

# How the PCSC Bill will entrench racial inequality in the criminal justice system: an overview

October 2021

This briefing outlines how 10 clauses in the Police, Crime, Sentencing and Courts Bill (the PCSC Bill) will deepen racial inequality in the criminal justice system (CJS) without evidence that they will reduce crime or improve public safety. We draw on the government’s own [equality assessments](#), which acknowledge that most of the provisions reviewed in this briefing are indirectly discriminatory. We also highlight the government’s lack of evidence that they are a ‘proportionate means of achieving a legitimate aim’ and their lack of sufficient mitigation of their impact on Black, Asian and minority ethnic communities. It is therefore our view that the Bill does not adhere to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010. We call on the government to withdraw or amend these 10 clauses. Our key concerns and the relevant clauses are listed in Figure 1. Each clause is described in more detail below.

Figure 1

Key concern	Relevant clauses
Increasing the use of suspicion-less stop and search powers and not requiring a criminal burden of proof	<ul style="list-style-type: none"> <li>Serious Violence Reduction Orders (SVROs) <i>Part 10, Clause 140 and 141</i></li> </ul>
Longer prison sentences for a range of offences	<ul style="list-style-type: none"> <li>Assaults on emergency workers <i>Part 1, Clause 2</i></li> <li>Mandatory minimums <i>Part 7, Clause 101</i></li> <li>Whole life orders for 18–20-year-olds <i>Part 7, Clause 103-105</i></li> </ul>
More punitive sentencing measures, including additional requirements not handed down by the courts	<ul style="list-style-type: none"> <li>Extending minimum tariffs for certain life sentences <i>Part 7, Clause 106</i></li> <li>Increasing the portion of a sentence spent in prison <i>Part 7, Clause 107 and 108</i></li> <li>Requiring an admission of guilt for diversionary and community cautions <i>Part 6, clause 78 and 87</i></li> <li>Powers to prevent automatic release <i>Part 7, Clause 109 and 110</i></li> <li>Probation officers to set additional license conditions <i>Part 7, Clause 111 and 127</i></li> </ul>
Criminalising marginalised communities	<ul style="list-style-type: none"> <li>New police powers for unauthorised encampments <i>Part 4, Clause 62</i></li> </ul>

We are also concerned that:

- The cumulative impact of these 10 clauses combined will further entrench racial disparity and undo progress which has been made since the publication of [the Lammy Review](#).
- Many of these clauses will widen the net and expand the number of people who come into contact with the CJS, which can have negative implications for a person's life.
- There is no evidence that measures to increase sentence lengths or to increase punitive requirements and powers will deter people from committing crime or improve public safety. Instead, [longer sentences will put more pressure on an already strained prison system](#).
- The government claims that some of these measures will increase the public's trust and confidence in the CJS, but there is a lack of evidence to support this. Relevant research in this area has found that the public is poorly informed about the actual severity of existing sentencing.
- Some clauses contain elements of retrospective sentencing whereby the government and CJS agencies are adding additional requirements and conditions to a person's sentence, which were not handed down by the court at the time of sentencing. This bypasses important protections of the judicial process.
- The government's equality statements have not considered how people can experience multiple forms of discrimination and have therefore not given due regard to the impact these proposed changes are likely to have on Black, Asian and minority ethnic women, children, young adults and people with religious beliefs, such as Muslims in the CJS.
- Some of the measures could have unintended negative consequences. For example, spending more time in prison rather than under probation supervision in the community could have an adverse impact on people's resettlement.
- There has been very limited consultation with disproportionately impacted communities in both designing these policies and for the government to understand how to effectively mitigate against any indirect discrimination. Where there has been some consultation (for example, in relation to [SVROs](#) and [powers for responding to unauthorised encampments](#)), the government has acknowledged the concerns of respondents regarding racial disparity, but these have been ignored or dismissed.

## Clauses of particular concern

### Increasing the use of suspicion-less stop and search powers

#### 1. Serious Violence Reduction Orders (SVROs) *Part 10, Clause 140 and 141*

The Bill will allow courts to issue Serious Violence Reduction Orders (SVRO) against those who are convicted of offences involving knives or offensive weapons. An SVRO can be imposed on a person despite no evidence they ever handled a weapon. SVROs can be imposed lawfully where:

- A person does not use or have possession of an offensive weapon when an offence takes place.
- If more than one person is involved, it only requires that a person 'ought to have known' that someone else had a knife or offensive weapon.

Police officers will have the power to stop and search a person who is subject to an SVRO to look for knives or offensive weapons, without prior authorisation under Section 60 or without recent intelligence or other reasonable grounds for suspicion that someone is in possession of a weapon at the time of the stop. The [government has admitted](#) that the policy risks searches being ineffective as searches will not be based upon recent intelligence.

An SVRO can last for between six months to two years and can be renewed indefinitely. During this time, the Order will apply continuously whenever the person is in a public place. This is a drastic extension of suspicion-less stop and search powers which are currently limited to 24 hours in a restricted area under Section 60 of the Criminal Justice and Public Order Act 1994 (the CPO Act). We believe police officers already have adequate powers to stop and search under Code A of the Police and Criminal Evidence Act 1984.

The Bill would also create a new offence of breaching an SVRO. A breach can occur by failing to do anything required by the order, doing anything prohibited by it, or obstructing a police officer in the exercise of any power relating to it.

This could be broadly interpreted and include requesting that the police provide their legal authority for subjecting someone to a stop and search or failing to answer a police officer's questions.

The breach of an SVRO can result in up to two years of imprisonment, an unlimited fine or both, even though there will have been no criminal process in relation to the original, alleged offending behaviour. This is the latest in a concerning line of recent civil orders which can be given on a lower standard of proof than in a criminal court (such as Knife Crime Prevention Orders and Criminal Behaviour Orders).

The government has stated that it is likely that Black men will be disproportionately impacted by SVROs. Stop and search powers are already disproportionately used against Black people. In 2019/20, Black, Asian and minority ethnic people were over four times more likely to be stopped and searched than White people. For Black people specifically, this was almost nine times more likely. SVROs will compound this disproportionality.

There is also a risk that there will be an increase in the use of stop and accounts as police attempt to identify someone on an SVRO to be searched. If stop and accounts or stop and searches are not conducted sensitively or individuals are frustrated at being stopped and searched on a regular basis, we are concerned that there might be an increase in the number of stops which result in arrest for public order offences, obstruction or assault thereby both net-widening and increasing racial disparity.

The government has stated that it will mitigate the potential racial disparity by piloting SRVOs to evaluate their use, before deciding whether the Orders will be rolled out nationally. The government has also acknowledged that it will be difficult to evaluate the deterrent effect of SRVOs. No details have been published about the nature of the evaluation and under what basis there could be a wider roll out. The government previously committed to evaluate a pilot use of relaxations to suspicion-less searches conducted under Section 60, but permanently made the changes despite [not having published the evaluation](#) of their impact or any evidence the searchers reduced violent crime.

Amendments have been tabled to [remove Clause 140](#) from the Bill and to limit both the conditions in which SVROs can be imposed and the harms caused to those who receive them. More details can be found in [a briefing](#) by Liberty.

An amendment has also been tabled to [repeal Section 60](#) from the CPO Act 1994, which provides for suspicion-less stop and search. More details about the harms of suspicion-less stop and search can be found in [a briefing](#) by the Criminal Justice Alliance.

## **Longer prison sentences for a range of offences**

### **2. Increasing the maximum sentence for assaulting emergency workers from 12 months to two years *Part 1, Clause 2***

We recognise the importance of protecting frontline workers. But we have concerns about what factors might lead to an assault on an emergency worker (particularly police) and what might constitute as an assault. How the police conduct a stop and search can impact on the outcome. Police officers can sometimes engage in ‘fishing’, where they pursue a person for an alternative offence if their original suspicions for the stop turn out to be baseless. If the person being searched perceives this as unfair, it may escalate and result in a charge against them – usually ‘assault on an officer’. In Black, Asian and minority ethnic communities, experiences of heavy-handed policing and ‘fishing’ are common. Due to these police techniques, this clause could lead to more minority ethnic people being charged with assaulting an emergency worker and receiving a longer prison sentence. The government has acknowledged that this change would disproportionately affect Black people and has provided no evidence that increased sentences will reduce this type of crime.

A [recent briefing](#) by Agenda and Alliance for Youth Justice explains that girls and young women’s experiences of violence and abuse can drive them into the CJS in a number of ways, as the survival strategies they use and their responses to trauma may put them at risk of offending. Assaults on emergency workers are serious offences which should not be accepted as part of their job. However, the frontline staff who deal with severe and complex problems are not always equipped and adequately resourced to identify and respond to the challenges facing young women. Black young women are particularly likely to be drawn into the criminal justice system this way – with assaults on emergency workers making up a staggering 17% of the total offences leading to a custodial sentence for Black young women aged 18–24-years-old. Increasing the sentences for these crimes will not keep frontline workers safe.

Young women in contact with the police and other emergency workers are often reacting under extreme stress. Instead, staff should be given proper training to recognise the signs of trauma and distress and respond in ways that de-escalate the situation.

### **3. Mandatory minimum sentences for particular offences *Part 7, Clause 101 (2) (3) (5)***

The Bill introduces mandatory minimum sentences for particular offences, such as threatening with a weapon or bladed article, repeat weapon offences and repeat drug trafficking offences. For certain offences (particularly drug offences and those heard in the Crown Court), some ethnic groups are more likely to be sentenced to prison and are more likely to be sent there for longer than their White counterparts for the same offence. Analysis from the Ministry of Justice shows that Black women are about 25% more likely than White women to be sentenced to prison at Crown Court. Once in prison, people from certain ethnic groups will have a worse experience of custody due to their race or religion (for example, minority ethnic prisoners are more likely to report having poorer treatment and Muslim prisoners report more negatively about their treatment by staff in prison).

The government has said it does not have the data to assess the impact this policy will have on groups with protected characteristics. However, using indicative data from the existing prison population, the government has recognised that individuals from minority ethnic communities are likely to be more affected and particularly disadvantaged by this policy. The government has justified this policy as ‘restoring confidence in the CJS.’ However, they provide no evidence that increasing sentences stops people from committing these types of crimes, increases public safety or increases confidence. Relevant research in this area has found that the public is poorly informed about the actual severity of existing sentencing.

One alternative way to increase the public and victims’ confidence in the criminal justice system would be to increase access to restorative justice (RJ). Research shows that RJ can improve victims’ wellbeing and satisfaction, as well as reduce reoffending. An [amendment has been tabled](#) that would require government departments to publish a national action plan for RJ. More details can be found in a [briefing](#) by Why Me? and the Criminal Justice Alliance.

#### 4. Whole life orders for children and changes to the Detention at Her Majesty's Pleasure sentences for children *Part 7, Clause 103, 104 and 105*

The Bill will increase sentences for children who commit serious offences, as well as introducing a life sentence for 18 to 20-year-olds:

- Judges will have the new power to impose whole life orders on people aged 18 to 20 in exceptional and serious circumstances. Currently, whole life orders can only be imposed on people aged 21 and above.
- There is a mandatory life sentence for children who commit murder known as Detention at Her Majesty's Pleasure (DHMP), which has a 12-year minimum term for all children. The Bill introduces a sliding scale of minimum terms which takes into consideration the age of the child and the seriousness of the murder - the older the child and the more serious the murder, the higher the starting point. In practice, this means that under 14-year-olds could receive sentences of up to 15 years, 15-16-year-olds could receive sentences of 10 years and 17-year-olds could receive sentences of up to 27 years.
- Children on DHMP sentences can undergo a minimum term review to determine if there should be a reduction in their time spent in custody. The Bill restricts opportunities for minimum term reviews.

The government does not have the data to assess the impact this policy will have on groups with protected characteristics. However, children from ethnic minorities are overpoliced, more likely to be stopped, searched and arrested, less likely to be diverted, and are therefore disproportionately likely to end up in prison and receive a longer sentence (including for the most serious offences). Black and minority ethnic children now represent 52% of children in prison, compared with only 18% of the general child population. During their time in youth custody, Black and minority ethnic children consistently report worse experiences and treatment than white children. It is also well-established that lengthy prison sentences can have [adverse impacts on children and young adult's development](#). The government has provided no evidence that these changes will improve public safety or reduce reoffending.

Amendments have been tabled to [withdraw Clause 103](#) from the Bill, [remove the increases to the current 12-year-minimum term](#) and [remove restrictions on term reviews](#). More information can be found in a [briefing](#) by the Alliance for Youth Justice (AYJ).

## More punitive sentencing measures

### 5. Requiring an admission of guilt for diversionary and community cautions *Part 6, Clause 78(2)(b) and 87(2)(b)*

We welcome efforts to divert people from courts through Out of Court Disposals. However, the Bill requires people to make an admission of guilt to qualify for a formal diversionary or community caution.

Black, Asian and minority ethnic people (including children) are less likely to benefit from formal diversionary measures, usually given by the police, as low levels of trust and confidence in the criminal justice system mean they are less likely to admit guilt and therefore more likely to receive a prosecution. If diversion out of the criminal justice system is unequal, it will increase racial inequality in the CJS. The government cites evidence from the Lammy Review that minority ethnic people's lower levels of trust in the CJS may result in indirect discrimination.

[The Lammy Review](#) also showed the disproportionate impact of criminal records on children from minority ethnic backgrounds. The Bill will mean that anyone who receives a diversionary caution will have to disclose it on a basic criminal record check for three months afterwards. This could act as a barrier to employment, education, housing and other opportunities. We support [the call](#) for the three-month disclosure period for diversionary cautions to be removed from the Bill, so that people can move on with their lives. The [Centre for Justice Innovation](#) and the [Revolving Doors Agency](#) have published briefings on effective out of court disposals.

### 6. Longer time spent in prison for those on discretionary life sentences *Part 7, Clause 106*

Discretionary life sentences may be imposed where a serious offence (such as manslaughter, rape or grievous bodily harm with intent) has been committed. The court will set a minimum term (a tariff) that must be fully served in prison before a person can be considered for release by the Parole Board. The Bill will change the starting point for how minimum tariffs are determined. Courts will have to calculate the custodial term of a sentence so that a person spends at least two-thirds of a determinate sentence in prison, instead of half their sentence, which is currently the case. This clause effectively means that people on discretionary life sentences will spend a longer portion of their overall sentence in prison.



The government does not have the data to assess the impact this policy will have on groups with protected characteristics, however research shows Black men are more likely to be sentenced to custody and for longer than their white counterparts for the same offence.

#### **7. Increasing time spent in prison for those convicted of certain violent and sexual offences *Part 7, Clause 107 and 108***

Currently, someone serving a custodial sentence handed down by the court will serve half of their sentence in prison and the remaining half under probation supervision in the community. The Bill will increase the time that people will be required to spend in prison by 17% if they are serving a standard determinate sentence for some serious violent, sexual and drug offences. This will also apply to children who are charged with these offences. The government has recognised that Black people will be adversely impacted by these changes as Black men and young Black boys are already more likely to be sentenced to custody and receive longer sentences (so therefore already spend longer in prison). The government has not provided any evidence that increasing the part of the sentence served in prison will be a deterrent or reduce reoffending. The government argue that keeping some people in prison for longer will increase public safety while they are in custody, but has not acknowledged that reducing the time spent in the community under probation supervision might have adverse impacts on someone's rehabilitation.

The government has explained how its improvements to family contact provision in some prisons will mitigate against a longer time spent in prison. It is deeply concerning that improved family engagement services and in-cell telephony is being used to justify holding people in prison for longer, where they will be separated from their families. People spending less time in prison, so they can return to their families and communities on licence under probation supervision would be the best way to strengthen their relationships and build pro-social networks.

Amendments have been tabled to Clause 107 that will limit the number of [children](#) and [people](#) in prison that this clause would apply to.

#### **8. Discretionary powers to prevent automatic release *Part 7, Clause 109 and 110***

The Secretary of State will have a new power to refer certain prisoners who are identified as a significant risk to the public (of committing specific offences, such as murder or terrorist-related offences) to the Parole Board

instead of automatically releasing them. The Parole Board would then have to decide whether it is safe to release them. However, the Bill also provides for the Parole Board to set aside its release decisions at the power of the Secretary of State, without the need for a judicial review by the High Court.

The government states that this power could also be used for those who are deemed to present a significant danger to the public at the time of their release, but whose offence at the point of sentencing was not serious enough to meet the threshold for Parole Board oversight.

For example, this would enable people convicted of non-terrorism offences to be prevented from release, if there is concern that they have become radicalised in prison and now present a terror threat. The perception of Islam being linked with terrorism has become institutionalised in the criminal justice system, despite only 1% of Muslim prisoners being convicted of terrorism-related offences. [The Young Review](#) and [research by Maslaha](#) has found that Muslim people in prison face discrimination: they feel that they are stereotyped, their behaviour policed and any religious practices (such as praying out loud or in congregation) more likely to be seen through a lens of terrorism and perceived as extreme and as a signifier of radicalisation.

The government acknowledges that Black, Asian and minority ethnic men are disproportionately represented in the group that this power applies to. It also acknowledges that there may be potential for unconscious bias in the assessment of risk, dangerousness and decisions regarding referrals to the Parole Board. Despite this, the government has stated that it does not anticipate any faith-based equality issues will arise because of this power and does not anticipate that it will be used inappropriately or to target particular groups. Although the government will monitor and review this power, it does not explain what will happen if it is found to be used in an unfair or disproportionate way. There is a clear risk that people who appear Muslim or are practicing Islam will be unfairly assessed as presenting a danger to the public and as a result may spend longer in prison. Any public protection concerns must be founded on firm evidence. Prison Reform Trust has published [a briefing](#) highlighting further concerns with Clause 109.

## **9. Powers for probation officers to set additional license conditions for prisoners *Part 7, Clause 111 and 127***

Probation officers will have responsibility for setting licence conditions for fixed term prisoners, including varying curfew requirements made under a

community order or suspended sentence order. Probation officers would have the power to further restrict a person's liberty beyond what the court has decided is necessary. Probation officers could require that a person adheres to additional conditions, attends extra appointments and/or spends longer periods under curfew when their movement is restricted. Failing to abide by these additional restrictions could involve breach proceedings and may result in imprisonment. [Recent research by HM Inspectorate of Probation](#) showed that minority ethnic groups felt that probation services lacked cultural understanding. This may deepen racial disparities, as it risks probation officers using discretionary powers to place additional restrictions on people from minority ethnic groups where bias and/or lack of cultural understanding could play a part in their decision-making.

## **Criminalising marginalised communities**

### **10. Criminalisation of trespass and new police powers for encampments** *Part 4, Clause 62*

The Bill will create a new offence of residing on land without consent or with a vehicle and prevents a person returning to a site within a 12-month period. It also contains a power to seize a vehicle (which could include homes) until the conclusion of criminal proceedings. The government consulted on the effectiveness of enforcement against unauthorised encampments in 2018.

The government's consultation response acknowledged concerns about the extension of powers which would indirectly discriminate against Gypsy, Roma and Traveller (GRT) communities, as they would be most affected by any change. Most police forces and Police and Crime Commissioners that responded to the consultation opposed the proposal to criminalise trespass, as the police already have sufficient powers. Instead, the police who responded noted that they would prefer that the focus was on providing more authorised sites. GRT people are already disproportionately represented in the CJS and experience further discrimination and poorer outcomes. This provision would exacerbate this.

Amendments have been tabled that would [remove Clause 62](#) and [introduce a statutory duty](#) to require that local authorities provide authorised sites for the GRT community. More information can be found in [a blog](#) written by The Traveller Movement.

This briefing was produced by a coalition of criminal justice and race equality organisations: EQUAL, Criminal Justice Alliance, Clinks, Alliance for Youth Justice, Agenda, Nacro, Transition to Adulthood Alliance, Prison Reform Trust, Zahid Mubarek Trust, Maslaha, Do It Justice Ltd, Revolving Doors Agency, Leaders Unlocked, Switchback and Women in Prison.

Our full analysis of the Bill is available at: [Entrenching Racial Disparities. Response to the Police, Crime, Sentencing and Courts Bill.](#)

The clause numbers relate to the Bill as it was introduced in the House of Lords ([HL Bill 40](#), dated 6 July 2021). Any references to the PSED, discrimination and protected characteristics are used as they are defined in the [Equality Act 2010](#).

A recording of an event the coalition held for Peers on this topic can be viewed [here](#).

A short explainer video about the Bill can also be viewed [here](#).

If you have any questions or would like more information about these issues, please contact the Criminal Justice Alliance's Senior Policy Officer Hannah Pittaway on: [Hannah.pittaway@criminaljusticealliance.org.uk](mailto:Hannah.pittaway@criminaljusticealliance.org.uk).