

Justice Committee

Proposals to end the automatic early release of certain categories of prisoner

Written submission from the Law Society of Scotland

Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members, but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

This response has been prepared on behalf of the Society by members of its Criminal Law Committee (“the Committee”).

The Committee welcomes the opportunity to consider and respond to the call for written evidence from the Scottish Parliament’s Justice Committee on the Scottish Government’s proposals to end automatic early release of some categories of prisoners which are set out in the letter from the Cabinet Secretary for Justice, Kenny MacAskill to the Justice Committee Convener, Christine Grahame, dated 3 September 2013 and has the following comments to make.

The Committee notes that the proposal as contained in the Cabinet Secretary for Justice’s letter is to end automatic early release for serious offenders who have been sentenced to 10 years or more such as violent offenders and to end automatic early release for sexual offenders who are sentenced to 4 years or more. The Committee notes that these proposals will not apply to those persons sentenced to a period of life imprisonment or those who receive an Order for Lifelong Restriction whose release will be considered on a discretionary basis after they have served the punishment part of their sentence set by the court and only as directed by the Parole Board taking into account public safety.

The Committee considers the current proposals to be a matter of public policy upon which the Law Society of Scotland would not provide detailed comment. The Committee further notes that changes to the Prisoners and Criminal Proceedings (Scotland) Act 1993 can only be enacted by primary legislation.

Following upon the announcement to the Parliament on 23 April 2014, by the Cabinet Secretary for Justice, the Committee notes that Stage 2 of the Criminal Justice (Scotland) Bill will not now commence until after the Post Corroboration Safeguard Review chaired by Lord Bonomy has reported and that this review is expected to report in April 2015. The Committee further notes, however, that the Justice Committee has agreed to consider the proposals to inform its future consideration of these provisions should they be brought forward by the Scottish Government at a later date.

The Committee accordingly has the following comments which it trusts will inform the Justice Committee in its consideration of these proposals.

The Committee notes that the legal position at present is set out in the 1993 Act as referred to above following a detailed investigation into the sentencing system in England and Wales (the Report of the Carlisle Committee) and, in Scotland, the Kincaid Committee (Parole and Related Issues in Scotland 1980, CM.598).

While noting that this proposal seeks to address the present issue where a prisoner must be released at the two-third stage of sentence even if that prisoner has not done anything in prison to address his or her offending behaviour and still poses a risk to the community, it is unaware of any evidence gathering exercise which has taken place in advance of the current proposals. The Committee respectfully suggests that Scottish Government should consider commissioning research similar to that commissioned and reported upon in Linda Hutton and Liz Levy's Report in 2002 (Parole Board Decisions and Release Outcomes, Scottish Executive Central Research Unit, 2002).

The Committee also notes that the most coherent reason for the existence of a system of mandatory release on licence prior to the expiry of the entire sentence is that it allows a degree of testing in the community while offenders are subject to conditions, breach of which can result in a return to custody.

It is not clear to the Committee why the proposals contained in the Cabinet Secretary for Justice's letter should only apply to certain categories of long term prisoner as it believes that there is no conclusive evidence that the nature of offence is in itself a reliable indicator of future risk to the community.

The Committee does, however, recognise that there are a small percentage of serious offenders who are wholly non-compliant with sentence planning and further prisoners who are involved in misconduct or drug misuse throughout their sentences and that a significant percentage of that group have their licence revoked at present.

With particular reference to proposals for sex offenders, it is expressly stated in terms of the Cabinet Secretary for Justice's letter that "sex offenders pose a particular risk to the public" and this is indeed reflected in special arrangements that apply to sexual offenders sentenced to short term sentences who, when released are released on licence in contrast with other short term prisoners.

The Committee is unclear as to whether there is a particular risk. In this regard it refers to what appears to be the most recent Parole Board Annual Reports which, although do not specify details or the reasons for revocation of licence, the figures in the 2005 and 2006 Annual Reports disclose that over these years, 48 offenders granted early release on parole and 246 offenders granted statutory release at the two-thirds point of their sentence were recalled to custody.

Of these 294 recalled prisoners, only four were facing fresh charges of a sexual nature and one of that four had been initially sentenced for a drugs offence.

Of these licensees, 21 were on licence for sexual offending.

Fourteen (66.7%) were recalled for non-compliance with supervision, three for offences of dishonesty, one for drug offences and three (14.2%) for further allegations of a sexual nature.

The Committee notes that in 2007-08, twenty-one long term prisoners on licence for sexual offences were recalled. 18 (85.7%) were for non-compliance with the terms of the licence, with one each (4.7%) for alleged violent offending, sexual offending and drug offending.

It is the Committee's understanding that the Parole Board no longer breaks down these statistics as it did previously.

Although this evidence is of some vintage, it does not appear to support the proposition that sex offenders pose a greater than average risk to the community than other offenders.

The Committee specifically refers to Doctor David Thornton's scoring guide¹ which indicates that there is trend for older men to have lower sexual recidivism rates than young men.

The Committee notes that a significant number of those convicted and sentenced to a period of imprisonment of over 4 years will be convicted of offences many years and perhaps even decades previously and that a percentage of this group will be statistically among the least likely to re-offend.

The Committee further notes that, with further reference to the Parole Board Annual Reports referred to above, of the 184 violent offenders recalled, 65 (35.3%), were facing charges of violence, 32 (17.3%) were facing other charges and the category that includes possession of weapons and 27 (14.6%) were facing theft charges or similar.

The Committee therefore believes that there may be some greater merit in requiring the Parole Board for Scotland to scrutinise the risk factors of serious violent offenders and, in certain circumstances, for them to be empowered not to direct release.

The Committee further notes that given the importance of licence conditions in allowing for supervision of offenders in the community and in enabling those who require them to access community support in areas such as accommodation, addictions, counselling and job search, the default position should therefore be that there should always be a period of community based supervision (with the sanction of recall to custody), for all but the most dangerous offenders who need not necessarily be those who have committed the most serious offences.

Alan McCreadie
Deputy Director of Law Reform
7 May 2014

¹ Risk Matrix Scoring Guide University of Birmingham 2007
<http://www.birmingham.ac.uk/Documents/college-les/psych/RM2000scoringinstructions.pdf>