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**Report to:** Police and Crime Panel

**Date:** 10 September 2021

**Subject:** Briefing on the Police, Crime, Sentencing and Courts Bill and the implications for West Yorkshire

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## 1. PURPOSE OF THE REPORT

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- 1.1. To inform and update members of the Police and Crime Panel on the Police, Crime, Sentencing and Courts Bill 2021 and the implications on the current West Yorkshire Police and Crime Plan.

## 2. INFORMATION

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- 2.1 The Police, Crime, Sentencing and Courts Bill 2021 was laid before Parliament for the first time on Tuesday 9<sup>th</sup> March 2021. If the Bill becomes law, it will have potential implications for many of the current Police and Crime Plan 2016-2021 priorities including:

- Child sexual abuse and exploitation
- Countering terrorism
- Cyber crime
- Major threats
- Missing people
- Road safety
- Serious violence; and
- Sexual abuse.

- 2.2 It may also impact on all four of the outcomes set out in the Police and Crime plan:

- Tackling crime and ASB
- Working to improve criminal justice
- Safeguarding vulnerable people; and
- Supporting victims and witnesses.

2.3 The Government's aims of the Bill are:

- Back the police by equipping officers with the powers and tools they need to keep themselves, and all of us, safe.
- Introduce tougher sentencing for the worst offenders and end automatic halfway release from prison for serious crimes.
- Improve the efficiency of the court and tribunal system by modernising existing court processes.

### **3 OVERVIEW OF THE POLICE, CRIME, SENTENCING AND COURTS BILL**

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- 3.1 The Bill is wide ranging in its subject areas and proposals. In terms of the progression through Parliament, it has completed its three readings within the House of Commons and has had its first reading within the House of Lords. The second reading in the House of Lords is due to take place on the 14<sup>th</sup> September 2021.
- 3.2 Some areas within the Bill have proved more controversial than others. The proposals the Bill makes on seeking to place greater restrictions on protests gives the police new powers to place constraints on demonstrations, including restricting their time span and noise levels. These new powers have been widely reported within the media and subject to widespread debate. There have been protests across England about the Bill, including clashes with police in Bristol.
- 3.3 The Government says the new measures will *"uphold the right to peaceful protest while providing the police with the necessary powers to stop disruptive protests from disproportionately infringing on the rights and freedoms of others."*
- 3.4 As well as addressing protest restrictions, the Bill also increases sentences for serious criminals, including sexual offenders.

### **4 MAIN AREAS OF THE BILL**

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- 4.1 The main areas proposed within the Bill are:
- **Enshrining the Police Covenant in law**, enabling special constables to join the Police Federation, and introducing a new legal test that will compare a police driver to what is expected of a trained police driver (instead of a regular driver), when deciding if they had committed dangerous/ careless driving.

- Increase the **maximum penalty from 12 months to two years in prison** for anyone who assaults or commits **an offence of battery against an emergency worker**.
- Introduce **a serious violence duty on specified authorities** to work together to prevent and reduce serious violence.
- Place a duty on **chief officers of police, local authorities and clinical commissioning groups (or local health boards), to undertake Offensive Weapons Homicide Reviews** to learn the lessons from incidents when an adult's death involves the use of an offensive weapon and help prevent future homicides.
- Proposals to strengthen the law that governs **digital information extraction** as part of criminal investigations through a statutory power and a code of practice. The **code of practice** will aim to guide authorities and provide clarity and consistency in **obtaining digital evidence**.
- Reform **pre-charge bail to better protect vulnerable victims and witnesses**.
- **Extend the offence of arranging or facilitating the commission of a child sex offence** to cover a wider range of preparatory conduct in respect of **sex offences committed against children under 13**.
- **Extend the scope of offences in the Sexual Offences Act 2003** relating to the abuse of positions of trust legislation to capture additional roles, such as sports coaches.
- Ensure that the **criminal courts have sufficient sentencing powers where criminal damage is caused to a memorial** so that they can consider all the impacts, not just the monetary value of the damage done.
- **Confer new powers on the police to assist them in locating human remains**, to help provide closure where possible to families with missing loved ones.
- Amend the **Crime (Overseas Production Orders) Act 2019** to ensure that it operates effectively to give the police and prosecutors the power to **obtain faster access to electronic data held overseas**.
- Strengthen **police powers to tackle non-violent protests** that have a significant disruptive effect on the public or on access to Parliament.
- Strengthen **police powers to tackle unauthorised encampments**.
- Introduce several **road traffic measures to ensure the courts have the powers they need to deal with dangerous and careless drivers**. The Bill places on a statutory footing the fees charged under the National Driver Offender Retraining Scheme, and removes the legal requirement to surrender

their driving license before a person can accept a fixed penalty notice. The Bill also allows the police in Scotland to issue fixed penalty notices on the spot to people who commit certain minor road traffic offences.

- Deliver on commitments made in the **Sentencing White Paper to reform the sentencing and release framework**. Serious criminals will receive tougher punishment and spend longer in prison.
- In addition, there will be changes to make the **system is agile enough to give offenders a fair start on their road to rehabilitation**. The Government are proposing that community sentencing should offer an appropriate level of punishment and address the underlying drivers of offending, providing interventions early to deflect people away from future offending. The Government is proposing to **pilot a problem-solving court approach** to provide an alternative to an immediate custodial sentence and with the aspiration of **improving national consistency for adult Out of Court Disposals**. There is also a proposal to reduce the time periods after which some criminal sentences become spent, with the view to aiding rehabilitation by helping offenders to move on with their lives.
- Wherever **possible children who offend should be diverted from custody**. The youth justice measures proposed are hoped to strengthen alternatives to custody which **promote rehabilitation**, while at the same time ensuring that children who commit serious offences and pose a risk to the public receive sentences that reflect the seriousness of their offending.
- Empower future providers of **Secure Schools** – developing schools with security, rather than prisons with education.
- Introduce **new Serious Violence Reduction Orders**, giving the police stop and search powers to target adults convicted of knife and offensive weapons offences.
- Strengthen the **management of sex offenders**, including enabling positive obligations and electronic monitoring requirements to be imposed on those who pose a risk through **Sexual Harm Prevention Orders and Sexual Risk Orders**.
- Strengthen the **management of terrorism risk offenders** on license in the community by introducing new police powers of premises and personal search, and an urgent power of arrest.
- **Modernise the delivery of criminal justice and encourage greater use of technology** where appropriate. It will enable the Government to make permanent the temporary provisions (in the Coronavirus Act 2020) which enabled court users to participate in and observe proceedings remotely via video and audio technology. This will improve the accessibility and efficiency of our criminal courts and reduce the need for participants to travel unnecessarily to court. The Bill will also make specific provisions for Prisoner Escort and

Custody Service officers to be able to supervise detainees in hearings taking place by way of live link in police stations, in particular Video Remand Hearings. Proposals also include enabling British Sign Language (BSL) interpreters to be present in the jury deliberation room, meaning that profoundly deaf individuals are not prevented from participating in jury service simply because they require the assistance of a BSL interpreter.

## 5. IMPLICATIONS OF THE BILL ON PARTNERSHIP WORKING IN WEST YORKSHIRE

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5.1 The Bill will potentially have significant implications on partnership working and in the formation and development of the new Police and Crime Plan 2021-2024. Of note are the following:

- **Work of the Local Criminal Justice Board (LCJB)**, in terms of ‘modernising’ the courts and enhancing use of technology. The Criminal Justice system has struggled to deal with cases in court during the pandemic which has resulted in a backlog of 2,533 cases within West Yorkshire (last report from March 2021). The magistrates court can deal with approximately 430 per week, with the new cases averaging 300 per week. This work with the LCJB is a priority and focus for both the Mayor and West Yorkshire Police.
- **Serious violence, the Violence Reduction Unit and partnership working.** The Bill proposes the introduction of Serious Violence Reduction Orders (SVROs) and Homicide Reviews. This is a key part of the Government’s wider programme of work to prevent and reduce serious violence; taking a whole-system approach to understanding the causes and consequences of serious violence, and taking a focus on prevention and early intervention. SVROs are a new court order aimed at bearing down on known offenders. It is currently being piloted in different areas of England and Wales. The idea behind the introduction is that they will give the police powers to take a more proactive approach and make it easier to target adults already convicted of knife and offensive weapon offences; for example giving them the automatic right to search these offenders. Every offender issued with a SVRO will face an increased likelihood of being stopped by the police and, if they persist in carrying weapons, they will be sent back to prison or brought before the court. The theory of the orders is that they will help to tackle prolific, high risk offenders, by making it easier for police to search them for weapons, but any additional use of stop and search could potentially target black and minority ethnic communities across West Yorkshire disproportionately.
- The Crime and Disorder Act 1998 will be amended to ensure that tackling **serious violence is an explicit priority for Community Safety Partnerships.** The following authorities will be subject to the duty:

- The Police
  - Local authorities
  - Youth offending teams
  - Probation
  - Fire and rescue, and
  - Health authorities.
- Educational institutions and prisons/youth custodial institutions will be under a separate duty to co-operate with core duty holders. There will be a requirement for the partnership to consult with all such institutions in their area. The serious violence duty will require organisations to work together to plan, share data, intelligence and knowledge, to generate evidence-based analysis of the problem, and solutions to prevent and reduce serious violence in local areas. This compliments the current investment in Violence Reduction Units in the 18 police force areas most affected by serious violence of which West Yorkshire is one.
  - **Offensive Weapons Homicide Reviews.** Police, local authorities, clinical commissioning groups in England and local health boards in Wales, will be required to review the circumstances of certain homicides where the victim was aged 18 or over, and the events surrounding their death involved the use of an offensive weapon. An overarching legal framework will be established which places a duty on review partners, setting notification publication requirements, and provides clarity around data sharing regulations.

## **6. VIEW OF THE MAYOR OF WEST YORKSHIRE – TRACY BRABIN**

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- 6.1 The Mayor has great concerns over parts of the Bill. It gives governments the power to shut down outlets of expression which are often utilised by the most marginalised and unrepresented in society. It has the potential to undermine freedom of expression and risks allowing governments to decide which voices are heard, further marginalising those who are often ignored at election time. Peaceful protest is vital to democracy as it allows people to show their opposition to the Government of the day. This area of the Bill opposes the principles of equality and inclusion which are at the heart of the Mayor's manifesto and the work she is striving to achieve within West Yorkshire to represent our diverse communities. The Mayor's position is that we should be celebrating that diversity and allowing everyone to have a voice and express it in a peaceful and inclusive fashion.
- 6.2 The Bill also causes the Mayor concern in relation to the rights to freedom of speech and the expression, and freedom of assembly and association. It creates a new statutory offence of "intentionally or recklessly causing public nuisance" in its clause 59. The new offence is accompanied by a 'reasonableness' defence. It is much broader than the already existing common law offence. In its current form, it could be used to criminalise non-violent

protests that are otherwise protected by the rights to freedom of speech and expression, and freedom of assembly and association, under Articles 10 and 11 of the European Convention on Human Rights (ECHR). This is because the offence would penalise not only those who cause “serious annoyance” or “serious inconvenience” to the public, but also those who pose a risk of causing the same. This can be used as a catch-all offence because of its broad framing. Virtually every protest runs the risk of causing inconvenience to the public, and in part that is the very point of a protest. Peaceful protests by their very nature carry the potential to cause serious annoyance and inconvenience and criminalising such acts will only dissuade individuals from participating.

- 6.3 The burden of proving that there existed a reasonable excuse for committing the offence of public nuisance will lie on the accused. Such reversal of burden of proof is contrary to the principle of presumption of innocence of the accused until proven guilty, as enshrined in Article 48 of the EU Charter of Fundamental Rights.
- 6.4 The human rights organisation Liberty has highlighted that the Bill would “expose already marginalised communities to profiling and disproportionate police powers through the expansion of stop and search, and Gypsy, Roma and Traveller communities may face increased police enforcement through the criminalisation of trespass”.
- 6.5 Disproportionality is also echoed through plans in this Bill to bring in longer sentences and to create more prison places. Recent research from the Prisons Reform Trust highlights the over-representation of Black, Asian and ethnic minority communities in the prison population and in deaths in custody. 26% of the prison population, 22,683 people, are from a minority ethnic group. If our prison population reflected the make-up of England and Wales, we would have over 9,000 fewer people in prison - the equivalent of 12 average-sized prisons. Analysis conducted for the Lammy Review found a clear direct association between an individual’s ethnic group and the odds of receiving a custodial sentence. With black people 53%, Asian 55%, and other ethnic groups 81% more likely to be sent to prison for an indictable offence at the Crown Court, even when factoring in higher not-guilty plea rates. If these proposals are brought into effect, it will increase racial inequality further across our criminal justice system.
- 6.6 The Police, Crime, Sentencing and Courts Bill also threatens the way of life for Gypsy, Roma and Traveller communities, through greater police powers targeting them.
- 6.7 The Mayor is extremely disappointed to note that the Bill does not include any specific measures to prevent male violence against women and girls, nor does it address the fact that a large proportion of women in prisons are survivors of domestic abuse and other types of gendered violence. This is an area of key importance for the Mayor and through the Mayoral pledge of putting women and girls safety at the heart of the Police and Crime Plan. It is hoped these

concerning issues will be addressed which this Bill fails to so, making West Yorkshire a safer place for all women and girls.

- 6.8 This legislation will be felt in marginalised communities more than any other. It will be felt by women unable to protest at the everyday violence they face, and by those from ethnic minority backgrounds, whose lives are policed disproportionately and who suffer with that every day. It will be felt by Gypsy, Roma and Traveller communities unable to maintain their way of life. It will be felt by trade unions, anti-racist campaigners and climate emergency activists when they try to change the world for the better.

## **7. EQUALITY, DIVERSITY AND INCLUSION BENEFITS AND IMPLICATIONS**

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- 7.1 If the Bill receives Royal Assent in its current form, it has the potential following implications on equality, diversity and inclusion within West Yorkshire:
- It will impact on those most marginalised and unrepresented in West Yorkshire through shutting down outlets of expression.
  - Will have a detrimental impact on rights to freedom of speech and the expression and freedom of assembly and association currently protected under Articles 10 and 11 of the European Convention on Human Rights (ECHR).
  - The burden of proving that there existed a reasonable excuse for committing the offence of public nuisance will lie on the accused. Such reversal of the burden of proof is contrary to the principle of presumption of innocence of the accused until proven guilty, as enshrined in Article 48 of the EU Charter of Fundamental Rights.
  - It may expose already marginalised communities to profiling and disproportionate police powers through the expansion of stop and search.
  - Increase disproportionality and racial inequality within the criminal justice system.
  - Threaten the way of life for Gypsy, Roma and Traveller communities, through greater police powers targeting them.

## **8. FINANCIAL IMPLICATIONS**

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- 8.1 None at this stage.



## **9. LEGAL IMPLICATIONS**

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- 9.1 Further analysis of the legal implications will be taken when the Bill receives Royal Assent.

## **10. EXTERNAL CONSULTATION**

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- 10.1 Not applicable.

## **11. RECOMMENDATIONS**

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- 11.1 That the Panel notes the headlines and impact of the Bill and acknowledges the wider implications on the development and formation of the new Police and Crime Plan.
- 11.2 That the panel notes the potential impact on partnership working across policing, crime and the criminal justice agenda, particularly in relation to serious violence including the work of the Violence Reduction Unit.

## **BACKGROUND PAPERS AND APPENDICES**

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[The Police, Crime, Sentencing and Courts Bill](#)  
[The Prisons Reform Trust – Research on Race](#)

## **CONTACT INFORMATION**

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