

Agenda

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

- January 2022 -

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. Committee Stage in the House of Lords concluded on 24 November, with Report stage commencing on 8 December. Part 10 of the Bill, including **amendments 90K and 90L**, will be debated on **Monday 10th January 2022**.

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 Report Stage to **support Amendments 90K and 90L**, tabled by Baroness Armstrong and supported by a coalition of peers and the Domestic Abuse Commissioner, and raise the important issue of **removing the “ought to have known”** joint enterprise 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, as well as the wider harms of SVROs, 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 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>141 - Creation of Serious Violence Reduction Orders (SVROs)</p> <p>Part 10, Chapter 1 of the PCSC Bill creates a new civil order aimed at tackling knife crime: the Serious Violence Reduction Order (SVRO). As well as increasing powers to police by removing the need for reasonable suspicion to stop and search those with a previous conviction, this order includes a <i>de facto</i> joint enterprise element. A SVRO could be imposed on someone convicted of an offence who is proven to the civil standard (on the balance of probabilities) that they <u>'knew or ought to have known'</u> that someone else involved in the offence used a knife in the commission of the offence, or simply had a knife in their possession at the time of the offence. Despite only needing to meet the threshold for a civil standard of proof, a breach of the order's terms allows for a period of imprisonment of up to two years.</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>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 of 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 In a 2021 study by academics at Manchester Metropolitan University and the organisation JENGba of 109 joint enterprise cases involving women and girls (the youngest girl being only 13 years old), the majority of those sentenced had convictions for serious violence offences and an average sentence length of 15 years (with almost half serving sentences of up to 30 years).

However, there was not a single case in which woman and girls had handled a weapon; in 90% of cases they engaged in no violence at all; and in half of the cases they were not even present at the scene of the crime.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

*“What ought one to know?...It is surely hard enough to establish in court as a matter of evidential fact what a particular person knew or did not know, let alone what they ought to have known. This is all to be worked out by a judge, without the benefit of the wisdom of a jury, with no particular guidance and no idea what “ought to have known” means. **The whole thing is completely absurd.** The idea that one should have one’s liberties restricted simply because of what one “ought to have known” should be taken out of the Bill.”*

Lord Moylan, [Committee Stage sitting 17th November 2021](#)

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 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

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.

"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"..."

Coercive relationships can often lead women and girls to being criminally exploited. 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**.¹⁴ 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 domestic abuse and 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.

Despite the Government's clear understanding* of the links between women's offending and their experiences of domestic abuse and exploitation, in their current form, SVROs will punish victims and survivors who are deemed 'on the balance of probabilities' to have 'ought to have known' someone in their company was in possession of a knife.

*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."¹⁵*

Comment in support from the Domestic Abuse Commissioner

"The Domestic Abuse Commissioner welcomes proposals led by Baroness Armstrong to remove the term "ought to know" to mitigate the impact that these orders could have on women and girls. More than half (57%) of women in prison report having suffered domestic violence, and 53% report having experienced

ⁱⁱⁱ Not her real name.

emotional, physical or sexual abuse during childhood. Where a woman is in an abusive and coercive relationship, neither a judgement that she “ought to have known” or did in fact know her partner was in possession of a knife should be legal basis for imposing a SVROs.

“The Domestic Abuse Commissioner also strongly welcomes the Government’s amendment to Part 2 of the PCSC Bill to explicitly extend the definition of serious violence to include domestic abuse and sexual violence for the purpose of the new Serious Violence Prevention Duty. This represents a critical opportunity to implement an early intervention, public health focused approach to prevent violence against women and girls and sends a strong message to police forces and local statutory agencies across the country of the importance of acting early.

“The Commissioner understands concerns that have been raised during the passage on the Bill regarding the sharing of data gathered under Part 2 and supports calls to ensure that any data gather is depersonalised and that more explicit assurances are set out by the government to ensure that it is not used for the purposes of implementing Serious Violence Reduction Orders (SVRO) under Part 10 of the Bill, particularly in respect of victims.

“The Commissioner, therefore, calls on the Government to ensure that the impact of both Part 2 and 10 are clearly monitored, with disaggregated data provided on the impact of the duties by protected characteristics. This information should be published on a regular basis to ensure steps are taken swiftly to address any disproportionality.”

What can you do?

Agenda, the alliance for women and girls at risk, is calling on peers to seize the opportunity at Report Stage to **support Amendments 90K and 90L**, tabled by Baroness Armstrong and supported by a coalition of peers and the Domestic Abuse Commissioner, and raise the important issue of **removing the “ought to have known”** joint enterprise provision from Serious Violence Reduction Orders.

This call is supported by:



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.
- [Joint Violence Against Women and Girls sector briefing](#) for House of Lords ahead of Report Stage of the Police, Crime, Sentencing and Courts Bill Serious Violence Duty and Serious Violence Reduction Orders
- [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@wearegenda.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 Agenda and Alliance for Youth Justice (2020) [Young Women’s Justice Project: Literature Review](#)

¹⁵ Prison Reform Trust (2017) [There’s a reason we’re in trouble: Domestic abuse as a driver to women’s offending](#)