

Prison Reform Trust Briefing – Offensive Weapons Bill Second Reading, House of Lords, 7 January 2019

There is understandable public concern about the recent spate of acid attacks and rise in knife crime in some inner-city areas. The evidence presented in the government's serious violence strategy suggests that solutions are most likely to lie in better regulation and control of supply and increased investment in preventative measures, including early intervention, education, trauma-informed and public health responses. Many children and young adults caught up in gangs are subject to coercion by older adults and responses by public agencies need to be mindful of underlying welfare and safeguarding concerns. Provisions which unnecessarily criminalise children and young people risk driving the problem underground and could result in more vulnerable individuals being drawn into the criminal justice system, instead of putting them in contact with the treatment and support they need. This briefing highlights key concerns relating to the provisions of the Offensive Weapons Bill, including the creation of new offences relating to the possession of corrosive substances, the creation of new and modification of existing offences of threatening with an offensive weapon, the extension of existing offences of possession of knives and offensive weapons, and the creation of new offenses relating to the sale and delivery of corrosive substances and bladed products.

About the Prison Reform Trust

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for prisoners and their families.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families.

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Chapter 1: Sale and delivery of corrosive products

We agree that the use of corrosive products should be tightly regulated and that this could include the creation of new offences relating to their sale and delivery, including appropriate grounds for defence. We question, however, whether a short prison sentence of 51 weeks (or six months under current enacted legislation) is an appropriate sanction, particularly when a large fine or regulatory penalty, such as a restriction on the ability of a retailer to trade in specific products, is likely to be an effective deterrent for any large or small trader. The Justice Secretary David Gauke has recently expressed a desire to limit the use of short prison sentences of less than 12 months and increase the use of community orders.¹ In an interview in the Times on May 26 2018, David Gauke was asked whether he would prefer there not be short sentences except in exceptional circumstance. He said: “Yes. There are exceptions but in terms of effectiveness at reducing re-offending it isn’t that effective”. He added: “I think custodial sentences should be very much a last resort”. His comments were made in response to evidence published by the Ministry of Justice which showed that for matched offenders a community order was more effective than a short prison sentence at reducing reoffending.² In view of this, it seems illogical to have one government department legislating for a sanction which another has deemed counterproductive. **Therefore, we would like to see custody removed as an option for punishment for the offences specified in clauses 1 and 3 and replaced with an upper limit of a high-level community order. PRT supported Amendments 12 & 13 tabled by Rt Hon Sir Ed Davey MP at House of Commons Report Stage to replace the custodial sentences for the new offence of sale of corrosive products to under-18s with community sentences.**

Chapter 2: Possession of corrosive substances

Clause 6 creates a new offence of possession of a corrosive substance in a public place. Possession of a corrosive substance can already be prosecuted under section 1 of the Prevention of Crime Act 1953, and this can result in a custodial sentence, including a mandatory custodial sentence for a second offence. Therefore, there is no need for new legislation to criminalise possession of a corrosive substance. The only rationale for this provision is that it does away with the need to prove intent to cause injury and puts the onus on the individual to prove that they had good reason for the possession of the substance. In addition, in contrast to the provisions of chapter 1 where restricted “corrosive products” are specified in schedule 1, in clause 6 a “corrosive substance” is loosely defined as any substance “which is capable of burning human skin by corrosion”. **This creates a very broad and ill-defined offence, and one that will lead to unjust prosecutions, convictions and custodial sentences. At the very least, a much higher bar should be placed on prosecution, with a need to prove intent to cause injury. In addition, much greater clarity is needed on what constitutes a corrosive substance, so that defendants have a reasonable chance of knowing which substances and their possession in public would place them in breach of the law. PRT supported Amendments 14 tabled by Rt Hon Sir Ed Davey MP at House of Commons Report Stage to make it an offence to have a corrosive substance in a public place only with the intent to cause injury to someone.**

¹ Sylvester, R et al (2018) ‘Under a year must be a last resort, says justice chief David Gauke’, The Times, May 26 2018. Available at: <https://www.thetimes.co.uk/article/under-a-year-in-jail-must-be-last-resort-says-justice-chief-david-gauke-msdbmfmbb>

² Ministry of Justice (2018) Analytical Summary 2018: Do offender characteristics affect the impact of short custodial sentences and court orders on reoffending?, London: Ministry of Justice. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/706597/do-offender-characteristics-affect-the-impact-of-short-custodial-sentences.pdf

Clause 8 provides that, where a person who is 16 years of age or older is convicted in England and Wales of the offence set out in clause 6 and has at least one relevant conviction (as set out in clause 9) then the Court must impose an appropriate custodial sentence of at least 6 months for an offender aged 18 years or older or 4 months for a 16 or 17 year old. We are opposed to the use of mandatory sentences, particularly for children. There is no evidence which shows that mandatory sentences act as an effective deterrent. Research suggests that it is the prospect of being caught which has the most effective deterrent effect and not the severity of the punishment imposed.³ These provisions will limit judicial discretion and result in vulnerable children and young people being exposed to more serious offenders in prison. In July 2017 the Chief Inspector of Prisons Peter Clarke told MPs that not a single custodial establishment in England and Wales was safe to hold children and young people.⁴ **It is particularly concerning that the government is legislating for mandatory penalties for an offence which is so poorly defined in the legislation, as this is likely to lead to the unjust incarceration of large numbers of children and young people. PRT supported Amendments 15 & 16 tabled by Rt Hon Sir Ed Davey MP at House of Commons Report Stage to remove mandatory custodial sentences for a second conviction.**

Clauses 10 to 12 provide law enforcement officers in England and Wales, Scotland and Northern Ireland with additional investigative and enforcement powers, including use of stop and search, in relation to offence of possessing a corrosive substance in a public place. Clause 31 provide law enforcement officers with additional powers to search for corrosive substance on school or further education premises. It is likely that these proposals will disproportionately affect BAME children and young people who are already significantly more likely to be subject to stop and search.⁵ Despite this, the policy equality statement on the proposals does not contain any specific analysis of the likely equality impact of the extension of investigative and enforcement powers.⁶ **The lack of clarity in the proposed law, the loose nature of the proposed offence, and the probable subsequent over-charging and misdirected prosecutions, are likely to further damage relations between BAME children and young people and the police. We urge the government to conduct a detailed equality impact assessment of the proposals before considering whether or not to proceed to implementation.**

Chapter 4: Sale and delivery of knives etc

Clause 17 provides that where a sale is carried out remotely, it is an offence for a seller to deliver or arrange for the delivery of a bladed product to a residential premises or to a locker. The offence is punishable with up to 51 weeks in custody (or six months under current enacted provisions) and / or a fine. **As with the provisions of chapter 1, we question whether a short prison sentence is an appropriate sanction and would like to see it replaced with an upper limit of a high level community order.**

Clause 22 makes it an offence to possess a knife under section 1 (as amended by Clause 21) of the Restriction of Offensive Weapons Act 1959, with a maximum penalty of 51 weeks.

³ Nagin, D (2013) Deterrence in the Twenty-first Century: A Review of the Evidence, Pittsburgh: Carnegie Mellon University. Available at:

<https://pdfs.semanticscholar.org/c788/48cc41cdc319033079c69c7cf1d3e80498b4.pdf>

⁴ Bentham, M (2017) 'Not a single young offender institution is safe: prison inspector's dire warning', The Evening Standard, July 18 2017

⁵ Ministry of Justice (2017) Statistics on Race and the Criminal Justice System 2016. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669094/statistics_on_race_and_the_criminal_justice_system_2016_v2.pdf

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717685/Policy_Equality_Statement.pdf

Clause 23 extends the prohibition on the possession of offensive weapons in schools to further education premises, with a maximum penalty on indictment of up to 4 years in prison. Clause 24 creates an offence of possession of a weapon in private, with a maximum penalty in Scotland of 6 months, in England and Wales of 51 weeks, and in Northern Ireland on indictment of up to 4 years in prison. Research suggests that children and young people carry knives and other offensive weapons for a number of complex reasons, including fear and self-protection.⁷ New criminal offences and sanctions are not going to persuade them to stop. **Educating children and funding wider preventative work in the community will have a greater impact on reducing knife crime than imposing lengthy sentences for possession offences. Imposing custodial sentences for non-violent possession offences will lead to vulnerable children and young people being unnecessarily drawn into the criminal justice system.**

Chapter 6: Threatening with offensive weapons etc

Clause 28 amends existing offences of threatening with an offensive weapon or bladed product in a public place. Clause 29 extends the offence to further education premises. Both clauses replace the requirement of the threat causing immediate risk of physical harm to the accused, with a requirement that the threat is such that a reasonable person who was exposed to it would think that they were at risk of immediate physical harm. For clause 28, there is a mandatory minimum custodial sentence of a four-month Detention and Training Order (DTO) for children aged 16 and 17 and a custodial sentence of at least six months for an adult convicted under the existing legislation. Removing the requirement that there is any objective risk of physical harm, and basing the test purely on the victim's "reasonable fears", substantially reduces the conviction threshold for this offence. Given the mandatory custodial penalties attached, we believe this is far too low a threshold to impose, which will result in children and young people being unnecessarily sent to prison. As they are still maturing, children and young adults can be impulsive and lack empathy and may find it difficult to anticipate the impact of their behaviour on others. Therefore, these proposals could place young people at a particular disadvantage for behaviour whose consequences they did not foresee and which did not put anyone at an objective risk. **We note that Clause 30 creates an offence of threatening with an offensive weapon in a private place. However, unlike clause 28 and 29, it retains the definition of threat as one of "an immediate risk of serious physical harm". We would like to see the definition of harm in clauses 30 also used in clauses 28 and 29. PRT supported Amendments 17, 18 & 19 tabled by Rt Hon Sir Ed Davey MP at House of Commons Report Stage to retain the current definition of risk for offences of threatening with an offensive weapon.**

⁷ Palasinski, M and Riggs, D (2012) Young White British Men and Knife-Carrying in Public: Discourses of Masculinity, Protection and Vulnerability, in *Crit Crim* 20: 463. <https://doi.org/10.1007/s10612-012-9161-4>