HOUSE OF LORDS Library Briefing

Prisoners (Disclosure of Information about Victims) Bill HL Bill 102 of 2019–21

The Prisoners (Disclosure of Information about Victims) Bill is a government bill. It is concerned with the obligations of the Parole Board when it considers whether an offender merits release from prison. It would place a statutory duty on the Parole Board to consider circumstances where offenders do not give certain details about their offences as part of its assessment as to whether that offender should be freed. These details concern the location of victims' remains and identity of child victims in indecent images. Guidance provided to Parole Board panel members already advises they consider any failure or refusal by an offender to disclose such information. This bill would make that a statutory obligation. The provisions in the bill would not change the statutory tests for the release of an offender.

The bill follows a campaign by Marie McCourt, the mother of Helen McCourt who was murdered in 1988. Ian Simms, the man convicted of her murder, has never revealed the whereabouts of her body. Certain provisions in the bill have been referred to as 'Helen's Law'. The bill also follows the case of nursery worker Vanessa George, who was convicted of the abuse of children and of making indecent images of her victims. Ms George has never disclosed the identities of the children involved, adding to the distress caused to the families of those at the nursery where she was employed.

The bill completed all its stages in the House of Commons on 3 March 2020. It received cross-party support. The provisions in the bill would apply to prisoners serving a life sentence for murder or manslaughter, and for those serving an extended determinate sentence (or a similar predecessor sentence) for manslaughter or for taking or making an indecent photograph or pseudo-photograph of a child. The Government amended the bill at committee stage to ensure it would also apply to cases where the Parole Board is making a public protection decision about a life prisoner convicted of similar qualifying offences of making indecent images of children.

The obligations to take such non-disclosures into account would apply to all such sentences, including those imposed prior to this bill coming into force. However, the obligations would only apply to decisions about the first release of an offender. Subsequent releases following a recall to prison would not be affected. The provisions of the bill would apply to England and Wales only.

James Tobin | 13 March 2020

Provisions in the bill

The bill has two substantive clauses. The provisions of the bill would apply to England and Wales only. Prisons, sentencing, and parole are devolved in Scotland and Northern Ireland.

Clause 1: Murder or manslaughter: prisoner's non-disclosure of information

Clause 1 applies to the release provisions relating to life sentences in murder, manslaughter and indecent image cases by placing a statutory obligation on the Parole Board to consider non-disclosure of information about a victim's remains or the identity of children in such indecent photographs when making a public protection decision (including a decision to release) about a prisoner.

When the Parole Board makes a public protection decision about a prisoner who is serving a life sentence for murder or manslaughter, and the board does not know where or how the victim's remains have been disposed, and believes that the prisoner has information about this that the prisoner has not disclosed, this fact must be taken into account. As the explanatory notes to the bill record, the relevant issue here is whether the Parole Board has subjective knowledge as to the fate of the victim's remains, and what they reasonably believe the prisoner to know about this.[1] The Government contend it is this subjective test that will enable the Parole Board to consider, for example, whether this non-disclosure is the result of a psychiatric disorder or a deliberate decision not to disclose the whereabouts of a victim's remains.

The provisions in clause 1 also apply to incidents where the Parole Board makes a public protection decision in relation to a prisoner serving a sentence of imprisonment for public protection for taking or making indecent photographs, or pseudo-photographs, of a child.[2] When the board does not know the identity of the child who appears in that image and believes the prisoner has such information that they have not given, this non-disclosure must be considered.

Clause 2: Manslaughter or indecent images: prisoner's non-disclosure of information

Clause 2 changes the release provisions for extended determinate sentences (and predecessor sentences) to place a statutory obligation on the Parole Board to consider the non-disclosure of information in similar situations to those set out in clause 1 in respect of victim's remains and in respect of indecent images.

Second reading

Moving the bill at second reading, the Lord Chancellor and Secretary of State for Justice, Robert Buckland, described the legislation as an important step:

> This is a short bill—it consists of just three clauses—but its importance cannot be underestimated. It responds directly to real-life issues that we know have caused, and continue to cause, immense distress to the families of victims of serious crimes.

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[1] Explanatory Notes, p 4.

[2] A pseudo-photograph is defined under the terms of the Protection of Children Act 1978 (as amended) as an image, whether made by computer-graphics or otherwise, which appears to be a photograph.

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> We have all lost people who are dear to us. We all know the closure and comfort that can arise from laying a loved one to rest. When we take into account the horrific circumstances of Helen [McCourt's] death, a proper burial and an opportunity to say goodbye must take on a wholly different dynamic for the McCourt family and others in their position. The campaign has resulted in this legislation. We have responded to the issues raised by it to identify a solution that works within the existing sentencing, release and Parole Board framework to ensure that a failure on the part of a prisoner to disclose such vital information is rightly and properly taken into account as part of the risk assessment of the prisoner before any release.[3]

He also addressed the issue of whether the bill should have gone further:

> I think it is right for me to deal at this stage with the concept of whether we should have gone further and introduced a rule of "no body, no release". Tempting though that might be […] there is a danger that if we proceed too far along that path, we could inadvertently create an artificial incentive for people to mislead the authorities and to feign co-operation or remorse. Of course, in another context, we see the dangers that are inherent in what I have described as superficial compliance with the authorities. There is a fine balance to be maintained, but I think that the bill as presented maintains it in a way that is clear, that increases public confidence in the system and that makes it abundantly plain to those who are charged with the responsibility of assessing risk that, in the view of this House, this issue is of particular public interest and public importance when it comes to the assessment that is to be made.[4]

Mr Buckland also commented on the importance of the Parole Board being able to make a subjective assessment of if, and why, an offender is withholding information:

> This subjective approach will allow the board to differentiate between circumstances in which, for example, the non-disclosure is due to a prisoner's mental illness, and cases in which a prisoner makes a deliberate decision not to say where a victim's remains are located. This subjective approach is fundamental to the proper functioning of the bill. It ensures that the non-disclosure and the reasons for it—in other words, the failure by the prisoner to say what they did with the victim's remains—are fully taken into account by the board when it comes to decision making. It is then for the Parole Board, as an independent body, to decide what bearing such information has on the risk that a prisoner may present and whether that risk can be managed safely in their community.[5]

Speaking from the Labour frontbench, Bambos Charalambous said his party supported the aims of the bill because:

> […] it will put into statute already established guidance for the Parole Board when making decisions about the suitability of serious offenders for release. The Parole Board's role is to protect the public by carrying out risk assessments on prisoners to decide whether they can be released safely back into the community. The decisions the Parole Board makes can be

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[3] HC *Hansard*, 11 February 2020, col 746.

[4] ibid, col 747.

[5] ibid, cols 747–8.

> life-changing for victims and prisoners, so we must never underestimate the gravity of the conclusions that the panel members come to.[6]

He too addressed whether the bill went far enough and what difference it would make turning existing guidance into a statutory obligation:

> Some will be disappointed and question whether the bill's provisions will make any practical difference, given the guidance that is already followed by the Parole Board. Some may believe that we need a policy of no body, no parole, such as that in force in parts of Australia. As many will know, the bill is a variation on a ten-minute rule bill tabled in 2016 by my hon. Friend the Member for St Helens North. His bill proposed an assumption against eligibility for parole in cases of a convicted offender's non-disclosure about their victim's remains. However, it is still right that the bill is before us and will be put into statute.[7]

The Liberal Democrats spokesperson (justice) Daisy Cooper also welcomed the bill.[8]

The McCourt's local MP Conor McGinn (Labour MP for St Helens North) described the debate on the bill as "bittersweet" given that Ian Simms was released from prison the week before.[9] Noting that he was still in favour of a stronger legislative presumption against release without disclosure, Mr McGinn still welcomed the Government's proposals:

> Although the bill is not absolutely a "no body, no parole" law, I understand that it will hugely strengthen the criteria that have already been laid down by the Parole Board. It would ill behove anyone watching this debate or hearing about the sequence of events that led up to Ian Simms's release not to ensure that this legislation is a hugely significant factor when they look at parole for convicted murderers.[10]

In also welcoming the bill, Lucy Telford (Conservative MP for Telford) questioned whether it would make any practical difference:

> The placing of a statutory duty on the Parole Board to ensure that the issue of non-disclosure is properly considered is a positive step and a very welcome gesture, but the bill will not fundamentally change the Parole Board's current practice. The families in such cases will still have to rely on the Parole Board's discretion, and that raises some questions about the Parole Board's role when it comes to victims' interests.
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> I know that there was a review of the Parole Board in 2018. One recommendation was that there should be a further, more in-depth review into the Parole Board's activity to see how legislation might actually make it a more transparent and accountable body. I would very much welcome such a review, especially if we could pursue it in a little more depth. We must

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[6] HC *Hansard*, 11 February 2020, col 750.
[7] ibid, col 751.
[8] ibid, col 757.
[9] ibid, col 754.
[10] ibid, col 755.

> continue to ensure that the rights of victims are equal to those of the offenders.[11]

Luke Pollard (Labour MP for Plymouth, Sutton and Devonport) lauded the bill. Little Ted's nursery, where Vanessa George was employed, is in Mr Pollard's constituency. Mr Pollard also reiterated calls for wider measures:

> Personally, I think that Vanessa George should still be behind bars. I do not see how a woman who refuses to name the children she abused should be let out and, indeed, I believe that if someone abuses a child, the state should say that for the childhood of that victim the perpetrator should be behind bars. That would give those children the entirety of what remains of their childhood in a protected space away from the accused. The fact that Vanessa George has been released without naming the children she abused shows that something was not right with the law and the experience of many of the parents throughout this process has been to stumble across deficiencies and difficulties in how it has worked. That needs to be addressed.[12]

Mr Pollard also questioned how the provisions in the bill would work when the primary charge for which an offender was convicted was not related to indecent images:

> [T]here are many more cases in which a charge of taking an indecent image of a child sits alongside other more serious charges, and reading the bill I am unsure how these provisions will work alongside additional charges when the primary charge is more severe. If the conviction is spent on the first charge, does the ability to withhold information on a subsequent charge of taking indecent images mean that the whole sentence could be locked down?[13]

Similarly, he asked what would happen should Vanessa George breach the licensing conditions under which she has been released:

> May I ask the minister whether, if a licence condition is now triggered and [Vanessa George] is called to jail, the provisions in the bill would apply? Or would they fall away, and would these provisions apply only to new offences?[14]

Similarly, Laura Trott (Conservative MP for Sevenoaks) asked about offenders who are subject to standard determinate sentences. She called upon the Government to monitor the impact of the bill once it was brought into force:

> I should like reassurance that offences under clause 2 with regard to indecent images should not ever fall under standard determinate sentences. We have discussed serious offences that are subject to such sentences, and I should be grateful for reassurance from the minister that that will not be the case. Secondly, on the duty for the Parole Board to take this into account, as numerous pieces of testimony have shown today, the Parole Board is not always as efficient in doing that as it should be. It would be useful if the department monitored the impact of the bill on sentencing and the extension of sentences as a result of its introduction.[15]

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[11] HC *Hansard*, 11 February 2020, cols 756–7.

[12] ibid, col 759.

[13] ibid, col 760.

[14] ibid.

[15] ibid, col 765.

In closing the debate, Chris Philp, the Parliamentary Under Secretary of State for Justice, addressed several issues that MPs had raised. About offenders convicted of multiple offences and how the bill would apply, he said:

> The hon. Member for Plymouth, Sutton and Devonport [Luke Pollard] asked some questions, one of which was: if there is a number of offences that somebody is serving a prison sentence for and only one of the sentences qualifies under clause 2, would the provisions still apply? The answer is that they would still apply, if the qualifying offence is one of a number of qualifying offences.[16]

About offenders recalled to prison, Mr Philp said:

> The provisions that we are debating apply to the first release that may occur. If a prisoner is released and then recalled, the statutory provisions that we are enacting will not apply, but the Parole Board guidance will, requiring it to take into account the non-disclosure—so the statutory provisions will not apply, but the Parole Board, under its guidelines, will have to account for those matters.[17]

On standard determinate sentences, he added:

> Where there is a standard determinate sentence, the provisions of the Bill do not apply because there is no Parole Board decision—release is automatic. Whether a sentence is a standard determinate sentence is a matter for the trial judge at the point of sentencing and it depends on whether the trial judge decides that the offender is dangerous. Clearly, for murder cases, for example, a life sentence with a tariff is mandatory, but with some of the indecent image offences in clause 2, it is conceivable that if a judge did not find that the offender was dangerous, they might hand down a standard determinate sentence. However, that was not the case with Vanessa George—it was an extended determinate sentence—and the expectation is clearly that any serious offender who is dangerous will receive an extended determinate sentence, and therefore, the bill's provisions would apply to those offenders.
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> On standard determinate sentences and releases more generally, the House rightly passed a statutory instrument a week or two ago moving back the automatic release point from half-way to two thirds for longer sentences, of seven years and over. We intend to go further in the sentencing review and bill later this year to make sure that the most serious offenders serve more of their sentence in prison, respecting the expectation of victims, which so many Members have spoken about this afternoon.[18]

Committee and report stages

The Government moved one substantive amendment and one further consequential amendment at committee stage. Speaking to the proposed changes, and in response to an intervention from

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[16] HC *Hansard*, 11 February 2020, col 768.

[17] ibid.

[18] ibid, col 769.

Sir Desmond Swayne (Conservative MP for New Forest West), Chris Philp said:

> There are two substantive clauses in this bill. Clause 1 relates to life sentences handed down for murder, manslaughter or indecent images. It is worth mentioning, in response to [Sir Desmond], that amendment 1 adds into the provisions of this bill sentences of imprisonment for public protection, which can also be handed down for making indecent images. Clause 2 covers the slightly broader type of sentence—namely, extended determinate sentences, whether they are handed down for manslaughter or the failure to disclose the subject of an indecent image. [Sir Desmond] is quite right to point out that in cases where there has been a failure to disclose the victim of an indecent image, it is more likely that there will be an extended determinate sentence than a life sentence. Indeed, in the case of Vanessa George, the sentence handed down was an extended determinate sentence, so that would have been caught by clause 2 rather than by clause 1.
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> The two clauses taken together cover the range of sentences that might be handed down—life sentences and imprisonment for public protection under amendment 1, and extended determinate sentences under clause 2.[19]

Mr Philp added:

> Amendment 2 to clause 1 is a technical, consequential amendment—a subsequent provision just to make sure that amendment 1 works technically.[20]

In later remarks at the end of the debate at committee stage in response to further contributions from MPs, Mr Philp also supplied further details on the Government's intentions about wider reform:

> To pick up on [Bambos Charalambous'] comments on the sentencing white paper, we do indeed intend to bring it forward later this calendar year. Hopefully, we can look at a much wider range of issues connected with sentencing to make sure that the punishment always fits the crime. In relation to a victims bill, it is our intention to legislate in that area later in the current session.[21]

He added:

> A wider review into the operation of the Parole Board will commence in due course—the so-called root-and-branch review announced in the manifesto last December […][22]

Both amendments were subsequently accepted without division. Report stage took place without further debate.

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[19] HC *Hansard*, 3 March 2020, cols 786–7. The explanatory notes to the bill record that, although an offender cannot currently receive a life sentence for offences related to indecent images under the Protection of Children Act 1978, it was previously possible for offenders to receive a sentence of imprisonment for public protection for this offence which falls into the definition of a life sentence. The amendment is therefore intended to ensure the provisions in the bill would cover such sentences (Explanatory Notes, p 2).

[20] HC *Hansard*, 3 March 2020, col 787.

[21] ibid, col 790.

[22] ibid, col 791.

Third reading

Opening proceedings at third reading, the Lord Chancellor and Secretary of State for Justice, Robert Buckland, reiterated the Government's intentions behind the bill:

> It is imperative that we protect the public from potentially dangerous offenders. Those offenders who do not disclose the whereabouts of a victim's remains or the identity of the victims in indecent images must be thoroughly assessed, and the non-disclosure must always be taken into account. We can all agree about the importance of stipulating in statute that appalling circumstances such as those addressed in this bill must be fully taken into account by the Parole Board when making any decisions on the release of such an offender. It is clearly in the public interest that all elements of a prisoner's release are given consideration, and in turn, it is in the interests of the Parole Board to be able to rely on statutory provision about always considering the relevant non-disclosure of information in its release assessments.[23]

For Labour, Bambos Charalambous reiterated his party's support for the bill but called for further measures aimed at helping victims of the offences in question and their families:

> While a duty is owed to victims by the Parole Board, it does not go far enough in my view, and the victims code certainly needs revamping. The Parole Board's decisions can have a profound effect on victims and prisoners alike, and no decision should be taken lightly. The fact that the Parole Board can place conditions on the release of a prisoner does not in my view go far enough, and it cannot address wilful refusal in relation to the non-disclosure of information. Let us be clear: the bill does not extend a prisoner's sentence, but it makes it clear that non-disclosure must be a factor in assessing the fitness of a prisoner to be released and their potential risk to the public.
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> There are still issues to be resolved regarding the Parole Board, such as the transparency of its decision making, the lack of information given to victims, the lack of emotional and practical support available to victims throughout the whole process, and even keeping people up to date with decisions about a prisoner's release. There are many areas of improvement that need to be looked at in relation to how victims are treated. Although they are outside the scope of this bill, they are matters that need to be viewed in tandem with the bill.[24]

MPs gave the bill a third reading without division.[25]

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[23] HC *Hansard*, 3 March 2020, col 793.

[24] ibid, col 795.

[25] ibid, col 796.