Criminal Justice and Courts Bill

House of Lords

Committee Stage

Briefing and Suggested Amendments on Part 1

July 2014

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Summary

- **Resources must be assured for the increase in Parole Board scrutiny prior to release;**
- **Review of whole life orders should be clearly set out in legislation;**
- **Electronic monitoring of people released from prison on licence should only be imposed on a case by case, not mandatory, basis, as the law already allows;**
- **In considering release after recall, Parole Boards must review licence conditions to ensure the person is able to comply;**
- **Second offence custody for knife crimes is unjustified;**

Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system – administrative, civil and criminal – in the United Kingdom. It is the UK section of the International Commission of Jurists. The issues raised in this briefing should not be taken as our sole concerns with regard to the proposals contained in the Bill.

2. This briefing deals with the criminal justice proposals and tabled amendments in Part 1 of the Bill. We have prepared and circulated a separate briefing on the changes to judicial review in Part 4, which we will update in readiness for Committee. The criminal justice provisions of this Bill contain two concerning themes. First, the increase in mandatory orders and powers of the Secretary of State to change the law by executive act. Such powers, without the possibility of exercising discretion in the circumstances, and without the scrutiny of Parliament, are contrary to the principles of fairness and proportionality that govern the rule of law. Second, the creation of new offences, sentencing thresholds, and release and recall tests that will increase the population of young people and adults incarcerated. At a time when all actors agree desistance is a primary aim of the criminal justice system, and that prison creates the highest recidivism rates of all sentencing options, the combined effect of the provisions of this Bill would create a worrying return to imprisonment.

3. A number of amendments have been tabled to alleviate the impact of proposals in the Bill. Below we set out those that we feel particularly address our concerns, and invite members of the House to support them.

Clauses 4, 5 and 7 – changes to Parole Board powers on release of prisoners

Amendment 4 (Lord Beecham and Lord Kennedy of Southwark):

Page 4, line 26, at end insert—

"(10) Before this section comes into force, the Secretary of State shall—

(a) consult the Parole Board about the resources required for additional hearings resulting from the implementation of this section; and

(b) lay a report before Parliament containing—

(i) his assessment of the resources required for additional hearings; and

(ii) his plans to ensure that the Parole Board has adequate resources to fulfil the requirements of this section effectively."

Amendment 5 (Lord Beecham and Lord Kennedy of Southwark):

Page 4, line 39, at end insert—

"(4) Before this section comes into force, the Secretary of State shall—

(a) consult the Parole Board about the resources required for additional hearings resulting from the implementation of this section; and

(b) lay a report before Parliament containing—

(i) his assessment of the resources required for additional hearings; and

(ii) his plans to ensure that the Parole Board has adequate resources to fulfil the requirements of this section effectively."

Amendment 8 (Lord Beecham and Lord Kennedy of Southwark):

Page 5, line 12, at end insert—

"(3) Before this section comes into force, the Secretary of State shall—

(a) consult the Parole Board about the resources required for additional hearings resulting from the implementation of this section; and

(b) lay a report before Parliament containing—

(i) his assessment of the resources required for additional hearings; and

(ii) his plans to ensure that the Parole Board has adequate resources to fulfil the requirements of this section effectively."

Amendment 16 (Lord Beecham and Lord Kennedy of Southwark):

Page 9, line 26, at end insert—

"(9) Before this section comes into force, the Secretary of State shall—

(a) consult the Parole Board about the resources required for additional hearings resulting from the implementation of this section; and

(b) lay a report before Parliament containing—

(i) his assessment of the resources required for additional hearings; and

(ii) his plans to ensure that the Parole Board has adequate resources to fulfil the requirements of this section effectively."

4. Clauses 4, 5 and 7 change the automatic release rules for prisoners serving extended sentences, offenders of particular concern and the test for release following recall of prisoners on license. Clauses 4 and 5 (together with Schedule 1, paragraph 6) make it necessary for prisoners to satisfy the Parole Board that it is no longer necessary for the protection of the public that they be confined, pursuant to section 246A(6)(b). Clause 7 requires the Secretary of State or Parole Board to only release a person where they are satisfied that the person is not highly unlikely to breach a condition in their licence.

5. These changes will have a significant impact upon both the resources of the Parole Board and the programmes available to prisoners to demonstrate they are suitable for release. The provision will be utilised to encompass prisoners formally detained under indeterminate sentences for public protection (IPP). It was accepted by Parliament in the Legal Aid, Punishment and Sentencing of Offenders Act 2012 (LASPO), that the IPP was no longer suitable, and the sentence was abolished. As we said in our briefing on the Bill, "These sentences have proved unworkable and unlawfully detained many prisoners passed the appropriate sentence that they should have served due to an ill thought out regime which was almost impossible to satisfy."[1] This was because, as the Prison Reform Trust (PRT) reported in 2010, the Parole Board is overstretched and highly risk averse, the necessary 'offending behaviour programmes' are scarcely available and limited in their scope and effectiveness, and it is inherently difficult to demonstrate reduced dangerousness and pass the high safety threshold for release.[2]

6. As at 31 December 2013, there were 5,335 IPP prisoners, of which 3,561 had passed their tariff. There were also 7,463 prisoners serving life sentences, of which 2,584 had passed their tariff.[3] Widening the category of cases that must be qualitatively

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[1] JUSTICE, LASPO, Part 3 Briefing for House of Lords Report Stage (March 2012), available at: http://www.justice.org.uk/data/files/resources/284/JUSTICE-Briefing-LASPO-HLCS.pdf

[2] J Jacobson, M Hough, *Unjust Deserts: imprisonment for public protection* (PRT, 2010)

[3] Ministry of Justice, *Prison Population Tables* (30 January 2014), available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276084/prison-population-tables-q3-2013.xls

assessed before release by the Parole Board, without increasing its resources or the courses available to prisoners, may lead to further cases of unlawful and unnecessary detention. As the Howard League[4] and PRT[5] record in their briefings, the Parole Board is under considerable strain as a result of cuts to staff and an increase in oral hearings.[6] This provision, together with further assessment prior to release following recall and the potential of increased breaches of licence should electronic monitoring of people's whereabouts be introduced (see below), without additional resources will risk the Parole Board being unable to cope with its case load. That is without knowing the impact of the cuts to legal aid introduced by LASPO, which will result in more prisoners applying to the Parole Board without legal representation in a wide range of circumstances. Unrepresented applicants almost inevitably extend the length of proceedings.[7]

7. Lord Beecham's amendments would ensure that consideration is given to the impact of the changes upon the resources of the Parole Board and sufficient provision be put in place to meet the increased demands. Without these amendments, there is a risk that the Parole Board will be overwhelmed and custodial terms will extend, risking violation of the article 5 right to liberty of prisoners.[8]

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[4] HC Committee Stage Briefing available at: https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Briefings/Briefing_for_Criminal_Justice_and_Courts_Bill_Committee_Stage_in_House_of_Commons_March_2014.pdf

[5] Second Reading Briefing available at: http://www.prisonreformtrust.org.uk/Portals/0/Documents/PRT%20Briefing%20Criminal%20Justice%20and%20Courts%20Bill%20House%20of%20Lords%202nd%20Reading%2030June14.pdf

[6] Due in the immediate past to the decision in *Osborn v the Parole Board* [2013] UKSC 61, that prisoners are entitled to an oral hearing in a wider set of circumstances than was previously provided. See Parole Board website (update April 2014) for the impact on hearings, in particular:

> Our next key challenge is to conclude as many reviews as possible. Around 550 cases are listed a month which is the maximum current capacity. Additional resources will be recruited to reach a monthly hearing figure of nearer 750 cases.

available at https://www.justice.gov.uk/offenders/parole-board/osborn,-booth-and-reilly-supreme-court-judgment

[7] W. Foxton, 'How legal aid reforms are clogging up the courts', *The Spectator,* 20 February 2014, available at: http://blogs.spectator.co.uk/coffeehouse/2014/02/how-legal-aid-reforms-are-clogging-up-the-courts/

[8] The European Court of Human Rights found in *James, Wells and Lee v UK,* App. Nos. 25119/09, 57715/09 and 57877/09 (18 September 2012) that the post-tariff detention of the IPP prisoner applicants was arbitrary due to delay in the progression of the sentences and the failure to provide appropriate courses and therefore unlawful until steps were taken to resolve the problems. The UKSC has this year heard a further challenge of lawfulness of detention in IPP cases (*Massey and Robinson)*. Judgment is pending.

After Clause 4

Amendment 7 (Lord Lester of Herne Hill, Lord Pannick, Lord Marks of Henley-on-Thames, Lord Lloyd of Berwick):

Insert the following new Clause—

"**Review of whole life orders**

After section 30 of the Crime (Sentences) Act 1997, insert—

"**30A Review of whole life orders**

(1) A prisoner who is—

(a) the subject of a whole life order made under—

(i) section 269 of the Criminal Justice Act 2003, or

(ii) section 82A(4) of the Powers of Criminal Courts (Sentencing) Act 2000, and

(b) has been in custody for 25 years, may apply to the Parole Board for a review of the whole life order.

(2) If on an application under subsection (1) the Parole Board is satisfied that the prisoner has made such exceptional progress towards rehabilitation that a whole life order is no longer justified, it shall substitute a determinate tariff for the whole life order.

(3) No fresh application may be made by a prisoner under subsection (1) before the period of five years has elapsed since the Parole Board's determination of the prisoner's previous application."

8. This amendment gives effect to the recommendation of the JCHR that, following recent cases before the European Court of Human Rights (ECtHR) and the Court of Appeal reviewing the compatibility of whole life orders with article 3 ECHR (prohibition of torture, inhuman or degrading treatment), the Bill provides an opportunity to address the remaining legal uncertainty surrounding the possibility of review.[9]

9. Whole life orders were created following the abolition of the death penalty and operate as follows:[10]

i) A trial judge must, under s1 of the 1965 Act, impose a life sentence for murder. Under s269 of the 2003 Act, the judge must decide whether to make a minimum term of a fixed number of years or a whole life order, considering mitigating and aggravating factors.

ii) If a fixed minimum term order is made, the Parole Board has the power under the

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[9] There are approximately 50 prisoners currently serving whole life sentences, taking into consideration the prison population as at March 2014, see Table 1.9, Prison Population Q1, Offender management quarterly tables - Oct-Dec 2013, available at, https://www.gov.uk/government/publications/offender-management-statistics-quarterly-october-december-2013-and-annual and known recent sentences.

[10] Pursuant to the Murder (Abolition of Death Penalty) Act 1965 (the 1965 Act), the Criminal Justice Act 2003 (the 2003 Act) and Crime (Sentences) Act 1997 (the 1997 Act)

provisions of s28 of the 1997 Act, commonly called the early release provisions, to direct release of the offender after the expiry of any minimum term for a fixed number of years set by the trial judge; it considers in essence the risk to the public if release is ordered. However, the Parole Board has no such power where a whole life order is made.

iii) A power of release is given under s30 of the 1997 Act to the Secretary of State, if there are exceptional circumstances which justify release on compassionate grounds.[11] Guidance in the Indeterminate Sentence Manual (the Lifer Manual)[12] explains that such circumstances would be limited to a terminally ill prisoner expected to die very shortly, or those who are incapacitated, and for whom the risk of re-offending is minimal, continuing detention would reduce life expectancy, arrangements are in place for care outside of prison and early release would give significant benefit.

10. A number of cases before the domestic courts have determined that a whole life order is not incompatible with article 3 ECHR.[13] However, the Grand Chamber of the ECtHR held in July 2013[14] that, because an irreducible term violates article 3 ECHR, the scheme in the UK by which release would be considered as set out in the Lifer Manual amounted to an irreducible term, as it was so limited as to provide no hope or possibility of release.[15] Moreover, the circumstances in which those conditions would apply could not be considered to provide 'a prospect of release' in order to comply with article 3 ECHR. The application of the power of release was uncertain due to the application of the Lifer Manual guidance and therefore the scheme violates article 3 ECHR.

11. The Court of Appeal Criminal Division (the CACD) disagreed on the 18th February 2014 when considering the Attorney General's reference from a sentencing judge's refusal to impose a whole life order due to foreseen incompatibility with article 3

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11 See Attorney General's Reference (No.69 of 2013) (*Ian McLoughlin*) ; *R v Newell* [2014] EWCA Crim 188; [2014] H.R.L.R. 7

12 Issued by the Secretary of State under Prison Service Order 4700

13 See *R v Oakes* [2012] EWCA Crim 2435; [2013] 2 Cr App R (S) 22 and cases cited therein

14 *Vinter and others v UK,* App. no. 66069/09 (9th July 2013), GC.

15 The Grand Chamber accepted that a judge can impose a whole life order as just punishment but it concluded that a legal regime for a review during the sentence must be in place at the time the sentence is passed in order to acknowledge that, although just punishment may have been passed at the time of sentence, over time the justification for detention might shift.

ECHR.[16] The CACD did consider that the Lifer Manual guidance was too narrow as to provide a prospect of release, but held that the Secretary of State is bound to exercise his power in a manner compatible with principles of domestic administrative law and with article 3 ECHR; He cannot fetter his discretion by taking into account only the matters set out in the Lifer Manual. Exceptional circumstances for release on compassionate grounds must be demonstrated by a prisoner prior to release, and there was no need to specify such circumstances further, as the terms were sufficiently certain.

12. The JCHR concluded that although the CACD brought welcome clarity to the exercise of the power to release, more specific details were needed as to how it would operate, including the timetable on which it should be sought, the grounds, who should conduct it and the periodic availability of further review. JUSTICE agrees with the JCHR. The ECtHR in *Vinter* stated that a person is entitled to know at the outset of his sentence what he must do to be considered for release and under what conditions.[17] The regime should be set out clearly in legislation, rather than in policy decisions and manuals at the discretion of the Secretary of State.[18] The JCHR amendment would confirm policy that a review is available after 25 years and at five year intervals thereafter. It makes two amendments to the current practice. First, it allocates the Parole Board as the decision maker. This is appropriate given the move towards judicial decision making in all other fields, in particular release from custody, in order to ensure a fair and independent hearing. Second it defines the test as previously set out by policy, that the section 30 exceptional circumstances on compassionate grounds test should be satisfied where the prisoner has made exceptional progress towards rehabilitation. This focuses the decision on the attitude and progress made in prison of the offender, rather than on their health. We support the suggested amendment and commend it to the House.

Clause 6 Electronic monitoring following release on licence etc

Amendment 10 (Lord Beecham and Lord Kennedy of Southwark):

Page 5, line 36, leave out from beginning to end of line 25 on page 6

Amendment 11 (Lord Beecham and Lord Kennedy of Southwark):

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[16] Note 2 above.

[17] At [122]

[18] See HC Deb 7 December 1994 cols 234–235 WA; HC Deb 10 November 1997 cols 419–420 WA

Page 6, line 29, at end insert—

"(1A) The code of practice must include a requirement that a person carrying out electronic monitoring who is not a public authority as defined by section 3 of the Freedom of Information Act 2000 shall provide information in respect of the carrying out of electronic monitoring in the same manner as if they were such a public authority."

Amendment 12 (Lord Beecham and Lord Kennedy of Southwark):

Page 6, line 31, at end insert—

"(3) A code of practice under this section must be made by statutory instrument.

(4) A statutory instrument containing a code of practice under subsection (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

After Clause 6

Amendment 13 (Lord Beecham and Lord Kennedy of Southwark):

Insert the following new Clause—

"**Annual review of the operation of electronic monitoring**

Within 12 months of section 6 coming into force, the Secretary of State shall undertake a review of the operation of electronic monitoring and assess the impact of mandatory electronic monitoring on those released on licence, including the reoffending rates of these individuals."

13. Section 62 of the Criminal Justice and Courts Services Act 2000 (the 2000 Act) currently provides the Secretary of State with the discretion to attach electronic monitoring conditions to the release of a person from prison on licence. Clause 6 amends the legislation through clause 6(3), which provides for the Secretary of State by order to require the *mandatory* imposition of electronic tracking of a class of people released on licence. JUSTICE considers that this would give far too much power to the Secretary of State without proper scrutiny of Parliament, or of the individual's circumstances. The power is unnecessary and disproportionate and should be removed from the Bill. Amendment 10 would enable this.

14. Currently, an electronic monitor (or 'tag') can be imposed to monitor compliance with other conditions, such as a curfew or exclusion zone. Under s62(2)(b) of the 2000 Act, it can also already monitor the movements and location ('whereabouts') of the released person, but on a discretionary and individual basis. Parliamentarians may

wish to ask Government why this power cannot be exercised more frequently without the new power in the Bill. [19] The proposal in the Bill would require:

- the mandatory imposition of electronic tracking;
- of a whole class of persons, potentially all those released on licence;
- for an unspecified period, simply to monitor a person's whereabouts.

15. The Impact Assessment[20] explains that the purpose of this measure is to (1) reduce re-offending, (2) protect victims and witnesses, and (3) assist police in the detection and investigation of crime. We cannot see how the use of a 'tag' will reduce re-offending or protect victims or witnesses without being imposed on a case by case basis. Tracking can only show where a person is, not what they are doing there. We also find it difficult to see which group of offenders will be suitable for a general 'whereabouts' monitor that is not already identified as appropriate for a curfew or exclusion order.

16. The third justification in the Impact Assessment is founded upon an inappropriate assumption that all those released from custody are likely to re-offend. It would be a significant and concerning departure to allow tracking of a whole class of persons for the purposes of preventing future crime. Without a focussed assessment of each case, we consider that such a broad order will undermine the presumption of innocence and impose a disproportionate restriction on people's movements. Even the Pilot Study that looked at tracking offenders when the 2000 Act came into force only focussed on prolific and priority offenders: sex, violent and domestic violent offenders, many of which were given curfew and exclusion requirements by way of

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[19] The existing power in s62(2)(b) is not being exercised. The Minister confirmed during Committee Stage debate in the Commons that current technology only allows for curfew orders to be monitored, see Col. No. 182, 18 March 2014. Prison Service Order 6000 (Parole Release and Recall), Issue no. 226, re-issue date 26/11/12 (PSO), available at https://www.justice.gov.uk/downloads/offenders/psipso/pso/pso-6000.pdf makes no mention of the power to release on condition pursuant to s62 Criminal Justice and Court Services Act. This is because the Criminal Justice (Sentencing) (Licence Conditions) Order 2005 paragraph 3 – other conditions of licence – does not include a provision for electronic monitoring as a condition of a licence. Chapter 14 of the PSO indicates that tracking conditions were only to be used in the course of the Pilot Study (see note 10 below), which concluded in 2006. Prison Service Instruction 40/2012 (Licences and Licence Conditions) (valid until 30 November 2016) restricts the use of electronic monitoring to home detention curfew or multi-agency public protection cases of high risk offenders or where the case is likely to attract national media interest, and then only in conjunction with a curfew.

[20] Ministry of Justice, *Electronic monitoring of whereabouts as a compulsory licence condition*, IA No: MoJ004/14, (5th February 2014) p 8, available at http://www.parliament.uk/documents/impact-assessments/IA14-03D.pdf

individual assessment.[21] We are concerned that without provision for express limits and safeguards around who will be subject to an order, this form of surveillance will become routine and widespread without adequate opportunity for oversight. 52% of tracked people interviewed for the Pilot Study said that satellite tracking could best be described as 'like being watched'.[22] This is all the more concerning given that the body undertaking the monitoring is likely to be a private company.[23] In order to ensure a monitoring requirement is fair and proportionate in the circumstances, it should be imposed on a case by case basis, with appropriate assessment of the offender and their offence.

17. A blanket monitor could also pose a disproportionate invasion of privacy, particularly over lengthy license periods.[24] There has already been significant intrusion into people's lives resulting from wide monitoring powers available under the Regulation of Investigatory Powers Act 2000,[25] and through existing powers to impose substantive licence conditions. In *S and Marper v UK* (2009) 48 EHRR 50 the European Court of Human Rights (ECtHR) held that the blanket and indiscriminate powers of retention of fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences by the police was a disproportionate interference with the right to respect for private life protected by article 8 ECHR, that could not be regarded as necessary in a democratic society. Without stronger

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[21] S. Shute, *Satellite tracking of offenders: A Study of the Pilots in England and Wales*, Research Summary 4 (Ministry of Justice, 2007), available at: http://webarchive.nationalarchives.gov.uk/20100505212400/http:/www.justice.gov.uk/publications/docs/satellite-tracking-of-offenders.pdf (Pilot Study) The pilot study was conducted between 2005 and 2006 and reviewed tags of 336 offenders.

[22] *Ibid.* p 14.

[23] The remarkable findings last year surrounding the G4S electronic monitoring contract provides a sobering example, see BBC, 'G4S probe after tag firms' multi-million over charging confirmed', 11 July 2013, available at http://www.bbc.co.uk/news/uk-23272708 NAPO in *Electronic tagging: A flawed system* (2012) available at: https://www.napo.org.uk/sites/default/files/Electronic%20Tagging%20a%20flawed%20system.pdf, records recent problems with the private firm tagging process – faulty equipment, communication breakdown between private companies operating the equipment and probation staff, lack of discretion being used or dismissal of valid explanations in circumstances of breach, failure to take into account the offence history and personal circumstances of the offender.

[24] Licence periods will vary significantly, dependent upon the type of sentence imposed upon the convicted person, since a licence period will last until the end of the person's sentence. For those serving an indeterminate sentence for public protection, a licence period is for life, subject to the possibility of review after ten years.

[25] See our report *Freedom From Suspicion: Surveillance Reform for a Digital Age* (JUSTICE, 2011)

justification, we consider that the same concerns apply to the proposal for blanket electronic tracking and the data obtained through it. While we remain opposed in principle to the proposed power, at the very least a code of practice would be required to assuage these concerns and Amendments 11 to 13 support the recent Joint Committee on Human Rights report, which concludes that:

> The detailed safeguards in the Code of Practice [proposed to apply to the collection and storage of data obtained through electronic monitoring] will be crucial to ensuring that the processing of data gathered from electronic monitoring following release on licence is carried out in such a way that any interference with the right to respect for private life is necessary and proportionate to the legitimate aims pursued. It is therefore important that there is some opportunity for parliamentary scrutiny of the adequacy of those safeguards.[26]

18. Furthermore, rather than support the desistance of released persons by integrating them back into society, this measure will engender suspicion and confrontation with the police from the outset because tracking data will be the first place the police look when crime is committed. The Offender Rehabilitation Act 2014 provides the possibility for convicted people to receive support to prevent them re-offending. This measure could counteract those efforts.

19. If better technology is available, this should be utilised under existing legislation, on a case by case basis and in a manner consistent with the right to private life of those concerned. However, a wide-ranging power to impose mandatory electronic tracking by executive order, of a whole class of people, is in our view wholly unjustified.

Clause 7 Test for release after recall: determinate sentences

Amendment 15 (Lord Beecham and Lord Kennedy of Southwark):

Page 7, line 2, at end insert—

"(4B) In considering whether the person is highly likely to breach a condition included in the person's licence, the conditions shall be reviewed and amended as appropriate to ensure that the person is able to comply."

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[26] JCHR, *Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill*, Fourteenth Report of Session 2013-2014, HL 189/ HC 1293 (11 June 2014), para 1.37.

20. Clause 7 creates a significant new test for release on licence once a person has been recalled to prison. The Secretary of State, or the Parole Board, dependent upon which release provision applies, will have the additional burden of only releasing the person where it appears that the person is *highly unlikely* to breach a condition in their licence. This is an onerous task that will seriously affect the liberty of those who would otherwise be suitable for release. The decision should require a careful review of the circumstances of breach and conditions placed upon the licence so that where it is clear that the person will be unable to meet a particular condition due to vulnerability or circumstances beyond their control, it is removed. Lord Beecham's amendment seeks to ensure that this takes place. The Howard League is concerned that the provision will "affect those prisoners who are deemed to be less likely to be able to comply, such as children, the mentally ill and people with learning disabilities" and lead to an increase in the number of these people in prison, who are not a risk to the public, but otherwise have difficulty managing their licence.[27] We consider it wholly inappropriate that the young and vulnerable be caught by this provision.

Clause 25 Possessing an offensive weapon or bladed article in public or on school premises: sentencing for second offences for those aged 16 or over

Lord Marks of Henley-on-Thames, Baroness Hamwee, Lord Dholakia and Lord Paddick:
Leave out clause

21. We were concerned by the introduction of this new provision at Report Stage in the Commons. There would appear to be little evidence to support its necessity and it is contrary to current policy attempting to reduce custodial terms for young people given the clear evidence that detention increases rather than reduces offending amongst young people. The PRT in its Briefing sets out the evidence to suggest this provision is unwarranted:

> The new clause will lead to the inappropriate imprisonment of children and young people. While the Government has yet to provide an impact assessment of the clause, we estimate that it could lead to the imprisonment of around 200 children and 2,000 adults per year. Knife crime is a serious problem in some inner-city communities but the term covers a wide-range of

[27] Briefing, supra.

> offences from those involving threat or injury to the much less serious offence of possession. Research shows that the majority of children and young people who carry knives do so out of fear and for protection; not to threaten or injure others.18 The number of possession-related offences has fallen by 34 per cent for children and 23 per cent for adults over the past three years.19 Over the same period levels of youth crime and the numbers of children in custody have also declined. Courts already have sufficient powers to deal appropriately with repeat offenders and the existing framework is working to deter children and adults from committing further knife possession offences.[28]

22. We support Lord Marks' intention to oppose the clause standing part of the Bill.

JUSTICE
11th July 2014

[28] PRT Briefing, note 5 above, p9.