PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

POLICE, CRIME, SENTENCING AND COURTS BILL

Eighteenth Sitting

Tuesday 22 June 2021

(Afternoon)

CONTENTS

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not later than

Saturday 26 June 2021

The Committee consisted of the following Members:

Chairs: Steve McCabe, † Sir Charles Walker

Anderson, Lee *(Ashfield)* (Con)
† Atkins, Victoria *(Parliamentary Under-Secretary of State for the Home Department)*
† Baillie, Siobhan *(Stroud)* (Con)
† Champion, Sarah *(Rotherham)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
† Dorans, Allan *(Ayr, Carrick and Cumnock)* (SNP)
Eagle, Maria *(Garston and Halewood)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
† Higginbotham, Antony *(Burnley)* (Con)
† Jones, Sarah *(Croydon Central)* (Lab)
† Levy, Ian *(Blyth Valley)* (Con)
† Philp, Chris *(Parliamentary Under-Secretary of State for the Home Department)*
† Pursglove, Tom *(Corby)* (Con)
† Wheeler, Mrs Heather *(South Derbyshire)* (Con)
† Williams, Hywel *(Arfon)* (PC)

Huw Yardley, Sarah Thatcher, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 22 June 2021

[Sir Charles Walker *in the Chair*]

Police, Crime, Sentencing and Courts Bill

The Chair: Here we are. We have the ambition, according to the Whips, to get to new clause 59 by 5 o'clock. That will take some energy and effort from Committee members, but I am sure that with a fair wind behind you and natural checks in place, you will succeed in your ambition.

New Clause 10

Restriction on evidence or questions about complainant's sexual history

'(1) Section 41 of the Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) In subsection (1)—

(a) starting in paragraph (b) omit "in cross examination, by or on behalf of any accused at the trial,";

(b) at end insert "with anyone other than the defendant".

(3) In subsection (2)—

(a) for "an accused" substitute "a party to the trial";

(b) in paragraph (a) omit "or (5)".

(4) For subsection (3) substitute—

"(3) This subsection applies if the evidence or question relates to a relevant issue in the case and that issue is not an issue of consent."

(5) For subsection (5) substitute— In subsection (6), for "subsections (3) and (5)" substitute "subsection (3)"."

"(a) For the purposes of subsection (3) no evidence may be adduced or question asked unless the judge determines in accordance with the procedures in this subsection that the question or evidence has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.

(b) In determining that question the judge shall take into account—

(i) the interests of justice, including the right of the accused to make a full answer and defence;

(ii) the need to preserve the integrity of the trial process by removing from the fact-finding process any discriminatory belief or bias;

(iii) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;

(iv) the potential threat to the complainant's personal dignity and right to privacy;

(v) the complainant's right to personal security and to the full protection and benefit of the law;

(vi) the provisions of the Victims Code;

and any other factor that the judge considers relevant.

(6) In subsection (6), for "subsections (3) and (5)" substitute "subsection (3).'—*(Sarah Champion.)*

This new clause excludes the admission in evidence of any sexual behaviour of the complainant with a third party, whether by the prosecution or the defence, to show consent, whilst leaving it admissible if it is relevant to any other issue in the case. It sets out the additional requirement that to be admitted the material must be more probative than prejudicial and sets out the considerations the judge must have in regard to considering that extra requirement.

Brought up, and read the First time, and Question proposed (this day), That the clause be read a Second time.

2 pm

Question again proposed.

The Chair: I remind the Committee that with this we are considering the following:

New clause 11—*Definition of "issue of consent"—*

'(1) Section 42 of the Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) For paragraph (b) substitute—

"(b) "issue of consent" means any issue where the complainant in fact consented to the conduct constituting the offence with which the defendant is charged and any issue where the accused reasonably believed that the complainant so consented;"

This new clause re-defines "issue of consent" for the purposes of section 41, including in the definition the defendant's reasonable belief in consent, and thus removing it as a reason for the inclusion of a complainant's sexual history or behaviour.

New clause 12—*Admission of evidence or questions about complainant's sexual history—*

'(1) The Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) After section 43 insert—

43A In any trial or contested hearing to which section 41 of the Youth Justice and Criminal Evidence Act 1999 applies, if no pre-trial application in accordance with Part 36 of the Criminal Procedure Rules has been made, or if such application has been made and refused in whole or in part, no further application may be made during the course of the trial or before its commencement to call such evidence or ask such question, and no judge may allow such application or admit any such questions or evidence.'

This new clause would have the effect that no section 41 evidence or questions could be admitted by a judge at trial unless there had been an application before trial in accordance with the practice directions; and the amendment would ban applications from being made immediately before or during the trial.

New clause 13—*Complainant's right of representation and appeal on an application to adduce evidence or questions on sexual conduct—*

'(1) The Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) After section 43 insert—

43A (1) The complainant may not be compelled to give evidence at any hearing on the application.

(2) The complainant will be entitled to be served with the application and to be legally represented (with the assistance of legal aid if financially eligible) as "a party" within the meaning of the Criminal Procedure Rules in responding in writing to the application and in presenting their case at any hearing on the application.

(3) If the application succeeds in whole or in part, the complainant will have a right to appeal for a rehearing of the application to the Court of Appeal on notice within 7 days of the judgement being delivered.

(4) On any such appeal, the Court of Appeal will rehear the application in full and may grant or refuse it in whole or in part.

(5) The Secretary of State may, by regulation, set out rules of procedure relating to any hearing or appeal under this section.'

This new clause would give the complainant a right of representation, with legal aid if they are financially eligible, to oppose any application to admit section 41 material about them. This new clause would also give complainants a right of appeal to the Court of Appeal if the application is allowed in whole or in part. The new clause also provides that the complainant is not compellable as witness at the application.

New clause 14—*Collection of and reporting to Parliament on data and information relating to proceedings involving rape and sexual assault—*

'(1) The Secretary of State shall collect and report to Parliament annually the following data and information—

(a) The time taken in every case of rape or sexual assault for the case to progress from complaint to charge, from charge to pre-trial plea and management hearing; and from then until trial.

(b) The number of applications to ask questions or adduce evidence of any sexual behaviour of the complainant under section 41 of the Youth Justice and Criminal Evidence Act 1999 ("the 1999 Act") made in the Magistrates and Crown Courts of England and Wales, irrespective of whether a trial was subsequently held.

(c) The number of cases which involved questions on or evidence of any sexual behaviour of the complainant in all rape, sexual abuse and other trials or contested hearings in the Magistrates and Crown courts in England and Wales, irrespective of whether an application was made to admit such questions or evidence in advance of the trial or hearing.

(d) In cases to which section 41 of the 1999 Act applies—

(i) whether Part 36 of the Criminal Procedure Rules was followed in each application and if it was not, how it was not;

(ii) the questions proposed to be asked;

(iii) the evidence proposed to be called;

(iv) whether the prosecution opposed the application and if so the content of their representations;

(v) whether evidence was called to support or oppose the application;

(vi) whether the application was allowed in whole or in part and a copy of the judgement made on the application; and

(vii) any other material which might assist in an assessment of the frequency, basis and nature of applications for the use of such questions or evidence and the likely impact on any parties to any trial and the trial outcome.

(2) The data and information to be collected under subsection (1) shall include—

(a) all the material from any pre-trial application;

(b) the questions in fact asked and the evidence in fact called about any sexual behaviour of the complainant in the trial;

(c) any application at the start or during the course of the trial to vary or alter any judgement given in any earlier application or any further application to admit such questions or evidence;

(d) whether any material not previously authorised was used in the trial;

(e) whether the prosecution objected; and

(f) any ruling made or action taken by the judge on the further conduct of the trial as a consequence of the admission of questions or evidence under section 41 of the 1999 Act.

(3) The data and information to be collected under this section shall be collected from the date of Royal Assent to this Bill.'

This new clause requires the Secretary of State to collect and report to Parliament data and information on trial delay and section 41 matters.

New clause 15—*Training for relevant public officials in relation to the conduct of cases of serious sexual offences—*

'(1) The Secretary of State shall, on this Act coming into force, publish and implement a strategy to provide training on the investigation of rape and alleged rape complainants, and the admissibility and cross-examination of complainants on their sexual history to—

(a) the Crown Prosecution Service;

(b) Police Forces;

(c) the Judiciary; and

(d) such other public bodies as the Secretary of State considers appropriate.

(2) The Secretary of State shall ensure that any judge who is asked to hear a trial where the accused is charged with rape or any other serious sexual offence has attended and completed a training programme for such trials which has been accredited by the Judicial College.'

This new clause ensures that all criminal justice agencies shall be trained and that no judge can hear a sexual offence trial of any kind unless they have attended the Judicial College serious sexual offence course.

New clause 42—*Enhancement of special measures in sexual offences—*

'(1) The Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) In section 27, after subsection (1), insert—

"(1A) Any interview conducted under this section of a complainant in respect of a sexual offence must be conducted by—

(a) a member of the Bar of England and Wales,

(b) a member of the Faculty of Advocates,

(c) a member of the Bar of Northern Ireland, or

(d) a solicitor advocate.'

New clause 57—*Restriction on evidence or questions about mental health counselling or treatment records relating to complainant or witness—*

'(1) The Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) After section 43 insert—

"43A Restriction on evidence or questions about mental health counselling or treatment records relating to complainant or witness

(1) If at a trial a person is charged with a sexual offence, then, except with the leave of the court—

(a) no evidence may be adduced, and

(b) no question may be asked in cross examination,

by or on behalf of any accused at the trial, about any records made in relation to any mental health counselling or treatment which may have been undertaken by a complainant or witness.

(2) The records made include those made by—

(a) a counsellor,

(b) a therapist,

(c) an Independent Sexual Violence Adviser (ISVA), and

(d) any victim support services.

(3) The court may give leave in relation to any evidence or question only on an application made by or on behalf of a party to the trial, and may not give such leave unless it is satisfied that—

(a) the evidence or question relates to a relevant issue in the case which will include a specific instance (or specific instances) of alleged sexual behaviour on the part of the complainant,

(b) the evidence or question has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice, and

(c) a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) the court on any relevant issue in the case.

(4) For the purposes of making a determination under paragraph (3)(b) the judge shall take into account—

(a) the interests of justice, including the right of the accused to make a full answer and defence;

(b) the need to preserve the integrity of the trial process by removing from the fact-finding process any discriminatory belief or bias;

(c) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;

(d) the potential threat to the personal dignity and right to privacy of the complainant or witness;

(e) the complainant's or witness's right to personal security and to the full protection and benefit of the law;

(f) the provisions of the Victims Code; and

(g) any other factor that the judge considers relevant.

(5) Where this section applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a sexual offence—

(a) it shall cease to apply in relation to the trial if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but

(b) it shall not cease to do so in the event of that person or those persons pleading guilty to, or being convicted of, that charge.

(6) Nothing in this section authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this section.

(7) In relation to evidence or questions under this Section, if no pre-trial application in accordance with Part 36 of the Criminal Procedure Rules has been made, or if such application has been made and refused in whole or in part, no further application may be made during the course of the trial or before its commencement to call such evidence or ask such question, and no judge may allow such application or admit any such questions or evidence.'

This new clause would restrict evidence or questions about mental health counselling or treatment records relating to complainant or witness unless a defined threshold is met.

New clause 68—*Law Commission consideration of the use of complainants' sexual history in rape trials*—

'The Secretary of State must seek advice and information from the Law Commission under section (3)(1)(e) of the Law Commissions Act 1965 with proposals for the reform or amendment of the law relating to the use of complainants' sexual history in rape trials.'

Alex Cunningham (Stockton North) (Lab): It is a pleasure to serve under your chairmanship, Sir Charles—probably for the last time in this Committee, as I believe you may be going fishing on Thursday. That might be just a rumour.

New clause 42 is yet another attempt by the Opposition to improve the provisions of special measures for victims of sexual offences. I hope the Government are more open-minded to this proposal. The new clause would make the use of professional advocates mandatory when complainants of sexual offences undergo video-recorded interviews. I thank the Society of Labour Lawyers for its extremely valuable input in the formation of this new clause.

A number of special measures are available to vulnerable and intimidated witnesses giving evidence at trial, under the Youth Justice and Criminal Evidence Act 1999. They include the use of screens, the use of a live TV link, giving evidence in private, the removal of wigs and gowns and the use of video-recorded cross examination where a video-recorded interview is admitted as evidence in chief—under section 28, which we discussed earlier.

The new clause deals with the special measure provided for under section 27—the use of video-recorded interviews as evidence in chief. Where the witness concerned is the complainant of a sexual offence, a video-recorded interview is presumed to be admissible in a Crown Court trial as evidence in chief. The Opposition seek to amend section 27 of the Act so that, where a victim of a sexual offence undergoes a video-recorded interview that is intended to stand as their evidence in chief at trial, the interview is conducted by a professional advocate as opposed to a police officer. We believe that is a relatively small but extremely effective proposal that could strengthen the evidence collected under section 27, and as a result strengthen a number of sexual offence cases from the outset.

Currently, video-recorded interviews are conducted by police officers rather than professional advocates. That is a rather significant extension of the role of the police in investigating crime, which includes the production of witness statements and interviewing of suspects, because a section 27 video-recorded interview is intended to be played to the jury and to stand in place of the live evidence on oath that would normally be elicited from the witness by the barrister for the prosecution.

Although it is true that police officers are trained to plan for and ask appropriate questions when conducting a video-recorded interview, it cannot be said that they have the same level of training or experience in witness handling as professional advocates such as barristers. An experienced practitioner explained to me that, in their experience, the interviews conducted by police can sometimes be repetitive, confusing and unclear. As a result, they may risk undermining the prosecution's case.

I stress that I am not criticising the police, who we know are committed to a full and thorough investigation of crimes. Rather, we believe that this is not covered by the police's usual remit of expertise, so it stands out as an anomaly in the range of police duties. The police should not be asked to carry out such duties, which fall outside the ordinary range of criminal investigation—especially in cases involving vulnerable or intimidated witnesses, which is what section 27 makes provision for.

We are also concerned that the use of police officers to conduct examination under section 27 may risk creating an imbalance in the equality of arms between the prosecution and defence. That is because the cross-examination of the same victims, whether conducted live during a trial or pre-recorded under section 28, will be conducted by a professional advocate, namely the defendant's barrister. The provisions of section 27 are intended to help a witness give their best evidence, but under the current system they may be prevented from doing so.

As things stand, with police officers undertaking interviews under section 27, the key witness in a sexual offence case—they will often be the only one in such cases—is denied the benefit of having their evidence for the prosecution elicited by a professional advocate. New clause 42 would redress that imbalance so that victims who receive the special measure of a section 27 video-recorded interview are not denied the chance to have their evidence elicited by a professional advocate.

The Government should adopt this eminently sensible proposal as soon as possible as one of their planned measures to improve the criminal justice system's response to rape and sexual offence cases. It would improve both the strength of the victim's evidence, and their experience of being questioned. I look forward to hearing the Minister's thoughts; I could not see anything on section 27 in the end-to-end rape review. Has his Department looked at the issue? Could it do some more work on it?

Before I turn to new clause 68, I pay tribute to the Mother of the House, my right hon. and learned Friend the Member for Camberwell and Peckham (Ms Harman),

for the time and energy she has devoted to this Bill. She has been a fierce and tireless advocate for improving the lives of women and girls, and her reputation as one of the most powerful voices in the House is well deserved. My hon. Friend the Member for Rotherham has made powerful points while speaking on amendments relating to section 41 of the Youth Justice and Criminal Evidence Act 1999. As she has already spoken at length about what section 41 does, or at least is intended to do, I will spare the Committee's time by not repeating what has been said.

I move on to new clause 68. The Opposition are deeply concerned by the issues raised by my right hon. and learned Friend the Member for Camberwell and Peckham. If section 41 is not functioning as was intended it is only right that the law be reviewed and, if necessary, amended. The last thing we want is for alleged victims of rape to face the ordeal of their sexual history being discussed in court—unless it can be shown to be absolutely necessary and only when strict criteria are met.

The Opposition's whole approach to this Bill has been to try to protect women and girls from violence and abuse and to ensure that all victims of violence are supported and protected through the criminal justice system. On section 41, we have sought to achieve this through new clause 68. The clause would compel the Government to ask the Law Commission to review section 41 of the Youth Justice and Criminal Evidence Act 1999, with the specific purpose of identifying whether it provides the safeguards intended when it was enacted—and if not, to advise the Government on avenues of reform.

As I am sure Committee members will agree, the question of what evidence should be admitted during trial is contentious and difficult; any reforms must carefully balance protecting complainants with respect for fair trial rights. Allowing the Law Commission to conduct a thorough review of section 41 would be the best course of action to determine the way forward.

Our thinking is twofold. First, we can have full confidence that the Law Commission will be able to evaluate this type of issue. It includes some of the most pre-eminent legal minds in the UK, so there is no doubt that it would review section 41 with the utmost care and detail. Secondly, if the Law Commission were allowed to undertake a root-and-branch approach to section 41, it might make recommendations for reform that went beyond those covered by the new clauses tabled to the Bill. For example, even the most experienced of legal practitioners sometimes struggle with the complexity of section 41, leading to avoidable errors made during trial. We hope that new clause 68 would allow the Law Commission to recommend changes that might be beneficial in this area, as well as others.

It seems that the Opposition are not alone in believing that pursing a Law Commission review is the best way to approach section 41; over the weekend, I was pleased to hear that the Government also concur with that view. Page 17 of the Government's end-to-end rape review report sets out that one of the actions that the Government will implement within the first six months will be to ask the Law Commission

> "to review the way rape myths are tackled as part of the court process and the way in which evidence about the victim is used."

Yet that strikes me as somewhat strange. When answering a question from my right hon. and learned Friend the Member for Camberwell and Peckham on this very topic in the Chamber yesterday, the Lord Chancellor seemed somewhat reluctant to confirm that that was the case. Furthermore, paragraph 114 of the Government's response to the rape review sets out that the Government have already asked the Law Commission to review section 41. I ask the Minister: which is it? Have the Government already asked the Law Commission to review section 41? If not, will he show his unequivocal support for that course of action by voting for new clause 68?

The Parliamentary Under-Secretary of State for the Home Department (Chris Philp): I hope that this is not the last time I serve under your chairmanship on this or any other Committee, Sir Charles.

The Chair: So do I!

Chris Philp: There is a lot to speak to in this group of new clauses, all of which cover the extremely serious question of the evidence given by rape complainants and other victims of sexual violence before the court and the need to make sure that they are properly looked after and that no one is deterred from coming forward with their claim. It would be terrible if people had an allegation and did not feel able to make it because they were concerned about the issues that we have talked about this afternoon.

I will take each new clause in order. New clause 57 talks about the rules around the disclosure of counselling or therapy sessions in some circumstances. It is important to set out how the law currently stands. There are already significant safeguards, and it is worth going through them. First, the police may request advice from prosecutors on whether something might be a reasonable line of inquiry. If they believe that medical notes might be a reasonable line of inquiry, they are allowed to approach the counsellor. They are not allowed to approach the counsellor simply because they believe such notes exist; that is allowed only if they believe the notes would support a reasonable line of inquiry.

If the notes do exist and if there is a reasonable line of inquiry, the police may approach the therapist to ascertain the situation, and the therapist may confirm or not confirm that there is a reasonable line of inquiry to pursue whether the notes do or do not exist. If they do exist, and if there is a reasonable line of inquiry, the therapist or counsellor does not disclose the relevant notes unless the victim gives their consent. The victim can withhold their consent and say, for whatever reason—understandably, in many cases—"I am not comfortable having that disclosed." Unless there is a court order compelling disclosure, which is a significant process that involves going to the court to get an order, the notes are not disclosed.

If the victim agrees that the notes can be disclosed, that does not mean they will necessarily be produced in evidence or disclosed to the defence. That will happen only if there is material capable of undermining the prosecution or, conversely, capable of assisting the case for the defence. So there are several steps to go through before very sensitive, private and personal information gets disclosed, one of which is the victim's own consent. That can be overridden only by an order of the court.

Sarah Champion (Rotherham) (Lab): I appreciate how sensitively and proactively the Minister is responding. The problem seems to be the perception as opposed to

[Sarah Champion]

the reality on the part of the victim and also on the part of the police who, from my constituents' experience, were routinely saying, "Unless you give us that information, we cannot proceed with the case." That has a chilling effect, which is why I am pushing for clarity and also a change in the law so that the guidance that should be there now would necessarily flow from that change in the law.

Chris Philp: I accept the point that there are instances, such as those that the hon. Lady referred to in her speech and I am sure exist more widely, where victims have had things said to them that are basically not appropriate and that either misrepresent the law as it currently stands or have the effect of deterring someone who would otherwise want to proceed with a case. That is probably one of the things that contributes to the unacceptably low level of rape prosecutions at the moment.

Paragraph 20 of the rape review report explicitly includes working with the police and getting them to take a different approach, frankly, to the one that the hon. Lady described in her speech and intervention. That will avoid the chilling effect. A moment ago, I laid out the law as it stands: it provides significant safeguards, including the victim's own consent. The issue is not the law, but how the law is being described to victims. That is why this issue is not so much for legislation but for the police and others to communicate more appropriately with victims. I assure the Committee that that is absolutely at the heart of the Government's agenda for the rape review and other work.

2.15 pm

Things do not stop there. The shadow Minister, the hon. Member for Stockton North, asked about new clause 68. The Law Commission has been asked to conduct a review of evidence and related matters in these cases, so I think that answers the question about the new clause: the work is in hand already. The review will include wider considerations of section 41 and the disclosure of sexual history, as well as the hon. Gentleman's point about people's personal medical history being dug into. He himself said in his speech that these are delicate issues—that we need to protect and encourage the victim and ensure that there is no chilling effect as well as ensure that justice is properly done. He acknowledged that the Law Commission is the right body to conduct that careful exercise, as it is an impartial expert. I am sure that we all accept that. That work has been commissioned to consider all the matters that have been discussed as well as section 41.

Alex Cunningham: Will the Minister confirm that the particular issues that I raised on new clause 68 are covered by the review? Can he totally clarify that?

Chris Philp: Yes. The Law Commission has been commissioned already and the remit, to which it has agreed—it has not been debated—is to examine the law, guidance and practice relating to the use of evidence in prosecutions of serious sexual offences and to consider the need for reform in order to increase the understanding of consent and sexual harm, and improve the treatment of victims. It covers all the areas that we have discussed.

Section 41 relates to the disclosure of a victim's personal sexual history—obviously a very private, personal matter. We are all concerned that that provision may in some cases discourage, or deter, people from making complaints. Under section 41 of the Youth Justice and Criminal Evidence Act 1999, there is a general prohibition on the admission of evidence or questions in cross-examination relating to the sexual history of the complainant apart from four very specific exceptions listed in subsections (3) and (5). Those exceptions are narrow and limited, and the judge's consent—permission—is required in advance; the defence cannot just bring out that history in court.

Besides having one of those conditions met, further criteria must be met: first, the evidence cannot be designed simply to impugn the credibility of the complainant; secondly, it must relate to specific and relevant instances of behaviour; and thirdly, the refusal of permission might render the verdict of the jury unsafe. That second set of criteria are applied after the court has examined whether one of the four very specific circumstances are met. That is why in 92% of cases no such evidence is adduced—a good thing, frankly. That practice will be considered by the Law Commission, however, as per the request in new clause 68.

The review has been commissioned and will examine the matters that we all agree are important and sensitive and where a delicate balance has to be struck. Rather than legislating in haste now, albeit absolutely for the right intentions, I think we should let the Law Commission's work unfold and proceed. That will not happen in time for the Bill because we will be on Report and Third Reading in just a few weeks' time. However, there are other Bills—I will not be specific, but if Members look at the Queen's Speech they can probably work out which ones—in which measures such as this might be made. I suggest to the Committee that that is the best way to proceed.

The Chair: I call Sarah Champion if she would like to respond before I call the shadow Minister.

Sarah Champion: My frustration is that we always promised jam tomorrow. It is always a report, a review or a consultation. All I want—and I believe the House wants—is for the justice system to be victim-centred rather than causing damage to victims of crime. I heard what the Minister said, and I am content to withdraw the new clause.

Alex Cunningham: I do not intend to press new clause 42 to a vote, but I hope that the Government's future plans will recognise the need for a provision to better serve victims. Similarly, I was mindful of pressing new clause 68, but I am delighted by the clear statement from the Minister quoting, I believe, from the document referred to the Commission. I am satisfied that these issues will be looked at. I hope that it is not just an internal review by the Law Commission but will listen to the views of people outside, including me and my right hon. and learned Friend the Member for Camberwell and Peckham (Ms Harman).

Sarah Champion: I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 16

THRESHOLD FOR IMPOSING DISCRETIONARY CUSTODIAL SENTENCE

"Section 230 of the Sentencing Act 2020 is amended as follows—

'(2A) If the court finds that the offence is so serious that neither a fine alone or a community sentence can be justified for the offence, it must state its reasons for being satisfied that the offence is so serious (having regard to the principles in subsection (2B), and, in particular, why a community order with appropriate requirements could not be justified).

(2B) When forming an opinion under subsection (2), the court should take account of the following principles—

(a) Passing the custody threshold does not mean that a custodial sentence should be deemed inevitable. Custody should not be imposed where a community order could provide sufficient restriction on an offender's liberty (by way of punishment) while addressing the rehabilitation of the offender to prevent future crime.

(b) Sentences should not necessarily escalate from one community order range to the next at each sentencing occasion. The decision as to the appropriate range of community order should be based upon the seriousness of the new offence, or offences.

(c) Section 65 of the Sentencing Code (a relevant previous conviction to be treated as an aggravating factor) should not be interpreted so as to push over the custody threshold the sentence for one or more offences that would not themselves justify custody.

(d) Where the offender being sentenced is a primary carer, imprisonment should not be imposed except for reason of public safety.'"—*(Alex Cunningham.)*

Brought up, and read the First time.

Alex Cunningham: I beg to move, That the clause be read a Second time.

I begin by thanking the Centre for Crime and Justice Studies for its work on this new clause. Its considered and thoughtful approach to reform in this area has been utterly invaluable.

This new clause amends the Sentencing Act 2020 to strengthen the custody threshold by making provision for sentencers to state their reasons when imposing a custodial sentence. We have tabled this new clause with a view to encouraging sentencers to use community-based sentences rather than short prison sentences. The benefit of community disposals has been discussed at length in the Committee, especially in our discussion on part 6, and I do not propose to go over those issues again in full.

The Opposition are interested in reforming the sentencing regime to guard in some way against short sentences, which evidence suggests may be associated with higher levels of reoffending than sentences served in the community, and during which there is little time to address the offender's needs. The Lord Chancellor's predecessor was acutely interested in reform in this area. In fact, while we are on the topic, I would be interested to hear an update from the Minister on the Ministry of Justice's unpublished Green Paper that features sentencing proposals to reduce the use of short-term custody. I recognise that his Department's position has moved on somewhat since then, but the paper may contain an evidence base that is helpful for legislators across the House as we seek to better our criminal justice system. Perhaps he can share some of its findings.

But the current Lord Chancellor is not as enthusiastic about radical reform in this area as his predecessor, so we have tabled a new clause that is a principled starting point for reform on this issue, which we hope the Government can adopt and build on. The aim of the new clause is to reduce the use of custody for less serious offending, for which there are better and more appropriate responses in the community sentencing framework.

The premise of reserving imprisonment for serious offences is already established in statutory terms in the Sentencing Act 2020, section 230 of which states:

"The court must not pass a custodial sentence unless it is of the opinion that — the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence."

However, it notes that the threshold is generally not applicable

"where a mandatory sentence requirement applies".

But even though we already have statutory provision that should guard against it, HM Inspectorate of Probation's 2019 inspection on "Post-release supervision for short-term prisoners" recognises that, in reality, people continue to go on an "expensive merry-go-round" of multiple wasteful short prison sentences.

The report noted that within the cohort of offenders on short prison sentences, women are disproportionally serving such sentences, with 15% of all female prisoners on them as compared with 6% of male prisoners, and that many in the cohort

"go in and out of prison for acquisitive crime associated with the dual diagnosis of mental health and addiction needs, but specific data are not available for this group."

Even the Government's sentencing White Paper shows little enthusiasm for the efficacy of short sentences in our current framework, describing them as offering

"temporary respite from offending behaviour"

and

"at best providing limited public protection, as most offenders continue to reoffend following release."

Outside the strengthening of the threshold for remand for children, however, the Bill as we have it does not make reforms to improve our regime with regard to short sentences or custodial periods.

The new clause would address that missed opportunity in the Bill and build on principles already accepted in sentencing guidelines, enshrining them into legislation to better clarify the currently rather opaque statutory custodial threshold. Specifically, it aims to better ensure that sentencers are appropriately reserving custody for serious offences by better clarifying the assessment that sentencers are required to make, and that the impact of imprisonment on dependent children is considered in the sentencing of primary carers. The latter point is an important one, and we will discuss it more fully when we get to new clause 26.

The clause also limits the relevance of previous convictions in determining custodial sentences. For the principle of reserving imprisonment for serious offences to be met in practice, it would be helpful to separate the issue of persistent low-level offending from that of serious offending. There is a range of low-level offending behaviour that is exacerbated rather that eliminated by

[Alex Cunningham]

short sentences, and which would be much better addressed by appropriately severe community sentences. Importantly for the current Lord Chancellor, perhaps, the clause as it stands does not eliminate short sentences. Speaking to the Justice Committee in 2019, he explained he did not believe abolishing short sentences was the right way forward, and said:

"My own experience as a recorder teaches me that there are times when, however reluctantly,"

short term prison sentences

"should be available to judges and magistrates. For example, repeat offenders who fail to comply with community orders ultimately need the sanction of custody".

The clause does not prohibit short sentences altogether; indeed the Opposition would have several reservations with that proposal, including the fact that it has been shown to lead to sentence creep.

Sarah Champion: My hon. Friend is making powerful points. Does he agree that the new clause would prevent the expensive merry-go-round of short-term wasteful prison sentences that do not ever address the nub of the problem? We are not trying to prevent short-term prison sentences, but to deal with the situation of the repeat offender going round and round, which costs so much and blocks up the system.

Alex Cunningham: That is most certainly the case. This is not just about cost, yet the cost to the Prison Service of accommodating people in prison even for very short periods is absolutely huge. The real effect, however, is not monetary; money is not the only factor. There is the whole issue of the effect on the family, and, as my hon. Friend said, the effect on the prospect of reoffending.

In Western Australia a ban on prison sentences of up to six months resulted in an increase in prison sentences over six months for law breaking that would previously had received a shorter prison sentence. It does not even go as far as introducing a presumption against short prison sentences, though this is an approach with something to be said for it and which has had some success in other countries, including my homeland, Scotland. Instead, the clause simply requires the court to explain why it believes a custodial sentence is appropriate and a community sentence cannot be justified. This will focus the mind of the court to ensure that custody is being used as the most appropriate option, not the simplest one. It also has the added benefit of improving accountability and understanding of sentencing decisions, which is important for public confidence in the criminal justice system.

As Adrian Crossley of the Centre for Social Justice said in one of our evidence sessions:

"We need to be much bolder about the amount of people we keep out of prison and deal with in the community. We can see clearly that in treating alcohol, drug addiction, mental health problems, literacy and numeracy, you are far more likely to have an effect on those key drivers of crime if you deal with people in the community than if you put them in prison. We could be much bolder in dealing with community disposals. There is a real risk of sentencing inflation here, of a prison population growing out of control and, in my view, of brutalising people who might otherwise be able to reform."—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee,* 18 May 2021; c. 42, Q58.]

2.30 pm

Our proposal goes a good way to answering the challenge that Mr Crossley put to the Government. Reforming the area of short prison sentences is needed urgently. In the next five years, we are on course for the prison population to increase to 100,000 people—a completely unprecedented level of incarceration in our country. Given that in the 1990s we were at 40,000, I am sure that the Committee will recognise that that is an astronomical increase. That is leading to issues in our prisons, with record levels of self-harm and violence, and excessive overcrowding, which limits prisoner access to rehabilitation.

In that light, I am sure that the Government can understand why the Opposition were disappointed that they did not use the opportunity of the Bill to take some action to reduce the prison population for those on short sentences. I sincerely hope that the Government will support the new clause to provide a kickstart to the justice system's work to reform the use of short sentences. I am interested to hear the Minister's response.

Chris Philp: Broadly speaking, the Government are keen to see alternatives to short custodial sentences. That is why we have been forward in promoting alternatives, such as community sentence treatment requirements to ensure that people get mental health, drug or alcohol addiction treatment as an alternative to short custodial sentences. As the Lord Chancellor has said, however—the shadow Minister also quoted him—in some cases, as a last resort, short sentences are required where the offender is not complying with community alternatives. I think we are agreed that short sentences should be available as an option.

I hope that the shadow Minister is reassured to know that the proportion of our prison population serving a short sentence of less than one year, say, is small. I do not have the precise figure at my fingertips, but I am pretty sure that less than 5% of our total prison population is serving a sentence of less than a year. Already, therefore, the principle that community alternatives are better than a short sentence is being applied in practice.

The new clause in some areas simply repeats the existing law, but in other areas I disagree with its principles. In fact, four principles are laid out in the new clause, the first and second of which—that custody should not be imposed where a community sentence would suffice, and that the community sentencing range should not escalate on each occasion—are already included in the Sentencing Council's "Imposition of community and custodial sentences" guidelines, which set out the approach that courts should take when deciding whether to impose a community or custodial sentence. The law is clear that custody should only be imposed where an offence or combination of offences is so serious that only a custodial sentence can be justified. Therefore, the first two of the four principles in the new clause are already enshrined in law.

The third principle of the new clause we disagree with on principle. It states that a relevant previous convictions should not push an offence over the custody threshold, where the current offence would not justify custody on its own. In effect, that element of the new clause says, no matter how many previous offences someone might have committed, "Don't look at that when deciding how long to sentence someone for." I disagree with that.

When someone is before the court having committed a large number of previous offences, that is rightly treated as an aggravating factor, which makes custody and longer custody more likely. It is right that repeat offenders are sentenced more seriously than people who have, for example, committed a first offence. So that element of the new clause I disagree with on its own terms.

The final of the four principles in the new clause refers to not giving custody to an offender where they are a primary carer, except for reasons of public safety. A legal principle is already established in the case of Petherick that where an offender is on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependents, which would make a custodial sentence disproportionate. The principle about primary carers is also reflected in the imposition guideline, and further to that the sentencing guidelines already say that where someone is a

"sole or primary carer for dependent relatives"

that is taken to be a mitigating factor.

The law as it stands gives some protection to primary carers. It does not go quite as far as the new clause, which I think goes too far; I do not think that someone being a primary carer should literally be a get out of jail free card. That person should be accountable and answerable for their crimes, if they have committed them, but their role as a care giver should be taken as a mitigating factor. That consideration is in law already, so for all those reasons, I do not support the new clause.

Alex Cunningham: I welcome the clarification around carers and sentencing, but it is still a fact that carers often find themselves in prison for short sentences when that could have been avoided.

I appreciate that the Government are making a commitment to look at short sentences and how they are set in the future. I hope that that work is done quite quickly, because I think it could drive tremendous change not just for defendants, or offenders, but for their families, and drive the rehabilitation to which my hon. Friend the Member for Rotherham referred earlier.

I do not intend to press the new clause. The Minister spoke about previous offences always being taken into consideration. I think that adds to the roundabout of people entering prison, leaving prison, entering prison, leaving prison, when the Government should ensure that such people have proper rehabilitative support rather than just their sentences being extended each time they appear in court for a similar offence. We need a much greater emphasis on rehabilitation in this country, and I hope that the Government recognise that. I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 18

Release of prisoners on Fridays or the day before Bank Holiday periods

"Section 23 of the Criminal Justice Act 1961 is amended by the insertion of the following subsection after subsection (3)—

'(3A) Where a prisoner is to be discharged on a Friday or the day before a bank holiday, at the discretion of the governor of the prison they may be discharged on a day within the previous five working days that is earlier than the day on which the prisoner would otherwise fall to be discharged.'"—*(Alex Cunningham.)*

Brought up, and read the First time.

Alex Cunningham: I beg to move, That the clause be read a Second time.

The new clause makes a very simple amendment to the current discharging regime from the prison, which the Opposition believe would ensure that those leaving prison have the support that they need as they transition into the community.

May I begin by thanking Nacro for its invaluable help in drafting the clause and its essential work to support people leaving prison? The new clause would give prisons the option to release people who need community support and are due for release on a Friday or the day before a bank holiday period on an earlier day in that same week, to ensure that support is put in place ahead of the weekend. That would support rehabilitation and resettlement. It would allow release to be spread from the Monday to the Thursday to prevent a significant increase in releases on the Thursday, which could be difficult for prisons to manage. Similar legislation has already been passed in Scotland in the Prisoners (Control of Release) (Scotland) Act 2015, and we think that it is time to introduce similar provisions for prisoners in England and Wales.

Many people released from prison on a Friday face an almost impossible race against the clock to get all the support that they need in place before the weekend. Getting all the correct support in place can prove a challenge on any day of the week, but it is especially difficult on a Friday because many community services have reduced service on Fridays, and reduced or no service exists over the weekend. Prison leavers have a very limited time window in which to make all the necessary arrangements that are vital to their resettlement before services close up shop for the weekend. If the prison leaver is unable to access those services, the likelihood of their reoffending is significantly increased.

Another issue is that there is actually a spike in releases on Friday. The national data show that more than a third of custody leavers are released on a Friday, and that includes releases that were scheduled for the Friday as well as those who have release dates over the weekend or on a public holiday. This peak in releases adds significant pressure to service staff and can consequently lead to late releases and pressure on services in the community.

Our new clause addresses that by giving the governor of the prison discretion to spread releases over the previous five days so that we do not simply end up shifting the Friday spike into a Thursday spike. We know that the release day is critical for putting in place the foundation blocks for life outside prison. As well as needing to attend mandatory appointments with probation, prison leavers may need to attend the local housing office to secure somewhere to live.

Sarah Jones (Croydon Central) (Lab): Does my hon. Friend share my experience as a Member of Parliament, which is that many people have come to my door on a Friday afternoon who have been made homeless for a particular reason or are in some kind of crisis, because they have found it almost impossible to get through to any services because people go home on a Friday? It is a very real thing. A question I always ask when I interview somebody to be a case worker is: "What would you do if someone comes to you on a Friday afternoon at half-past 4 and has nowhere to go?". Although this seems such a

[Sarah Jones]

simple new clause, it is incredibly important and could be the difference between someone slipping back into old ways or getting a bit of support that they need to rehabilitate themselves.

Alex Cunningham: That is most certainly the case. I may not have encountered as many as my hon. Friend, but I have had people in that situation who have nowhere to go. We find ourselves turning to local charities, but when it gets to 4.30 or 5 o'clock and somebody shows up, it is far too late to access even those sorts of support services.

Of course, the person may need to visit the jobcentre to make a universal credit claim or other benefits claims. They may need to see their GP or to attend community mental health or substance misuse services. No doubt there are many individuals who would have to do a number of things on that list. If they are unable to find somewhere to live, or to sort out necessary medication or financial support on the day, they may be left homeless over the weekend without vital medication and with only £46 to last until Monday when they can try to access services again. That can sadly lead to them falling back into old networks or habits just to get by.

It is therefore entirely in the Government's interest to make resettlement as seamless as possible, to minimise any possible lapse into reoffending. There is a window of opportunity when people are released from prison, when they are most motivated to move forward in their lives. That can pass by if the barriers to resettlement and rehabilitation are too high. Nacro has said that it often hears from staff and professionals in other agencies working with people on release from prison how Friday releases have a huge impact on levels of hope and motivation. It has provided me with a few case studies that well illustrate the problems that Friday prison releases can cause.

The first is the case of M:

"M was released on a Friday before a bank holiday weekend after serving a year in custody. He has an addiction to heroin but, when released, was not given the prescription charts from the prison which were needed to determine the dose of methadone he needed. He was also not given a bridging prescription.

As it was late afternoon on a Friday, the GP from the substance misuse service had left and M and his resettlement broker were unable to get his medication.

M was vulnerable and entitled to priority housing. However, the local authority did not deem him to be priority need and, as it was a Friday afternoon, M didn't have time to gather the further evidence needed to prove this before the weekend.

M spent the weekend sleeping in a known drug house and ended up using heroin. As part of his licence conditions, he was required to give blood samples and tested positive for drug use.

Releasing M earlier in the week would have meant faster access to the medical services and the medication he needed and increased his chances of finding a housing a solution more quickly."

Something as seemingly small as the discharge day being a Friday had seriously disastrous consequences for M and put his rehabilitation and resettlement in serious jeopardy.

Nacro also shared the story of C:

"C was released from prison after serving a three-week sentence. On release, his Through the Gate mentor met him and went with him to present himself to probation, a train ride away.

On presenting to the local housing authority to make a homeless application, C was told to make an online application to receive an appointment with a housing officer for the next week.

C's mentor contacted a local charity to which he could also make a homeless application and they asked him to come down on the following Monday. C also had to wait until the following Monday to go to the Jobcentre Plus to enquire about getting a deposit for a flat.

C slept rough that weekend. Had C been released earlier in the week, he would have been able to access these services faster without a three-night gap in which he had to sleep rough, which increased his chances of reoffending."

2.45 pm

I know that the Minister recognises the importance of making the transition back into the community as smooth as possible, and the positive impact that that has on the offender's rehabilitation in the community, so I would have thought that the Government would be keen to support this proposal. I am interested to hear whether it is something his Department has considered implementing.

Chris Philp: We do recognise that there are challenges in making sure that offenders leaving prison are given access to the services they need, so that they can get their lives back on track. However, Friday is a working day, and we would prefer to focus our efforts on making sure that those services are available on Friday, rather than on excluding Friday as a release day and therefore concentrating all the releases on just four days—Monday, Tuesday, Wednesday and Thursday—which, by definition, would mean that release numbers on those days were 25% higher than would otherwise be the case.

Sarah Champion: I hear what the Minister says, but the new clause would mean that we could address any issues on a Friday and before the weekend, when no staff are available.

Chris Philp: In terms of ensuring that people have access to the necessary services—we recognise that that needs to be done—significantly increased investment is being made to address the concerns that the hon. Lady has just raised. For example, in January this year—just a few months ago—the Government announced a £50 million investment to reduce crime and tackle the drivers of reoffending. That included work to help develop the Department's approved premises—those are obviously important when somebody is coming out of prison—to provide temporary accommodation to prison leavers at risk of homelessness in five key probation areas. In addition, earlier this year—again, I think it was in January or February—an additional £80 million was announced, which was aimed at expanding substance misuse programmes. Those two initiatives, funded this calendar year with £50 million and £80 million, are aimed at tackling prisoner homelessness issues and, separately, drug addiction problems, so there is a real commitment to do more in this area.

I would like to turn to the question of Scotland—the shadow Minister's native home. As he said, it legislated in 2015 to allow release not five days earlier, but up to two days earlier. A Freedom of Information Act request made just a few months ago uncovered the fact that over the six years that Scotland has had this provision, only 20 people have been released early under it, so it has not had an enormous effect in Scotland.

We would like to focus our efforts on making sure that when people are released on a Friday they are properly looked after, instead of increasing the numbers on Monday to Thursday—

Allan Dorans (Ayr, Carrick and Cumnock) (SNP) *rose—*

Chris Philp: I was about to sit down, but I can see that the member of the Committee from a Scottish seat wants to intervene, and it would be churlish not to accept.

Allan Dorans: I thank the Minister for giving way. Does he accept that a significant number of people are imprisoned hundreds of miles from their homes, and being released on a Friday would prevent them from getting the necessary services locally? Does he also accept that the prison governor, having known the prisoner's history in prison, is best placed to decide whether releasing him a few days early would benefit him and his opportunity to reintegrate into the community, thereby reducing his reoffending?

Chris Philp: I do understand the point, but public transport clearly does operate on a Friday and, indeed, on a Saturday and a Sunday for the most part.

It is instructive that, over the last six years, only an average of three people per year have been released early from Scottish prisons, suggesting that prison governors in Scotland, for whatever reason, have not chosen to use this power very widely. For that reason, it is right to concentrate our efforts on investing in rehabilitation services, as we are doing.

Alex Cunningham: I am hoping that the Minister is allowing me to intervene at the end of his remarks. He is concerned about increasing the number of people released from Monday to Thursday, but—I am sure he was listening attentively to my speech earlier—a third of all prisoners are currently released on a Friday. Some 33% or 34% of all prisoners are released on a Friday, and some of them could be spread over the previous four days, which would help services in trying to come to their aid.

I am concerned about what the Government might want to do. The question I pose to the Minister is: what are the Government going to do about the fact that such a high proportion of prisoners are released on Friday, to level it out a bit? I do not intend to press for a vote, but it is important that the Government consider what they are going to do about the huge spike on a Friday and, more importantly, about the lack of access to services. The Minister talked about investment in services, but if those services close down at half-past 4 on a Friday afternoon, they are no use to anybody being released from prison in those circumstances.

Chris Philp: I thank the shadow Minister for drawing attention to the statistic. As I said earlier, the focus is on investing to make sure that services are available—the £50 million and the £80 million. An additional consideration would be encouraging governors to make the release early in the day to avoid encountering services closing for the weekend.

Hywel Williams (Arfon) (PC): Will the Minister give way?

The Chair: You do not have to give way, Minister. You are doing a very generous thing here in responding to interventions.

Chris Philp: I am happy to do so if it is in order.

The Chair: It is in order and you do not have to seek my permission to give way.

Hywel Williams: I thank the Minister for giving way, and thank you for your guidance, Sir Charles. I tried to intervene earlier, but the Minister was distracted by another colleague.

I raised earlier the fact that women prisoners from Wales are held very far away from their homes. Release can entail a whole day's travel or even longer. However early in the day services are provided, it may be of no help whatever to people who have to travel cross country, perhaps by public transport, and who will not get back to their home communities until late evening.

The Chair: You are being generous, Minister.

Chris Philp: Yes, although I will probably sit down now. We are obviously looking at a very bespoke set of circumstances concerning female prisoners in Wales released on a Friday. I hear the concern about distances travelled in Wales, and I will undertake to raise that with my colleague the Prisons Minister, my hon. Friend the Member for Cheltenham (Alex Chalk).

The Chair: The hon. Member for Cheltenham is a very busy man.

Chris Philp: He is getting busier.

The Chair: He is indeed being made busier by the Minister here today.

Alex Cunningham: I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 19

Implementation of the Law Commission review of hate crime

"(1) The Secretary of State may by regulations implement any recommendations of the Law Commission following the conclusion of its review of hate crime.

(2) The power conferred by subsection (1) includes—

(a) power to amend primary legislation; and

(b) power to amend or revoke subordinate legislation.

(3) A document containing a draft of regulations under subsection (1) must be laid before Parliament not later than three months after the publication of the Law Commission's recommendations, and that draft must be in a form which would implement all those recommendations.

(4) Draft regulations under subsection (1) must be laid before Parliament not earlier than 60 days, but not later than 120 days, after the document referred to in subsection (3) was laid before Parliament.

(5) The draft regulations laid before Parliament under subsection (4) must be in the form in which they appeared in the document laid before Parliament under sub-section (3), except that they may contain any changes which have been recommended by any committee of either House of Parliament which has reported on that document.

(6) A Minister must make a motion in each House of Parliament approving the draft regulations laid before Parliament under subsection (4) within 14 days of the date on which they were laid.

(7) Subject to subsection (8), if the draft regulations are approved by both Houses of Parliament, the Secretary of State must make them in the form of the draft which has been approved.

(8) If any amendments to the draft regulations are agreed to by both Houses of Parliament, the Secretary of State must make the regulations in the form of the draft as so amended."—*(Alex Cunningham.)*

This new clause would require the Secretary of State to implement any and all recommendations made by the Law Commission's review of hate crime. Draft regulations implementing the Commission's recommendations would be subject to the super-affirmative scrutiny process (by subsections (3) to (5)), and would be amendable (under subsection (8)).

Brought up, and read the First time.

Alex Cunningham: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 25—*Strategy to tackle misogynist attitudes in society*—

"(1) Within 12 months of the passing of this Act, the Secretary of State must lay before Parliament a comprehensive national strategy to tackle misogynistic attitudes in society for the purpose of reducing the number of violent and non-violent offences perpetrated against women and girls.

(2) For the purposes of subsection (1) misogyny is defined as the dislike of, contempt for, or ingrained prejudice against, women or girls."

This new clause compels the Government to commit to the creation of a comprehensive national strategy to tackle the misogynistic attitudes which underpin the abuse faced by women and girls in society for the purpose of reducing the number of violent and non-violent offences perpetrated against women and girls.

Alex Cunningham: I thank my hon. Friend the Member for Walthamstow (Stella Creasy) for her tireless work in drafting the new clause, as well as her efforts to draw attention to this important issue. I met her in the corridor on the way back to the Committee this afternoon, and she was wishing us all well—"everybody," she said—in the hope that we could move this matter on. She knows that the community out there are watching closely, because they understand that it is this afternoon that I will be speaking to these new clauses.

New clause 19 would compel the Government to act on the recommendations of the Law Commission review on hate crime legislation, which we expect to be published later in 2021. As members of the Committee will be aware, the Law Commission's remit for the review is to

"review the current range of specific offences and aggravating factors in sentencing".

In its initial report published in September 2020, the Law Commission made several initial recommendations, one being that it explicitly supported the inclusion of "sex or gender" into the framework of protected characteristics. The effect of this would be to place "sex or gender" alongside characteristics that are currently protected by hate crime legislation—race, religion, transgender identity, disability and sexuality.

Unfortunately, history shows us that without a clear legislative vehicle for Law Commission proposals, it can be years until recommendations are implemented. That was the case with the 2014 Law Commission review into hate crime, which has yet to receive a response from the Government and has now been superseded by the more recent review.

For that reason, the Opposition wholeheartedly support new clause 19. Victims of misogynistic hate crime cannot afford to sit back and wait years for the Government to implement the Law Commission's recommendations, if they choose to implement them at all. We have seen that happen before and we cannot allow it to happen again. We cannot have more dither and delay—something this Government are unfortunately all too keen to do. New clause 19 would use the statutory instrument process to enable the Government to introduce legislation to enact the commission's recommendations. It has been drafted specifically to provide for parliamentary oversight of the introduction of the recommendations, including the ability to vote on them using the super-affirmative process.

While it is not possible to require the Government to act on recommendations that do not yet exist, this process would ensure that parliamentary time is made available for debate, scrutiny and amendment as soon as they do. Without new clause 19, there is a very real chance that the Law Commission's recommendations will take years to be introduced into law and, given the current epidemic of violence against women and girls, that is time victims cannot afford. Taken in isolation, recognising misogyny as a hate crime will not be the silver bullet in the battle to tackle the way women and girls are treated as a whole. That is why we have tabled new clause 25 to stand alongside it.

In order to really take on violence against women and girls, we first need to recognise and treat the root causes that drive it. As the Minister must agree, a culture where misogyny is accepted without challenge, or shrugged off all together, underpins many of the violent and abusive crimes perpetrated against women and girls. As Sophie Maskell of the Nottingham Women's Centre puts it so brilliantly:

"Misogyny is the soil in which violence against women and girls grows."

As long as we see violence against women and girls as somehow being created in a vacuum, we will never be able to fully tackle it. If we really want to confront the growing threats women and girls face, we must be more ambitious than simply looking to tackle individual acts of crime and must divert our gaze to the cause. In this case, that cause is misogyny. We must accept that hostility towards women and girls is deeply engrained in our society and it is this toxic culture, and our combined failure to tackle it, that enables perpetrators to commit their crimes. Whether the crime is serious sexual assault, domestic abuse or wolf-whistling at a woman in the street, unless as a society we start to take misogyny seriously, we will continue to lose the battle.

I was reminded of the horrific and pervasive impact of misogyny recently when I met a group of inspirational young women from St Michael's Catholic Academy in Billingham in my borough who are doing a project on the impact of sexual harassment on women and men. They were full of energy to tackle society's challenges, but they told me that they did not feel like they were being listened to; that they did not have a voice. That was only a few weeks ago, and I promised them that I would give them a voice today in this Committee.

Cassidy Desira told me:

"Our trauma is often minimalized and stigmatized, because the alternative of taking it seriously is too uncomfortable… I believe the issue is that people don't actually see the issue at all, or they plainly do not want to, they believe that they can see the

world how they please, how they were raised, as the law is clean-cut, their outdated opinions won't destroy someone's life. Unfortunately, the law has failed assault victims many, many times."

She went on to say:

"In my opinion, these ideas must be conveyed from the youngest ages possible, that means burning the victim-blaming ideology from the root, as sexual assault only gets worse over time. It starts with a whistle, soon the predator feels entitled to take it even further."

Emily Barlow, another student at the school told me:

"Peer pressure is a very big reason as to why boys in particular feel the need to degrade girls. Pride. Many boys think of the comments and actions they say and make as normal, this is because sexual harassment has become so normalised that it has become second nature but the scary thing is that they don't know they are doing it."

3 pm

I hope the Government will listen to the powerful words of those young women and support the Opposition's new clause, which will compel Ministers to commit to a comprehensive national strategy to tackle the misogynistic attitudes that underpin the abuse faced by women and girls in society, including that described by my constituents. Tackling crimes against women and girls is too important to be party political. Today, I hope that the Minister will join me in saying that, now more than ever, it is critical that we take the first steps to tackle the causes of abuse at their root. We can no longer refuse to ignore this issue. I ask the Committee to support new clauses 19 and 25.

The Parliamentary Under-Secretary of State for the Home Department (Victoria Atkins): I thank the hon. Gentleman for his speech. He does not need to implore this Government to listen to the girls he has quoted. Not only are we listening, not only have we listened, but we are following through with a tackling violence against women and girls strategy that is truly ambitious and, I believe, an unprecedented effort to tackle the issues that the girls he quoted have to contend with.

As I said, we conducted the first ever call for evidence on tackling violence against women and girls. No other Government have gone out to the public as we have to ask girls and women for their experiences of what they face day in, day out in their lives. We opened the conversation to the whole of society, so men and boys were very welcome to contribute as well.

I set my officials the challenge of reaching a young woman in her 20s, getting the bus home from work at night, who would not normally respond to surveys. We would somehow try to find ways of reaching her. Not only did we try that in December, but following the awful events of earlier this year—I deliberately do not name anyone, because I am respectful of the family, but I suspect we know the events of which I speak—we reopened the survey, precisely because we understood that women and girls want to talk and to share their experiences.

That is when we received 160,000 further responses. Each and every one is being read and considered carefully in drawing up our tackling violence against women and girls strategy. However, because the Government place so much focus on crimes that disproportionately affect women and girls, we have also decided to focus not one, but two national strategies on such crimes. For the first time, therefore, we have split out domestic abuse from the catch-all phrase "violence against women and girls", not because we are trying to de-gender it or to deny that the crime disproportionately affects women and girls, but because it is such a high-volume, high-harm crime that it deserves its own national strategy. Thus, we are giving it the focus it deserves in the domestic abuse strategy, which will be published later this year, after the VAWG strategy.

If nothing else has come out of recent events, it is that the range of offences that VAWG covers is significant, so we cannot pretend that a one-size-fits-all approach will suit all those crimes. We do not try to do that, and we are certainly not working towards that. We want to have tailored strategies fit for the 2020s, looking at both offline and online behaviour.

Sarah Champion: I hope the Minister is aware of how grateful I am for all the work she has done on this cause. She has really been a champion for it. Is she able to share with the Committee her thoughts about whether the crime is increasing or our awareness is increasing? Does she have any thoughts she can share about the root causes of this, and therefore how early prevention will stop it happening?

Victoria Atkins: It is a complicated answer to a complicated question. We know, for example, that some forms of crime are increasing, and there is ongoing academic research into some of those, but we have reason to believe that more women are reporting facing violent acts within sexual relationships. That encompasses a range of relationships, from intimate, long-term relationships to first dates. That is precisely why, on the Domestic Abuse Act 2021, we worked across the House with colleagues to clarify the law on the so-called rough sex defence, because we knew that women in intimate, long-term relationships and in shorter relationships were experiencing that. Through that Act, we also brought in the prohibition on non-fatal strangulation, and again we worked on a cross-party basis. There is emerging evidence, particularly on the latter, that more and more victims of domestic abuse, but also those in other types of relationships, are facing these acts within—to use shorthand—the bedroom. We very much wanted to put a marker in the sand to say, "This sort of behaviour is not healthy, and it is now not lawful."

The thinking is that those sorts of behaviours have increased over recent years. The thinking behind that is that online pornography has had an impact. However, I refer the hon. Lady to the research that I commissioned when I was Minister for Women and Equalities on the impact of online pornography and attitudes towards women and girls. The Government published that a few months ago. It is fair to say that there are not quite the clear lines that some would expect, but there are common themes there, if I can put it as broadly as that. Online pornography is a factor with some crimes, but sadly violence against women and girls is—dare I say it?—as old as time. The ways in which a minority of men—I make that absolutely clear—see fit to behave towards women and girls is part of the Gordian knot that we must try to untie. It will be a longer-term process than this Bill or the next Bill that comes along when legislation is appropriate. It will require a cultural education journey, as well as shorter-term fixes.

[Victoria Atkins]

I am very pleased that the hon. Member for Stockton North raised the Law Commission research. As part of our work on ensuring that the law is keeping up to date with modern practices, we have commissioned a lot of work from the Law Commission recently. I do not apologise for that. In fact, it gives me the opportunity to thank the Law Commission for the work it conducts, often looking into very complex areas of law and trying to find ways through in order to assist this place and the other place in updating the law.

The current investigation into hate crime illustrates that point very well. In 2018, we asked the Law Commission to consider the current range of offences and aggravating factors in sentencing and to make recommendations on the most appropriate models to ensure that the criminal law provides consistent and effective protection from conduct motivated by hatred towards protected groups or characteristics. The Law Commission published its consultation document in September. It was an enormous document—more than 500 pages and 62 separate questions. The Law Commission has been very clear that the consultation document was exactly that; it was not a report or a set of conclusions. It does not represent the Law Commission's final position on any of the issues raised.

I make that point because the new clause invites Parliament to adopt those recommendations wholesale, and I think we are all duty bound to acknowledge that what we have had so far from the Law Commission is a consultation document. It is not its final report. Indeed, the Law Commission hopes to report in October, and of course the Government will give that report very, very careful consideration. I do not believe, however, that it would be appropriate for this Government, or indeed any Government, or any Parliament, to sign what is effectively a blank piece of legislation without seeing what the Law Commission is going to recommend.

We do not know what the consequences may be of the recommendations, nor what would be required to enact and enable them. It may be, for example, that changes to primary legislation would be required. I have to say that I feel uncomfortable at the prospect of the Bill permitting other parts of primary legislation to be overwritten—overruled—by virtue of the super-affirmative procedure. We must surely ensure that significant changes to the law should be properly debated by both Houses of Parliament in the normal way, with any Bill going through all the normal processes and stages.

I gently suggest to the Opposition that perhaps they should be careful what they wish for, because in this very Bill clause 59 gives effect to the Law Commission's recommendation relating to the common law offence of public nuisance. It made that recommendation in 2015 and recommended that it be put into statute. If I recall our deliberations correctly, the Opposition opposed that very clause. I cannot imagine what the reaction would have been had we attempted to have this super-affirmative procedure imposed in relation to clause 59.

Sarah Jones: The Minister points to the risks of legislation being passed that defines something that is as yet undefined, and that being a blank cheque. Does she agree that our concerns about the protest element of the Bill, which gives the Home Secretary the right to define vast sections of the Bill after the legislation has been passed, relate to the same principle?

Victoria Atkins: No, no, no, on the very contrary. I do not want to get into very technical discussions about the ways in which hate crime legislation is drawn up, but the hon. Lady will know that there are reams of statute setting out various elements of hate crime and aggravating factors in sentencing. The proposed new subsection to which the hon. Lady refers in clause 54 relates to the definitions of

"serious disruption to the activities of an organisation which are carried out in the vicinity of a public procession, or…serious disruption to the life of the community."

It is not a proper comparison in any way, shape or form, because that is a definition of two terms, whereas—who knows?—the Law Commission may be very radical in its reform and recommend that we change many parts of primary legislation that has been passed over several years by various Governments.

On new clause 25, we have already taken significant action, not least with the passing of the Domestic Abuse Act, but we must go further. That is why we will publish the tackling violence against women and girls strategy and a complementary domestic abuse strategy to focus all our attention on those crimes that disproportionately affect women and girls. I have already spoken about the importance of education and challenging some cultural attitudes that exist in corners of society. That will be very much part of the work of both of those complementary strategies, so I invite the Committee to await the Law Commission's publication of its conclusions, and publication of the Government's VAWG and domestic abuse strategies. I hope that the hon. Member for Stockton North will be content to withdraw his new clause.

3.15 pm

Alex Cunningham: There are sufficient protections for Parliament in the secondary legislation process. Given what the Law Commission has done in the past, "radical" does not strike me as a word that would be applied too often.

Victoria Atkins: Will the Opposition then change their mind and support clause 59, which is a Law Commission recommendation to put public nuisance on the statute book?

Alex Cunningham: Indeed we will not.

The important thing here is to think about what we are trying to achieve. We are actually trying to achieve better protection for women and girls out there in society, day after day, week in, week out.

The Minister managed to talk about commissioned reports, two strategies and one survey. We have so much information in the system already that we know now that we need to act to deal with this. The evidence that I quoted from Emily and Cassidy bears that out. They are 15 or 16 and they were making it very clear that this is a major problem in society. I praise their school for facilitating discussions across the school. I hope that other schools will follow on, because that might build awareness and do away with us punishing people as, hopefully, society changes to the extent that women and girls are much more valued and not subject to the abuse that they suffer now, which may start as verbal but ends up very physical.

Sarah Champion: Will my hon. Friend comment on Nottinghamshire police's pilot on misogyny as a hate crime? They thought it worked exceptionally well in challenging behaviour. That is the sort of thing that we need rolled out across the country.

Alex Cunningham: As I said earlier, we have evidence that things are working in some areas and that there is a real need to do much more across the country. For that reason, we should be strong enough to accept with confidence that we can examine the Law Commission's recommendations later in the year and commit the decision making to a legislative Committee. On that basis, I shall press new clause 19.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 8.

Division No. 31]

AYES

Champion, Sarah	Jones, Sarah
Charalambous, Bambos	
Cunningham, Alex	Williams, Hywel

NOES

Atkins, Victoria	Levy, Ian
Baillie, Siobhan	Philp, Chris
Goodwill, rh Mr Robert	Pursglove, Tom
Higginbotham, Antony	Wheeler, Mrs Heather

Question accordingly negatived.

The Chair: I am mindful that the Whips want to finish at 5 pm. We need to make progress if that is to be achieved.

New Clause 21

MINIMUM SENTENCE FOR AN OFFENCE UNDER SECTION 1 OF THE SEXUAL OFFENCES ACT 2003

"(1) This section applies where—

(a) an individual is convicted of an offence under section 1 of the Sexual Offences Act 2003, and

(b) the offence was committed after the commencement of this section and at a time when the individual was aged 18 or over.

(2) The court shall impose an appropriate custodial sentence (or order for detention) for a term of at least the required minimum term (with or without a fine) unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

(3) In this section "appropriate custodial sentence (or order for detention)" means—

(a) in the case of an offender who is aged 18 or over when convicted, a sentence of imprisonment, and

(b) in the case of an offender who is aged under 18 at that time, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

(4) In this section "the required minimum term" means seven years."—*(Alex Cunningham.)*

This new clause creates a statutory minimum sentence for rape of 7 years. A court must impose at least the statutory minimum unless it is of the opinion there are exceptional circumstances relating to the offence or to the offender which justify not doing so.

Brought up, and read the First time.

Alex Cunningham: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 22—*Minimum sentence for an offence under section 4A of the Protection from Harassment Act 1997—*

"(1) This section applies where—

(a) an individual is convicted of an offence under section 4A of the Protection from Harassment Act 1997, and

(b) the offence was committed after the commencement of this section and at a time when the individual was aged 18 or over.

(2) The court shall impose an appropriate custodial sentence (or order for detention) for a term of at least the required minimum term (with or without a fine) unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

(3) In this section "appropriate custodial sentence (or order for detention)" means—

(a) in the case of an offender who is aged 18 or over when convicted, a sentence of imprisonment, and

(b) in the case of an offender who is aged under 18 at that time, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

(4) In this section "the required minimum term" means five months."

This new clause creates a new statutory minimum sentence for adults convicted of "stalking involving fear of violence or serious alarm or distress" of 5 months. A court must impose at least the statutory minimum unless it is of the opinion there are exceptional circumstances relating to the offence or to the offender which justify not doing so.

Alex Cunningham: It is impossible for anyone who has not been through it to imagine the trauma of being raped. That is why I will start with the anonymous voice of a rape victim who was attacked on 29 February last year. The attack happened after a night out in Marlborough. The victim awoke to find 20-year-old Killian Hutchinson assaulting her before raping her. She told police officers that she felt unable to move, either out of fear or because she was intoxicated. She told the *Swindon Advertiser*:

"I felt immense shame, I felt like nobody would believe me, I felt like it would go nowhere and I'd…done all of this for nothing. But know that none of this is true, those who love you will believe you, the shame you may feel is misplaced. And it won't all be for nothing."

It is a scandal that her attacker was sentenced to imprisonment of just five years and three months after pleading guilty to rape.

For the benefit of the Committee, I point out that although the maximum sentence for rape is life imprisonment, there is not currently a minimum sentence set out in statute. Instead, the sentencing guidelines set a starting point for rape of five years, which can be reduced to only four years if certain mitigating circumstances exist. The Opposition simply do not believe that four years is a proportionate sentencing option for one of the most horrendous crimes that it is possible to commit.

There are two options available to us. One would be to ask the Sentencing Council to review the current sentencing guidelines as they apply to rape, but that would take time and there is no guarantee that it would recommend any changes. The second is to create a statutory minimum sentence for rape—a provision along the lines of section 51A of the Firearms Act 1968, which compels a court to hand down a minimum sentence

[Alex Cunningham]

unless there are exceptional circumstances relating to the offence, or the offender, that justify not doing so. In other words, this method creates a minimum sentence that can be set by Parliament, but still gives judges the power to depart from that sentence in exceptional circumstances.

New clause 21 uses this method to create a minimum statutory sentence for rape of seven years, which we believe is more proportionate to the devastating consequences of this crime. The new clause would not only ensure that the punishment better represented the crime; it would also bring our sentencing regime closer to that in other common-law jurisdictions around the world.

I thank the House of Commons Library for the extremely helpful briefing that it put together on this point. When I asked what the sentencing ranges for rape were in other common-law countries, its research showed the following. The minimum sentence for rape in India was increased in 2018 and now stands at 10 years. In Australia, the Australian Law Reform Commission said in 2020 that the penalty range for rape was 12 years to life imprisonment. In the state of Victoria, rape carried a standard sentence of 10 years; and in New South Wales, the standard sentence was seven years.

That prompts the question of why is the sentencing minimum for rape comparatively low in this country? Can the Minister honestly say that a four or five-year sentence can ever truly reflect the enormous damage caused by rape? I must be clear about this: we are not talking about the maximum sentence available to courts, nor the average sentence; we are talking about the minimum sentence that a rapist could conceivably receive, as the sentencing regime stands.

I have a suspicion that the Minister will argue that setting minimum statutory sentences undermines the law by removing the discretion afforded to judges by way of the sentencing guidelines. He was previously at pains to talk about average sentences handed down being somewhat higher than the minimum, but it is still the case that many rapists receive much lower sentences. Surely toughening the law around minimum sentences cannot be so disagreeable, as clause 100 of this very Bill ensures that repeat offenders in relation to certain crimes receive a statutory minimum sentence. As the Library briefing sets out:

> "Clause 100 and Schedule 11 of the Bill would change the law so that for these offences a court is required to impose a custodial sentence of at least the statutory minimum term unless there are exceptional circumstances that relate to any of the offences or to the offender".

If members of the Committee have suddenly had a feeling of déjà vu, they are correct in thinking that they have heard that phrase before. That is because new clause 21 would create a statutory minimum sentence for rape of seven years, unless exceptional circumstances relating to the offence or the offender would make it unjust to do so. In other words, new clause 21 is much the same as clause 100 of the Government's Bill, which sets a minimum sentence for those convicted of repeated drug offences and burglaries.

That raises an important point. If the Minister says, as I suspect he will, that the Government cannot support new clause 21 because he does not agree with statutory minimum sentences, why does he support clause 100? What is it about the crimes under clause 100 that the Government feel deserve minimum sentences that rape does not? Why does it seem that the Government's thinking is different when it comes to crimes that affect predominantly women and girls? Why is he happy to have minimum sentences for repeat drug offences, which, as I set out earlier in Committee, will greatly increase racial disparity in the justice system, but not for rape?

As an Opposition, we accept that increasing the minimum sentence for rape will not in isolation solve the greater issues at play, but it would ensure that the punishment is proportionate to the crime. Fundamentally, it would send out a clear message that the Government are serious about tackling the epidemic of violence against women and girls in society. The question for the Minister is simple. Does he feel that four to five years in prison can ever be a proportionate sentence for rape? If not, does he support longer sentences for rapists? He has indicated in the past that he does; now is the time for him to ensure that they are imposed.

Like new clause 21, new clause 22 would use the model of the Firearms Act to create a statutory minimum sentence for those who commit the most serious type of stalking offences. When researching the law in relation to stalking, I came across a very useful and persuasive report written by the Under-Secretary of State for Justice, the hon. Member for Cheltenham. The report was part of a campaign by someone who is now the Minister responsible for prisons to recognise the immense harm stalking causes and to increase the maximum sentence that applies to the more serious forms of stalking—stalking involving fear of violence or serious alarm or distress. The report makes a compelling case and it is little wonder that it led to the maximum sentence being doubled from five years to 10. However, it did nothing at all to ensure that the minimum sentence for this horrendous crime reflects the impact on victims' lives.

As with rape, there is currently no minimum statutory sentence for those who stalk with the intention of invoking fear of violence or serious alarm or distress. Instead, judges follow the sentencing guidelines. As the law currently stands, someone convicted under section 4A of the Protection from Harassment Act 1997 can receive anything from 10 years in prison to a category C fine. Not only do we not agree with that, but it misrepresents the gravity of the offence. We also believe that the current system provides no deterrence to perpetrators of this terrible crime. Moreover, it is deeply troubling how few perpetrators of serious acts of stalking ever receive custodial sentences. One report notes that despite record numbers of convictions for stalking, 58% per cent of stalkers received only community or suspended sentences. How can it be right that more than half of stalkers never spend a day in prison? What sort of message does that send to the victims of this horrendous crime?

The purpose of new clause 22 is to end that undue leniency and ensure those convicted of the most serious form of stalking can expect to receive a custodial sentence as default, rather than as an exception. The question for the Minister is one of policy. Is it right for someone who stalks with the intention of causing fear of violence to receive a simple fine or a suspended sentence?

Chris Philp: As the shadow Minister made clear in his opening remarks, these are incredibly serious offences that leave victims traumatised and distressed, and the psychological scars are often borne for many years, if not decades, after the offences are committed. They are

among the gravest offences that can be committed, and it is right this House takes them seriously. We have discussed the Government's commitment to improving prosecutions in this area, and that was laid out by the Lord Chancellor in his statement yesterday following the publication of the rape review on Friday last week. More needs to be done, and the Government commitment in this area is clear.

3.30 pm

Let me start by being clear about the way in which the sentencing for rape works. The maximum sentence for rape committed under section 1 of the Sexual Offences Act 2003 is life imprisonment. It is right that the maximum sentence is life imprisonment—across the House, we would agree on that. The question that the new clause speaks to, however, is not the maximum sentence, but the minimum sentence or, implicitly, the length of time served in prison.

It is helpful to say that the average sentence handed down for rape is not four or five years, as listeners might have concluded; it is, in fact, almost 10 years. That number has gone up considerably, by about a year and a half to two years since 2010. It is right that the average sentence given for rape over the past 11 years has gone up significantly, and it is right that the average sentence is as long as 10 years. It is important to put on the record the fact that 95% of people convicted of that awful offence were sentenced to more than four years. In fact, 68% of people convicted of this awful offence are sentenced to more than seven years in prison.

Strictly speaking, nor is it right to say that the starting point is five years. The starting point is five years for a category 3 harm level, culpability level B. Conversely, the starting point for harm level category 1, culpability level A, is 15 years—a much higher starting point. The starting point depends on the levels of harm and of culpability. The starting points range between five and 15 years, so it is not accurate to say that the starting point is five years. All of that is within a maximum of life.

It is also worth pointing out that, where there is a repeat offence, there is in some circumstances a mandatory life sentence. For example, where the offender is convicted of a schedule 15 offence in the sentencing code, which includes rape, where the court would impose a sentence of 10 years or more and where there has been a previous conviction for a listed offence that received a life sentence with a minimum of five years or a sentence of imprisonment for at least 10 years, there is then a minimum of a life sentence for that second offence. We therefore already have a minimum sentence in those circumstances, which include rape. That is important.

Not only is there already a life sentence maximum and not only has the average sentence gone up by about two years since 2010, but we have legislated, and in this Bill are legislating, to ensure that those people convicted of rape spend longer in prison. About 80% of rapists are sentenced to a standard determinate sentence, which means that release is automatic. Historically, that release was automatic at the halfway point—80%, automatically released at the halfway point.

Last year, we legislated to move that automatic release point from half to two thirds for those sentenced to seven years or more for rape. In the Bill, at clause 106, we extend that to include rapes where the sentence is four to seven years. I was surprised that the Opposition voted against that clause, because it would see many rapists serve more of their sentence in prison. In fact, clause 107 would see child rapists—rape of a child under 13—spend more of their sentence in prison, but the Opposition, excluding the hon. Member for Rotherham, who abstained, voted against that as well. The Bill includes measures that would see rapists spend longer in prison, but the Opposition voted against that, surprisingly.

Let me turn now to the question of a statutory minimum proposed by new clause 21. As the shadow Minister said, there are some repeat offences where there is already a statutory minimum sentence. Not always, but generally speaking, those sentences are for repeat offences, and they are generally crimes that are straightforward in their definition. Possession of a firearm or a threat with a knife are first-time offences. The repeat offence is a class A drug offence or domestic burglary. There are minimum sentences in those areas, but they are for in many ways more straightforward offences that carry with them a smaller range of behaviours, making them potentially more amenable to a minimum sentence.

We have considered this matter carefully, as it is very serious, and the shadow Minister made some good points about it. We considered the question of judicial discretion, which the shadow Minister prefigured in his speech. On 20 May, we heard evidence from a number of witnesses, and asked them whether they thought a mandatory minimum for rape would be appropriate. I asked all four witnesses the question. They were Dr Janes, legal director of the Howard League for Penal Reform; Dr Paradine, chief executive of Women in Prison; Nina Champion, director of the Criminal Justice Alliance; and Dr Bild of the Sentencing Academy. I pressed the point about rape, as I knew we would be debating this new clause, and all four witnesses said that they felt a minimum sentence for rape would unduly circumscribe judicial discretion, because there are different cases with different backgrounds.

Viewed in the round, given the maximum of life; given that the starting points can be as high as 15 years; given that the average sentence in practice is 10 years and has gone up considerably since 2010; and given that we are rightly legislating in this very Bill to keep rapists in prison for longer, we feel, on balance, that imposing a statutory minimum for a first-time offence, as proposed in new clause 21, is not right at this time. Sentencing in this area, however, both in terms of its administration and the sentences themselves, is under ongoing review. We keep these things under continual review. We have made changes recently—I have referred to changes to the release points, embodied in clauses 106 and 107—and the matter will receive ongoing attention. We completely accept that there is a delicate balance to be struck, but feel that new clause 21 does not quite strike that balance, and I hope I have explained the reasons why.

New clause 22, which deals with stalking, is equally serious. We heard the shadow Minister say, quite rightly, that stalking can be a gateway offence. It is clearly serious in itself, but it can also escalate. What starts as stalking can soon become a great deal more serious, and we know about some recent cases that powerfully illustrate how that can happen, often with very tragic consequences. That is why in 2012 the Government rightly created two new stalking offences, including one that is the subject of new clause 22—stalking involving a fear of violence or serious alarm or distress. Later, in the Policing and

Crime Act 2017, the Government rightly doubled the maximum sentence for that offence from five years to 10 years. In 2020, 74% of people convicted of that offence, involving the fear of serious violence or serious alarm, received immediate custody. Among that 74% receiving immediate custody, the average sentence handed down was 16.9 months, which is over three times longer than the minimum proposed in the new clause. The new offence created by the Government, whose maximum penalty was doubled in 2017, is being used by the courts. Immediate custody is given in three quarters of cases, with a sentence handed down that is three times longer than is being proposed. Hand in hand with that is the wider work being done to protect women and girls, to which my hon. Friend the safeguarding Minister referred. The violence against women and girls strategy goes far wider than simply sentencing policies; it aims to protect women and girls from violence in a number of different ways in terms of preventive work, better prosecutions, better work by the police, work on evidence and prosecutions and so on. All of that is critically important.

Investment is being made in protecting women and girls from stalking offences, including the safer streets fund, to which £45 million has been given this year, which is designed to keep the streets safe more generally, and specifically £25 million to do more to protect women and girls, and rightly so.

Sarah Champion: I am listening intently to everything the Minister and his colleague are saying, which is great, but does the Minister understand that we have been promised all this for a long time? Although we are hearing his promises, we are awaiting the outcomes of reviews for which we are not given dates. Women are being murdered and abused.

Chris Philp: My colleague, the safeguarding Minister, tells me that the refreshed VAWG strategy will be published this year, in less than six months. I hope that gives some reassurance to the hon. Lady. If she is asking for action, I would point to the extra £25 million VAWG-specific funding, the new offences created in 2012 and the doubling of sentences in 2017. Those are not promises for the future, but actions that have been taken. She should also note that three quarters of those convicted of the offence get immediate custody, and that immediate custody of 16.9 months is more than three times longer than the minimum proposed in the new clause.

We want to make sure that those found guilty of those bad offences, which are terrible in themselves and can lead to escalation, are getting appropriately punished. But we are trying to strike a balance between that and the need to give the judge the ability to consider the individual case on its merits. That might include, for example, the perpetrator having mental health issues, where treatment might be more appropriate than custody. We need to tread carefully in striking that balance.

Given the action that has been taken and that three quarters of the offenders get immediate custody for a term much longer than the minimum proposed in the new clause, we are trying to strike a balance, which is not easy. There are good arguments on both sides of the issue, but we feel that the current sentencing laws make sense in this context. We have made a commitment to keep this under ongoing review and there are other legislative vehicles that could reconsider the issue. I am sure that the VAWG strategy, which my hon. Friend the safeguarding Minister is overseeing, will consider all the issues in the round, when it reports a little later this year.

These are difficult issues and difficult balances to strike, but I hope that I have explained why I believe the Government's approach strikes that balance.

Alex Cunningham: On new clause 22 and stalking, it was interesting to listen to the level of sentencing imposed, and that is quite encouraging. But I think the Government recognise that more still needs to be done, and I hope that they will continue to consider the matter.

I also think that it would be helpful to have more publicity about what happens to stalkers who commit that crime, because women are still not confident about coming forward. If they learn that they will be taken seriously and that the people who are making their lives a misery may receive the sort of sentence the Minister outlined, more women may come forward and use the law. I hope that the Government will consider that suggestion.

I am disappointed that the Government are prepared to vote against increasing the sentence for rapists. I never thought that I would stand in Committee and believe that Conservative Members would think that it was okay to vote against a minimum sentence of seven years for rapists. I have spoken to rape victims—it was some time ago, not recently—and they tell me that the people convicted went to prison for four years, five years, seven years, but they, the victims, got a life sentence. They continued to live that ordeal. Then, of course, when they learned that the person was due to be released, they lived their lives in more fear because they were afraid that something dreadful might happen to them again.

3.45 pm

We need to send a clear message to all men who think it is okay to pressure a woman to the point of rape, and then commit that terrible crime, that they will go to prison for at least seven years, regardless of the severity of the crime, because rape is rape. It is the most dreadful crime imaginable. It is important that they know that we in Parliament are standing against them and with women and girls. I want to press this new clause to a vote, because it is the right thing to do. We can talk about average sentences for as long as we like, but the bottom line is that there are rapists who are going to prison for less than five years, and that is simply not good enough in the society that we have today. I hope Committee members will vote for a minimum sentence of seven years for rapists.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 8.

Division No. 32]

AYES

Champion, Sarah	Jones, Sarah
Charalambous, Bambos	
Cunningham, Alex	Williams, Hywel

NOES

Atkins, Victoria	Levy, Ian
Baillie, Siobhan	Philp, Chris
Goodwill, rh Mr Robert	Pursglove, Tom
Higginbotham, Antony	Wheeler, Mrs Heather

Question accordingly negatived.

Chris Philp: On a point of order, Sir Charles. In my speech, I said that 74% of people convicted of a stalking offence with serious alarm faced immediate custody. I should have been clear that that was all custody, not just immediate custody.

The Chair: Thank you for that point of order, Mr Philp; I am sure it was much appreciated by the Committee.

New Clause 23

STREET SEXUAL HARASSMENT

"(1) A person must not engage in any conduct in a public place—

(a) which amounts to sexual harassment of another, and

(b) which they know or ought to know amounts to sexual harassment of the other.

(2) For the purposes of this section, the person whose conduct is in question ought to know that it amounts to sexual harassment of another if a reasonable person would think the conduct amounted to sexual harassment of the other.

(3) The conduct referred to in subsection (1) is known as street sexual harassment.

(4) A person (A) engages in conduct which amounts to street sexual harassment, or which they know or ought to know amounts to street sexual harassment, of another (B) if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(5) In deciding whether conduct has the effect referred to in subsection (4)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case; and

(c) whether it is reasonable for the conduct to have that effect.

(6) For the purposes of this section, "conduct" includes speech, non-verbal attitudes such as gestures imitating or suggesting a sexual act, and obscene sound effects.

(7) A person who engages in any conduct in breach of subsection (1) is guilty of an offence.

(8) Where on any occasion an authorised officer finds a person who he has reason to believe has on that occasion committed an offence under section 1 above, he must give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty, unless subsection (9) applies.

(9) This subsection applies (and subsection (8) does not apply) if a person has previously—

(a) been found guilty of an offence under subsection (1), or

(b) made payment of a fixed penalty issued under subsection (8).

(10) Where a person is given a notice under this section in respect of an offence—

(a) no proceedings shall be instituted for that offence before the expiration of fourteen days following the date of the notice; and

(b) he shall not be convicted of that offence if he pays the fixed penalty before the expiration of that period.

(11) A notice under this section shall give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence and shall state—

(a) the period during which, by virtue of subsection (2) above, proceedings will not be taken for the offence;

(b) the amount of the fixed penalty; and

(c) the person to whom and the address at which the fixed penalty may be paid; and, without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting to that person at that address a letter containing the amount of the penalty (in cash or otherwise).

(12) Where a letter is sent in accordance with subsection (11)(c) above payment shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(13) The form of notices under this section shall be such as the Secretary of State may by order prescribe.

(14) The amount of a fixed penalty payable in pursuance of a notice under this section is £500.

(15) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale."—*(Alex Cunningham.)*

This new clause creates an offence of engaging in unwanted conduct of a sexual nature in public. Those found to have committed an offence would be given an on the spot fine of £500. Those who commit the offence on further occasions would liable to receive a fine of up to £1000.

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 8.

Division No. 33]

AYES

Champion, Sarah	Jones, Sarah
Charalambous, Bambos	
Cunningham, Alex	Williams, Hywel

NOES

Atkins, Victoria	Levy, Ian
Baillie, Siobhan	Philp, Chris
Goodwill, rh Mr Robert	Pursglove, Tom
Higginbotham, Antony	Wheeler, Mrs Heather

Question accordingly negatived.

New Clause 24

REVIEW OF DOMESTIC HOMICIDE

"(1) Within 18 months of the commencement of this Act, the Secretary of State must commission a review and publish a report on the effectiveness of current legislation and sentencing policy surrounding domestic abuse, with a particular view to making policy recommendations to increase sentences for domestic homicide, and reduce the gap in sentence length between domestic homicide and other homicides.

(2) A review under subsection (1) must be conducted by a person who meets the criteria for qualification for appointment to the Supreme Court, as set out in section 25 of the Constitutional Reform Act 2005.

(3) A review under subsection (1) must consider—

(a) trends in the incidences and types of domestic abuse, with a focus on domestic homicide,

(b) sentencing policy as it applies to domestic abuse, with a focus on domestic homicide,

(c) current sentencing guidelines as they relate to domestic abuse, with a focus on domestic homicide, and

(d) the creation of new defences and/or mitigating circumstances to protect victims of domestic abuse who commit offences as a consequence of that abuse.

(4) For the purposes of subsection (1) domestic homicide is to be defined as circumstances in which the death of a person aged 16 or over has, or appears to have, resulted from violence, abuse or neglect by a person to whom they were related or with whom they were, or had been, in an intimate personal relationship, or a member of the same household as themselves.

(5) The Secretary of State must lay a copy of the report before Parliament.

(6) A Minister of the Crown must, not later than 3 months after the report has been laid before Parliament, make a motion in the House of Commons in relation to the report."—*(Alex Cunningham.)*

This new clause compels the Government to commission a review and publish a report on the effectiveness of current legislation and sentencing policy surrounding domestic abuse, with a particular focus on increasing sentences for domestic homicide. The review would also consider the creation of new protections to assist victims of domestic abuse who commit domestic homicide.

Brought up, and read the First time.

Alex Cunningham: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss the following:

New clause 48—*Reporting of data on homicide reviews*—

"(1) The Secretary of State must collect and report to Parliament annually data and information relating to reviews under—

(a) Section 16M of the Children Act 2004 (child death reviews) where the death of the child was due to homicide,

(b) Section 9 of the Domestic Violence, Crime and Victims Act 2004 (domestic homicide review), and

(c) Section 23 of the Police, Crime, Sentencing and Courts Act 2021 (offensive weapons homicide reviews).

(2) The Secretary of State must set out in regulations the type of data to be collected and reported under this Section.

(3) Not later than three months after each report has been laid before Parliament, the Secretary of State must lay before Parliament a report which assesses the lessons which may be learnt from the data.

(4) The report prepared for the purposes of subsection (3) must be prepared by a person independent of the Secretary of State."

This new clause requires the Secretary of State to collect and report annually to Parliament data on child death reviews where they involve homicide, domestic homicide reviews and offensive weapons homicide reviews. It would also require the Secretary of State to commission and lay before Parliament a "lessons learnt" review of the data.

New clause 55—*Domestic homicide reviews*—

"(1) Section 9 of the Domestic Violence, Crime and Victims Act 2004 is amended as follows.

(2) For subsection (2) substitute—

'(2) The Secretary of State must in all cases which meet the circumstances set out in subsection (1) direct a specified person or body within subsection (4) to establish, or to participate in, a domestic homicide review.'

(3) After subsection (3) insert—

'(3ZA) The Secretary of State must by regulations set out—

(a) the type of data relating to domestic homicide reviews which must be recorded, including—

(i) the number of domestic homicide reviews taking place across England and Wales annually; and

(ii) the time taken to complete each individual domestic homicide review;

(b) that the data must be recorded centrally in a Home Office database; and

(c) that the data must be published annually.'"

This new clause seeks to modify the Domestic Violence, Crime and Victims Act 2004 to force the Secretary of State to automatically direct a domestic homicide review in circumstances as outlined in Section 9 of the Act. The amendment also aims to improve data collection methodologies around domestic homicide reviews.

Alex Cunningham: The record will show that the Conservative members of this Committee voted against a minimum sentence of seven years for rape. The Minister pointed out some of our votes, and I am happy to put that on the record, too.

I again thank my right hon. and learned Friend the Member for Camberwell and Peckham, my hon. Friend the Member for Rotherham and my right Friend the Member for Kingston upon Hull North (Dame Diana Johnson) for their support on this new clause. New clause 24 would require the Lord Chancellor, within 18 months of the commencement of this Act, to commission a review of the effectiveness of current legislation and sentencing policy surrounding domestic abuse. The review, conducted by a senior member of the judiciary, would have a particular view to increasing sentences for domestic homicide, and reducing the gap in sentence length between domestic homicide and other homicides. The review would also examine the effectiveness of sentencing more broadly for domestic abuse.

It is a stain on our society that the number of female victims of murder in England and Wales is the highest that it has been since 2006, some 15 years ago. Rather than things getting better, things are getting dramatically worse. Staggeringly, almost half of female homicides—48%—take place in the family home. This flies in the face of the commonly held myth that murders take place away from the safety of the family home and are predominately committed by strangers.

As I set out earlier, while the Opposition fully support the Government's introduction of clause 103, which increases the custodial sentence for murder committed by a person under the age of 18, we feel there is much more that could be done in this area. This is particularly the case when it comes to the staggering difference in sentence lengths between those who murder within the home and those who murder a stranger in the street. Once again, I will repeat Carole Gould's words which I feel really ring true on this point:

"Why should a life taken in the home by someone you know be valued less than a life taken by a stranger in the streets?"

Even under the proposals set out in the Bill, a child aged 10 to 14 who commits murder after taking a weapon to the scene, say a public place, would be liable to a minimum of 13 years imprisonment. For a child of the same age who committed murder using a weapon in the family home, the minimum sentence would be eight years.

That gap exists not only for children, but for adults. As I have told the Committee before, Joe Atkinson was 25 when he murdered his 24-year-old ex-girlfriend in a jealous rage. For those who take a knife or weapon to the scene, such as those who stab someone to death on the street, the normal starting point for sentencing is 25 years, but Joe Atkinson was sentenced to just 16 years and two months, partly because the murder was committed using a weapon found in the victim's home. But that is just one piece of legislation that new clause 24 would seek to review. The review would also examine the effectiveness of sentencing more broadly for domestic abuse in general.

As Committee members will no doubt be aware, we have seen a staggering increase in appeals for help during the pandemic from those suffering domestic abuse. Between April 2020 and February 2021, Refuge recorded an average of more than 13,000 calls and messages to its

national abuse helpline each month, a truly horrifying number. This is an increase of more than 60% on the average number of monthly contacts at the start of 2020. The crime survey for England and Wales showed that 1.6 million women and 757,000 men had experienced domestic abuse between March 2019 and March 2020, with a 7% growth in police-recorded domestic abuse crimes. Each of those figures suggests that the current measures the Government are taking to address domestic violence and domestic homicide simply are not working.

In order to truly tackle these issues, we need a root-and-branch independent review of how our criminal justice system responds to domestic abuse and domestic homicide. This is too important a point to ignore, and I hope the Minister will support new clause 24 today.

Sarah Jones: I will not try to remake my hon. Friend's argument, which was compelling. I shall speak to new clauses 48 and 55, which have been grouped with new clause 24. I have spoken previously in Committee about the importance of learning the lessons of homicides. The relevant clauses would introduce offensive weapon homicide reviews, and we are debating the Bill at a time when serious violence is at record levels. Of all homicides in the latest year, 37% were knife-enabled crimes. A large proportion of homicides involved offensive weapons: in the year ending March 2020, 275 homicides involved a sharp instrument, 49 involved a blunt instrument and 30 involved shootings. We welcome this part of the Bill. It is important that lessons are learned.

It is incredibly important that the pathways that lead people to be involved in homicides can be understood and that the knowledge is shared with the bodies that can make preventive interventions and changes. Every homicide review that is carried out has a life behind it, and at the heart of every review is a person who has lost their life, each with a complex set of circumstances that can help to inform multi-agency bodies to prevent another death and provide better protections for those left behind. We owe it to the families of victims to ensure that any lessons are learned.

The domestic abuse charity Standing Together recently reviewed domestic homicide review processes in London boroughs, and its report highlighted that not enough knowledge sharing is happening. With new clause 48, we are seeking to put in the Bill a requirement on the Secretary of State to ensure that data is collected and reported on for all homicide reviews. The new clause requires the Secretary of State to collect and report annually to Parliament data on child death reviews involving homicide, on domestic homicide reviews, and on offensive-weapon homicide reviews. It would also require the Secretary of State to commission and lay before Parliament a lessons learned review of the data.

New clause 55, which was tabled by my hon. Friend the Member for Pontypridd (Alex Davies-Jones), would modify the Domestic Violence Crime and Victims Act 2004 to force the Secretary of State to automatically direct a domestic homicide review in circumstances as outlined in section 9 of the Act. We also aim with the new clause to improve data collection methodologies around domestic homicide reviews.

New clause 55 would bring about a really important change. Section 9(4) of the 2004 Act states:

"The Secretary of State may in a particular case direct a specified person…to establish, or to participate in, a domestic homicide review."

However, those should not just be particular cases at the Secretary of State's discretion; it should be the norm that when a person aged 16 or over has died, and their death has or appears to have resulted from violence, abuse or neglect by a person who they were related to, in a relationship with, or in the same household, a domestic homicide review should be automatically directed.

There are some serious gaps in data that a more common application of domestic homicide reviews would help to bring to light. Unless I am wrong, in which case the Minister can correct me, the Home Office does not publish a record of the number of domestic homicide reviews taking place across the UK, the number of victims with a history of domestic abuse who have gone or remain missing, or the number of unexplained or sudden deaths of victims with a history of domestic abuse. In the UK, the Office for National Statistics provides an annual homicide report for England and Wales, while Scotland has its own similar dataset, but those figures only scratch the surface. The ONS finds that over the last decade in England and Wales, an average of 85 women a year are killed by a partner or ex-partner. That is 44% of all homicides against women, while in Scotland the proportion is 49%.

Although Government data tells us the number of victims, their gender and their relationship to the perpetrator, there is no further information around the crimes and their nature. Some cases may also be lost because the killer's gender is not noted. Crucially, there is no information about the perpetrator's history of domestic abuse. That makes it hard to understand the relationship between domestic abuse and homicide, even on the most basic level.

Eight women were killed in the first three days of 2012, and in the same year, Karen Ingala Smith, chief executive of the domestic violence charity Nia, began to name them on her WordPress page to count dead women. She trawled through articles, police reports and domestic homicides reviews to collect and memorialise the cases. In 2015, Ingala Smith and Clarrie O'Callaghan launched the Femicide Census following their work on the count. Their 10-year report, released in November 2020, paints a stark picture of homicide against women in the UK. According to their report, there has been no improvement: women are being killed by men at the same rate as a decade ago, averaging 143 deaths a year when including all killers, not just intimate partners.

The Femicide Census provides crucial context for each killing, providing data on everything from the location to the method of the killing to the perpetrator's history of abuse. Femicide Census findings published in November 2020 show that over the past decade, 62% of cases encountered were of women who died at the hands of an intimate partner. Nearly two thirds of perpetrators were currently or had previously been in an intimate relationship with the victim, and 72% of female homicide victims died in their homes. The census also begins to link domestic abuse and femicide: 59% of cases involved a history of coercive control or violence, and almost half the perpetrators were known to have histories of abuse against women.

4 pm

In 2015, the Government launched the domestic violence disclosure scheme, known more commonly as Clare's law. Named after Clare Wood, who was killed in 2009 by a

former partner with a history of violence, the scheme allows potential victims of domestic abuse or their friends and relatives to obtain information from the police about a person's history of domestic abuse offences and convictions. The police also have a right to disclose that information to a person they perceive to be at risk, such as a woman entering a relationship with a known or suspected abuser.

The hope is that the scheme will help protect potential victims, but the reality can be far less simple. The victim may fear that it is dangerous to put in an application, out of fear of retaliation, and the data may not be available on many of the perpetrators because they were never reported to the police. There is no co-ordination between how police forces collect data on the number of women who died in sudden or unexpected circumstances, so there is currently no accurate way to measure the scale of the problem. There is no co-ordination or record of how many of these deaths are investigated as homicides. There is no requirement on police forces to record the number of women with domestic abuse markers against their name who have gone missing, and there is no automatic requirement that forces a domestic homicide review in any circumstance where the death is unexpected or sudden, or where the victim has domestic abuse markers attached to their name.

The Femicide Census includes cases only when it is legally clear that a man is the perpetrator, either because they were charged with murder or manslaughter or because an inquest reached an unlawful killing outcome. The ONS reports that a third of all homicides against women go unsolved. There are also other femicides that are solved but not counted in the official statistics, such as the case of Katie Wilding, whose death was caused by a drug overdose at the hands of a partner she had previously reported as abusing her. That was not recorded as a homicide, and only four years later was a domestic homicide review conceded.

Suicides can be legally linked to domestic abuse. Take the tragic case of Justene Reece, who died aged 46 by suicide after a campaign of abuse from her ex-partner. Hannah Sidaway, the senior Crown prosecutor for CPS West Midlands convinced the court that a sustained campaign of torment, which had caused psychological injury, was solely responsible for Justene's decision to kill herself. She proved that there was a clear intention that Justene Reece should suffer clear psychological harm on the part of the perpetrator, Nicholas Allen, and that his sustained and determined criminal actions were having a profound impact on her.

That case set a new precedent. The fact that a court was successfully convinced that that man was criminally responsible for causing suicide means that more men could be prosecuted too. The case showed that an abuser could be successfully charged with manslaughter when their victim was unable to withstand their sustained battery of verbal, psychological and emotional abuse. If that direct link can now be made, how many suicides caused by domestic abuse are going uncounted?

It is important that the lessons of all existing homicide reviews are better understood and shared between partners. That will ultimately make our streets safer and save lives. We need to learn the lessons. The victims and their families deserve nothing less.

Victoria Atkins: New clause 24 seeks to establish a review into sentencing in cases of domestic homicide, following many tragic cases, including those of Ellie Gould and Poppy Devey Waterhouse, among others, where there remain concerns about the sentences handed down by courts. The Government recognise those concerns, which is why my right hon. and learned Friend the Lord Chancellor has already announced a review of sentencing in domestic homicide cases.

We are carrying out a targeted review of how such cases, focused on those that involve fatal attacks on intimate partners or ex-partners, are dealt with in our justice system, including how such cases are sentenced. It is the Lord Chancellor's intention to make quick progress on this and to conduct the review while the Bill is making its way through the legislative process. The first phase of the review is under way to gather data and relevant information, following which the Lord Chancellor will consider the best form for the next phase of the review.

As for a review of domestic abuse legislation more generally, Parliament has just finished scrutinising, at length and in depth, the Domestic Abuse Act 2021. The Act contains many important reforms and proposals for the future, and our focus must be on implementing those reforms before reviewing their impact.

Turning to new clauses 48 and 55, clause 27(7) requires the Secretary of State to publish or make arrangements to publish the report of an offensive weapons homicide review, unless publication is considered inappropriate, in which case the Secretary of State must publish as much of the report as is considered appropriate for publication. Beyond that statutory requirement, we want to ensure that the recommendations from offensive weapons homicide reviews are shared, considered, debated and, where appropriate, implemented locally and nationally in England and Wales. We will therefore set up a new Home Office homicide oversight board to oversee the introduction of offensive weapons homicide reviews to monitor implementation of any findings and to support dissemination of learnings locally and nationally. We will set out further details about the board and how it will operate in due course.

We have already undertaken to create a central repository to hold all reports from DHRs. Once introduced, all historical reports will be collected to ensure that there is a central database on domestic homicides. That is a significant move forward. We are working closely with the domestic abuse commissioner on the detailed arrangements for that central repository so that it can be effective in helping all relevant agencies to access and apply the lessons learned from DHRs.

Finally, in relation to child death reviews, the "Working together to safeguard children" guidance sets out the statutory requirements regarding child death reviews. Established processes are already in place to collate and share learning from such reviews, and it is a statutory requirement that child death review partners make arrangements for the analysis of information from all deaths reviewed and that learnings should be shared with the national child mortality database. The database analyses the patterns, causes and associated risk factors for child mortality in England and disseminates data and learning from the reviews via its annual and thematic reports.

We are not persuaded that new clause 55 is necessary. The statutory guidance for DHRs makes it clear that where the criteria for a review are met a review should be conducted. The power in section 9(2) of the 2004 Act to direct that a review be undertaken is a backstop and, in practice, is rarely needed. However, when it is needed, it is exercised. Indeed, the Home Secretary exercised it recently in the case of the death of Ruth Williams, because Torfaen Council had refused to progress a DHR. Furthermore, we have introduced a process whereby the DHR quality assurance panel reviews all cases where a decision has been made not to conduct a review. The quality assurance panel is made up of members representing statutory bodies and expert organisations, and they are well placed to consider whether a DHR is necessary and to offer appropriate feedback. That process ensures that DHRs can commence as soon as practicable, without needing the Home Secretary to intervene in every case.

In summary, we agree that the lessons for all the homicide reviews must be learned and applied locally and nationally. Mechanisms are already in place, or are indeed being put in place, to ensure that that happens, so we are not persuaded that the two new clauses are necessary at this stage.

Sarah Jones: I am interested in the homicide board to which the Minister referred. We would appreciate more details about how that would work, and it would be nice if we could get them before Report. I am reassured about the number of databases that there are, because we know that violence breeds violence, and I suspect that there are themes across all these areas from which we could learn more. I ask the Minister to keep pushing the issue.

Alex Cunningham: I am not sure how the dual thing in one set of clauses works in protocols, but we have managed anyway.

Sir Charles, you will be thinking that if you got a fiver for every time you heard the words "review", "survey" or "commission", you would be able to fund your fishing fees for a week on the River Tweed. Here we are, asking for a further review, so that is another fiver in the pot towards your fees.

We believe that the Government are doing well across the domestic abuse agenda, but we think that much more could be done, in a much more positive way. I suppose the report card would say, "Could do better," and we think that the best way to do that is through a formal review, captured in the legislation. That would compel things to happen, and then we would get the information we need on which to act. For that reason, I want to vote on new clause 24.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 7.

Division No. 34]

AYES

Champion, Sarah	Jones, Sarah
Charalambous, Bambos	
Cunningham, Alex	Williams, Hywel

NOES

Atkins, Victoria	Philp, Chris
Baillie, Siobhan	Pursglove, Tom
Higginbotham, Antony	
Levy, Ian	Wheeler, Mrs Heather

Question accordingly negatived.

New Clause 26

DUTY TO COLLECT AND PUBLISH DATA RELATING TO NUMBER OF OFFENDERS WHO RECEIVE A CUSTODIAL SENTENCE AND ARE PARENTS OF CHILDREN, OR PREGNANT, AT THE TIME OF THEIR SENTENCING

"(1) The Secretary of State must take reasonable steps to ensure the following data is centrally collected and published annually—

(a) the number of offenders who receive a custodial sentence and, at the time of their sentencing—

(i) have parental responsibility for a child or children aged under 18; or

(ii) are pregnant; and

(b) the number of such children and unborn children.

(2) For the purposes of subsection (1), 'parental responsibility' has the meaning given by Section 3 of the Children Act 1989.

(3) The data collected under subsection (1) must include whether the offenders are the primary carer of any such children.

(4) For the purposes of subsection (3), 'primary carer' means someone who has substantial care of a person under the age of 18. Where care is equally shared, all carers of that child are to be considered a 'primary carer'.

(5) The data collected under subsections (1) and (3) must—

(a) only be gathered with the offender's consent; and

(b) be disaggregated according to the following criteria—

(i) the gender of the offender to which they relate;

(ii) the ethnicity of the offender;

(iii) the length of the sentence received by the offender;

(iv) the offence for which the offender is sentenced.

(6) The data and information to be collected under this section shall be collected from the date on which this Act is passed."

This new clause will place a duty on the Secretary of State to collect and publish data relating to number of offenders who receive a custodial sentence and are parents of children, or pregnant, at the time of their sentencing.—(Alex Cunningham.)

Brought up, and read the First time.

Alex Cunningham: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss the following:

New clause 32—*Requirement for a pre-sentence report when sentencing a primary carer—*

"(1) Section 30 of the Sentencing Act 2020 is amended as follows.

(2) After subsection (3) insert—

'(3A) A court must make inquiries to establish whether the offender is a primary carer for a child.

(3B) If the court establishes that the offender is a primary carer for a child, unless there are exceptional circumstances before sentencing the offender the court must obtain a pre-sentence report containing information to enable the court to make an assessment of the impact of a custodial sentence on the child.'

(3) After subsection (4) insert—

'(5) In this section—

(a) "child" means a person under the age of 18; and

(b) "primary carer" means a person who has primary or substantial care responsibilities for a child.'"

This new clause amends section 30 of the Sentencing Act 2020 to make clear the requirement for a sentencing judge to have a copy of a pre-sentence report, considering the impact of a custodial sentence on the dependent child, when sentencing a primary carer of a child.

New clause 33—*Duty of the court to state how it has considered the consequences for the child when sentencing—*

"(1) Section 52 of the Sentencing Act 2020 is amended as follows.

(2) After subsection (9) insert—

'Offenders who are primary carers

"(10) A court sentencing a primary carer for a child must state how the best interests of the child were considered in determining the sentence (including, if appropriate, consideration of the views of the child).

(11) A court sentencing a pregnant woman must state how the best interests of the baby were considered in determining the sentence.

(12) In this section—

(a) 'child' means a person under the age of 18; and

(b) 'primary carer' means a person who has primary or substantial care responsibilities for a child.'"

This new clause amends section 52 of the Sentencing Act 2020 to require a sentencing judge to state how the best interests of a child were considered when sentencing a primary carer of a dependent child.

New clause 34—*Welfare of child to be a distinct consideration when sentencing a primary carer—*

"(1) After section 227 of the Sentencing Act 2020, insert—

'227A Restrictions on imposing imprisonment on a primary carer

(1) This section applies where a court is considering imposing a custodial sentence on—

(a) a primary carer for a child, or

(b) a pregnant woman.

(2) The sentencing court must—

(a) consider the impact of a custodial sentence on the child or unborn child, and

(b) presume (subject to victim impact and any other sentencing considerations) that a non-custodial sentence is in the best interests of the child or unborn child.

(3) In this section—

(a) "child" means a person under the age of 18, and

(b) "primary carer" means a person who has primary or substantial care responsibilities for a child.'"

This new clause would create a requirement for a sentencing judge to consider the impact of a custodial sentence on a child when sentencing a primary carer of a dependent child.

New clause 35—*Welfare of child to be a distinct consideration when determining bail for a primary carer—*

"(1) Section 4 of the Bail Act 1976 is amended as follows.

(2) After subsection (9) insert—

'(10) Where a court determines whether to grant bail in criminal proceedings to a person to whom this section applies who is a primary carer for a child or pregnant, the court must—

(a) consider the impact of not granting bail on the child or unborn child; and

(b) presume (subject to victim impact or other relevant considerations) that it is in the best interests of the child or unborn child for bail to be granted.

(11) In this section—

(a) "child" means a person under the age of 18, and

(b) "primary carer" means a person who has primary or substantial care responsibilities for a child.'"

This new clause would impose a requirement for the judge to consider the impact of not granting bail on a child when determining, in criminal proceedings, whether to grant bail to a primary carer of a dependent child.

New clause 36—*Data collection in relation to prisoners who are primary carers—*

"(1) The Secretary of State must collect and publish annual data identifying—

(a) how many prisoners are the primary carers of a child,

(b) how many children have a primary carer in custody, and

(c) the ages of those children.

(2) In this section—

(a) 'child' means a person under the age of 18, and

(b) 'primary carer' means a person who has primary or substantial care responsibilities for a child."

This new clause would impose a requirement on the Secretary of State to collect and publish data on the number of prisoners who are the primary carers of a child and the number of children who have a primary carer in custody.

Alex Cunningham: The new clauses fall broadly into three categories: sentencing provisions, which is new clauses 32, 33 and 34; provisions relating to determining bail, which is new clause 35; and provisions relating to data collection, which is new clauses 26 and 36. I will speak to them in that order.

I would like to thank Women in Prison for its helpful input to the new clauses, and I recognise the excellent work of the Joint Committee on Human Rights, whose members have promoted new clauses 32 through to 36 and carried out forensic work on the matter in recent years.

An estimated 53,140 children are affected by their primary carer going to prison each year. The mother is more likely to be that primary carer, and as the 2007 Corston report notes, as many as 95% of children are forced to leave their home when their mother goes to prison. That separation can be extremely traumatic for children, and they go on to face a huge upheaval in their lives as a result of something that is no fault of their own.

As Georgia, a young woman who was 15 years old when her mother was sentenced to prison, eloquently put it to the inquiry by the Joint Committee on Human Rights:

"This is the thing I always think about, and I think back to it quite a lot. I know my mum did wrong and deserved a punishment, but if you were to stand my mum up in that box with me and my brother, and someone turned around and said 'Do you sentence these three?', would the judge look at it differently?"

We know that the primary carer is often also at risk of losing employment and their home, even after a short period in prison. Research has shown that, even among those who do not lose their home, many will face problem debt, which consequently will still leave the children vulnerable to homelessness. As Women in Prison notes:

"The imprisonment of a household member is one of ten adverse childhood experiences known to have a significant negative impact on children's long-term health and wellbeing, their school attainment, and later life experiences, including life expectancy and the likelihood of being imprisoned themselves.

Significantly, experiencing parental imprisonment increases a child's own risk of involvement with the criminal justice system, with over two thirds of prisoners' sons going on to offend themselves."

4.15 pm

Sarah Champion: I support the new clauses, because I have yet to see a positive reason for women going into prisons. As my hon. Friend is saying, the impact on children is dramatic, but it is not only the fact that children are more likely to themselves face criminal actions; it is also that, on every measure, children going into care fail to achieve their potential. We really are damning children by doing this to their mothers.

Alex Cunningham: We certainly are. I quoted the figure earlier; some 95% of children end up leaving their home when their principal carer goes to prison, which bears out what my hon. Friend says.

The 2017 Farmer review found that family ties are a factor in reducing reoffending, which has attendant benefits for all our communities. The Government's own 2018 female offender strategy acknowledges that

"custody results in significant disruptions to family life"

and that many women

"could be more successfully supported in the community, where reoffending outcomes are better."

Sentencers are already expected to consider the impact on child dependants, but it seems that in reality the current guidelines are not applied rigorously or consistently across all cases.

The Joint Committee on Human Rights found in its 2019 inquiry "The right to family life: Children whose mothers are in prison" that despite the fact that the Sentencing Council had strengthened its guidance to judges and magistrates about the need to consider dependent children,

"evidence to the inquiry clearly indicated that this guidance is not being satisfactorily adhered to in practice and the question remains whether these steps go fast or far enough to guarantee children's rights."

Taken together these clauses will strengthen sentencers' existing duties to ensure that they are applied consistently across all cases and that, as a result, children's rights are guaranteed.

I will now consider the new clauses that deal with sentencing provisions. New clause 32 amends section 30 of the Sentencing Act 2020 to make clear the requirement for a sentencing judge to have a copy of a pre-sentence report, considering the impact of a custodial sentence on the dependent child, when sentencing a primary carer of a child. The Joint Committee has raised concerns about the current quality and use of pre-sentence reports and in its inquiry was told that pre-sentence reports were

"vitally important in ensuring that courts have all the information necessary about dependent children before sentencing a primary carer,"

but written evidence from Dr Natalie Booth noted that they were used

"inconsistently and ineffectively in many cases".

New clause 33 amends section 52 of the Sentencing Act 2020 to require a sentencing judge to state how the best interests of a child were considered when sentencing a primary carer of a dependent child. New clause 34 would create a requirement for a sentencing judge to consider the impact of a custodial sentence on a child when sentencing a primary carer of a dependent child.

The Opposition believe that these new clauses can help address the current inconsistency that I previously referred to by explicitly requiring sentencers to give due regard to the impact of a sentence on any dependent children and their welfare. As the Joint Committee on Human Rights notes:

"These new clauses merely reflect what ought to, but sadly often does not, happen—to consider and respect the rights of the child when a primary carer is sentenced".

As Dr Paradine of Women in Prison told the Committee in one of our evidence sessions:

"It is completely unacceptable that the measures up until now have not resulted in the change needed. This is an opportunity to make that small change. It does not require anything different, but it will make sure, hopefully, that the things that should be happening in court do happen, that imprisonment is not having a disproportionate impact on children and that their best interests are safeguarded."—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee,* 20 May 2021; c. 150, Q255.]

I think Dr Paradine puts it very compellingly; these are things that are already meant to happen in the court, yet in many cases they still do not.

Mr Robert Goodwill (Scarborough and Whitby) (Con): The hon. Gentleman is making some very valid points and no one should underestimate the effect on a child of having either parent sent to jail. He talks a lot about "a primary carer". As a parent, I see myself as sharing the care of our children. Is he assuming that in every case the woman would be the primary carer, or does he consider in these days of equality that it would be for the judge to decide who might be the primary carer?

Alex Cunningham: The right hon. Gentleman makes a very valid point. There are some cases where a lone male parent is the principal carer who may find himself in the dock facing a prison sentence. Naturally, the provisions apply to both men and women.

Dr Paradine puts it very compellingly: these are things that are already meant to happen in the court, yet in many cases they still do not. The Government clearly intend these things to happen, so I hope they can support the new clauses backed by the Joint Committee on Human Rights today and tighten provision in this area.

New clause 35 would impose a requirement for the judge to consider the impact of not granting bail on a child when determining in criminal proceedings whether to grant bail to a primary carer of a dependent child. This is an important measure because we know that even short bouts in custody can have very destabilising effects on families. The Government's own figures show that a significant proportion of women remanded into custody do not go on to receive a custodial sentence. In 2019, 66% of women remanded by the magistrates court and 39% remanded by the Crown court did not go on to receive one. Again, under the current provisions, consideration should be made of child dependants but in practice it is not, and so again we ask the Government to support the amendment backed by the JCHR and tighten practice in this area.

Finally, I turn to the data provisions in new clauses 26 and 36. New clause 26 would place a duty on the Secretary of State to collect and publish data on the

[Alex Cunningham]

number of offenders who receive a custodial sentence and who are parents of children or are pregnant at the time of their sentencing. New clause 36 would impose a requirement on the Secretary of State to collect and publish data on the number of prisoners who are the primary carers of a child and on the number of children who have a primary carer in custody. Both clauses speak to the same issue: there is an absence of data on this topic that needs to be addressed.

As the JCHR stated in its legislative scrutiny report for the Bill:

"The Government still does not know how many mothers of dependent children are in prison. It also does not know how many children are separated from their mother by her imprisonment. Despite this Committee's repeated recommendations that it should collect this data, the Government's approach continues to keep a group of children invisible to policy makers, the courts, the Prison Service and other support services."

The Committee continued:

"A lack of data inhibits the ability of the Government, prisons and local authorities to design and evaluate services for children whose mothers are in prison. It prevents children whose primary carer has been separated from them, through no fault of their own, from accessing the support that will help them during and after their mothers' sentence, and ultimately shows a blatant disregard for the rights of the child, as well as their parents' right to family life."

The absence of data is impacting service provision and ultimately preventing the Government from being able to improve measures to support primary carers and their children who are affected in this way, and means that we cannot measure progress in this area. These simple and straightforward duties on the Government are the next necessary step in improving the criminal justice system's response to these cases, and I hope that the Government can support them today.

As Women in Prison recognises, this is a timely opportunity for the Government to

"make progress on their ambitions to radically reduce the number of women in prison included in their strategy and National Concordat on women in the criminal justice system, as well as the recommendations of the Farmer Review on women."

Given that three in five women in prison have children under the age of 18, the proposed changes are needed now, as the Bill ushers in sentencing reforms.

The new clauses have cross-party support and will safeguard the welfare of the thousands of children who experience the profound impact of maternal imprisonment by ensuring that it is at least at the forefront of sentencers' minds. All we ask is for the Government to ensure that what should happen does happen. Often, it simply does not.

The inclusion of the new clauses in the Bill will ensure that the data on the welfare of children is captured and adequately reported, so that those children can access the services and support that they need and deserve.

Chris Philp: I am conscious that we are perhaps not progressing as quickly as we had hoped, so I will try to be concise, while answering the questions properly.

The Government accept that we should avoid imprisoning a primary carer unless it is absolutely necessary, but we should also be clear that when someone commits a serious criminal offence, the fact that they are a primary carer should not confer immunity from imprisonment on them. There is clearly a legitimate criminal justice objective in imprisoning some people in some circumstances. We should not get into a position whereby simply having a dependant renders the offender immune from custody—that is not a reasonable proposition. However, we should ensure that custody is used as a last resort and sparingly. I will answer the questions in that spirit.

New clause 26 concerns data collection. The Government fully support the intention behind it, but we do not believe that it is necessary. We already take steps to obtain details of dependent children or pregnancy both at court, as part of the pre-sentence report, and again on reception into custody. However, it is true that the information is not collected centrally, or in a standard format. The Government intend to enable that information to be collated better and to improve its availability. The underlying data exists; it is simply a question of collation and we intend to respond positively to the various JCHR recommendations on that.

Again, we support the principle behind new clause 32, but do not believe that it is necessary. The sentencing code is already clear that

"the court must obtain and consider a pre-sentence report before forming the opinion unless, in the circumstances of the case, it considers that it is unnecessary to obtain a pre-sentence report."

Existing legislation already asks the court to obtain that PSR. In addition, further guidance was introduced in 2019 for probation practitioners. It sets out that for those who are primary carers with responsibilities for children, a request to the court for an adjournment to prepare the PSR is considered mandatory. That is to ensure that the impact of a custodial sentence on dependants is considered.

As we set out in the sentencing White Paper last September, we are currently running a pilot in 15 magistrates courts. It includes targeting female offenders, who, among other cohorts, have been identified as having particular needs, for fuller written PSRs.

I hope that it is clear from the sentencing code, the guidance issued to probation practitioners and the pilot work that the matter is already being addressed through existing measures. That is probably one reason why so few women are in prison.

Again, the Government are sympathetic to the sentiment behind new clauses 33 and 34, but, by law, a court is already required to state its reasons for deciding on a sentence, and courts are required to take into account the impact on dependants at various points in the sentencing process. We have already discussed the Petherick case, which established that, on the cusp of custody, cases where there is a dependant should be treated in a way that takes that into account. That can tip the scales so that a custodial sentence that might otherwise have been considered proportionate becomes disproportionate.

As we have discussed, courts are also required by law to follow relevant sentencing guidelines issued by the independent Sentencing Council, unless the court is satisfied that it would be contrary to the interests of justice to do so. Reflecting the principles in the Petherick case, which we have spoken about, the guideline on the imposition of community and custodial sentences is clear that

"on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing."

4.30 pm

Where the impact on dependants would not make a custodial sentence disproportionate, the guideline makes it clear that the court should determine the shortest custodial sentence commensurate with the seriousness of the offence, and it requires sentencers to consider whether a sentence can be suspended. On top of all that, the sentencing guidelines state that sole or primary carer status is a mitigating factor. I think there is a great deal there to push courts very firmly to consider properly and fully a person's status as a primary carer, although not to disregard the offence—this is not a "get out of jail free" card or immunity, but primary carer status is properly and fully taken into account in the law and the sentencing guidelines.

New clause 35 concerns bail. Again, we are sympathetic to the thoughts behind it, but the Bail Act 1976 sets out a general right to bail for all defendants involved in criminal proceedings and awaiting trial, recognising that a person should not be deprived of their liberty unless it is necessary for the protection of the public or delivery of justice. A defendant who is being considered for bail can be refused only where there is a specific reason to do so, as specified in legislation. Generally speaking, that concerns substantial grounds to believe that the defendant, if released, would abscond, commit further offences, interfere with witnesses or otherwise obstruct the course of justice. Clear protections are already set out in the Bail Act—clearly, a piece of legislation that has been around for a while.

Finally, I turn to new clause 36 on data, which we have discussed a little bit already. As with new clause 26, the Government fully support the intention behind the new clause but we do not think that it is necessary, because we have committed firmly to collecting more data centrally and using it to inform policy decisions. We are already looking at how we can deliver that, particularly in relation to changes to the basic custody screening tool to make sure we capture more robust data. I have a lot of sympathy for the principles that are being discussed, but in pretty much all cases, either they are enshrined in existing legislation or—this is the case with data—work is going on to deliver the desired intention.

Alex Cunningham: I emphasise to the Minister that new clause 26 does not stop or rule out custody for anybody who is a carer or primary carer.

I am grateful for the Minister's comment on data. As I have said before in this room, we know how poor data is across the Ministry of Justice, judging by the number of times I get answers to parliamentary questions that state that the data either is not available or cannot be provided without disproportionate cost. I very much welcome that commitment to collecting data in this area and others.

The Minister talked about pre-sentencing reports. I emphasised in my speech that these reports must very much take into consideration the child, not just the offender. Perhaps we need to do more work with our sentencers to make sure that they are aware of the restrictions on them when it comes to remanding people in custody or sentencing them to it.

On bail, I understand what the Minister is saying, but there is still a very high proportion of women and carers being remanded in custody who do not go on to receive a custodial sentence. That plays back to my point that perhaps we need to do more work with sentencers to make sure they are applying the law in the fairest way possible.

In the light of the explanations from the Minister, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

Ordered, That further consideration be now adjourned. *—(Tom Pursglove.)*

4.36 pm

Adjourned till Thursday 24 June at half-past Eleven o'clock.

Written evidence reported to the House

PCSCB41 Transition to Adulthood Alliance

PCSCB42 Judith Ratcliffe