Justice Committee

Criminal Justice and Licensing (Scotland) Bill - Stage 2

Written submission from the Scottish Centre for Crime and Justice Research (SCCJR)

The amendments added at Stage 2 to the Bill are a cause for concern as they accelerate a trend of over criminalization and penalization in Scotland. Some of us have submitted more detailed comments on the mechanics of specific amendments, but in this brief statement we at the SCCJR are writing to express our consensus that these amendments, taken together, would make for an unwieldy, unevidenced and over complicated law. Enacting these amendments will create pressures to divert scarce resources into the justice system and thereby undermine the current strategies for securing community safety.

Additionally, by deleting the sections relating to the principles of sentencing, watering down the sentencing council proposals of the Scottish Prisons Commission, hardening the approach to breaches of bail and police undertakings, defining serious and organised crime so broadly, Scotland is not only losing its chance to do something progressive and bold in realising a more effective justice system, but it is adopting a reactionary stance to come up with a law that almost certainly will lead to net widening, penal expansion and worsening rates of reoffending.

Just as America, the world’s most aggressive user of prisons, has begun to recognise the error of its ways in the face of a fiscal crisis caused by penal expansion\(^1\), Scotland would take up such discredited practices as mandatory minimum sentences; imprisonment as the main strategy of managing breaches of bail, probation and parole; and wide ranging criminalization of behaviour much of which is already prosecutable under common law or existing legislation. The amendments to the law hence appear to us to lack foundation in evidence or logic.

We also raise a separate concern about the procedure by which these amendments were made. The amendments proposed here introduce a number of new offences (in particular on stalking, engaging in paid-for sexual activity and related offences, voyeurism etc). Irrespective of the general questions of whether or not these are appropriate areas for criminalization, we are particularly concerned that these amendments are introducing major new elements to the Bill at Stage 2. There is thus no opportunity for proper debate or thorough scrutiny of either the amendments individually or the Bill as a revised whole. The proper procedure for introducing such offences should be in a stand-alone piece of legislation or at a much earlier stage in the legislative process. As things stand there is a risk that the democratic process is being subverted. Our concern, therefore, is that this Bill is becoming increasingly poor law. For this reason we would strongly urge that the amendments introducing new offences be removed from the draft Bill and presented to Parliament in separate legislation.

The Bill as originally introduced proposed reforms to sentencing based on a review of Scottish penal policy which included a widespread review of the empirical evidence related to the impact of sentencing on the prison population and put forward proposals on the basis of this evidence. The reforms proposed were a coherent package which sought to implement these proposals. We are concerned that the proposed amendments not only dilute the original proposals, but run the risk of replacing a principled and coherent approach to penal policy with just the kind of muddled and incoherent approach to sentencing that was identified as having created the problem for penal policy. This cannot be the most appropriate way to reduce re-offending and secure safer communities in Scotland.

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