (CNA) level. This is the level above which prisons become officially overcrowded. As of February 2009, the prison population was 111% of the CNA level, exceeding the CNA level by 7,879.
- 85 of the 139 prisons in England and Wales are officially overcrowded.
- The provisions of this Bill are projected to result in the need for 300 additional prison places, at a cost of £60 million in capital costs and £12 million in resource costs (Explanatory notes, paragraph 769).

Contents of the Bill

The Criminal Justice Alliance's primary focus is around prison overcrowding, the prison population and sentencing. The main elements of the Bill that relate to these issues are examined below. The briefing addresses:

1. Partial defence to murder: diminished responsibility and Partial defence to murder: loss of control (Clauses 42-46)
2. Bail in murder cases (Clauses 101-102)
3. Sentencing Guidelines Council (Clauses 104-122)
4. Dangerous offenders (Clauses 124-125)
5. Commissioner for Victims and Witnesses (Clause 126)

¹ Although the Criminal Justice Alliance works closely with its members, this briefing should not be seen to represent the views or policy positions of each individual member organisation.

PART 2: CRIMINAL OFFENCES

Partial defence to murder: diminished responsibility and Partial defence to murder: loss of control (Clauses 42-46)

The Criminal Justice Alliance is concerned that the Government's decision to attempt to reform the law of homicide piecemeal is a mistake. The Criminal Justice Alliance believes that the law on homicide needs wholesale reform. In particular, the Government should abolish the mandatory life sentence for homicide. This would give an appropriate level of discretion to sentencers and negate the need to introduce partial defences of this kind, which are intended in part to allow some defendants to be instead convicted of manslaughter and to therefore avoid a mandatory life sentence.

PART 3: CRIMINAL EVIDENCE, INVESTIGATIONS AND PROCEDURE

Bail in murder cases (Clauses 101-102)

Clauses 101-102 of the Bill amend the *Bail Act 1976* so that a defendant who is charged with murder may not be granted bail unless the court believes that there is no significant risk that he or she would commit an offence that would be likely to cause physical or mental injury to another person (Clause 101) and so that a person who is charged with murder may not be granted bail except by a Crown Court judge (Clause 102). The Criminal Justice Alliance opposes these changes.

Clause 101

Firstly, it is not clear why this new test should apply to murder but not to other offences, given that some offences (for example terrorism offences or serious sexual offences) may be of near comparable seriousness, especially given the range of circumstances that can lead to a murder charge. In addition, while offence seriousness is one consideration in deciding whether bail is granted, it is not the only consideration. Somebody charged with murder might, in some circumstances, be considerably less likely to commit a further offence causing harm than somebody charged with another, 'lesser' offence. As a result, changing the requirements for bail for murder but not for other offences would be illogical.

Furthermore, it is not clear why these changes are necessary. The consultation on bail in murder cases, which has led to these proposals, arose primarily from two cases, those of Gary Weddell and Anthony Leon Peart. However, the case of Gary Weddell was an extremely unusual one and not in itself a reason to change the law. The case of Anthony Leon Peart was complex, but highlighted a number of failings primarily in the application of the law rather than in the law itself. The Criminal Justice Alliance is therefore not convinced that changes to the law would have prevented these tragic cases or that these changes are necessary now to prevent future offences.

Evidence also suggests that bail is already used very rarely in cases of murder, and only in exceptional circumstances. Although the statistical data is not available to confirm this, it seems very likely that defendants charged with murder only receive bail in unusual circumstances and that considerable caution is already applied to granting bail in these cases. Indeed the assessment of the impact of the Bill on the prison population (Explanatory notes, paragraph 769) makes no reference to these clauses, suggesting that the Government does not believe that any more defendants will be imprisoned on remand than is currently the case. This therefore suggests that Clause 101 is unnecessary.

It is also likely that Clause 101 would be incompatible with Article 5 of the European Convention on Human Rights. JUSTICE has argued that this clause would either have to be read down under s3 *Human Rights Act 1998* (like s25 of the *Criminal Justice and Public Order Act 1994*) or be judged incompatible with Article 5 of the European Convention on Human Rights.

Clause 102

Clause 102 specifies that '[a] person charged with murder may not be granted bail except by order of a judge of the Crown Court'. For the reasons set out above, the CJA does not believe that this requirement should apply to murder but not to any other offence.

Clause 102 also allows for an additional 48 hours for the Crown Court to make a decision about bail, after the magistrates' court has referred the case to the Crown Court, to allow time for the case to be brought to the Crown Court. In our view, this additional delay is unacceptable, and is also likely to be incompatible with Article 5 of the European Convention on Human Rights. If the decision is taken that bail decisions in murder cases must be made in the Crown Court, then arrangements should be made for defendants charged with murder to be brought before the Crown Court in the first instance, rather than the magistrates' court.

The Criminal Justice Alliance therefore recommends that Clause 101 and Clause 102 should be removed from the Bill.

PART 4: SENTENCING

Sentencing Guidelines Council (Clauses 104-122)

Clauses 104-122 of the Bill introduce a Sentencing Council for England and Wales, to replace the existing Sentencing Advisory Panel and Sentencing Guidelines Council.

A sentencing commission was proposed by Lord Carter in his review of prisons (*Securing the Future: Proposals for the efficient and sustainable use of custody in England and Wales*) and a working group, the Sentencing Commission Working Group, was subsequently set up, made up of a mixture of judicial and non-judicial members and chaired by Lord Justice Gage. The working group broadly welcomed the establishment of a sentencing commission, but rejected proposals made by Lord Carter for a rigid 'grid' system. The Sentencing Council proposed in the Bill largely reflects the recommendations made by the working group.

The Criminal Justice Alliance welcomes the introduction of a Sentencing Council, and supports in the most part the proposals set out in the Bill. The Criminal Justice Alliance responded to the Sentencing Commission Working Group's consultation on *A Structured Sentencing Framework and Sentencing Commission* and supports the decision to reject sentencing 'grids' and to implement the recommendations of the Sentencing Commission Working Group's final report.

The Criminal Justice Alliance believes that a Sentencing Council can promote stability and consistency in sentencing and improve the availability of data and other information about sentencing. The structure of the current Sentencing Advisory Panel and Sentencing Guidelines Council is unwieldy and results in undue delay in producing new guidance. A single Sentencing

Council, led by the judiciary but also encompassing non-judicial members, can maintain judicial confidence while also playing a part in reviving public confidence in sentencing.

In particular, the Criminal Justice Alliance welcomes:

- *The introduction of tighter restrictions on the courts on departure from the guidelines (Clause 111)*
At present, the courts must ‘have regard to’ the guidelines when passing sentence. Under the proposals in the Bill, sentencers must follow the guidelines ‘unless the court is satisfied that it would be contrary to the interests of justice to do so’. This should improve consistency without unduly fettering judicial discretion.
- *The proposed duty on the Council to assess the resource implications of their guidelines on the prison, probation and youth justice services (Clause 113) and to assess the impact on resources of policy and legislative proposals (Clause 118)*
The latter is particularly important given the unplanned impact on the prison population of previous legislation, for example the introduction of Indeterminate Sentences for Public Protection in the *Criminal Justice Act 2003*. The Sentencing Council, by publishing its assessment of the impact of policy and legislative proposals on penal capacity, will ensure that parliament is able to make informed decisions about proposed legislative changes and that the government and the National Offender Management Service can plan appropriately.
- *The proposed duty on the Council to monitor the operation and effect of its guidelines (Clause 114)*
At present there is very limited information on the extent to which courts follow the guidelines of the current Sentencing Guidelines Council, and therefore how effective they are in promoting consistency in sentencing. More information on the extent to which guidelines are being followed will be essential in ensuring that the proposed Sentencing Council is operating effectively.

However, the Criminal Justice Alliance would also like to see:

- *An enhanced community engagement function for the Sentencing Council*
The Criminal Justice Alliance supports the proposals in Clause 115 (Promoting awareness), which relate to the proposed Sentencing Council’s work in better informing the public about sentencing. However, the provisions do not go nearly far enough. Community engagement should be central to the Council’s work. It should encompass public consultation, proactive involvement in the public and media debate around sentencing, and providing accessible statistics and other information on sentencing. The public are generally misinformed about sentencing, and a Sentencing Council with a strong community engagement function could play a leading role in correcting this, therefore contributing to improving public confidence in the criminal justice system.
- *Experience of sentencing in the youth court represented on the Sentencing Council*
Schedule 13 (Paragraph 3) sets out requirements for the judicial membership of the Sentencing Council. The Sentencing Council will develop guidelines for sentencing young people under the age of 18 and to ensure that this is informed by first-hand experience of sentencing young people, at least one of the judicial members should have experience of working in the youth court.

- *Expertise in the reform and rehabilitation of offenders, in the youth justice system and in working with women offenders represented on the Sentencing Council*
Schedule 13 (Paragraph 4) sets out requirements for the non-judicial membership of the Sentencing Council. In addition to the expertise set out in this paragraph, the Sentencing Council should also include in its membership:
 - Expertise in the reform and rehabilitation of offenders, in particular to inform the Sentencing Council’s duty to consider ‘the cost of different sentences and their relative effectiveness in preventing reoffending’ [Clause 106(11)(d)].
 - Expertise in working with children in the youth justice system, to inform its work on guidelines for sentencing young people under the age of 18.
 - Expertise in working with women offenders, to ensure that the differences between male and female offenders are recognised in the development of sentencing guidelines, for example in the identification of mitigating factors that the Sentencing Council considers relevant [see Clause 107(6)(b)].

- *A duty on the Sentencing Council to promote sentencing that is effective in reducing reoffending*
Reducing reoffending should be central to sentencing and central to the work of the Sentencing Council in drawing up sentencing guidelines and in commissioning research on the effectiveness of sentencing. The Sentencing Council should therefore be required to promote effective measures to reduce reoffending in all of its work.

- *A duty on the Sentencing Council to consider the needs of minority groups in the criminal justice system - including women, young people, young adults (aged 18-25) and ethnic minorities*
The Sentencing Council should consider minority groups in developing sentencing guidelines and in its broader work programme, to ensure that the needs of these groups are addressed. The Sentencing Council should also have a positive duty to prevent direct and indirect discrimination in sentencing.

A detailed discussion on the merits of a Sentencing Council is available in *A Sentencing Commission for England and Wales: an opportunity to address the prisons crisis*, published by the Prison Reform Trust and available at:
<http://www.prisonreformtrust.org.uk/temp/Sentencingspcommission.pdf>

Dangerous offenders (Clauses 124-125)

Clauses 124-125 of the Bill extend the use of Indeterminate Sentences for Public Protection (IPPs) for a range of terrorism offences.

IPPs were introduced in the *Criminal Justice Act 2003*. Prisoners receive a minimum tariff, at the end of which the Parole Board decides whether they should be released, based on whether they are judged to pose a risk. The initial scope of these sentences was very wide, covering a broad range of offences and offering very limited discretion to sentencers as to when they should be used. The *Criminal Justice and Immigration Act 2008* restricted the use of IPPs, including introducing a minimum tariff of two years for prisoners serving IPPs (intended to ensure that IPPs could only be given for more serious offences), limiting the number of offences that IPPs can be given for, and allowing courts greater discretion as to when to impose an IPP.

However, as of 12 February 2009 there were 5,059 IPP prisoners. 1,487 had gone beyond their tariff and were therefore eligible for consideration for release. Yet, as of 15 January 2009, only 47 IPP prisoners in total had ever been released on licence.

The Criminal Justice Alliance welcomes the changes made to IPPs in the *Criminal Justice and Immigration Act 2008*. However, the Criminal Justice Alliance believes that IPPs remain a fundamentally flawed and unworkable sentence, and opposes their extension to cover further offences.

In particular, we are concerned that people convicted of terrorism offences would not be able to prove that they had addressed their offending behaviour. In order to prove that they no longer pose a risk, and should therefore be released at the end of their tariff, prisoners on IPPs are normally required to attend offending behaviour programmes. However, at present we are not aware of any available programmes that would specifically be relevant to offenders convicted of terrorism offences. These prisoners would therefore be unable to prove that they were ready for release, and would be at risk of being detained permanently.

The Criminal Justice Alliance therefore recommends that Clauses 124 and 125 should be removed from the Bill.

PART 5: MISCELLANEOUS CRIMINAL JUSTICE PROVISIONS

Commissioner for Victims and Witnesses (Clause 126)

The Criminal Justice Alliance welcomes the introduction of a Commissioner for Victims and Witnesses, which could improve confidence in the criminal justice system and the services that it provides for victims and witnesses.

However, the Criminal Justice Alliance believes that it would be beneficial for the Commissioner for Victims and Witnesses to carry out research on the needs of victims and witnesses in the criminal justice system. This was included in the 'General functions of Commissioner' contained in the *Domestic Violence, Crime and Victims Act 2004* [Clause 49(2)(d)], which was never implemented, but is removed by Clause 126(3)(a) of this Bill. The Commissioner for Victims and Witnesses could play a valuable role, through carrying out and commissioning research, in clarifying victims' and witnesses' experiences of the criminal justice system, and what changes would genuinely be in their interests.

The Criminal Justice Alliance therefore recommends that Clause 126(3)(a) of this Bill ['In section 49 (general functions of Commissioner) omit subsection (2)(d) (carrying out of research)'] be removed from the Bill.

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