

Domestic Abuse Bill

Prison Reform Trust briefing for the second reading in the House of Commons on 2 October 2019

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. Our Transforming Lives programme to reduce the unnecessary imprisonment of women in the UK is supported by the National Lottery Community Fund. The Domestic Abuse Bill represents an important opportunity to ensure that victims of domestic abuse get the protection and support they need and that perpetrators are effectively dealt with to reduce their risk of offending. The Bill contains some important provisions but could be further improved to ensure it meets its stated objectives.

This briefing focuses on key gaps and provisions in the Bill including the following:

- The Bill should be amended to strengthen legal protection for victims of domestic abuse who are driven by that experience to commit an offence and ensure the provision of guidance and training for criminal justice agencies.¹ This would address a current gap in the law and strengthen the recognition of the links between victimisation and offending. Our proposal is supported by the Criminal Bar Association and a wide range of allied organisations, including Women's Aid and Agenda: the alliance for women and girls at risk.²
- The Bill raises civil liberties issues in relation to the proposed criminalisation of breach of civil Domestic Abuse Protection Orders.³
- The title and scope of the Bill should be expanded to include all forms of violence against women and girls, including those from BAME backgrounds and migrant women with no recourse to public funds.
- The Bill must be accompanied by a sustainable, long term funding plan for specialist services to support victims and those at risk of domestic abuse, including minority groups.

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¹ See PRT's recommendations in: [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending](#), London: PRT and the accompanying [briefing by the Criminal Bar Association](#).

² Read our short briefing and see list of supporting organisations and our submission to the Pre-Legislative Scrutiny Committee on the Draft Bill at: www.prisonreformtrust.org.uk/women/domesticabuse

³ See [PRT's submission to the government's consultation on the draft Domestic Abuse Bill, May 2018](#)

Legal protection for victims of domestic abuse who are driven to offend

The Bill should be amended to address the gap in legal protection for victims of domestic abuse who are driven to offend, and to ensure the provision of supporting guidance and training for criminal justice agencies.

The majority of women in prison are victims of domestic abuse and many have been driven to offend as a direct result of that abuse. Yet whereas victims of trafficking rightly have a statutory defence to protect them from prosecution where they have been compelled to offend as part of their exploitation, there is no equivalent protection for victims of domestic abuse. The Bill presents an important opportunity to address this anomaly.

In response to a recommendation by the Pre-legislative Scrutiny Committee on the Draft Bill, the government acknowledged the link between women's experience of domestic abuse and their offending and confirmed that it is considering PRT's proposal for new legal protection.

We will be seeking amendments to the Bill to take forward this recommendation. For more information go to: www.prisonreformtrust.org.uk/women/domesticabuse or contact Katy Swaine Williams.

Domestic Abuse Protection Orders (DAPOs)

Clause 24 of the Bill introduces a new civil order, the DAPO, and builds on the existing Domestic Violence Protection Order (DVPO) piloted in 2014. The DVPO may be used where there is insufficient evidence to convict, to allow the alleged victim/survivor breathing space.

While we appreciate the challenges in obtaining convictions in domestic abuse cases, we are concerned that a breach of the new order would be treated as a criminal offence. Criminalising breach is not the right solution, and may contravene the right to a fair trial under Article 6 of the European Convention on Human Rights.

We oppose in principle a policy under which civil orders imposed on a balance of probabilities can, if breached, result in a criminal conviction and even imprisonment without a criminal process in relation to the original, alleged offending behaviour.

The proposal to criminalise breach in relation to positive conditions of an order, for instance a failure to attend a particular programme, is particularly problematic. There may be legitimate reasons for such a breach, for instance illness or child care responsibilities or unavailability of suitably adapted programmes for people with learning disabilities or mental health needs. In these circumstances, prosecution for breach would be disproportionate and could have negative consequences for both victim and perpetrator.

Furthermore, there is a risk that rather than protecting victims, the threat of criminalisation could act as a barrier to use of the new orders. As the government's consultation acknowledged:

*"There is...a risk that criminalising breach could deter people from applying for the proposed order, or...reporting a breach."*⁴

⁴ HM Government (2019) Transforming the response to domestic abuse: Consultation response and draft Bill, London: OGL

Making provision for certain breaches to be dealt with as a contempt of court is not a sufficient safeguard, as this is still a serious offence punishable by up to two years in prison or an unlimited fine. In conclusion we believe the provision allowing for criminalisation of breach of DAPOs should be removed from this Bill.

Title and scope of the Bill

We are concerned that the current scope of the Bill is not ambitious enough, and that a statutory framework for a comprehensive, public sector response to violence against women and girls is needed in order to achieve the necessary shift in public understanding of the severe impact of VAWG on individuals and families. This should be underpinned by a national training framework and informed by learning from implementation of The Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 (the ‘Wales Act’) and the associated policy and training framework.

Specific attention should be given to ensuring that the Bill and associated guidance provide equal protection for victims/survivors in minority groups, including BAME women, foreign national women, women of minority faiths, LGBT women and disabled women—who will often face additional support needs which can limit engagement with ‘one-size-fits-all’ services. As noted by the Pre-Legislative Scrutiny Committee on the Draft Bill, the Bill currently misses the opportunity to address the needs of migrant women with no recourse to public funds.

Long-term and sustainable funding

If the Bill is to realise its stated objectives, it must be accompanied by a sustainable, long term funding plan for specialist services aimed at meeting all victims’ needs, including support for victims of abuse who are themselves subject to criminal proceedings, and for minority groups.

Support should be made more widely available both in prison and in the community to ensure access to justice for the most vulnerable groups. However, at present services like these are scarce and struggle to sustain themselves on a patchwork of relatively short-term funding streams.

Investment in a network of specialist women’s community services throughout the country would enable many more women to achieve positive outcomes for themselves and their children, as well as ensuring women victims of domestic abuse are diverted away from the criminal justice system and from custody where appropriate, through the effective use of community disposals. As the House of Commons Justice Committee has commented:⁵

“...the existing funding is unlikely to have sufficient impact. The Government should be more bold in investing in community alternatives for women cross-departmentally, not only via the justice system...That the issue of mainstream cross-Government funding for women’s centres remains unresolved by consecutive Governments over the last 10 years is a grossly wasted opportunity to reduce the costly intergenerational impact of crime...”

⁵ House of Commons Justice Select Committee (2019) Prison population 2022: planning for the future Sixteenth Report of Session 2017–19, London: TSO