

House of Lords Briefing for Committee Stage of the Police, Crime, Sentencing and Courts Bill

- November 2021 -

Agenda is an alliance of over 100 organisations working in England and Wales to build a society where women and girls are able to live their lives free from inequality, poverty and violence. We campaign for women and girls facing abuse, poverty, poor mental health, addiction, contact with the criminal justice system and homelessness to get the support and protection they need.

The status of the Bill

The Police, Crime, Sentencing and Courts (PCSC) Bill was introduced on 9 March 2021 in the House of Commons. The Bill has since had its First and Second Reading in the House of Lords, with Committee Stage commencing on 20th October. **Amendments 226A and 226B** will be debated **this week or early next week**.

Introduction

This briefing highlights **one key area**ⁱ of the Bill that will **disproportionately impact negatively on women and girls**, particularly younger women and girls, Black and minoritisedⁱⁱ women and girls, and women and girls in abusive and exploitative relationships.

The proposed terms of a Serious Violence Reduction Order (SVRO) mean that women and girls who are judged to have **“ought to have known”** someone in their company was in possession of a bladed article or offensive weapon could potentially face **two years’ imprisonment** for a breach of the order’s terms.

This is a regressive policy, ignoring not only the Government’s own wisdom about the **risks of making SVROs too broad**, but also the **legal precedent** against equivocating possible foresight of an offence with intent to assist that offence.

It is also significant that this clause is introduced against the backdrop of the **landmark Domestic Abuse Act**, which strives to make domestic abuse “everyone’s business”. We already know that a majority of women in prison are victims of domestic abuse, and the PCSC Bill should not exacerbate this - as outlined in the National Concordat on Women at Risk of or in Contact with the Criminal Justice System (2021)¹ and the Government’s Female Offender Strategy (2018).²

Agenda, the alliance for women and girls at risk, is calling on peers to seize the opportunity at Committee Stage to **support Amendments 226A and 226B**, tabled by Baroness Armstrong, and raise the important issue of **removing the “ought to have known”** provision from Serious Violence Reduction Orders.

ⁱ For a comprehensive overview of the various clauses that will have a disproportionate impact on women and girls, we refer you to the ‘**Other briefings**’ section at the end of this document for more resources from our partners on the Bill’s impact.

ⁱⁱ The term ‘Black, Asian and Minority Ethnic’ is commonly used in policy and commissioning contexts but can collapse together a broad range of differences between individuals, as well as reinforcing the idea that certain groups automatically occupy a minority position. Drawing on critical analysis of this term by services led by and for marginalised groups (see Thiara and Roy (2020), Reclaiming Voice: Minoritised Women and Sexual Violence, Imkaan), we refer to ‘Black and minoritised’ girls and young women. Whilst groups can be ‘minoritised’ in a number of ways, we specifically use this term to highlight the way in which certain racialised or ethnic groups are constructed as ‘minorities’ through processes of marginalisation and exclusion.

Serious Violence Reduction Orders (SVROs)

Clause	Change to the PCSC Bill needed
<p>140 - Creation of Serious Violence Reduction Orders (SVROs) SVROs introduce a new court order aimed at tackling knife crime which can be imposed on a lower standard of proof, but allows for a period of imprisonment of up to two years following a breach of an order’s terms.</p> <p>SVROs can be imposed on individuals even when they were not themselves in possession of a knife or weapon:</p> <p><i>(4) The condition in this subsection is that the court is satisfied on the balance of probabilities that—</i></p> <p><i>(a) a bladed article or offensive weapon was used by another person in the commission of the offence and the offender knew or ought to have known that this would be the case, or</i></p> <p><i>(b) another person who committed the offence had a bladed article or offensive weapon with them when the offence was committed and the offender knew or ought to have known that this would be the case.</i></p>	<p>1. Remove “or ought to have known”.</p>

The **creation of Serious Violence Reduction Orders (SVROs)** will disproportionately and unfairly impact on women and girls, leaving them facing up to **two years imprisonment** for the possibility they “**ought to have known**” someone in their company was in possession a bladed weapon or offensive article.

This clause is in the vein of Joint Enterprise laws, which are known to have brought women into the criminal justice system that had no involvement in the alleged offence.³ Research has found that in **90% of joint enterprise cases against women, they had engaged in no violence at all, and in half of the cases they were not even present at the scene.**⁴ In 2016, a joint session of the UK Supreme Court and Privy Council heard two appeals against joint enterprise law, and ruled that the common law on joint enterprise had taken a ‘wrong turn’: the courts should not have treated defendants’ foresight of an offence as equivalent to intent to assist that offence.⁵

In the Government’s own consultation on Serious Violence Reduction Orders, the Government stated:
*“We think that extending SVROs to any offence involving violence **would be too broad, as it could mean that a person could be stopped and searched for a weapon, despite never having been convicted of carrying or using one.**”⁶*

The inclusion of “or ought to have known” **also carries this risk.** Its inclusion in the Bill was not consulted on, but it is **not too late** to remove it.

Hidden unequal impact

In the Government’s consultation on Serious Violence Reduction Orders, a key theme that emerged in relation to the potential impact that SVROs will have on individuals with protected characteristics was

the disproportionate impact on “BAME” individuals, in particular Black men. Responses also highlighted the potential impact on young people under 18.

While it is true that men and boys – particularly Black men and boys - are more likely than women and girls to be convicted for offences involving the possession or use of a knife or other offensive weapon, the “ought to have known” provision will **disproportionately impact on Black and minoritised women and girls** – who will be criminalised for their relationships, however informal, with men targeted for Serious Violence Reduction Orders.

Black women and girls are also more likely to be given a SVRO compared to white women and girls, as they tend to be disproportionately impacted by punitive criminal justice policy. For example, Black girls are significantly more likely to be arrested than white girls,⁷ and data from 2016 shows that Black adult women and women of mixed ethnicity were also more than twice as likely to be arrested than white women.⁸ Between 2015-19, **the number of Black women prosecuted for possession of an article with a blade increased by 71%**, compared to a 14% increase for white women.⁹

Nadine, 25

“It’s very much like white girls are portrayed as innocent and vulnerable and then you have girls of colour these things are happening to, but it’s not spoken about as often because they’re not seen as on a level as a victim, if that makes sense...”

SVROs are not set to be applied to children, but it is **very concerning** that **this remains “under review”**. Expanding SVROs to U18s will **widen the net of criminalisation of girls**.

Overlooking domestic abuse & criminal exploitation

The proposed terms of an SVRO **renders invisible the impact of coercion in relationships** experienced by many women and girls drawn into the criminal justice system.

More than half (57%) of women in prison report having suffered **domestic violence**,¹⁰ and 53% report having experienced emotional, **physical or sexual abuse during childhood**.¹¹ Both of these figures are likely to be significant underestimates. It is estimated that between 75-90% of girls in the criminal justice system may have been abused.¹²

In cases where a woman or girl is in an abusive and coercive relationship, neither a judgement that she “ought to have known” or did in fact know her boyfriend or partner was in possession of a knife should be legal basis for her being drawn **needlessly and unfairly into the criminal justice system**. Her involvement with the criminal justice system could put her **at even more risk of harm**.

Razia’sⁱⁱⁱ story¹³

Razia is now 23. She experienced abuse in a relationship with an ex-partner who was arrested for drugs offences. Her experiences highlight how fear, pressure and coercion in relationships can make it both difficult and unsafe for young women to challenge or recognise criminal behaviour.

ⁱⁱⁱ Not her real name.

"I was in a coercive and abusive relationship, and it was the wrong place, wrong time... Because I turned a blind eye to it, I was still sort of involved inadvertently because I was in contact with him and because he'd been making phone calls from my phone..."

When I got to court, my ex-partner and all his friends were there... They were looking at me, making snide comments... Saying, "If you say something... It's game over for you"..."

Policy context

The [Female Offender Strategy](#) (2018) set out to reduce the number of women in the criminal justice system, acknowledging the importance of a gender-informed approach that takes account of other inequalities women experience: *"Given the overrepresentation of [Black, Asian and minority ethnic] women in the criminal justice system (CJS) and the proportion of female offenders with experience of domestic abuse, our workforce, environment and interventions must become more alive to their experiences and responsive to their individual needs."*

The most recent draft of the [Domestic Abuse Act statutory guidance](#) (2021) includes a new section on "Criminal Justice System and Women." It acknowledges the importance of understanding the role of abuse, including coercive control, in women's offending behaviour: *"More than half (57%) of women in prison report having suffered domestic violence, and women in prison are more than twice as likely as men to say they have committed offences to support someone else's drug use."¹⁴*

Despite the predominant narrative that it is mainly young men and boys affected by so-called 'gang' involvement, there is **increasing evidence of the prevalence of young women and girls' victimisation**.¹⁵ Girls experiencing multiple forms of disadvantage are often targeted and groomed by criminals who exploit their vulnerability to engage them in criminal activity. Perpetrators often create the impression of a protective familial or romantic relationship, meaning some girls recruited in this way may not realise they are victims of criminal exploitation. These girls and young women need holistic, trauma-informed, gender-specialist support – **not a punitive response** which increases their risk of long-term involvement with the criminal justice system.

What can you do?

Agenda, the alliance for women and girls at risk, is calling on peers to seize the opportunity at Committee Stage to **support Amendments 226A and 226B**, tabled by Baroness Armstrong, and raise the important issue of **removing the "ought to have known"** provision from Serious Violence Reduction Orders.

This call is supported by

 **Hibiscus**
for social justice



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 **EQUAL**
ACTION FOR RACE EQUALITY IN
THE CRIMINAL JUSTICE SYSTEM

**PRISON
REFORM
TRUST**

 **Women
in Prison**

Other briefings

- [Agenda and the Alliance for Youth Justice](#) (2021) Young Women’s Justice Project Briefing “I Wanted To Be Heard” Young Women In The Criminal Justice System At Risk Of Violence, Abuse And Exploitation
- [Agenda and Women in Prison](#)’s joint briefing for Report Stage and Third Reading of the Police, Crime, Sentencing and Courts Bill highlights key parts of the Bill that will disproportionately negative impact on women and girls, as well as areas of the Bill that could be strengthened to improve outcomes for women and girls and key gaps in the legislation.
- [Criminal Justice Alliance & EQUAL coalition briefing](#) concludes the PCSC Bill risks deepening racial inequality in the criminal justice system and sets out the clauses which are indirectly discriminatory and assesses the evidence and relevant information contained in the equality statement and/or equality impact assessment.
- [Alliance for Youth Justice briefing](#) highlights clauses that should be removed which will exacerbate inequalities and increase the criminalisation and incarceration of children and puts forward suggested provisions to ensure custody is a last resort and enshrine welfare and rights-based approaches in children’s sentencing legislation.
- [Prison Reform Trust briefing](#) examines Part 7 (sentencing and release), Part 8 (youth justice), Part 10 (management of offenders) and Part 11 (rehabilitation of offenders).
- [Friends, Families and Travellers briefing](#) outlines some context on Part 4 (‘unauthorised encampments’) of the PCSC Bill which will criminalise trespass and further compound inequalities experienced by Gypsies, Traveller and Roma communities.
- [Revolving Doors](#) Briefing on amendment to the Police, Crime, Sentencing and Courts Bill at the House of Lords Committee Stage

We would welcome the opportunity to discuss the issues outlined in this briefing with you in more depth.

To arrange a call or for more information, please get in touch with hermione@weareagenda.org

¹ Ministry of Justice (2021) [Concordat on women in or at risk of contact with the Criminal Justice System](#)

² Ministry of Justice (2018) [Female Offender Strategy](#)

³ Clarke, B. and Chadwick, K. (2020) [Stories of Injustice: The criminalisation of women convicted under joint enterprise laws](#).

⁴ Ibid.

⁵ Prison Reform Trust (2016) [JOINT ENTERPRISE: RIGHTING A WRONG TURN? Report of an exploratory study](#)

⁶ Home Office (2021) [Consultation on Serious Violence Reduction Orders Summary of Consultation Responses and Conclusion](#)

⁷ Ministry of Justice (2017) [Women and the Criminal Justice System 2017](#)

⁸ All Party Parliamentary Group on Women in the Penal System (2019) [Arresting the entry of women into the criminal justice system](#), The Howard League

⁹ Ministry of Justice (2021) Prosecution (by specific offence) [2015-2019] [Women in the CJS: Local Data Tool](#)

¹⁰ Prison Reform Trust (2017) [There’s a reason we’re in trouble” Domestic abuse as a driver to women’s offending](#)

¹¹ Women In Prison, [Key Facts](#)

¹² Beyond Youth Custody (2014) [Resettlement Of Girls And Young Women](#)

¹³ Razia and Niya’s stories were shared with Agenda through interviews conducted in partnership with the Muslim Women in Prison project as part the Young Women’s Justice Project research, highlighted additional barriers to disclosure facing Muslim young women caught up in the criminal justice system. This includes the stigma associated with pre-marital relationships within some Muslim communities and the ‘silencing’ of experiences of abuse in order to protect so-called ‘honour’ codes.

¹⁴ Prison Reform Trust (2017) [There’s a reason we’re in trouble: Domestic abuse as a driver to women’s offending](#)

¹⁵ Agenda and Alliance for Youth Justice (2020) [Young Women’s Justice Project: Literature Review](#)