
Howard League Briefing on Sentencing Bill: Second Reading, House of Lords

Wednesday 12 November 2025

The Sentencing Bill has been introduced as a response to the Independent Sentencing Review and the recommendations published in its final report.¹ There are a range of welcome proposals in the Bill, many of which are necessary to manage demand on the system given the unsustainable growth in prison numbers over many years. These include:

- Introducing a presumption that the courts will suspend most custodial sentences of 12 months or less;
- Extending the power of the courts to suspend custodial sentences of up to 3 years;
- Extending the maximum period for a court to delay a sentencing decision following conviction, from six months to 12 months;
- 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;
- Providing 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;
- 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, as well as adding a welcome list of factors that the court should take in to account in its remand decision-making, namely where the defendant is pregnant, a primary caregiver, or a victim of domestic abuse.

This Howard League briefing focuses on three broad areas where Members of the House of Lords may wish to express specific concerns. For a full narrative analysis of the Bill as introduced, please see the briefing we produced for the Second Reading in the House of Commons.²

Earned progression and the use of additional days of imprisonment

The flagship proposal of both the Independent Sentencing Review and this Bill is to introduce an 'earned progression' model that would enable some people to be released from prison one-third of the way through their sentences. The Howard League welcomes this in principle but is concerned that earned progression as conceived in the legislation may lead to unintended consequences if not carefully implemented. There is a danger that people will

¹ Ministry of Justice, *Independent Sentencing Review: Final report* (2025) <https://www.gov.uk/government/publications/independent-sentencing-review-final-report> accessed 5 November 2025

² The Howard League for Penal Reform, *Briefing on Sentencing Bill* (2025) <https://howardleague.org/briefing-on-sentencing-bill-second-reading/> accessed 5 November 2025

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.

The problem lies in a decision by ministers to take a flawed existing internal punishment process in prisons – through which some people can be given additional days of imprisonment – and make it the cornerstone of the new policy. The proposed arrangements would double the number of additional days that people can receive for breaches of prison rules, putting more pressure on capacity, and leave open the possibility that some are released from custody without supervision.

Additional days of imprisonment are a form of punishment awarded through prison disciplinary procedures. If someone serving a determinate sentence is found to have breached a prison rule, they can have days added to their time in custody by an external adjudicator, usually a district judge. Additional days are not treated in the same way as sentences handed down by the criminal courts, which have release part of the way through and the remainder of the sentence on licence; people serve the entire period of additional days in prison.

Currently, the maximum number of additional days that can be imposed on someone for one incident is 42. The government has previously indicated in the House of Commons that it intends to use secondary legislation to double this to 84.³ The Ministry of Justice (MoJ) has also suggested that there will be no cap on the total number that can be awarded to someone on the earned progression model – in spite of a recommendation from the Independent Sentencing Review that there should be a halfway point limit on how long someone can be kept in custody on additional days under the earned progression model.

The Howard League has since published a policy briefing explaining how the planned changes raise significant public safety concerns.⁴ The lack of an upper limit would make it possible for people in prison to receive so many additional days that they reach the end of their sentence and get released into the community without any form of supervision from probation. Similarly, doubling the number of additional days that can be awarded would mean people get to their sentence end date twice as fast.

The additional days process is also unfair and ineffective in maintaining good order and discipline. As additional days can only be awarded to people on determinate sentences (not those serving indeterminate sentences, civil orders and Detention and Training Orders, nor people on remand), they fuel a sense of injustice and unequal treatment behind bars. There are also concerns around whether the process is fair and just, including with regard to access to legal representation, administrative procedure, the quality of evidence, and adherence to legal thresholds.⁵ Since the pandemic, the default position has been to hold adjudications as online hearings, despite there being a discretion to hold them face-to-face, which risks fairness and access to justice, particularly for vulnerable prisoners or those with communication needs.

Resentment is likely to rise even higher under the government's proposed changes, as it appears that the harsher additional days structure might apply even to people who are excluded from the earned progression model, including more than 9,000 people on extended determinate sentences and children. We are also concerned that there may be

³ UK Parliament, *House of Commons Sentencing Bill Second Reading Debate* [Sentencing Bill - Hansard - UK Parliament](#) accessed 5 November 2025

⁴ The Howard League For Penal Reform, *Earned Regression: How a flawed approach to punishment risks making the prisons crisis worse* (2025) <https://howardleague.org/wp-content/uploads/2025/10/Earned-Regression-November-2025.pdf> accessed 5 November 2025

⁵ *Ibid.*

disproportionate impact on certain cohorts. This includes young adults, who reside in some of the most violent and unsafe prisons in the estate and have the highest rates of involvement in assaults (including as victims).⁶ Racial disproportionality in the use of additional days is long established and continues to persist.⁷

We urge Members of the House of Lords to seek assurances that the proposal to double the number of days that can be awarded per incident be dropped. The Independent Sentencing Review's recommendation of a halfway point limit on how long an individual can be kept in custody through additional days is also a necessary safeguard that should be adopted in any secondary legislation.

Sentencing, recall and 'naming and shaming' concerns

While the Howard League welcomes proposals 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.

The Howard League questions proposals to allow the courts to prohibit individuals from drinking establishments; attending sports and other public events; from driving; and which 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.

Part 1 of the Bill also introduces reforms 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.

On recall, the government proposes to move away from standard recall and replace 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 Bill's reforms 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.

⁶ MoJ, *Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to March 2025. Self-harm and Assaults to December 2024* (2025) <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2024> accessed 6 November 2025

⁷ See: Howard League, *Earned Regression* (n4) and UK Government, *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System* (2017) <https://www.gov.uk/government/publications/lammy-review-final-report> accessed 29 October 2025

The Howard League opposes the proposal to enable 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.

Sentence inflation and why this legislation does not go far enough to solve the prison capacity crisis

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.⁸

Ultimately the Bill ducks out of the reform of longer sentencing, and the Independent Sentencing Review's recommendation to include those on extended determinate sentences in its 'earned progression' model were not accepted. The Review itself was clear that sentence inflation, in response to penal populism, is the key driver behind the unsustainable growth in prison numbers. The Howard League would direct Members of the House of Lords to the paper that we published on this topic in 2024, signed by the four surviving former Lords Chief Justice of England and Wales – Lord Woolf, Lord Phillips of Worth Matravers, Lord Thomas of Cwmgiedd, and Lord Burnett of Maldon – and Sir Brian Leveson, the only surviving President of the Queen's Bench Division who was also Head of Criminal Justice.⁹

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⁸ MoJ, *Sentencing Bill Impact Assessment* (2025) <https://publications.parliament.uk/pa/bills/cbill/59-01/0299/hcb299.ia.pdf> p27, accessed 5 November 2025

⁹ The Howard League for Penal Reform, *Sentence inflation: a judicial critique* (2025) <https://howardleague.org/publications/sentence-inflation-a-judicial-critique/> accessed 5 November 2025