

Justice Committee

Prisoners (Control of Release) (Scotland) Bill

Written submission from Professor Fergus McNeill

Yesterday, I reviewed the written submissions and the record of last week's session. I wonder if you might pass on these two observations to the Committee:

Firstly, I would simply reiterate that it seems to me that the proposed legislation would serve not to reduce risk, but to store it up for a little longer. In my assessment this is as likely to increase risk as to reduce it. I spent last week in a meeting with European experts from several jurisdictions and many of them were expressing concern about the increasing numbers of prisoners opting to 'max out' on their sentences, in order to avoid (a) the painful uncertainties attendant on discretionary release schemes and (b) the more and more intrusive and sometimes disproportionate forms of post release supervision emerging in many jurisdictions (which are not always combined with significant support). As some of those who submitted evidence have made clear, the proposals risk introducing this possibility (of maxing out) in Scotland -- and many have serious concerns about this for both in terms of risk and in terms of reintegration.

Secondly, I note that several witnesses referred positively to the principles of the Custodial Sentences and Weapons Act (2007) as an alternative potential set of reforms. I served as expert adviser to the Committee in its deliberations on that Bill. If the current members care to examine the then Committee's stage 2 report, they'll find that the evidence pointed to a very significant number of serious problems with the Bill. The Committee's final endorsement of the Bill's *principles* and its subsequent passage at Stage 3 reflected the political realities of an imminent election; its passage was not in my view supported by the evidence or by the critique that the Committee delivered of the Bill's detailed provisions. That is why the Act has never been implemented -- it couldn't be. The costs of doing so -- both in terms of increased work for criminal justice social work and the Scottish Prison Service -- were and remain unaffordable. Moreover, much of the new work would have been pointlessly bureaucratic and a distraction from existing challenges and tasks; for example, the Bill required risk assessment prior to release of everyone serving over 14 days, which would have tied up precious staff time and resources in making decisions about short sentence and low risk of harm prisoners.

That said, the principle of clearly articulating every sentence of imprisonment in terms of its custodial and community parts remains, in my assessment, a good one. If nothing else, it might assist with the problems of public misunderstanding and media misrepresentation that I allude to in my written evidence.

For these reasons, I would support the view of other witnesses that the current Bill should be abandoned and that the complex question of how best to manage early release should be referred to the Scottish Sentencing Council, when it becomes established. Until then, our current arrangements seem likely to me to better protect the public (and support reintegration) than what is proposed in the Bill.

Fergus McNeill
Professor of Criminology & Social Work
University of Glasgow
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