

POLICE, CRIME, SENTENCING AND COURTS BILL

HOUSE OF COMMONS PUBLIC BILL COMMITTEE

Written evidence submission on the behalf of Dr Robert Jones, University of South Wales

June 2021

About

The Centre for Criminology at the University of South Wales was established in 2001 and comprises a team of active researchers and research students with specialisms in homicide and violence, policing, youth justice and youth policy, probation and prisons, the rehabilitation and resettlement of offenders, prisoners' children and families, substance misuse, green, global and transnational criminology, crime prevention, animal abuse, informal justice and alternatives to prosecution and imprisonment. Members also collaborate with colleagues in the Centre for Social Policy and the International Centre for Policing & Security.

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Executive Summary

This written evidence submission has been prepared to help the Committee better understand the ways in which the *Police, Crime, Courts and Sentencing Bill* will impact on Welsh devolution and devolved services. The main points raised in this submission are summarised below:

- The UK Government's formal controls over policing and criminal justice overlap and intersect with the Welsh Government's responsibilities over a range of policy areas in Wales including health, education, housing, substance misuse and local government.
- The *Police, Crime Sentencing and Courts Bill* will have a significant impact on devolved services including local government, equalities, health, and children's services.
- The Bill promises to compound many of the problems facing the criminal justice system in Wales including adding to what is already the largest prison population (per 100,000 people) in Western Europe and widening inequalities between different ethnic groups.
- A clause should be added to the *Police, Crime, Courts and Sentencing Bill* to amend the Government of Wales Act 2006 to create a statutory duty for a UK Government Minister, when a Government Bill whose primary purpose is to make provision in relation to the justice system or home affairs has been introduced in the UK Parliament, to make a written statement setting out the potential impact (if any) of such legislation upon areas that fall under the legislative competence of the Welsh Parliament. This assessment should be presented before both the UK and Welsh Parliaments.
- This clause should also include an obligation on the Home Office and Ministry of Justice to produce an impact assessment, within six months of the *Police, Crime, Courts and Sentencing Bill* securing Royal Assent, outlining the legislation's impact on devolved policy and services in Wales (including justice policies they have co-produced alongside the Welsh Government).
- The Committee should immediately seek clarification from the Home Office and Ministry of Justice about the geographical extent of the provisions included in the Bill.

1. Introduction

1.1 The arrangements for policing and criminal justice in post-devolution Wales are both unique and complex (see [Commission on Justice in Wales 2019: 10](#)). While the UK Government retains formal responsibility for policing and justice in Wales, the Welsh Government's responsibilities for health, education, housing, social care, local government, equalities and the Welsh language mean that devolved public services have a formal role to play in the delivery of policing and criminal justice services. The extent of the Welsh Government's involvement has led the UK Government to recognise (on multiple occasions) that Wales has a 'unique status' in the England and Wales system and that there exists a 'different Welsh perspective' to its work in Wales (NOMS et al. 2006: iii; see also [Ministry of Justice 2014](#); [Ministry of Justice 2017](#); [Ministry of Justice and Welsh Government 2018](#); [Wales Office, 2013](#)).

1.2 Despite repeated efforts to acknowledge the impact that devolution has made, however, research has shown that the 'Welsh context' continues to be overlooked or misunderstood by government officials in Whitehall. This includes a failure to fully engage with the complexities of policing and criminal justice in post-devolution Wales when designing new legislation and policy ([Jones and Wyn Jones 2019: 42-74](#)). In addition to UK Ministers and government officials, research has shown that the Westminster parliament (primarily the two committees responsible for scrutinising policing and criminal justice, the Home Affairs Committee and Justice Committee respectively) regularly overlooks the distinct justice arrangements that exist in post-devolution Wales when scrutinising Home Office and Ministry of Justice business ([Jones and Wyn Jones 2019](#); see also [Commission on Justice in Wales 2019: 476](#)). Due to the 'jagged edges' between reserved and devolved responsibilities for policing and criminal justice in Wales, scrutiny of these issues can often fall between the gaps that separate the House of Commons and the Welsh Parliament ([Jones and Wyn Jones 2019](#)).

1.3 This evidence submission has been prepared to help draw the Committee's attention to the Welsh dimension to the *Police, Crime, Sentencing and Courts Bill*. It is hoped that this evidence will help the Committee to consider the impact the Bill will have on Welsh

devolution as well as its potential to compound the problems already facing the Welsh criminal justice system and Welsh communities.

2. Welsh Devolution and Criminal Justice

2.1 UK level institutions are formally responsible for policing and criminal justice in Wales as part of their overall responsibility for the England and Wales system. Legislative responsibility resides in Westminster, not only in the more general sense that Westminster retains sovereignty even in devolved areas, but also in the more specific sense that Westminster legislates for the England and Wales legal and justice system. That system is largely administered by the Home Office and the Ministry of Justice.

2.2. Behind the formal reservation of powers, however, there is much by the way of complementary activity by both the Welsh Parliament and the Welsh Government. This because in both theory and practice, legal and wider justice systems cannot operate in isolation from broader systems and frameworks of social policy, which in Wales are largely devolved. Criminal justice policy for Wales, for example, intersects with and is indeed reliant upon mental health and substance misuse services, housing, social services, the education system, and so on, much (though not all) of which are the responsibility of devolved institutions and operate differently to those in England.

2.3 Significantly, devolved policy making in the areas of, for example, health or housing is also fundamentally impacted by justice policies being pursued by the UK government over which devolved institutions have little or no formal influence. Concerns have previously been raised about the impact that Home Office or Ministry of Justice policies have within areas that fall within the Senedd's legislative competency ([Jones and Wyn Jones 2019](#)). While section 110A of the Government of Wales Act 2006 (as inserted by section 11 of the Wales Act 2017) requires that any new Welsh legislation with a potential impact on the justice system be accompanied by a 'justice impact assessment' prepared by the person in charge of the Bill to explain how it impacts on the 'England and Wales' justice system, the Westminster Government/ Parliament is *not* required to report on the impact that its legislative changes will have on devolved services in Wales.

2.4 The Home Office and Ministry of Justice's *Police, Crime, Sentencing and Courts Bill* will have a significant impact on Welsh devolution and devolved services. As part of the government's commitment to tackle serious violence, for example, the Bill will place a duty on Welsh local authorities to work in partnership to develop a plan to prevent or reduce serious violence.¹ While Clause 17 of the Bill would provide the UK Secretary of State powers to issue directions to any member of a serious violence partnership (e.g. a local authority) that it believes has not carried out its duty to prevent serious violence, Clause 17 (it appears) will allow the UK Government to direct devolved public services in Wales in relation to their serious violence partnership duties (e.g. to develop a plan to prevent or reduce serious violence).²

2.5 In March 2021, the (then) Welsh Government's Deputy Minister and Chief Whip, Jane Hutt MS, [stated](#) that some of the provisions included within the Bill 'are within the legislative competence' of the Welsh Parliament. When addressing the provisions to tackle serious violence, the Minister argued that the Bill 'could potentially see the SoS [Secretary of State] issuing directions on devolved matters which fall within the remit of our devolved Welsh authorities'. A Legislative Consent Memorandum (LCM) outlining the provisions within the Bill that relate to devolved matters was laid by the Deputy Minister on 22 March 2020.

2.6 The Welsh Government ([2021](#)) has also expressed concern at the UK Government's provision for unauthorised encampments and the Bill's emphasis on 'enforcement and criminalisation' (see Part 4, Chapter 4 of the Bill). According to the Deputy Minister, this approach is in stark contrast the Welsh Government's commitment to engaging with communities and investing in adequate provision to help Welsh local authorities address the housing needs of Gypsy, Roma and Traveller communities. The Welsh Government's ([2021: 114](#)) recently published *Race Equality Action Plan for Wales* includes a commitment to support Gypsy and Traveller communities by 'rejecting any anti Gypsy and Traveller policy

¹ In its Impact Assessment for the Serious Violence Duty, the Home Office lists the Ministry of Justice; Ministry of Housing, Communities and Local Government; Department of Health and Social Care; and the Department for Education as other departments involved. The responsibilities of the Ministry of Housing, Communities and Local Government; the Department of Health and Social Care; and the Department for Education are largely England-only.

² Clause 17 states that the UK Secretary of State would be required to consult the Welsh Government before issuing a direction to a devolved body in Wales.

that would criminalise or attempt to force more Gypsy and Traveller communities away from traditional ways of life' as well as a pledge to explore new ways of funding culturally appropriate accommodation and site provision.

2.7 Another area of the Bill that appears to intersect with the Welsh Government's responsibilities is the provision to impose restrictions on public processions (Clause 54). While the responsibility for public order is reserved to the UK Parliament, the provisions relating to the 'noise generated by persons taking part in a procession' look set to overlap with the devolved government's responsibilities for environmental health.

2.8 The Bill in its current form also lacks clarity when legislating on what appear to be England-only matters. In Clause 138, for example, the Bill introduces provisions for Secure 16-19 Academies (previously 'Secure Schools') by amending section 1b of the Academies Act 2010. This legislation applies to the education system in England. While the UK Government [committed](#) itself to the development of 'secure schools' in 2016, the proposals were rejected by the Welsh Cabinet Secretary for Communities and Children who stated that the Welsh Government would seek to find "Welsh solutions" to the problems facing young people in the secure estate in Wales ([Welsh Parliament Debate, 14 December 2016](#)).

2.9 The uncertainty surrounding the geographical extent of the Bill has been compounded by subsequent Home Office and Ministry of Justice guidance. Although Wales was included in the [earlier](#) draft guidance on the serious violence duty, a strategic needs assessment [published](#) by the UK Government on 28 May applies *only* to England. At this stage it is unclear if additional guidance will be prepared to reflect the Welsh context and the role that devolved services are expected to play as part of the serious violence duty.

3. Sentencing and Imprisonment in Wales

3.1 The *Police, Crime, Sentencing and Courts Bill* includes a number of measures that will further contribute to the trend of sentence inflation and increasing prisoner numbers in England and Wales (e.g. Clause 106 and 107). The Ministry of Justice's ([2021:2](#)) own Impact Assessment of the *Sentencing, Release, Probation and Youth Justice Measures*, for example,

estimates that prison and youth custody services will face an 'increased population' with individuals being forced to serve longer periods in custody.

3.2 The provisions included in the Bill look set to add to the problems already facing the Welsh criminal justice system. While the single jurisdiction of England and Wales has recorded the highest average imprisonment rate in Western Europe since 1999 ([Jones 2019](#)), disaggregated Ministry of Justice data reveal that Wales has recorded a *higher* rate of imprisonment than England in each year since 2013 ([Jones 2020](#)).

3.3 By 2028/29, the Ministry of Justice [estimate](#) that the Bill will have led to a total increase in the England and Wales prison population of around 700 people. In line with the estimates included in the Ministry of Justice's Impact Assessment and the latest disaggregated Welsh-only prison data, the Bill will result in an additional 40 Welsh people in prison by 2028/29.³

3.4 The Bill is also likely to compound the existing inequalities found within the Welsh criminal justice system. The UK Government's [own](#) Equality Impact Assessment on the *minimum terms for repeat offences*, for example, acknowledges that the Bill will place individuals with protected characteristics, including those from a Black Asian and Minority Ethnic Background (BAME), 'at a particular disadvantage when compared to persons who do not share these characteristics since they may be more likely to be given a custodial sentence and serve longer sentences than before'. Previous research has shown that individuals from a BAME background in Wales are over-represented in prison and are more likely to be given longer custodial sentences (see [Jones, 2019; 2020](#)).

3.5 The Bill's potential to compound these existing inequalities is likely to impact upon the Welsh Government's current and future policy in this area. Within its recently published *Race Equality Action Plan*, for example, the Welsh Government ([2021: 113](#)) has stated its commitment to 'develop a Race Equality Delivery Plan which will address the

³ Welsh prisoners (based on home address prior to entering custody) comprised 5.7% of the total England and Wales prison population in 2020. Welsh prisoner data were obtained using the Freedom of Information Act 2000.

over-representation of Black, Asian and Minority Ethnic people in the criminal justice system’.

3.6 The Ministry of Justice estimate that increasing prisoner numbers will also add to the issues already facing prisons across Wales and England including ‘instability, self-harm, violence and overcrowding’. In Wales, repeated concerns have been raised in recent years about rising levels of self-harm and assault ([House of Commons Welsh Affairs Committee, 2019](#); [Jones, 2019](#); [2020](#)). Given the Welsh Government’s responsibilities for physical and mental health services across the Welsh prison estate, the Bill is likely to add to the problems already facing health services across Wales. A report published by the Welsh Parliament’s Health, Social Care and Sport Committee ([2021: 48](#)) in March 2021 revealed that mental health services at HMP Parc in Bridgend were already overstretched and that services at HMP Cardiff were ‘woefully underfunded’.⁴

3.7 As argued [elsewhere](#), the Bill will increase the number of children who are held in custody and those that come into contact with the youth justice system. These measures include introducing minimum sentences (Clause 100) and increasing the amount of time children will spend in custody (Clause 105 and 106).⁵ Interestingly, the stance that the UK Government has taken within the Bill appears inconsistent with the approach it has *jointly* adopted in Wales. The Ministry of Justice and Welsh Government’s [Youth Justice Blueprint for Wales](#), which was published in May 2019, made a commitment to ‘reduce the number of children in the youth justice system’ as part of a ‘child first’ approach and aimed to ‘align devolved and non-devolved services through a shared vision, values and approach which underpins the design and delivery of services’. The provisions included in the *Police, Crime, Sentencing and Courts Bill* appear to seriously undermine this ‘shared’ ethos and commitment.

3.8 At this stage, it is unclear if the Ministry of Justice remain committed to the *Youth Justice Blueprint for Wales*’ pledge to reduce the number of children in the youth justice system in Wales or if the provisions included in the Bill supersede the joint strategy and signify the pursuit of an alternative UK Government approach to youth justice policy. The Committee

⁴ Mental health in-reach teams had been commissioned to meet the needs of 720 prisoners but the prisons population had climbed to almost 1,800.

⁵ The wider punitive aspects of the Bill will also impact on children (see [Youth Justice Alliance 2021:3](#)).

should seek clarification from the Ministry of Justice on what impact these provisions will have on the *Youth Justice Blueprint for Wales* (see 4.3).

4. Conclusion

4.1 Without any formal requirement on those responsible for introducing justice legislation in the UK Parliament to assess the impact that it has on Welsh devolution (unlike the one imposed on the Welsh Parliament, see 2.3), it is likely that the *Police, Crime, Sentencing and Courts Bill* will be introduced without any detailed scrutiny of the issues raised here. The absence of any 'Welsh specific' witnesses already called to give evidence during the Committee stages of the Bill, not to mention those existing concerns about the level of scrutiny directed towards Welsh justice issues in Westminster (see Jones and Wyn Jones 2019), only serves to underline this point. It is hoped that this submission can help the Committee to better understand the ways in which the *Police, Crime, Courts and Sentencing Bill* will impact on Welsh devolution and devolved services.

4.2 In view of the issues raised in this submission a clause should be added to the *Police, Crime, Courts and Sentencing Bill* to amend the Government of Wales Act 2006 to create a statutory duty for a UK Government Minister, when a Government Bill whose primary purpose is to make provision in relation to the justice system or home affairs has been introduced in the UK Parliament, to make a written statement setting out the potential impact (if any) of such legislation upon areas that fall under the legislative competence of the Welsh Parliament. This assessment should be presented before both the UK and Welsh Parliaments.

4.3 This clause should also include an obligation on the Home Office and Ministry of Justice to produce an impact assessment, within six months of the *Police, Crime, Courts and Sentencing Bill* securing Royal Assent, outlining the legislation's impact on devolved policy and services in Wales (including justice policies they have co-produced alongside the Welsh Government).

4.4 The Committee should immediately seek clarification from the Home Office and Ministry of Justice about the geographical extent of the provisions included in the Bill.

Following the publication of England-only guidance on 28 May, the Home Office and Ministry of Justice should provide some indication of if/when it intends to publish guidance that applies (only) to Wales.