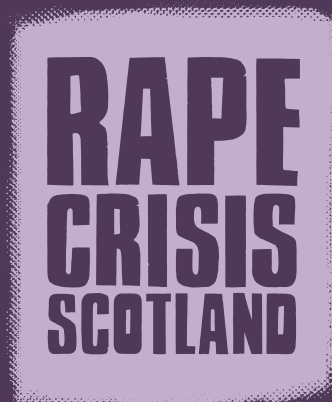




CONSULTATION

Bail and Release
From Custody

Consultation
Response (2022)



Do you have any comments on the general approach taken in relation to the use of bail and remand?

We have concerns that the general approach taken in relation to the use of bail and remand leaves a substantial gap where proper consideration of the protection to survivors and their needs. There is insufficient consideration given as to the risks faced by survivors of sexual violence and rape.

We have reviewed the policy memorandum and proposals and find that there is a significant lack of victims and survivors voices alongside a lack of sufficient consideration of the mechanisms of either sexual violence or domestic abuse. There is no gendered analysis performed.

The absence of this raises concerns for the ability of the provisions to manage individuals who pose violent and sexual risks to women and girls.

There lacks specific consideration as to the use of special conditions of bail and their enforcement. These conditions are a very important safety feature in the protection of women and girls where there is an individual on bail in such a case. This includes a lack of acknowledgement as to how the court should deal with breaches of the special conditions and assess risk where this occurs in cases of gender-based violence.

If survivors are to be properly considered in the remit of this legislation considerably more effort needs to be taken to consider how these provisions will affect them and there does not appear to be evidence that that there has been through consideration of the implications for survivors of sexual violence of domestic abuse.

We note that on p11 of the policy memorandum which gives a 'criminal justice overview' – this section does not give specific mention of domestic or sexual offending statistics. We note that there is mention of repeat victimisation being a particular problem, the report does not then draw the highly likely conclusion that this is in fact largely made up of domestically aggravated offences.

Throughout page 1 – 15 of the policy memorandum the Scottish Government highlights the negative impact that custody can have on an accused/perpetrator. We would highlight that remand in custody has significant benefits to women and children living with abuse. The removal of the perpetrator even

on a short-term basis can make an immense difference in their lives. Allowing them to set up home away from their abuser, establish support networks and cut ties with him. It can give respite to survivors of sexual violence who do not need to worry that they will see the perpetrator again – especially if he is known to live in the same area.

If the Scottish Government wishes to reduce the number of individuals in custody and have an accused properly supported in the community, there must be a sufficient infrastructure to support victims and provide protection from the accused. This includes stringent supervision and enforcement of bail conditions, police presence, availability of supports and services for victims. We often see examples of accused persons breaching their bail without consequence, especially where there has been a domestic abuse element to the crime. We also see women effectively blamed for allowing them to breach bail conditions by letting them back into their home or have contact with children. Victims of this type of abuse need strong supports in order to prevent the perpetrator from being able to work his way back into the position where he has access to continue the abuse. There should be tough consequences for those who fail to adhere to their special conditions of bail in domestic and sexual violence cases.

Overall, it doesn't seem like these provisions have been made with proper consideration of survivors or victims experiences and we do not think that their interests will be served or that they will be sufficiently protected from harm through them.

Do you have any comments on the general approach taken in the Bill to the arrangements for the release of prisoners?

Again, we would express concern that not enough consideration has been given to the impact of these provisions on survivors of sexual violence and rape. When perpetrators of sexual violence, including where there has been a connection with ongoing domestic abuse, are released on bail this is a significant and distressing period for victims and survivors. There are considerable risks to their wellbeing if they have not been provided with sufficient support and protection. We see survivors frequently let down at this stage of the criminal justice process,

not being informed of the release or the correct information around this or not being offered the right support.

Do you have any comments on the practical implementations of the proposed changes in the Bill, including resource implications?

No

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?

We see that there could be a benefit to encouraging input from justice social workers, however we think that this information should be used to encourage the protection and safety of victims and survivors in sexual and domestic violence crimes. The use of information from justice social work is already available routinely in some jurisdictions and we have seen examples of good practice where this has given the court key information regarding the associated risks. We submit that the information provided by programmes such as ASSIST, DASAT and EDDACS is also of vital important and should be given as standard across all jurisdictions.

Provision has to be made to incorporate the views and voices of survivors in this process. The victim in the case will have the best information regarding the circumstances and be able to assess the risk themselves and provide an opinion.

They will also know the details necessary for special conditions of bail – the relevant places that an accused should not be able to go to if they are granted bail.

Trauma informed approach would mean the victim/ complainer has a role to play in this process and is given the opportunity to be involved and have their views heard. This should be considered by a social worker when assessing risk. Anyone seeking to obtain information from a survivor should be properly trained and have experience working with survivors or rape and sexual violence

and the survivor should not be required to speak to multiple people for this process.

We also see that errors are constantly made during the existing process which are a detriment to victims. This includes; information given to the accused when it should not, errors in the imposition of special conditions of 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?

We support the introduction of the provision relating to the risk of harm to the complainer and the specific mention of psychological harm. Care needs to be taken that alongside this the court will have enough information to assess what the risks are, if they are to give consideration of psychological harm, they will need to know the situation and feelings of the victims alongside a clear understanding and knowledge base of the way sexual violence and domestic abuse perpetrators commit abuse to apply this correctly.

There needs to be clear guidance on how this information is gathered from survivors to ensure it is done in a trauma informed way.

However, we have concerns regarding the remainder of the provision and the general trend to reduce the numbers of accused persons in custody on remand.

The move to limit the use of remand in sexual violence and domestic abuse crimes would not be in the interests of the victims. We are aware of numerous breaches of bail, threatening behaviour towards the victim by the accused on bail, approaches made, traumatising sightings in public if they live in the same community. Allowing accused bail gives them the ability to carry on abuse of this nature.

Again, the policy memorandum and subsequent provisions does nothing to consider the benefits that remand in custody bring to victims of sexual or domestic violence. The removal of the perpetrator can be significant for those experiencing domestic abuse, giving them the ability to break ties. It can significantly help to reduce trauma as the survivor will know that there is no physical way for their abuser to reach them. These factors are massively beneficial to the complainant and provide security to them, their families and their children.

In cases where the accused breaches special conditions of bail there is often very little the police can do to enforce them, many of them have insufficient evidence and women are left to police the conditions themselves. This is especially difficult where the victim is isolated or under pressure from others to have contact with the perpetrator.

If more accused are granted bail, what do the government foresee about the rising numbers of offences while on bail? We cannot see that this has been given enough consideration or alternative supports to ensure their safety.

We expect this will mean a great deal more offending and harm caused to victims.

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, violence, sexual offending or domestic abuse.

What are your views on this proposal?

We have significant concerns regarding the removal of the restriction on granting bail for certain solemn offences. We believe that the exceptional circumstances test provides sufficient latitude to judges to allow bail should the specific circumstances of the case allow it. In particular, cases involving Violence against Women and Girls (VAWG) have significant risk associated with them and the safety of victims should be at the heart of any decision to release a person on bail.

It was only very recently that domestic abuse was added, alongside sexual violence, to the terms of 23D. This was done so to recognise the impact of those crimes and the high risks involved. This would be removing a protection that was only recently provided which brought specific focus to crimes of violence against women and girls.

Far from acting as a protection to victims, this proposal 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 policy memorandum states that the intention of Section 3 of the Bill is to repeal section 23D of the 1995 Act as part of a simplification of the legal framework so as not to 'unduly fetter the discretion of the court in their decision-making'. We see that it goes much further than this – it removes an important safeguard

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?

We support this but also stress that they need to record the reasons for bail being granted in cases of sexual violence, rape and domestic violence.

The victim needs to know and understand the reasons for granting bail or imposition of special conditions of bail. They need to be given accurate information on these matters.

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?

We are not in support of these proposals. The sentence received for a crime of sexual violence or rape should consider the severity of the crime, victim safety and victim protection, rather than time spent subject to electronic monitoring. Whilst we agree that time spent on electronic monitoring is restrictive, it should be no substitute for time that should have been spent in prison as part of a sentence.

The implication of electronic monitoring can only have a limited effect when considering the protection of victims of sexual violence or domestic abuse. It will only impose a curfew which cannot stop them using other means to harass or contact their victims. It does not provide any degree of certainty around compliance with other conditions such as not harassing witnesses and 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 curfew. It is not comparable to time in custody

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?

We are supportive of these proposals as they also have benefits for victim survivors of sexual violence and rape. The release of a perpetrator of sexual offences is a very challenging time for a survivor, who should have been made aware in advance of the release. The security they had from knowing that the

perpetrator could not approach them or further harm them is taken away and this will increase anxiety. This will mean that survivors require to access their support services, including those within the third sector and leaving release to the weekend may cause more difficulty for them being able to do this.

We note that the policy memorandum prepared by the Scottish Government gives no mention of this basic need for survivors, and again note that it does not appear that sufficient consideration has been given for the needs of survivors and victims, this raises concern as to the whether the risks of these provisions have been properly addressed.

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?

We have concerns about these provisions as they relate to cases of sexual violence, rape and domestic abuse. These provisions relate to long term prisoners, serving custody sentences of 4 years or more. This will mean prisoners who have committed the most serious offences, where this involves sexual or domestic violence these will be some of the most high-risk individuals. We are concerned that changing the approach to release for these prisoners will mean that there is insufficient consideration given to risks to victims and to others in the community. The most robust risk assessments need to be carried

out to ensure safety. While these provisions could be of use for nonviolent or nonsexual offenders, they are not appropriate where this type of serious offending exists.

There must be robust risk assessment carried out which focus not just on the offender's behaviour in custody but their offence, surrounding behaviour and the known risks associated with those.

The focus should not just be on trying to re integrate perpetrators into communities, preventing further abuse of women and girls involves providing sufficient protections for them and should include, imposing strict and robust meaningful licence conditions which are rigorously enforced, ensuring post release programmes are appropriate, non-complicit, gender informed and challenge behaviours and attitudes that perpetuate women's inequality and violence against women.

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?

The emergency provisions which were introduced during the Covid pandemic were introduced to help stop the spread of the virus. There was considerable uncertainty and a disregard for victims needs in their operation. There were serious failings in the communication with victims, the welfare and safety of victims at this time which caused increased victim trauma and anxiety.

We note that VSS saw a significant increase in safeguarding issues directly related to the emergency release of prisoners.

Victim safety considerations should be a priority before any individual is released from prison and that support is put in place for victims prior to perpetrators being released from custody.

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?

In order to properly protect victims of sexual violence and prevent further reoffending by perpetrators of such violence, the services available to prisoners on release should be working to challenge any behaviours and attitudes which perpetuate violence against women and girls. They should be designed to deal with the gendered aspects of these crimes.

We note that release from custody is a highly distressing time for survivors who will require support of their own. We see that great lengths are being put in place to support perpetrators on their release, there should similarly be packages of support, and properly funded support facilities available for survivors of sexual violence which will, in part, ensure their safety.

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?

If the government are seeking to introduce new standards for throughcare this should incorporate a gendered analysis of sexual and domestic violence and aim to dismantle harmful attitudes which lead to this offending. There needs to be a firm understanding of sexual and domestic violence incorporated into the ethos of the throughcare programme.

It is crucial that victims and support organisations are included as a category that Scottish Ministers must consult.

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?

We are supportive of this provision but must stress that it would only be appropriate for a victim support organisation to seek this information if they had the express consent of the survivor/ victim.

For this provision to work effectively there needs to be a significant overhaul of the VNS system. There are countless examples of victim/survivors of sexual violence and rape, who have signed up to the scheme, either not being told of a pending release or being told in a manner that is not trauma informed with no support mechanism or even offer of support in place for them.