

Sentencing Guidelines (Pre-Sentence Reports) Bill

House of Commons – Second Reading – Briefing

17 April 2025

Introduction

1. JUSTICE is a cross-party law reform and human rights organisation working to strengthen the UK justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. This briefing addresses the Sentencing Guidelines (Pre-Sentence Reports) Bill (the “**Bill**”), introduced in the House of Commons on 1 April 2025. The Bill concerns the permissible scope of sentencing guidelines which cover the circumstances in which a court should request a pre-sentence report (“**PSR**”) before sentencing an individual.
3. PSRs are prepared by the probation service. Their purpose is to assist courts with the task of sentencing an individual who has been convicted of a criminal offence. A PSR contains information about the offence(s), an analysis of the underlying causes contributing to a person's offending and their previous pattern of offending (if any), their likelihood of further offending and the degree and nature of any risk they pose. Information about the individual may be provided on a range of topics, such as their accommodation and employment/education status, financial position, relationships with friends, family or partners, any substance misuse, physical and mental health, experience of trauma, caring responsibilities and thinking and behaviour. This information helps the court to understand whether it is appropriate for an individual to serve their sentence in the community rather than in custody and, if so, what conditions should apply to them throughout their sentence.
4. The Bill would prevent sentencing guidelines about PSRs from including any “*provision framed by reference to different personal characteristics of an offender*”. It defines “*personal characteristics*” to include “*in particular*” race, religion or belief, cultural background, however this is not an exhaustive list.

JUSTICE's concerns

5. JUSTICE is concerned that the Bill would prevent the Sentencing Council issuing guidance which assists courts in ensuring that PSRs are obtained in **all** cases in which they are relevant and necessary, as is

required in any event by the Sentencing Act. It is vital that sentencers are provided with as much information relevant to sentence as possible, so that the most fair and appropriate sentence can be determined. A PSR is a crucial tool in achieving this and should be ordered in all cases where they may be of value to the court. A whole range of ‘personal characteristics’ of defendants make a PSR more likely to be necessary – including, but by no means limited to, race, region and cultural background. Sentencing Council guidance ought to reflect this position.

Race, religion and cultural background

6. The Bill’s particular focus on race, religion or belief and cultural background in our view overlooks the important findings of the independent Lammy review (the “**Lammy Review**”). The Lammy review highlighted the key role that PSRs may play in assisting courts to determine the most suitable sentence in a given case:

*[PSRs] may be particularly important for shedding light on individuals from backgrounds unfamiliar to the judge. This is vital considering the gap between the difference in background – both in social class and ethnicity – between the magistrates, judges and many of those offenders who come before them.*¹

7. These findings must be seen in the context of the deeply concerning racial disproportionality in sentencing outcomes which was identified by the Lammy Review and continues to exist. Recent data reveals, for example, that a custodial sentence is 41% more likely for Chinese defendants, and between 16 and 21% more likely for defendants from Asian groups compared with white British defendants. A custodial sentence is between 9 and 19% more likely for Black defendants and 22% for white and Black African defendants than white British defendants.² **These figures are adjusted for individual and case characteristics.**³
8. Such disproportionality is of course a cause for serious concern and must be urgently addressed. This is explicitly recognised by the first report published by the Independent Sentencing Review, chaired by the Rt Hon David Gauke, which notes, for example, that “*Ethnic minorities continue to be over-represented in prison relative to those with a white British ethnicity and are also more likely to be given longer sentences than other groups and serve custodial sentences... [The complexity of these issues] highlights the need for sustained efforts across the system to understand and address disparities*”⁴ Although the stated aim of

¹ [The Lammy Review](#), p. 34

² K Lymeropoulou, [Ethnic Inequalities in Sentencing: Evidence from the Crown Court in England and Wales](#), The British Journal of Criminology, Volume 64, Issue 5, September 2024, pp. 1189-1210

³ *Ibid.*

⁴ Independent Sentencing Review, [History and Trends in Sentencing](#), pp. 17-18

the Bill is to prevent differential treatment and maintain equality before the law, this aim is precisely why it is so important that sentencing guidelines refer to factors including race - such reference represents an important and necessary steps towards addressing the differential treatment which currently exists within sentencing.

Other 'personal characteristics', including pregnancy and age

9. Moreover, whilst the Bill's definition of "personal characteristics" *includes* race, religion or belief and cultural background, it is not limited to these factors. There is therefore a real risk that a wide range of vulnerable individuals, in respect of whom obtaining a PSR can be vital for a just outcome, will be sentenced without a PSR due to inadequate Sentencing Council guidance.
10. For example, the importance of ensuring that PSRs are obtained when sentencing pregnant individuals or primary caregivers cannot be overstated. The risks of custody both to pregnant individuals and their babies can be severe and may well justify a non-custodial sentence. Former Victims' Commissioner Dame Vera Baird has highlighted that:
 - a) 22% of pregnant prisoners miss midwifery appointments;
 - b) 1 in 10 pregnant prisoners do not get to hospital in time and give birth in-cell or on the way to hospital; and
 - c) Babies born in prison are twice as likely to be premature, as well as seven times more likely to be stillborn than those born in the community⁵
11. Dr Laura Abbott, Senior Lecturer in Midwifery at the University of Hertfordshire, found that in-cell births are common, taking place in a non-sterile environment and often happen without any midwifery support.⁶ Further, the campaign community Level Up noted in its submission to the Independent Sentencing Review that:
 - a) Rates of many adverse pregnancy outcomes are higher for Black women, including rates of maternal death, premature birth, pre-eclampsia, postpartum hemorrhaging and blood clots, stillbirth and serious post-natal complications.
12. Pregnant women in prison are at greater risk of perinatal mental health difficulties, with the NHS finding that entry into custody is particularly distressing for pregnant women and mothers separated from their children.

⁵ Vera Baird, [*Pregnancy and Prison. Do Not Mix.*](#), 2025

⁶ *Ibid.*

13. The imprisonment of a household member is one of ten adverse childhood experiences (ACEs) known to risk significant negative impact on children's long-term health and wellbeing, their school attainment and later life experiences.⁷
14. As a result, it is essential that courts are provided with as much information as possible about the circumstances of the individual to be sentenced so that a community-based sentence is imposed in all appropriate cases and that any conditions attached to the sentence are suitable and practicable.
15. Further, a PSR may be especially of value when sentencing a young adult (aged 18-25). It is now well established that particular considerations apply in the sentencing of young adults.⁸ A PSR may provide valuable information to the court about a young adult's maturity and the extent to which immaturity has underpinned the offending which falls to be sentenced. A PSR may prove particularly pivotal in cases where for any reason a psychological report or maturity assessment has not been obtained.

Conclusion

16. The examples discussed in this briefing constitute only a small selection of the factors which might be deemed a "*personal characteristic*" within the meaning of the Bill. Indeed, this description could apply to almost any factor pertaining to an individual which is relevant to sentence: physical or mental ill health, status as a victim of domestic violence or modern slavery, neurodiversity, community ties, employment status or history and many more.
17. This demonstrates the difficulties with the Bill and the risk it poses to the provision of sound and evidence-based guidance to the court. Personal characteristics are inherently relevant to the sentencing exercise and will frequently give rise to the need for a PSR. There is no principled reason to remove them from the scope of Sentencing Council guidance in general. We consider placing a particular focus on race, religion/ belief and culture to be a significant concern and at odds with an evidence-based approach.
18. We therefore urge the government to withdraw the Bill and give careful consideration to these serious concerns.

For more information, please contact:

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⁷Level Up, [Response to Independent Sentencing Review 2024 to 2025: Call for Evidence – December 2024](#)

⁸ See, e.g., [R v Clarke, Andrews and Thompson \[2018\] EWCA Crim 185](#) See, e.g., R v Clarke, Andrews and Thompson [2018] EWCA Crim 185.