
Howard League Briefing on Sentencing Bill: Second Reading

Tuesday 16 September 2025

The Sentencing Bill contains measures in relation to:

- Sentencing
- Management of offenders after sentencing
- Bail
- Foreign Criminals

This Howard League briefing provides an overview of our key concerns, before taking each of these parts of the Bill in turn.

Key concerns

The Sentencing Bill has been introduced as a response to the Independent Sentencing Review and the recommendations published in its final report.¹ The legislation is complex, particularly as regards sentencing and the management of individuals on release, and making prison regimes more central to the operation of sentencing in a new model of 'earned progression' may lead to unintended consequences if not carefully implemented. There is a danger that people will be set up to fail in custody and on release, and that the reduction in demand for prison places the Ministry of Justice envisages may not be delivered in its entirety.

Moreover, while the government is right to address the prison capacity crisis by attempting to manage demand on prison places, the Bill does not go far enough to create a safe and sustainable system. Even if all the proposals in the Bill are effective, the prison system in England and Wales will face a similar capacity crisis in a few years' time. Overcrowding and conditions in prisons will continue to deteriorate from an extremely poor current baseline. The Ministry of Justice's own Impact Assessment of the legislation states:

All reduction for prison demand from these measures is assumed to be filled by new offenders as the prison population is expected to grow in line with increasing supply. It is expected that the additional prison places being built by the government will be filled (for example, after these reforms it is expected there will be around 2,000 more people in prison by May 2029 compared to current levels). As such, it is assumed there are no prison place savings from these measures.²

While there are some welcome proposals contained within the legislation, particularly around restricting the use of short custodial sentences and on Bail Act reform, this Sentencing Bill

¹ Ministry of Justice, *Independent Sentencing Review: Final report* (2025) <https://www.gov.uk/government/publications/independent-sentencing-review-final-report> accessed 10 September 2025

² MoJ, *Sentencing Bill Impact Assessment* (2025) <https://publications.parliament.uk/pa/bills/cbill/59-01/0299/hcb299.ia.pdf> p27

before Parliament ultimately ducks the primary reason prison numbers will continue to grow at unsustainable levels over the coming years: sentence inflation.³

Part 1: Sentencing

The Howard League supports the broad thrust of this part of the Bill, in particular clauses 1 and 2 introducing a presumption that the courts will suspend most custodial sentences of 12 months or less; and extending the power of the courts to suspend custodial sentences of up to 3 years. Analysis by the Ministry of Justice suggests that community orders and suspended sentence orders are associated with lower proven reoffending rates than short-term custodial sentences (of less than 12 months).⁴ We also welcome clause 5 on extending the maximum period for a court to delay a sentencing decision following conviction, from six months to 12 months.

While the Howard League welcomes clause 4 to amend the statutory purposes of sentencing by making explicit reference to protection of victims, it is regrettable that the government has not accepted the totality of the Independent Sentencing Review's recommendation in this regard: which was to also include introducing "crime reduction" as an overarching principle that governs the five purposes of sentencing. The Review intended this to ensure that the sentencing framework is best placed to make effective use of government resources by preventing future victims.

We support clauses 11 and 12, introducing a new 'Probation Requirement' which replaces the Rehabilitation Activity Requirement (RAR), providing probation practitioners more flexibility to align their engagement with an individual's risks and needs.

The Howard League questions the need for clauses 13, 14, 15, and 16. These clauses cover powers for the court to prohibit individuals from drinking establishments; attending sports and other public events; from driving; and allow for the imposition of restriction zones limiting people to specific geographical areas. These measures might actively work as barriers to a person's rehabilitation by restricting – for example – access to employment and education opportunities, while it remains to be seen whether monitoring these prohibitions will be proportionate for an already overstretched probation service to deliver effectively. There is already an established range of community sentence requirements and adding these punitive frills is unnecessary.

Clauses 18 and 19 introduce reform to the Sentencing Council, introducing a statutory requirement for the Council to publish an annual business plan which must be approved by the Lord Chancellor before publication, as well as introducing a statutory requirement that the Lord Chancellor and Lady Chief Justice must jointly approve sentencing guidelines before the Council can issue them as final, definitive guidelines. The Howard League is concerned the latter change in particular will undermine the independence of the Sentencing Council and lead to the politicisation of sentencing guidelines in the future.

³ The Howard League for Penal Reform, *Sentence inflation: a judicial critique* (2025) <https://howardleague.org/publications/sentence-inflation-a-judicial-critique/> accessed 10 September 2025

⁴ MoJ, *The impact of short custodial sentences, community orders and suspended sentence orders on reoffending* (2019) <https://assets.publishing.service.gov.uk/media/5d1c732ee5274a08cdbe45c4/impact-short-custodial-sentences.pdf> accessed 10 September 2025

Part 2: Management of offenders after sentencing

This part of the Bill revolves around Clause 20, which sets standard determinate sentence (SDS) release points to enable the government's proposed 'earned progression' model, by amending the Criminal Justice Act 2003. The new framework will apply to all SDS cases where release is automatic and not subject to a Parole Board decision. It will phase out early release under Home Detention Curfew (HDC) for those serving SDS and SDS40 is revoked. The progression model sets a minimum release point of one third for those serving SDS which currently have an automatic release point of 40% or 50%, while more serious SDS offences will have a 50% minimum.

The Bill's Explanatory Notes explain that this change sits alongside secondary legislation to strengthen the adjudication system for managing bad behaviour. The Notes go on to state: "Those whose behaviour in custody has resulted in the sanction of added days by an Independent Adjudicator (a District Judge) (under Rule 55A(3) of the Prison Rules 1999), will stay in custody past the one third point until those additional custodial days have been served".⁵ The Ministry of Justice has indicated that it intends to double the maximum number of added days per incident that an independent adjudicator can impose (from 42 to 84). There will also not be a maximum cap on time in custody, as recommended by the Independent Sentencing Review in its final report.

There are no new measures to incentivise good behaviour per se, and therefore 'earned progression' seems the wrong way to describe a model that depends far more on stick than on any apparent carrot. In whatever way the model should be properly described, the Howard League is concerned that prisons are not equipped to deliver regimes effectively or fairly in the current state of the system. We are particularly concerned that demographic characteristics such as age and neurodivergence affect how people understand and interact with regime.⁶ Some may be less able to engage and succeed, while others may occupy a more favourable position by virtue of how cultures in prison operate. There is a very real danger that people in prison will be set up to fail in unsafe and unproductive environments, leading to individuals spending far more time in custody than the Ministry of Justice intends.

HM Prison and Probation Service's own Annual Prison Performance Ratings for 2024/25 revealed that 22 prisons (almost a fifth of the estate) were given a rating of serious concern.⁷ This is the largest number of prisons rated as of serious concern since these performance ratings were introduced. The National Audit Office (NAO) described HMPPS as '...failing to meet its aims of providing a safe, secure and decent prison estate.'⁸ HM Inspectorate of Prisons (HMIP) has issued eight Urgent Notifications (notifying the Secretary of State of an urgent or significant concern) in the last two years.⁹ Safety in prisons continues to worsen –

⁵ UK Parliament, *SENTENCING BILL: EXPLANATORY NOTES* (2025)

<https://publications.parliament.uk/pa/bills/cbill/59-01/0299/en/240299en.pdf> accessed 10 September 2025, p27

⁶ See for example The Howard League for Penal Reform, 'How will the sentencing review recommendations be turned into operational reality?', *Howard League blog* (2025)

<https://howardleague.org/blog/how-will-the-sentencing-review-recommendations-be-turned-into-operational-reality/> accessed 11 September 2025

⁷ MoJ, *Prison Performance Ratings: 2024 to 2025* (2025)

<https://www.gov.uk/government/statistics/prison-performance-ratings-2024-to-2025>

⁸ NAO, *Increasing the capacity of the prison estate to meet demand* (2024)

<https://www.nao.org.uk/wp-content/uploads/2024/12/increasing-the-capacity-of-the-prison-estate-to-meet-demand.pdf> accessed 10 September 2025

⁹ MoJ, *Annual Prison Performance Ratings 2024/25* (2025)

<https://www.gov.uk/government/statistics/prison-performance-ratings-2024-to-2025/annual-prison->

levels of self-harm have reached a record high, and assaults continue to increase.¹⁰ Prisons are failing to deliver adequate levels of purposeful activity, something which is integral to rehabilitation. Three quarters of the prisons surveyed by HMIP were rated poor or not sufficiently good for purposeful activity.¹¹

We are also concerned that the use of additional days of imprisonment is high and rising, and contributory to the capacity crisis; in 2024, for example, the total 108,366 additional days awarded equated to almost 297 years of imprisonment.¹² Prior to the pandemic, additional days were even higher – in 2018, for example, more than 1,000 years of additional days were awarded and there is a real risk we will return to these levels of application, if not even higher again. Additional days are an ineffective tool for enforcing discipline – they serve as a long-term, as opposed to short-term, consequence and poor behaviour is adequately managed among people who cannot receive additional days. Experience in other jurisdictions suggests that more immediate consequences are more effective. Current practices also raise serious concerns relating to procedural justice. These concerns must be addressed if the earned progression model becomes the cornerstone of prison regimes.

In the second phase of the 'progression' model, individuals will enter a period of intensive supervision. Although not in the legislation itself, we are concerned that the proposed blanket electronic monitoring of individuals in this phase is disproportionate and will be challenging to deliver – for example, in relation to individuals who are released into unstable accommodation. Clauses 24 and 25 parallel Clauses 13-16 in introducing more restrictive licence conditions. Again, we question the necessity or effectiveness of these proposals.

Clauses 26 to 30 reforms recall by moving away from standard recall and replacing it with a fixed term recall of 56 days, after which individuals will be automatically released (barring exceptional circumstances). The Howard League remains unconvinced as to whether these changes to recall will be effective in the long term, as it means short spells in custody will remain a feature of the system despite the reforms in Part 1 of the Bill designed to minimise the use of short prison sentences. Reducing the likelihood of recall by abolishing recall to custody for administrative breaches entirely would be more effective.

The final stage of the progression model does limit recall in this way, as it envisages most individuals not being subject to active supervision, with recall only occurring if a new offence is committed. Clause 31 enables this by amending the Criminal Justice Act 2003, removing

[performance-ratings-202425](#) accessed 10 September 2025; see also MoJ, *Collection: Urgent Notification process* (undated) <https://www.gov.uk/government/collections/urgent-notification-process> accessed 10 September

¹⁰ MoJ, *Safety in custody: quarterly update to March 2025* (2025) <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-march-2025> accessed 10 September 2025

¹¹ HM Chief Inspector of Prisons for England and Wales, *HM Chief Inspector of Prisons for England and Wales: Annual Report 2023–24* (2024) https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/19/2024/09/25.13_HMI-Prisons_AR-23-24_v6a_Final-WEB.pdf accessed 10 September 2025; and HM Chief Inspector of Prisons for England and Wales, *HM Chief Inspector of Prisons for England and Wales: Annual Report 2024–25* (2025) <https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/19/2025/07/Annual-report-FINAL.pdf> accessed 10 September 2025

¹² Additional days of imprisonment are awarded following a formal disciplinary process known as an Independent Adjudication, presided by an external adjudicator. Sentences can be extended by up to 42 days for each single incident of prison indiscipline (the Ministry of Justice now proposes to raise this to 84 days). Only people on standard determinate sentences are eligible to receive additional days.

the requirement for Post Sentence Supervision – barring various exemptions considered to be high risk, such as those on Multi-Agency Public Protection Arrangements (MAPPA) and those convicted of terrorist offences or deemed to pose a terrorist risk. It is unclear what supervision for those under these exemptions will look like.

There are two other points to make about the government's proposed 'earned progression' model and that relates to who it excludes. Firstly, the Independent Sentencing Review recommended that individuals on Extended Determinate Sentences (EDS) also move to an 'earned progression' model, functioning differently from those on SDS and centred on a safe and managed way to earn release through engagement with the Parole Board. It is regrettable that the government rejected this recommendation as it is inconsistent with the treatment of comparable individuals on SDS convicted of serious crimes and unfair to deny rehabilitation opportunities for those willing to engage. There are more than 9,000 EDS sentenced prisoners, many of whom are serving very long sentences.¹³ Adopting this recommendation would have substantially contributed to the government's desire to bring down the prison population with the safety and security of Parole Board release.

Secondly, children are excluded from the opportunity to secure earlier release and are now likely to spend longer in custody than adults serving equivalent sentences. It is well established that children should spend the shortest period of time in custody, that regard should be given to their welfare, and that their best interests should be a primary consideration. However, the Bill's Equalities Statement says: "These changes to early release points will not apply to youth sentences. We recognise these changes create differences between how adults and children are treated. However, youth sentences were not considered by the Independent Review of Sentencing and so the recommended changes to release dates were designed for the adult system. We will be retaining Home Detention Curfew for individuals serving s250s to ensure that eligible individuals will still have access to earlier release. We will consider release arrangement for those serving youth sentences separately, in a manner that properly accounts for the circumstances and needs of children who offend".¹⁴ Ministers should be clear on what timetable they are working to address youth sentencing separately and promptly, with the context of this Bill and its changes in mind – especially as the Bill's changes to Sentences for Offenders of Particular Concern in Part 1 (clauses 7-10) does include children.

This Part of the Bill also makes some changes to community order requirements. The Howard League welcomes clauses 33 and 34 making changes that should mean Unpaid Work requirements are more efficient and flexible. We oppose clause 35, which enables a probation provider to publish the names and photographs of adults subject to an unpaid work requirement. Again, this is an unnecessarily punitive measure that could provide a barrier to rehabilitation and lead to unintended problems not just for the individuals concerned, but for their immediate family members – especially their children. Stigmatising prison leavers does not serve their reintegration and restoration to life in the community.

We welcome clauses 36 and 37 which provide for automatic early termination of community orders and the supervision period of suspended sentence orders once all court-ordered requirements and all other objectives in a sentence plan are complete. As the Ministry of

¹³ MoJ, *Offender management statistics quarterly: January to March 2025* (2025) <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2025> accessed 11 September 2025

¹⁴ MoJ, *Sentencing Bill equalities statement* (2025) https://assets.publishing.service.gov.uk/media/68b80f92b0a373a01819fd76/Sentencing_Bill_Equalities_Statement_2_.pdf accessed 10 September 2025, p38

Justice envisages, this should provide an incentive for individuals to comply and complete orders in a timely manner.

Part 3: Bail

The Howard League broadly welcomes clause 41, which builds on the presumption to suspend short sentences by amending the ‘no real prospect’ test in the Bail Act 1976 so that fewer exceptions to bail apply where the court considers an immediate custodial sentence unlikely. The clause also amends the Act so the court can impose an electronic monitoring requirement and adds a welcome list of factors that the court should take into account in its decision-making, namely whether the defendant is pregnant, a primary caregiver, or a victim of domestic abuse.

Part 4: Foreign Criminals

Clause 42 is described in the Explanatory Notes as a “placeholder for a substantive clause which will allow the Lord Chancellor to make provision about the deportation of foreign criminals and about the processing of information about foreign criminals for the purposes of the exercise of functions under the Immigration Acts”.¹⁵ The Howard League is concerned that major legislation could be introduced with such a lacuna being presented to Parliament. It seems far from ideal that the Bill’s memorandum on the European Convention of Human Rights is only able to state that: “the topic of the deportation of foreign criminals will inevitably engage Articles 2, 3, 5, 6, and 8 of the ECHR. It is not possible to provide a detailed analysis on the wording of the marker clause”.¹⁶ This will require anxious scrutiny by Parliament when such provision is made.

¹⁵ UK Parliament, *SENTENCING BILL: EXPLANATORY NOTES* (n5) p35

¹⁶ UK Parliament, *THE SENTENCING BILL 2025: EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM* (2025) https://publications.parliament.uk/pa/bills/cbill/59-01/0299/echr_memo.pdf accessed 10 September 2025, p26