

Response ID ANON-TECQ-DARZ-X

Submitted to Criminal Justice (Sentencing etc) Bill
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Introduction

What is your name?

Name:
Charles Little

What is your email address?

Email:
[REDACTED]

If you are providing a submission on behalf of an organisation or business, please state its name.

Organisation:
N/A

The Committee for Justice has agreed to publish all responses as part of the survey results. If you would like to have your survey results anonymised and for us not to publish your name or organisation, please indicate so here.

I am content for my information, including details of my name and organisation, to be published in the survey results.

Exercise of court's discretion when sentencing

Clause 1 outlines the purposes and principles of sentencing. It sets out the factors that the court must have regard to for the purposes of sentencing, which are: the punishment of offenders; for the protection of the public; the reduction of crime by deterrence; the rehabilitation of offenders; and, the making of reparations by offenders to persons affected by their offences. Do you agree with the purposes of sentencing as outlined above?

No

Please provide information to support your answer here::

Above all it must clearly state that the purpose of a sentence is to provide justice for the victims. When considering a sentence a Judge must always ask the question 'Does the sentence I am considering provide justice for the victims?' If he cannot answer 'yes' then he needs to reconsider.

As a victim going through the justice system I felt that I was merely a spectator to a process in which the victims were incidental bystanders. The courts must make it absolutely clear that the sentence is about justice for the victims, and fully involve the victims in the process so that they fully understand what is happening and why, and if appropriate have their views recorded on the record.

Clause 1 also defines the principles of sentencing as proportionate, fair and transparent. Do you agree with these being set as the principles of sentencing?

No

Please provide information to support your answer here::

The principle 'that sentencing should be fair' is very vague. Fair to who? The offender, The victims? The public?

Judges must explain fully and clearly how the sentence is fair. It is important that the judge takes the time to fully explain to the victims in person in order that he may hear their views and take them into account in his deliberations.

Do you have anything further to add on Clause 1 of the Bill?

Yes

Please provide any further information relating to Clause 1 here::

Prior to the sentencing the judge should meet with the victims and explain to them how he has arrived at his decisions. He must answer their questions fully and take their views under consideration.

The present system where the victims are left to sit in an alien environment and hear the sentence pronounced from the bench using unfamiliar language and not having time to take it all in is traumatising.

Hearing my autistic son scream when we left the courtroom because he felt we had not received justice will remain with me forever. Victims should never be put in the position where they are effectively subjected to a psychological assault by the court.

Clause 2 imposes a duty to follow guidance relevant to the case when sentencing an offender, unless it would be contrary to the interests of justice to do so and to give reasons in relation to sentencing. Do you support the objectives of this clause?

Yes

Please provide information to support your answer here::

I support the objectives in principle, however as I stated in my answer in regard to clause 1, the victims need to have the process and the reasons explained to them by the judge in a way that their questions can be answered and their views taken into account if possible. Just giving one off lengthy explanations in court without any preparation will not come near meeting the victims need to understand.

The victims will be traumatised and in an alien environment. It must be the duty of the judge to ensure by confirmation with them that they understand how and why decisions are being made. It must be the duty of the court to ensure that happens.

Do you have anything further to add on Clause 2 of the Bill?

No

Please provide information to support your answer here::

Part 1 - Exercise of court's discretion when sentencing - Do you have anything further to add on Part 1 of the Bill?

No

Please provide information to support your answer here::

Availability and effect of suspended sentence orders

Clause 3 sets out when suspended sentence orders may be made and Clause 4 sets out what a suspended sentence order is and how it will be activated. Do you support the provisions around when suspended sentences can be used and what a suspended sentence order is in Clauses 3 and 4 of the Bill?

No

Please provide information to support your answer here::

Where an offender's criminality is a function of his mental health the court must, prior to deciding on a suspended sentence, give consideration to the availability of appropriate mental health support in order to prevent re-offending. In the current climate the Mental Health Service is struggling to cope, and it should be considered that such an offender may get better mental health support in the controlled environment of prison rather than being out in the community. It is not always in the offender's or the public interest to take the least restrictive option.

Clause 5 sets out the operational period and supervision period which apply to a suspended sentence. Do you agree with the periods and requirements outlined in the clause?

Yes

Please provide information to support your answer here::

Clause 6 sets out that a court must explain to an offender, in language the offender can understand, the reason why it is imposing requirements and the effect of them. Do you agree with the provision of copies of orders and explanation of effect as laid out in Clause 6?

Yes

Please provide information to support your answer here::

Clause 7 sets out how a suspended sentence is to be treated. Do you agree with the intent of Clause 7?

Yes

Please provide information to support your answer here::

Do you have any other comments on Clauses 3 to 7 of the Bill?

No

Please provide information to support your answer here::

Community requirements

The Minister of Justice has stated that the intention behind adding community-based requirements to suspended sentences is to allow rehabilitative work to be carried out where it might be helpful to do so and to add a visible element to making reparations that could be realised via a community based sentence. Do you agree with the intent behind enacting Clauses 8-10?

Yes

Please provide information to support your answer here::

The visible element in making reparations is particularly valuable as a visible deterrent to other potential offenders. If used, for example, in clearing up litter and fly tipping waste it provides an element of rehabilitation for the offender, an element of deterrence to other potential offenders, and provides a very low cost public service for maintaining the environment.

When considering suspended sentences the possibility of reparations via a community based sentence should be high on the list of options. However, prior to award the community in which it will be served must be consulted to ensure that the work to be carried out is of a nature that meets a specific shortfall in service that the community requires filled.

Do you have any other comments on Clauses 8 to 10 of the Bill?

No

Please provide information to support your answer here::

Responsible Officer

Do you have any comments on Clauses 11 to 13 of the Bill?

Yes

Please provide information to support your answer here::

It states at Clause 12 (3):

"This is subject to paragraphs 4(5) and 5(5) of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996 (in-patient treatment for a mental or drug or alcohol dependency)."

This does not make sense, there is no such thing as a 'mental dependency'. It should be amended to read:

(in-patient treatment for mental health, or a drug or alcohol dependency).'

Activation of sentence and amendment of order etc.

Do you have any comments on Clause 14 of the Bill?

No

Please provide information to support your answer here::

Supplementary (Suspended sentences)

Do you have any comments on Clauses 15 to 17 of the Bill?

No

Please provide information to support your answer here::

Part 2 - Suspended Sentences. Do you have anything further to add on Part 2 of the Bill?

No

Please provide information to support your answer here::

Life sentences

Clause 18 makes provision so that, where a court makes an order under paragraph (1) or (3) of the Life Sentences (Northern Ireland) Order 2001 (the 2001 Order), the court must state in ordinary language the reason for imposing a life sentence and explain in ordinary language to the offender the effect of such a decision. Do you agree with the intention behind this clause?

No

Please provide information to support your answer here::

I agree that an explanation in ordinary language must be given to the offender; however it must also be given to the victims or victims' family. In all court proceedings the victims must have consideration at least equal to that of the offender. At present it does not happen. Ideally the Judge should explain in private to the victims in order that they may have their questions answered. It must be clearly understood that sentencing is primarily about delivering justice for the victims and the public, not some esoteric exercise between the Criminal Justice System and the offender.

Having gone through the Criminal Justice System as a close family member of the victims of a double homicide I can say without fear of contradiction that victims are made to feel irrelevant to the proceedings. The system just compounds their trauma.

Clause 19 inserts new Article 5B and Schedule A1 into the 2001 Order on the determination of tariffs in cases of mandatory life sentences for adult offenders. This includes the starting point of 15 years where there are no aggravating factors and 20 years as the starting point where the seriousness of the offence is exceptionally high. Do you agree with the provisions of this clause?

No

Please provide information to support your answer here::

Tariffs can be reduced by as much as 25% if the offender pleads guilty, as a guilty plea is assumed to be "an indication of remorse". In many cases Victims and the public see guilty pleas not as remorse but as 'working the system' in order to get a lesser sentence in the face of evidence that will convict. The starting points should therefore be higher to allow for these situations. Offenders must be required to genuinely demonstrate remorse, not just plead guilty.

The starting points for tariffs should be:

Where there are mitigating factors, such as diminished responsibility 15 years

Where there are no aggravating factors 20 years

Where the seriousness is exceptionally high 25 years

Do you have any other comments on Clauses 18 or 19 of the Bill?

No

Please provide information to support your answer here::

Part 3 - Life sentences. Do you have anything further to add on Part 3 of the Bill?

Yes

Please provide information to support your answer here::

For victims, whether or not they agree with the length of tariff awarded, the tariff is the delivery of justice.

The tariff is described in the 'Life Sentences (Northern Ireland) Order 2001' as "such part as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence".

Victims therefore have the legitimate expectation that that every day of the tariff will be spent in prison, with the exception of compassionate circumstances of an exceptional nature. To do otherwise is to mitigate the "retribution and deterrence" and deny the victims justice.

After the tariff expiry date (TED) the purpose of the sentence changes from 'retribution' to 'public safety' and the Parole Commissioners may commence consideration for release on Life License. It is at this point that pre-release testing (PRT) in the community, if required, may commence. The TED is NOT a release date, it is the date on which consideration of release may commence.

This must be reflected in amendment to the 'Life Sentences (Northern Ireland) Order 2001' to ensure that the current NIPS policy of usurping the courts authority and denial of justice to victims by releasing prisoners on PRT, commencing 3 years before TED, is stopped. The tariff is the justice for the victims and must not be mitigated by DOJ/NIPS in this callous and cruel way.

Unduly lenient sentences

Three options were consulted on for the reform of unduly lenient sentence review: • Option A – All Crown Court and Magistrates' Courts sentences are made referrable • Option B – All Crown Court sentences are made referrable • Option C – All Crown Court sentences and sentences for offences with a maximum penalty of 12 months or more when tried in a Magistrates' Court are made referrable. No clear preference for any option emerged as a result of the consultation. The review team concluded that to extend the arrangements to some Magistrates' Courts sentences would risk diminishing their purpose and would add to confusion over which offences were included, so it was decided to only make the referrals applicable to Crown Court sentences. Do you agree with the approach as provided for in Clause 20?

Yes

Please provide information to support your answer here::

Clause 21 allows for the Director of Public Prosecutions for Northern Ireland to refer a case to the Court of Appeal where it appears to them that the sentencing has been unduly lenient and the case is one which is applicable under Clause 20. Do you agree with the intent behind this

Clause?

Yes

Please provide information to support your answer here::

Do you have any comments on Clauses 20 to 23 of the Bill?

No

Please provide information to support your answer here::

Part 4 - Unduly lenient sentences. Do you have anything further to add on Part 4 of the Bill?

No

Please provide information to support your answer here::

Failure to disclose information about victim's remains: Increase to sentence following failure to disclose

Part 5 of the Criminal Justice (Sentencing etc) Bill, covering Clauses 24 to 27, proposes to introduce a statutory aggravating factor, adding a minimum of 30% to the notional custodial period, for failure to disclose the location of a victim's remains or how a victim was disposed of. Do you agree with the introduction of this aggravating factor as an additional tariff to sentencing in "no body" cases?

Yes

Please provide information to support your answer here::

Do you have any other comments on Clauses 24 to 27 of the Bill?

No

Please provide information to support your answer here::

Reduction to sentence following disclosure

Clauses 28 to 30 of the Bill deal with applying a reduction to the additional aggravating tariff where disclosure of the location or detailing what happened to a victim's remains is made post conviction. The principle is that the amount of any reduction will never exceed the aggravation applied at the point of sentencing but provides an incentive for the offender to disclose information about the victim's remains or how they were disposed of. Do you agree with the principles behind Clauses 28 to 30 of the Bill?

Yes

Please provide information to support your answer here::

Do you have any other comments on Clauses 28 to 30 of the Bill?

No

Please provide information to support your answer here::

Parole Commissioners

Clause 31 places a duty on Parole Commissioners to consider a failure by a prisoner to disclose the location of victim's remains or how a victim's remains have been disposed of, when considering their release as part of the public interest decision making. Do you agree that this should form part of the consideration for the Parole Commissioners when making a determination?

Yes

Please provide information to support your answer here::

Do you have any other comments on Clause 31 of the Bill?

No

Please provide information to support your answer here::

Supplementary (Failure to disclose)

Do you have any comments on Clause 32 of the Bill?

No

Please provide information to support your answer here::

Part 5 - Failure to disclose about a victim's remains. Do you have any further comments on Part 4 of the Bill?

No

Please provide information to support your answer here::

Particular persons or groups: Aggravation by hostility

Clause 33 introduces an aggravator to an offence if the offence is aggravated by the person's race, religion, sexual orientation or as a result of disability. Do you agree with this being an appropriate list of groups for the aggravators included in this Clause?

Yes

Please provide information to support your answer here::

Clause 34 sets out the consequences of aggravation by hostility. Do you agree with the consequences outlined in the Clause?

Yes

Please provide information to support your answer here::

Clause 35 provides the Department of Justice with the power to add, amend or revoke the kinds of hostility by which an offence may be aggravated if the hostility relates to a group or characteristic. Do you agree that the Department should be able to amend the groups for whom an aggravator applies?

Yes

Please provide information to support your answer here::

Do you have any other comments on Clauses 33 to 35 of the Bill?

No

Please provide information to support your answer here::

Aggravation by reason of vulnerability

Clause 36 introduces a new aggravator by reason of the victim being vulnerable, following a consultation which originally included older age and vulnerability as potential aggravators. Do you agree with including vulnerability as an aggravator in this Clause?

Yes

Please provide information to support your answer here::

Do you have any other comments on Clause 36 of the Bill?

No

Please provide information to support your answer here::

Public Workers etc

Clause 37 introduces a new offence of assault on a public worker and defines a public worker as being a person employed or engaged to provide a service to the public, performing a public duty or delivering a public service. Do you agree with the new offence of assault on a public worker?

Yes

Please provide information to support your answer here::

Do you agree with the definition of a public worker as defined in Clause 37?

No

Please provide information to support your answer here::

Clause 37 needs to make it clear that 'public worker' includes the voluntary sector, for example St John Ambulance, Red Cross, and Order of Malta.

Clause 37 proposes that a person found guilty of assaulting a public worker could receive a fine and/or be sentenced to up to 2 years imprisonment. Do you believe the penalties for this offence are appropriate?

Yes

Please provide information to support your answer here::

Clause 38 proposes introducing a new aggravator if an offence is committed against a public worker who is acting in the exercise of functions as a public worker. Do you agree with the inclusion of an offence of aggravation by assault on a public worker?

Yes

Please provide information to support your answer here::

Do you have any other comments on Clauses 37 to 39 of the Bill?

No

Please provide information to support your answer here::

Part 6 - Particular persons or groups. Do you have any further comments on Part 6 of the Bill?

No

Please provide information to support your answer here::

Road Traffic Offences

Clause 40 increases the maximum penalty for causing death or grievous bodily injury by driving while disqualified to 12 months or the statutory maximum fine or both when tried summarily, and 4 years or a fine or both when tried on indictment. Do you agree with the proposed increased sentences?

No

Please provide information to support your answer here::

Too many deaths are caused by people not complying with the law. If you are disqualified and you kill someone when driving that should be treated as murder.

Clause 41 of the Bill proposes to increase the maximum sentences for driving offences that cause death or grievous bodily injury, through dangerous driving or while under the influence of drink or drugs, from 14 years to 20 years. Do you agree with the increase in maximum sentencing for these offences?

No

Please provide information to support your answer here::

Drivers who kill by dangerous driving or while under the influence of drink or drugs should be guilty of murder.

Clause 42 of the Bill proposes to increase the maximum sentences available for certain repeat offences which occur within 10 years of the person serving the required custodial period for the earlier offence. Do you agree with the increase to the maximum sentence periods for certain repeat offenders?

Yes

Please provide information to support your answer here::

Clauses 43 to 45 provide for disqualification periods for certain offences and for certain repeat offences and increase the mandatory minimum disqualification period. Do you agree with the introduction of new mandatory minimum disqualification periods included in these clauses of the Bill?

Yes

Please provide information to support your answer here::

Do you have any other comments on Clauses 40 to 45 of the Bill?

No

Please provide information to support your answer here::

Part 7 - Road Traffic Offences. Do you have anything further to add on Part 7 of the Bill?

Yes

Please provide information to support your answer here::

Road Traffic laws are to protect the public. Anyone who kills as a result of breaching road traffic laws should be guilty of murder.

General

Do you have comments on Clauses 46 to 49 of the Bill?

Yes

Please provide information to support your answer here::

"Clause 46

(3) Regulations under subsection (1) that amend, repeal, revoke or otherwise modify primary legislation may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly."

There needs to be a mechanism to determine whether or not proposed (and a review of existing) Regulations will fall into this category. For example the current Prison Rule 27 applied to prisoners serving the tariff ordered under primary legislation allows NIPS to release those prisoners "for any period under any conditions for any reason". Clearly absurd and in direct contradiction of the primary legislation. In this example NIPS is usurping the courts authority.

Commencement

Do you agree that the sections of the Bill should be commenced as outlined in Clause 50 of the Bill?

Yes

Please provide any other comments or views you have here::

Short Title

Do you have any comments on Clause 51 of the Bill?

No

Please provide any other comments or views you have here::

Any Other Comments on the Bill

Do you have any other comments or views on the Criminal Justice (Sentencing etc) Bill?

No

Please provide any other comments or views you have on the Criminal Justice (Sentencing etc) Bill here::