



BRIEFING PAPER

Number 8694, 29 September 2020

Prisoners (Disclosure of Information About Victims) Bill

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Contents:

1. Background
2. The Bill (as introduced in the House of Commons)
3. Progress of the Bill through Parliament



Contents

Summary	3
1. Background	5
1.1 Calls for “Helen’s Law”	5
1.2 Vanessa George	7
1.3 The Parole Board and release	7
2. The Bill (as introduced in the House of Commons)	9
2.1 Clause 1 – Non-disclosure of information by a prisoner serving a life sentence for murder or manslaughter	9
2.2 Clause 2 – Non-disclosure of information by a prisoner serving an extended determinate sentence for manslaughter or indecent images	10
2.3 Comment on the Bill	11
3. Progress of the Bill through Parliament	12
3.1 House of Commons	12
3.2 House of Lords	12
Lords amendment – Parole Board Database	12

Summary

The [Prisoners \(Disclosure of Information about Victims\) Bill 2019-21](#) was introduced in the House of Commons on 8 January 2020. It completed all stages in the House of Lords on 8 September 2020. At report stage in the Lords one new clause, moved by Baroness Kennedy of Cradley (Non-Affiliated), was agreed on division.

The new clause agreed by the Lords would require the Parole Board to create and maintain a new database. The database would contain details of family members of victims in cases covered by the Bill where a prisoner refuses to disclose information about the whereabouts of a victim's body or the identity of a child in an indecent image. The Parole Board would be required to contact those on the database to provide specified information about an offender's parole application.

The Bill is due to return to the Commons on 6 October 2020 for consideration of this Lords amendment.

The Bill as introduced would place a statutory obligation on the Parole Board to take into account an offender's non-disclosure of certain information when making a decision about the release from prison of certain prisoners. The Parole Board would be required to take into account a prisoner's non-disclosure of information about a victim's remains or the identity of child victims in indecent images.

Parole Board guidance currently advises panel members to consider any failure or refusal by an offender to disclose the whereabouts of a victim's remains when assessing suitability for release. It is also established Parole Board practice to consider the non-disclosure of relevant information by offenders in cases involving living victims. The Government has said the Bill would ensure that the Parole Board take such matters into account by placing the guidance and practice into law.

The statutory obligation would apply to prisoners serving:

- a life sentence for murder, manslaughter, or the offence of taking or making an indecent photograph or pseudo-photograph of a child;
- an extended determinate sentence (or a similar predecessor sentence) for manslaughter or taking or making an indecent photograph or pseudo-photograph of a child.

The obligation to take into account the non-disclosure would apply to all such sentences, including those that were imposed before the coming into force of the provisions contained in this Bill. The obligation would apply to decisions about a first release, not any subsequent releases following recall to prison.

The Bill responds to the campaign for "Helen's law", led by Marie McCourt, whose daughter, Helen, was murdered in 1988. Helen McCourt's body has never been found. The Bill also responds to the case of Vanessa George, a nursery worker who was convicted of multiple counts of sexual abuse and taking and distributing indecent images of children and refused to name the victims.

Some have questioned whether the provisions of the Bill will make any difference in practice given the guidance already followed by the Parole Board.

The Ministry of Justice has published papers concerning the Bill, including a factsheet, equalities statement and European Convention on Human Rights memorandum. See: Gov.uk, [Prisoners \(Disclosure of Information about Victims\) Bill](#). Information about the Bill

4 Prisoners (Disclosure of Information About Victims) Bill

can also be found on the [page for the Bill on the Parliament website](#). [Explanatory Notes](#) were published for the Bill as brought from the Commons to the Lords. [Explanatory Notes](#) have also been published for the Lords amendment.

The provisions of the Bill extend and apply to England and Wales only. Prisons and sentencing (including release provisions) are devolved to Scotland and Northern Ireland. For further detail see paragraph 8 and annex A of the Explanatory Notes.

The Bill would come into force on a date to be specified by the Secretary of State by statutory instrument.

1. Background

1.1 Calls for “Helen’s Law”

Part of the Bill has arisen in response to a campaign for “Helen’s Law”. The campaign has been led by Marie McCourt, whose daughter, Helen, was murdered by Ian Simms in 1988. Helen McCourt’s body has never been found. Marie McCourt has spoken about the impact this has had on her:

She said being denied a funeral for her daughter had caused “unimaginable suffering”.

She added: “For almost three decades Simms has refused to reveal the whereabouts of Helen’s body - denying us the chance to grant her the dignity of a funeral and resting place.”¹

The campaign called for the law to be changed to prohibit the release on parole of offenders who were convicted of murder and have failed to reveal the location of the body of their victim.²

A change.org petition calling for Helen’s Law was presented to the Government by Marie McCourt in February 2016.³ The [petition](#) continues to receive signatures.

Conor McGinn introduced a Ten Minute Rule Bill, [Unlawful Killing \(Recovery of Remains\) Bill 2016-17](#) which was given a first reading on 11 October 2016. The Bill was never published and did not progress.

Conor McGinn’s Bill proposed a presumption against eligibility for parole in cases where a person, convicted of unlawfully killing another person, has not provided relevant knowledge in their possession for the purposes of facilitating the location and recovery of the remains of the victim. It would also have created a separate offence of withholding such information.

Mr McGinn called for the Government to support his proposal or incorporate it into its legislative programme.⁴

The Government at that time stated that it had written to the Parole Board asking it to review its guidelines on the issue. The Government also commented that, in sentencing and parole decisions, the courts and the Parole Board already takes refusal to reveal the location of victims’ remains into account.⁵

In May 2019 the then Justice Secretary, David Gauke, met with Marie McCourt and Conor McGinn. In July 2019 Mr Gauke announced that the Government planned to change the law so that the Parole Board

¹ [Helen's Law 'may come too late', says victim's mother](#), BBC News, 16 October 2019

² [Helen McCourt: Law change plea over killers who refuse to say where victims are](#), BBC News, 14 December 2015

³ [Helen McCourt murder: Mother hands in petition to Downing Street](#), BBC News, 4 February 2016

⁴ [HC Deb 17 November 2016 c407](#)

⁵ [Lords PQ - HL6108 \[on Homicide: Parole\] 23 February 2016](#)

6 Prisoners (Disclosure of Information About Victims) Bill

would be required to consider non-disclosure of such information when reviewing an offender's suitability for release.⁶

The Parole Board decided in November 2019 that Ian Simms should be released. The BBC reported the Parole Board's comments:

The Parole Board said it had "carefully considered" Simms' failure to reveal where he concealed Ms McCourt's body and concluded there is "no prospect of Simms ever disclosing the whereabouts of his victim even if he were kept in prison until he died".

The board added the refusal continues to cause understandable distress and misery to the victim's family and the panel concluded this demonstrated a lack of empathy.

But it said denial was not a "necessarily-determining factor" and also considered evidence from two psychologists who recommended release.

The Parole Board said: "The progress that Mr Simms has made, the considerable change in his behaviour, the fact that he has not been involved in any violence or substance misuse for many years, his protective factors, the recommendations from all the professionals and all the evidence presented at the hearing, the panel was satisfied that Mr Simms met the test for release."⁷

The Justice Secretary subsequently made an application for a reconsideration of the release decision. The application was unsuccessful. The Parole Board decided that the original decision to release Ian Simms should stand.⁸

Marie McCourt started proceedings for judicial review, challenging the decision to release Simms.⁹ An application to the High Court to prevent his release until the judicial review was heard was unsuccessful. It was reported on 6 February 2020 that Simms had been released from prison.¹⁰ A spokesperson for the Ministry of Justice said:

"The High Court's ruling means we must now release Ian Simms from custody though he will be recalled if the court later decides to quash the Parole Board's decision.

"He will be on licence for life, subject to strict conditions and probation supervision when released, and he faces a return to prison if he fails to comply."¹¹

In September 2020 the High Court refused Marie McCourt permission to apply for judicial review having found that the Parole Board's decision to release Simms had "involved no arguable public law error".¹²

⁶ Gov.uk, press release, [Justice Secretary confirms plans for 'Helen's Law'](#), 6 July 2019

⁷ [Helen McCourt murderer Ian Simms set for parole](#), BBC News, 21 November 2019

⁸ [Application for Reconsideration in the case of Ian Simms \[2020\] PBRA 6](#), 8 January 2020

⁹ [Helen McCourt's mum in legal bid to block daughter's killer's release](#), BBC News, 30 January 2020

¹⁰ [Helen McCourt murderer Ian Simms released from prison](#), BBC News, 6 February 2020

¹¹ Ibid

¹² [McCourt, R \(On the Application Of\) v The Parole Board for England And Wales & Ors \[2020\] EWHC 2320 \(Admin\) \(01 September 2020\)](#)

1.2 Vanessa George

Another part of the Bill responds to issues in the case of Vanessa George, a nursery worker who was convicted of multiple counts of sexual abuse and taking and distributing indecent images of children. She refused to identify the children who were the victims of her offences, adding to the distress of parents of children who attended the nursery. It was reported that the judge sentencing her, Mr Justice Royce, said to the lawyer representing Vanessa George:

Your client must know, it seems to me, who she has abused (...) and who she has not.

If I were a parent I would want to know. Would it not at least be decent for her to indicate who she has abused and who she has not.¹³

There was a Westminster Hall debate in July 2019 regarding [Vanessa George's release from prison](#). Luke Pollard noted her refusal to give information on the identities of her victims and spoke about the impact on the parents of children in the nursery in which she had worked:

That we do not know who was abused denies those children tailored help for the consequences of that abuse and leaves each parent with a life sentence from which there is no early release. Not knowing whether their child was one of the babies Vanessa George penetrated and filmed must eat away at them every waking moment, and being forced to live with that trauma is unimaginably devastating.¹⁴

1.3 The Parole Board and release

The [Parole Board](#) is an executive non-departmental public body, which is responsible for the parole system. Parole is the mechanism by which prisoners serving indeterminate and some determinate sentences can be released early subject to certain conditions. The Parole Board carries out risk assessments on prisoners to determine whether they can be safely released into the community. For more information on the Parole Board and the parole process see the Library briefing: [The Parole System of England and Wales](#).

Where a person is given a life sentence a judge must specify the minimum term (sometimes called the tariff) the person must spend in prison before becoming eligible to apply to the Parole Board for release.

An extended sentence consists of a custodial period and an extended period of licence.¹⁵ Prisoners serving an extended determinate sentence are considered for release by the Parole Board at the two thirds point of the custodial part of their sentence.¹⁶

For a prisoner to be released, the Parole Board must be satisfied that it is no longer necessary for the protection of the public that the prisoner

¹³ [Nursery worker Vanessa George: judge asks her to reveal identities of victims](#), [Telegraph](#), Telegraph, 1 October 2009

¹⁴ [HC Deb 23 July 2019 c559WH](#)

¹⁵ Section 226A of the *Criminal Justice Act 2003*

¹⁶ Release provisions differ for older kinds of extended sentence

8 Prisoners (Disclosure of Information About Victims) Bill

should be confined.¹⁷ The provisions in the Bill would not change this test for release.

The [Explanatory Notes](#) for the Bill set out how the Parole Board already takes into account non-disclosure of information about victims, stating that the Bill would put this guidance and established practice into law:

The Parole Board already has internal guidance which advises panel members to consider any failure or refusal by an offender to disclose the whereabouts of a victim's remains when assessing suitability for release. It is also established Parole Board practice to consider the non-disclosure of relevant information by offenders in cases involving living victims.¹⁸

The [Explanatory Notes](#) also note that general public law principles mean that all relevant considerations should be taken into account.

¹⁷ For life sentences the "release test" is set out in section 28(6)(b) of the *Crime (Sentences) Act 1997*. For extended determinate sentences the test is set out in section 246A(6)(b) of the *Criminal Justice Act 2003*.

¹⁸ [Prisoners \(Disclosure of Information About Victims\) Bill Explanatory Notes](#), para 4

2. The Bill (as introduced in the House of Commons)

2.1 Clause 1 – Non-disclosure of information by a prisoner serving a life sentence for murder or manslaughter

Clause 1 concerns the non-disclosure of information about the victim's remains by a prisoner serving a life sentence for murder or manslaughter.

The clause would insert a new section 28A into the *Crime (Sentences) Act 1997*. The new section would apply when the Parole Board is making a decision about the release of a prisoner sentenced to life for murder or manslaughter. It would only apply to an offender's first release, not to any subsequent re-releases following recall to prison.

The Parole Board would be required to take into account the prisoner's non-disclosure of information regarding where or how the victim's body was disposed of and the reasons, in the Parole Board's view, for the prisoner's non-disclosure. The obligation on the Parole Board would apply where the Parole Board does not know where and how the victim's remains were disposed of and the Parole Board believes the prisoner has such information which the prisoner has not disclosed.

It will be for the Parole Board to determine what it believes the prisoner to know and what it believes to be the reasons for the prisoner's non-disclosure. The [Explanatory Notes](#) state that this will enable the Parole Board to consider issues such as whether the prisoner's non-disclosure is a result of a psychiatric disorder or a deliberate decision not to disclose the information. The Bill does not prohibit release in cases of non-disclosure.

The new section would state that its provisions do not limit the matters which the Parole Board must or may take into account when making a decision about release.

The new obligation to consider non-disclosure would also apply retrospectively to the release of prisoners who were given a life sentence before this provision comes into force.¹⁹ The Ministry of Justice's [European Convention on Human Rights memorandum](#) for the Bill concludes that this does not engage Article 7 of the convention (no punishment without law). The memorandum states that, whilst the provisions will be applied retrospectively to all relevant offenders who have had life or extended determinate sentences imposed at the time of commencement, the provisions do not affect the penalty of the court.²⁰

¹⁹ New section 28A(4)

²⁰ Ministry of Justice, [Prisoners \(Disclosure of Information About Victims\) Bill – European Convention on Human Rights Memorandum](#), para 22 and 23

2.2 Clause 2 – Non-disclosure of information by a prisoner serving an extended determinate sentence for manslaughter or indecent images

Clause 2 would insert a new section 246B into the *Criminal Justice Act 2003*. The new section would impose, in respect of prisoners serving an extended determinate sentence²¹ for manslaughter, the same obligation on the Parole Board (to consider the non-disclosure of information about a victim's remains when deciding on release) as clause 1 would impose in respect of prisoners serving life sentences for murder or manslaughter.

Clause 2 would also insert a new section 246C into the *Criminal Justice Act 2003*. This new section would impose an obligation on the Parole Board when making a decision about release of a prisoner who is serving an extended determinate sentence for the offence of taking or making an indecent photograph of a child. The Parole Board would be required to take into account the non-disclosure by the prisoner of information about the identity of the child who is the subject of the images and the reasons for it. The obligation to take into account such non-disclosure would also apply where the prisoner is serving an extended determinate sentence for a relevant offence of making an indecent pseudo-photograph of a child.²² A pseudo-photograph is an image that is made to look like a photograph.²³

The obligation to take into account non-disclosure would arise where the Parole Board does not know the identity of a child that appears in an indecent image taken or made by the prisoner, and believes that the prisoner has information about the identity of the child which the prisoner has not disclosed. As with clause 1, it would be for the Parole Board to determine what they believe the prisoner to know about the identity of the child.

The new obligations will only apply to a first release decision by the Parole Board and not to any subsequent re-releases after recall to prison.

The obligations to take into account non-disclosure in both new sections (246B and 246C) would apply to the release of prisoners who were given extended determinate sentences before these sections come into force.

Both new sections state that their provisions do not limit the matters which the Parole Board must or may take into account when making a decision about release.

²¹ Or similar predecessor sentences, see clause 2(4) which would make parallel changes to apply to prisoners serving older sentences.

²² Under section 1(1)(a) of the *Protection of Children Act 1978*

²³ Section 7(7) of the *Protection of Children Act 1978*

2.3 Comment on the Bill

The legal commentator Joshua Rozenburg has said it is hard to see what difference the provisions of the Bill would make in practice, given the guidance already in place:

... even if it had come into force last year, the legislation would not have stopped Simms being released. Unless panel members currently ignore the board's own guidance, it is hard to see what difference the new law will make. Sometimes, a statute may be no more than a gesture of sympathy.²⁴

The Explanatory Notes to the Bill state that no Impact Assessment for the Bill is needed as the Bill will not result in any change to current Parole Board practice and therefore no resulting impact on the prison population or demand for prison places is anticipated.²⁵

Neil Gillingham, the grandson of Carole Packman who was killed by her husband Russell Causley in 1985, said that he thought the Bill was "a law with no teeth".

"It's a kick in the teeth," said Mr Gillingham. "What's transpired with this bill is not what we set out to achieve. It's not what we were promised. Killers who refuse to reveal where their victim's remains are should never be considered for parole under any circumstances. It's all about the killer's rights and there are no rights for victims' families."²⁶

Dr Jen Hough, a lecturer in criminology at Liverpool Hope University, has said that putting the obligation into statute would serve a purpose:

Having this specifically legislated should now remove its potential arbitrary application, which should provide a more consistent – and fair – approach for victims or their families.²⁷

Dr Hough also noted the difficulties that might arise if release was prohibited in the case of non-disclosure:

But it is also difficult to have a complete indeterminate sentence as someone may genuinely not be able to remember, particularly if there are health reasons. Alternatively, there may have been a miscarriage of justice in the first place, in which case someone will continue to spend time in prison for something they are not able to resolve."²⁸

A spokesperson for the Parole Board has commented that the Bill balances the need to keep people safe with the protections in human rights legislation against arbitrary detention, noting that:

...the proposals also take into account instances where, for example, a murderer may genuinely not know the location of a victim's body if it has been moved".²⁹

²⁴ [Is 'Helen's law' an empty gesture?](#), Law Society Gazette, 20 January 2020

²⁵ [Prisoners \(Disclosure of Information About Victims\) Bill Explanatory Notes](#), para 28

²⁶ [Helen's Law: 'No body, no parole' rule fought for by murder victims' families 'has no teeth'](#), iNews, 30 January 2020

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

3. Progress of the Bill through Parliament

3.1 House of Commons

The Bill received its [second reading](#) on 11 February 2020. It received cross-party support, with spokespersons for Labour and the Liberal Democrats welcoming the Bill.

At [committee stage](#) the Government moved one substantive amendment. The amendment was supported by the opposition and was agreed without division. It would insert a new section 28B into the *Crime (Sentences) Act 1997*, which would require the Parole Board to take into account non-disclosure of the identity of a child victim by a prisoner serving a sentence of imprisonment for public protection³⁰ for the offence of taking or making an indecent photograph (or pseudo-photograph) of a child. The Bill already provides for the Parole Board to take account non-disclosure by prisoners serving extended sentences for such offences.

Report stage took place without further debate. Third reading took place without division.

For further details of the debate at all stages in the Commons see the Lords Library briefing: [Prisoners \(Disclosure of Information about Victims\) Bill: Briefing for Lords Stages](#), 13 March 2020.

3.2 House of Lords

The Bill was widely supported at [second reading](#). The Bill was considered in a [virtual committee](#). No amendments were made at this stage.

At report stage one new clause, moved by Baroness Kennedy of Cradley (Non-Affiliated), was agreed on division having been resisted by the Government.³¹

Lords amendment – Parole Board Database

The [new clause](#) agreed by the Lords would require the Parole Board to create and maintain a new database. The database would list details of family members of victims in cases covered by the Bill, where a prisoner refuses to disclose information about the whereabouts of a victim's body or the identity of a child in an indecent image.

The new clause would require the Parole Board to contact 'relevant persons' (defined members of the victim's family) to provide specified information about an offender's parole application.

The new clause would require the database to be created within six months of the Bill receiving Royal Assent. It would allow for victims and

³⁰ Sentences of imprisonment for public protection were abolished in 2012 and are no longer imposed, see Library briefing, [Sentences of Imprisonment for Public Protection](#), 6 June 2019

³¹ [HL Deb 1 July 2020 c759](#)

their families to opt out of receiving information and communications. The Secretary of State would be required to undertake a review of the effectiveness of this measure and report to Parliament within one year of the database being created.

[Explanatory Notes](#) have been provided for the amendment.

Debate

During the debate Baroness Kennedy explained that the amendment was built on one tabled by Baroness Barker (Liberal Democrat) at Committee, which had received support across the House.³² She said the amendment sought to put victims and their families at the heart of the Bill and to relieve the anguish that victims and their families experience from not knowing information about parole release hearings.

Baroness Kennedy noted that the Minister had said in Committee that processes already exist for victims and their families to receive information. However, she said that victims currently had to 'opt in' to these processes, and some victims who did not opt in were distressed when they discovered, through third parties such as the media or Facebook, that the offender had been released.

She said the amendment would stop this from happening by taking an 'opt out' approach. Lord German, speaking in support of the amendment, said that the opt-out principle built into the amendment was crucial.³³ Baroness Newlove and Baroness Barker also spoke in support of the amendment.

Responding for the Government, Lord Keen said that the amendment would effectively replicate some elements of the existing victim contact scheme for a limited group of people and place the duty on the Parole Board to administer it rather than the National Probation Service. He stated that the Parole Board was not equipped for such a function. He said:

There is already a well-established process delivered through the victim contact scheme to provide victims with information about the date and outcome of parole hearings, and they can request a summary of the Parole Board decision. This process also facilitates victims requesting the imposition of specific licence conditions for the offender's release, such as exclusion zones, and assists them in submitting a victim personal statement which will be considered by the Parole Board panel. The Government see no justification for replicating the excellent service provided by the victim contact scheme for a particular group of victims' families in a limited way.³⁴

Lord Keen raised what he described as "significant practical difficulties" in operating the scheme on an opt-out basis. He said the amendment would duplicate much of the work delivered under the victim contact scheme but would not replace it entirely. This would mean victims

³² [HL Deb 1 July 2020 c760](#). See [HL Deb 20 May 2020 c1167](#) for the Lords Committee debate.

³³ [Ibid c762](#)

³⁴ [Ibid c767](#)

would have to receive contacts from, and share information with, both the Parole Board and the victim contact scheme which could add to their distress. He gave details of a new process being trialled:

... whereby all eligible victims are referred directly to the National Probation Service, to ensure that they are all offered access to the victim contact scheme directly by it, thus ensuring that we reduce the risk of victims opting out before they are clear about the benefits of the scheme. The new process also incorporates a standard referral form that provides the service with the address, telephone number and email address of victims to allow for multiple methods of contact.³⁵

Baroness Kennedy expressed disappointment in the Minister's response. She pushed the amendment to a division and it was agreed (Content 267, Not Content 241).

The Commons is due to consider the amendment on 6 October 2020.

³⁵ Ibid c678

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