

Sentencing Bill: Lords Second Reading

Briefing from the Domestic Abuse Commissioner

About the Domestic Abuse Commissioner

The Domestic Abuse Act 2021 established the Office of the Domestic Abuse Commissioner (DAC), to provide public leadership on domestic abuse issues, play a key role in overseeing and monitoring the provision of domestic abuse services in England and Wales and promote best practice, including in multi-agency working.

The role of the Commissioner is to encourage good practice in: preventing domestic abuse; identifying victims and survivors, and perpetrators of domestic abuse, as well as children affected by domestic abuse; and improving the protection and provision of support to people affected by domestic abuse from agencies and government.

Domestic abuse and the Sentencing Bill

Victims and survivors must be at the heart of Government's justice reforms – rather than forced to pay the price for systemic failures.

The Commissioner welcomes provisions in the Sentencing Bill, such as:

- Exceptions to the presumption of suspended sentences for custodial sentences less than twelve months, which will ensure that dangerous perpetrators still face time in prison, and
- The judicial finding of domestic abuse, which she has previously recommended and will vastly improve our understanding of domestic abuse perpetrators serving both custodial and community sentences.

The Commissioner also welcomes provisions to strengthen community sentences, such as electronic monitoring and restriction zones, and will be engaging closely on the implementation of these measures to ensure that they are applied properly, so that victims can be safeguarded.

However, the Commissioner remains extremely concerned about the impact that the recall provisions in Part 2 of the Bill will have on victims and survivors of domestic abuse, and is calling on Government to urgently amend the Bill to address this.

Key concerns

Under Part 2 of the Bill, **the vast majority of offenders recalled to prison will now be re-released automatically after 56 days, without review by the Parole Board.** Potentially without change to their risk or the circumstances which led to their recall, they will be released back into the community.

For some offenders, this will be a positive step in avoiding unnecessarily lengthy recalls – for example, those who are also victims of domestic abuse, who may find themselves recalled for administrative breaches because their license or electronic monitoring arrangements do not take into account their risk as a victim of domestic abuse, and who then end up spending excessive amounts of time back in custody due to backlogs in Parole Board hearings.

However, this provision fails to take into account the risk posed by perpetrators of domestic abuse, who are fixated on their victims and will stop at nothing to continue their abuse. Simply **holding these offenders in custody for 56 days, with no efforts to reduce their risk, will put their victim(s) at high risk of future abuse and violence.** When they are released, if they are recalled once again – this is likely to only be after an incident which may have brought harm to the victim.

This cycle of escalating danger will pose a risk not only to that individual victim, but to wider public safety, and will increase pressure on public services such as policing and Probation, which are already near breaking point.

“It feels to me like they can't do anything with the perpetrator, so they put it all on the victim.” – victim/survivor

Insufficiency of existing mitigations

The Bill broadly offers three mitigations of relevance to perpetrators of domestic abuse.

- It requires the following cohorts of offenders to be returned to custody under standard recall rather than fixed-term recall:

- Offenders managed under MAPPA 2 or 3, and
 - Offenders recalled because they have been charged with a further offence.
- It gives the Lord Chancellor discretion to determine an offender is not suitable for automatic release where further information is received following the offender's recall, which indicates that they meet one of the exclusions.
 - It introduces a new power – to be used only in exceptional circumstances – to keep offenders in custody beyond 56 days where the Lord Chancellor believes on reasonable grounds that the prisoner would, if released, pose a significant risk of serious harm occasioned by the commission of murder or specified violent, sexual or terrorist offences.

The Commissioner is of the view that the existing mitigations in the Bill do not go far enough to safeguard victims of domestic abuse.

Exemption for offenders managed under MAPPA 2 and 3

Many domestic abuse perpetrators will not be managed under MAPPA. We do not have specific data on this – but research as well as evidence from specialist services that support victims indicate that MAPPA is not being used enough to manage domestic abuse offenders.¹ The Commissioner welcomes the judicial finding of domestic abuse, introduced in the Bill, which will hopefully allow us to have this data in future.

Exemption for offenders charged with a further offence

The exclusion of offenders charged with a further offence will not capture the majority of domestic abuse perpetrators – even those who breach orders which carry a criminal sanction.

Take as an example the most widely-used protective order for domestic abuse victims, for which a breach is a criminal offence: a non-molestation order.

- In 2019/20, 32,075 non-molestation orders were issued.²
- In the same year, 11,900 breaches were recorded by police. (To note: this should not be taken as indicative of the total number of breaches which occurred.)³

¹ [A Register for Domestic Abuse and Stalking Offenders in England and Wales? A Report to Inform Policy and Practice](#)

² [Domestic abuse and the criminal justice system, November 2020](#)

³ [A duty to protect: Police use of protective measures in cases involving violence against women and girls – GOV.UK](#)

- Even of those recorded, only 35% of cases resulted in a charge.⁴

Of course, most of these orders in the official statistics will not be in relation to offenders on license in the community. But if, overall, 65% of recorded breaches do not result in a charge, then it is unlikely that most domestic abuse perpetrators being recalled to custody because they pose an increased risk to their victim will have been charged with a breach-related offence.

Additionally, domestic abuse-related offenses take longer to reach an outcome than non-domestic abuse-related offenses. It is unlikely that domestic abuse perpetrators who have committed a further offense will be charged in time for the 'further offence exclusion' to take effect within the 56 days of fixed-term recall.

- 47.3% of domestic abuse-related crimes take more than 31 days to reach an outcome in comparison with 34.5% of non-domestic abuse-related crimes.⁵
- 20.8% of domestic abuse-related crimes take more than 100 days to reach an outcome, in comparison with 13.6% of non-domestic abuse-related crimes.⁶

Probation officers can recall offenders for much less than a further offence charge. It is critical that where a perpetrator of domestic abuse has been in contact with their victim, and this has led to their recall, that they are held in custody until there has been a demonstrable reduction in the risk that they pose.

Exceptional power to keep offenders in custody

The provision to keep offenders in custody beyond 56 days if they pose a significant risk to members of the public is meant to be used only in exceptional circumstances, where that offender poses a significant risk of serious harm by committing a serious further offence. As drafted, it will not be used with any amount of regularity to prevent the automatic release of these dangerous offenders.

Furthermore, the link between release and serious sexual and violent offences fails to encompass the many escalations which will have a significant negative impact on a victim but will not reach the threshold of the offences listed in the Bill.

The Commissioner's proposed solution

⁴ [A duty to protect: Police use of protective measures in cases involving violence against women and girls - GOV.UK](#)

⁵ [Domestic abuse and the criminal justice system, November 2024](#)

⁶ [Domestic abuse and the criminal justice system, November 2024](#)

Given the capacity crisis and backlogs in Parole Board hearings, the Commissioner is proposing that any perpetrator of domestic abuse recalled on the basis of contact with the victim is not automatically released after 56 days, but rather held in custody until a risk assessment process indicates that there has been a demonstrable reduction in the risk they pose, and that this risk can be safely managed in the community.

- This would not constitute a wholesale exemption to automatic release provisions, for all perpetrators of domestic abuse who are recalled.
- The mechanism by which this would be achieved is the risk-assessed recall review process – which allows certain offenders to be considered for re-release without review by the Parole Board – in order to release these offenders beyond 56 days but potentially in shorter time than they would be released if they had to go through the Parole Board process.

Jess Asato MP laid amendments to this effect at Committee Stage in the Commons, and the Commissioner would like to see them carried through to debates in the Lords.⁷ The full text of these amendments can be found in an annex to this briefing.

We do not have the data on how many offenders this will affect, because it is currently not possible to identify domestic abuse perpetrators past the point of conviction. In addition, publicly available data on recall is not granular enough to identify the number of offenders recalled on the basis of contact with the victim.

- Evidence in the Sentencing Review indicates that the majority of offenders are recalled on the basis of ‘administrative’ breaches, such as tags losing charge or offenders not turning up to their appointments.
- The evaluation of the DAPOL pilot further confirms this, with only 8.2% of offenders recalled on the basis of a location violation and 5.4% recalled on the basis of a curfew violation.⁸

It is therefore likely those offenders recalled on the basis of contact with a victim will not represent a significant proportion of the total recalled population. However, to their victims, they pose a serious threat; ensuring that they remain in custody until their risk has demonstrably reduced is vital to safeguard both current and future victims.

Further information

⁷ [Amendment NC5 to Sentencing Bill to Sentencing Bill – Parliamentary Bills – UK Parliament](#)

⁸ [Electronic Monitoring of Domestic Abuse Perpetrators on Licence – Process Evaluation](#)

The Office of the Domestic Abuse Commissioner would be pleased to discuss these recommendations in further detail. If you are interested in doing so, please contact the Commissioner's policy team on commissioner@domesticabusecommissioner.independent.gov.uk.

Annex: Full text of amendments laid in the Commons

Amendment 1

Clause 29, page 55, line 5 leave out “both” and insert “more”.

Amendment 2

Clause 29, page 55, line 27, after subclause (8) insert—

(9) The third condition is that the basis for P’s recall is that P has breached a license condition, civil order, or criminal order in relation to the victim of the crime for which P is serving the sentence in question.

Amendment 3

To move the following Clause—

Further release after recall: offenders eligible for risk-assessed release

(1) The Criminal Justice Act 2003 is amended as follows—

(2) In section 255C, after subsection (3) insert—

(3A) Subsection (5) applies if the basis for P’s recall is that P has breached a license condition, civil order, or criminal order in relation to the victim of a crime for which P is serving a sentence.

(3B) Where this subsection applies—

- (i) at the end of the period of 56 days beginning with the day on which P returns to custody, P must be considered for referral for executive release as opposed to automatic release,
- (ii) if P is referred for consideration for executive release, the Secretary of State may release P again on licence, and
- (iii) if P is not referred for consideration for executive release, or if P is denied executive release, the Secretary of State must refer P’s case to the Board.