

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 51 members - including campaigning charities, voluntary sector service providers, 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 16 January 2009 was 81,748, of whom 77,516 were male and 4,232 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; this is a reduction of 0.4% from 2006 and 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 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 November 2008, the prison population was 112% of the CNA level, exceeding the CNA level by 9,047.
- 88 of the 139 prisons in England and Wales are officially overcrowded.

Contents of the Bill

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

PART 2: CRIMINAL OFFENCES

Partial defence to murder: diminished responsibility and Partial defence to murder: loss of control (Clauses 39-43)

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 return an appropriate level of discretion to sentencers and negate the need to introduce partial defences of this kind, which

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

are intended 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 (Clauses 97-98)

Clauses 97-98 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 and so that a person who is charged with murder may not be granted bail except by a Crown Court judge.

The Criminal Justice Alliance opposes these changes. 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. 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.

It is also likely that these Clauses, as currently set out, would be incompatible with Article 5 of the European Convention on Human Rights.

In addition, it is surprising that these provisions are not expected to have any impact on the prison population, according to the impact assessment included in the Explanatory notes (Paragraph 775).² We would expect that if these provisions were introduced, it would inevitably lead to more defendants charged with murder being remanded in custody than is currently the case.

² The provisions of the 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 775). However, the changes proposed in Clauses 97-98 are not one of the measures that are predicted to have an impact on the prison population.

PART 4: SENTENCING

Sentencing Guidelines Council (Clauses 100-118)

Clauses 100-118 of the Bill introduce a Sentencing Council for England and Wales, to replace the existing Sentencing Advisory Panel and Sentencing Guidelines Council.

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 107)*
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 109) and to assess the impact on resources of policy and legislative proposals (Clause 114)*
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. 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 on proposed changes.
- *The proposed duty on the Council to monitor the operation and effect of its guidelines (Clause 110)*
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 111 (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.

- *Consultation by the Sentencing Council with the House of Commons Justice Committee on draft guidelines*

Clause 104(4) mandates that the Sentencing Council must consult the Lord Chancellor, such persons as the Lord Chancellor may direct and such other persons as the Council considers appropriate. However, it would be beneficial in making the work of the Sentencing Council more accountable to parliament if the Sentencing Council consulted with the House of Commons Justice Committee on each draft guideline.

- *Expertise in the reform and rehabilitation of 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 experience 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 111(11)(d)].

- *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.

- *Responsibility for assessing the effects of factors not relating to sentencing to be held by the Ministry of Justice*

Clause 113 states that the Sentencing Council should prepare a report of the impact of non-sentencing factors on the resources required for giving effect to sentences imposed by the courts. However, it is not clear why this should be a function of a Sentencing Council, which should rightly have expertise and experience focused on sentencing factors. However, an annual assessment of the impact of non-sentencing factors on penal capacity would be beneficial in planning for the future. This should be carried out and published by the Ministry of Justice.

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 120-121)

Clauses 120-121 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 15 December 2008 there were 4,581 IPP prisoners. 1,224 had gone beyond their tariff and were therefore eligible for consideration for release. As of 5 November 2008, only 38 IPP prisoners in total had 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, and would therefore be unable to prove that they were ready for release.

PART 5: MISCELLANEOUS CRIMINAL JUSTICE PROVISIONS

Commissioner for Victims and Witnesses (Clause 122)

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.

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 122(3)(a) of the 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 122(3)(a) of the Bill [‘In section 49 (general functions of Commissioner) omit subsection (2)(d) (carrying out of research)’] be removed.

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