

# Justice in sentencing

**Paul Cavadino** examines the contents and likely impact of the Crime (Sentences) Bill.

The Crime (Sentences) Bill, now before Parliament, enacts changes to the law on sentencing and the early release of prisoners which were foreshadowed in the White Paper 'Protecting the Public' (April 1996). These include automatic life sentences on a second conviction for a serious violent or sexual offence; minimum sentences for repeat burglars and drug dealers; and the ending of current early release mechanisms such as automatic conditional release and

the gravity of the crime or the dangerousness of the offender justifies this; but automatic life sentences will prevent them from achieving proportionality and justice in sentencing.

Moreover, automatic life sentences could actually weaken public protection by eliminating any incentive for offenders to plead guilty. As a result there will be more contested trials, lengthier delays in the courts, increased distress to victims who have to give evidence and almost certainly, more wrongful acquittals.

In some cases the prospect of an automatic life sentence will deter victims and witnesses from giving evidence. As Baroness Mallalieu recently pointed out:

'More victims of sexual assault, who are often required to give evidence against close relatives in situations where affection continues to exist or where there is heavy family pressure, will refuse to testify in cases where the consequences of a conviction will be a life sentence, with the result that more guilty people will escape justice.'

Similar considerations also apply in some cases of domestic violence.

## Minimum sentences

Clauses 2 and 3 require courts to impose minimum sentences of seven years on offenders convicted of trafficking in Class A drugs, and of three years on offenders convicted of domestic burglary, if they have two or more previous such convictions. A court can pass a lesser sentence only if there are 'exceptional circumstances'.

The seven year minimum will apply not only to large scale traffickers but also to small-time addicts sharing out drugs among themselves. The three year minimum will apply not only to the 'professional' burglar but also to the inadequate 18 year old whose amateurish burglary attempts are bound up with a range of problems which could best be tackled by an intensive probation programme.

Minimum sentences will not only cause injustice. They will also prevent sentencers from passing the sentence which is most likely to prevent

reoffending. Many drug dealing offences and an increasing number of burglaries are driven by the need to feed a drug habit. (A survey in March 1996 by Cleveland Probation Service of a sample of offenders convicted of three or more burglaries found that 36% had drug problems). Where such an offender is willing to co-operate with a probation order combined with drug rehabilitation, this is much more likely than imprisonment to prevent further offending; but if mandatory prison sentences were in operation, the courts would be forbidden to use this option.

## Early release

Clauses 6 to 22 of the Bill change the system governing the early release of prisoners. They abolish current systems of parole and conditional release. Instead, prisoners serving three months or more could earn a small discount of up to six days a month by co-operation with the prison regime and positive good behaviour. To compensate for these changes, Clause 21 requires courts to reduce their sentences by two-thirds of the current level.

On release, offenders sentenced to 12 months or more will be supervised for a period representing 15% of the sentence. This will greatly reduce periods of post-release supervision. At present an offender is released from a three year sentence after 18 months, then supervised for nine months, followed by a further nine month period 'at risk' of serving the rest of the sentence of two years, which would have a post-release supervision period of 3.5 months with no 'at risk' period. The

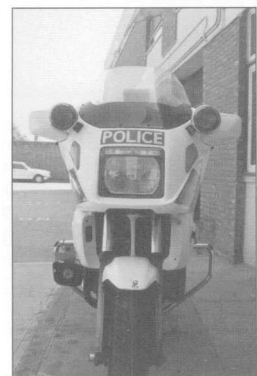
discretionary parole. The consensus view of those working in the criminal justice process is that the Bill will do nothing to reduce crime but a great deal to increase injustice.

## Automatic life sentences

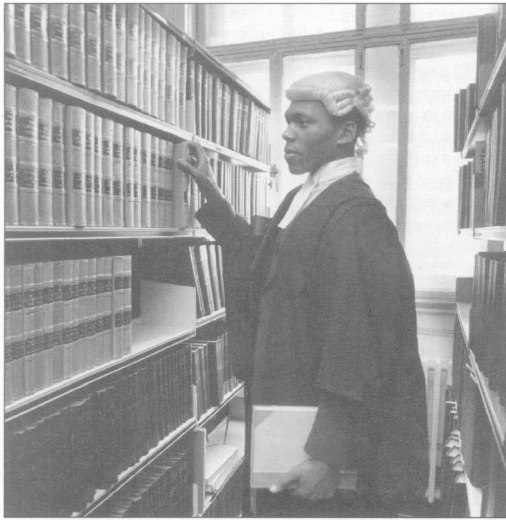
Clause 1 of the Bill requires courts to impose automatic life sentences on those who are twice convicted of serious violent or sexual offences unless there are 'exceptional circumstances'.

The central objection to this proposal is simple - that requiring courts to pass automatic life sentences on all serious repeat offenders whatever the individual circumstances would be unjust. Judges already have the discretionary power to pass life sentences for serious violent and sexual offences when

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David Kidd-Hewitt



successful resettlement of difficult offenders often requires painstaking work over a substantial period of time, and such a reduction in supervision terms will put the public at greater risk from reoffending.

A long term prisoner who does not currently get parole would receive a marginally longer period of supervision under the Bill's proposals. However, that has to be set against the large reductions in supervision periods for most released prisoners. The Parole Board has commented that 'the Government, in its attempt to introduce more honesty in sentencing, is in danger of losing sight of its main aim expressed in the foreword to the White Paper: to protect the public from dangerous and persistent criminals'.

The proposals would involve the establishment of complicated and cumbersome arrangements to assess the earning of relatively small amounts of remission (described in the Bill as 'early release days'). A review every two months by prison staff would award each prisoner up to 12 days' early release. Decisions affecting the length of time for which prisoners are detained will therefore be made by an administrative procedure which will not involve a hearing or comply with the principles of natural justice. Additional problems will include the

uncertainty and distress to prisoners' families, and difficulties for agencies making plans for the prisoners' release, as a result of uncertain and ever-changing release dates. Moreover, a large reduction in the amount of early release available will greatly diminish a currently powerful incentive to good behaviour by prisoners.

### The prison population

The Government has estimated that the Bill will increase the prison population by around 11,000. However, this assumes that the changed early release rules will have no effect on the prison population because courts will reduce their sentences to compensate. Yet, such a large reduction in sentence lengths would undoubtedly subject judges to severe criticism in the tabloid media. The former Home Office Minister Sir Peter Lloyd MP has commented:

'I doubt whether the judges will oblige the Home Secretary in the face of public expectation that the new law means longer inside and taunts from the media and others that they have gone even softer... The prison population will thus get even larger, pre-empting huge extra resources that could be better spent on crime prevention, better policing and more effective programmes in existing prisons.'

### The impact on crime

What effect will all this have on crime? While such a large increase in imprisonment may have some 'containment' effect, research indicates that a 25% increase in the prison population is needed to reduce crime by one per cent. On this basis, the containment effect of these proposals would reduce crime by no less than one per cent if the Government's calculations of the likely increase in the prison population are accurate.

On the other hand, the proposals are likely to increase crime by abolishing parole and reducing other forms of supervision on release which markedly reduce offending by ex-prisoners; by preventing judges from choosing the sentence most likely to divert the individual offender from further crime; by reducing incentives to plead guilty; thereby increasing the risk of wrongful acquittals of dangerous offenders; and by increasing violent criminal acts

inside prisons by greatly reducing the most powerful incentive to good behaviour by prisoners. If the changes lead to greater prison overcrowding, this will also restrict the Prison Service's ability to provide regimes which effectively challenge offending behaviour; this is likely to increase reoffending on release. Furthermore, the large increase in expenditure on prisons necessitated by the Bill is likely to be at the expense of other forms of social expenditure which contribute to preventing crime.

On balance therefore, these measures may well reduce rather than increase public protection. They will sacrifice justice and effectiveness to a desire to appear tough at all costs in penal policy.

*Paul Cavadino is Chair of the Penal Affairs Consortium, an alliance of 31 organisations concerned with the penal system.*

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## THE CRIME BILL: WHO PAYS?

Wednesday, 22nd January, 1997

2.00 - 5.30 pm Church House, Westminster

This ISTD Forum provides the opportunity for the public debate that should be taking place on the content and implications of the Crime (Sentences) Bill. We have asked politicians to outline their parties' positions on the Bill. The judiciary's voice will be heard. Questions will be asked about the proposals regarding the abolition of parole, the tagging of juvenile offenders and we will hear the views of the statutory agencies who will be in the front-line of implementation.

This is your chance to hear and contribute to the debate and question those involved.

Vincent Hanna will be in the chair.

### Speakers will include:

Sir Ivan Lawrence MP	Conservative Party
Alun Michael, MP	Shadow Minister, Home Affairs, Labour Party
Alan Beith, MP	Deputy Leader, Liberal Democrat Party
Lord Donaldson of Lynton	Former Master of the Rolls
Paul Cavadino	Chair, Penal Affairs Consortium
John Harding	Chief Probation Officer, ILPS
David Roddan	General Secretary, Prison Governors' Assoc.
Tom Stacey	The Offenders' Tag Association

To reserve your place, please send your cheque (£10 members; £15 non-members) payable to ISTD to: Julie Grogan, ISTD, King's College London, Strand, London WC2R 2LS. Tel: 0171 873 2822.

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