‘Transforming Parole in Scotland’
Scottish Government Consultation Submission from the Scottish Centre for Crime and Justice Research

27 March 2019

We welcome the opportunity to comment in response to this Scottish Government consultation. Our submission focuses on the following key points:

1. We advocate further consideration and discussion of the purpose of the parole system in Scotland. Its future development could formally encompass two purposes: (a) risk assessment and public safety, *and* (b) enabling desistance and re/integration.

2. We support and advocate the independence and impartiality of the Parole Board for Scotland.

3. Victim support, notification and communication are important throughout criminal justice processes, including parole. However, we do not endorse proposals which would allow victims undue influence in parole decision-making, or give them the impression that they had such influence.

4. Improved communication about parole should be a priority in Scotland. Clear, meaningful communication with people in prison and with victims and survivors may be associated with increased perceptions of legitimacy and procedural fairness. Across Scotland, a more community-engaged communications and education strategy might help to proactively raise awareness of parole and the Parole Board for Scotland.

In our view, the consultation misses an opportunity to discuss the purpose of our parole system. As presently constituted, that system is focused on the assessment and management of risk in relation to the release of people serving long-term prison sentences. We agree that this is an important and legitimate function of any parole system, but we think that parole decision-making and supervision practice must also pursue a second purpose (as it does in many European jurisdictions); that is, the reintegration of people who have been punished through imprisonment. Indeed, some eminent legal scholars go so far as to argue that the re/integration of the offender is the ultimate goal of punishment itself. They suggest that while many factors and purposes may guide a judge in *determining* an appropriate sentence (including considerations of retribution, deterrence, rehabilitation, incapacitation, and so on), in the *implementation* of sentences clearing the pathway to re/integration is the key task and priority (see, for example, du Bois Pedain, 2017).

Yet many studies show that the pathway is strewn with obstacles and that punishment certainly does not end at the prison gate, or even when the license period ends; for example, with employment being very difficult to secure, people with convictions being routinely stigmatised, and society having a limited faith in the possibility of change (e.g. Miller and Stuart, 2018). This is important not least because our own research (and that of many others who explore how and why people stop offending and sometimes secure integration) suggests that as well as being important in principle (in ensuring that supposedly proportionate punishment does end with the formal sentence's expiry), re/integration is what best secures desistance from crime (e.g. McNeill and Schinkel, 2014; McNeill and Graham, 2018; Nugent and Schinkel, 2016). So, in fact, there is a congruence between the pursuit of public safety and the re/integration of people during *and* after their sentences. However, we fear that a parole system *too* pre-occupied with risk and not formally mandated to simultaneously pursue re/integration may end up simply storing risk for the future (by not releasing people) and surveilling risk (through supervision) rather than reducing risk by actively prioritising and supporting re/integration.

In addition to providing crucial material and emotional support to those returning to our communities from prison, one vision of transformed parole would reconstruct it as something that approaches a 'reintegration ritual' (Maruna, 2011). Such an approach would cast granting parole as an important step towards the de-labelling of the person as 'an offender' at their sentence expiry. Such an approach might require *certain aspects* of the parole process to be much more transparent and public than they currently are. Parole hearings – not just in deciding release, but also in review and completion processes -- are well positioned to function as reintegration rituals, because even though the person has not completed their sentence; they mark sequenced transitions in the person's gradual return to full and free membership of the community. That said, clearly there would need to be limits on the information presented at public parole hearings (for example, sensitive

information about the person's past should not be given). But information is already filtered in current processes (i.e. 'damaging information').

The importance of reintegration is noted, in passing, on page 8 of the Consultation, where it is stated that 'the purpose of licence conditions recommended by the Parole Board when a prisoner is approved for release are to protect the public, to prevent re-offending and to help secure successful reintegration back into the community.' Yet the list of licence conditions provided there focuses on requirements and restrictions placed on the parolee, not the forms of support or 'rights of return' that might enable reintegration. Perhaps as well as licence conditions, we might consider introducing a reciprocal 'reintegration guarantee' of the sort that exists, for example, in Norway.

These comments notwithstanding, as this consultation seems aimed at a more modest transformation – one which will likely retain the central focus on risk and public safety rather than reintegration, our answers reflect that limited scope.

QUESTIONS

Question 1: Do you think victims and their families should have a greater voice in the parole process?

NO:

This is a difficult question to answer in the absence of clarity about what is meant by 'voice'. If parole hearings continue to be centred on the question of risk and public safety, then it would seem that victims and their families should 'have a voice' only in so far as they are able to provide relevant information that can assist the Board members in addressing that question. This kind of input might be relevant and important, for example, in relation to cases of domestic abuse or stalking. But in many other cases, it is hard to imagine how victims and their families can assist with this kind of risk judgment unless they have access to specific intelligence about the person and/or his or her proposed release arrangements.

That said, the implicit desire to give victims and their families a greater 'voice' may not be related to judgements about risk at all; rather, it may be driven by the understandable desire to acknowledge and recognise their suffering and their potential interest in the fate of the sentenced person. However, victims and their families can and do explain the impact of the offence(s) at the point of sentencing in court. To re-open that question in a parole hearing is, arguably, legally and morally problematic. How exactly would Board members be expected to use information about victim or family impact given that they cannot engage in post hoc re-sentencing for the original offence; their judgement is of a fundamentally different sort.

At its worst, the proposal could lead to a situation where victims and their families are given an entitlement to speak, but what they have to say can have little or no legitimate bearing on the Board's decision. In other words, they could speak, but they could not be meaningfully heard. Such a scenario risks re-victimising victims and affecting their confidence and trust in criminal justice processes. In our view, it would be more honest and less harmful to explain processes and decisions more clearly – including making clear to victims and families (both at the sentencing stage and again at the parole stage) why the impact of the crime on them cannot and should not be reconsidered at the parole stage in the process. We acknowledge that victims and survivors are diverse in their perspectives and experiences. Yet there is some research evidence from elsewhere to suggest that victim involvement in parole hearings can influence or lead to increased parole denial (Morgan and Smith, 2005; Roberts, 2009). Overall, we support offering victim notification and support services, but we do not support the proposal to allow victims to have (or to be led to believe that they have) direct influence on Parole Board decision-making.

Question 2: Do you think victims and their families should be entitled to attend parole hearings in person?

NO:

Again, it is difficult to answer this question without any guidance on what purpose the attendance of victims and their families would be intended to serve. In line with our answer to Question 1 above, our worry is that a right of attendance might be seen to imply meaningful participation in or 'voice' in or influence over the parole decision-making process. To convey that impression would be dishonest and harmful.

That said, there may be a case for more transparency in parole processes for all parties and, if their roles (and the limits of their roles, for example, as observers) were made clear, then it may be possible to imagine attendance by victims and families – and presumably by members of the sentenced person's family. If this proposal were to proceed, commensurate availability of support services for victims and their families and for sentenced people's families who attend as observers during and after this process would be very important.

Question 3: Do you think there should be clear criteria on the kinds of information the Parole Board should consider in relation to the safety and welfare of victims and their families?

YES:

We would agree that this seems an obvious and overdue requirement. We would add however, that there should be clear criteria on the kinds of information that the Board should consider in relation to the safety and welfare of sentenced persons and *their* families – including circumstances where public disclosure of parole decision-making might reasonably be expected, for example, to harm the well-being of a sentenced person's partner or children or other relatives/intimates.

Question 4: Do you think more could be done to strengthen the Parole Board's current use of licence conditions (including conditions to exclude individuals from certain areas, or from certain individuals)?

NO:

Given the Parole Board's current powers, we are unclear about what is being proposed here. People on parole can be excluded from certain areas, from contact with victims, from certain associations, etc., and parole conditions can be and are monitored in a variety of ways, including through MAPPA arrangements, social work supervision and electronic monitoring. If the implication is that more restrictive use of conditions is required, we would like the chance to interrogate the evidence for that proposition.

In using electronic monitoring in parole cases, there are no provisions restricting the length of the electronic monitoring condition on the parole licence or the length of the restriction hours. The available statistics show that electronic monitoring is not used extensively in parole cases in Scotland. In 2018, 45 parole releases with an electronic monitoring condition were made (G4S, 2019). One of the potential reasons for the lack of or low use of electronic monitoring in parole is, according to some practitioner perspectives, because of the type of radio frequency tagging technology currently used in Scotland and its reliance on a home curfew (see McIvor and Graham, 2016). If GPS tagging and tracking is introduced in Scotland, enabling the use of 'exclusion zones' and restrictions away from victims and areas associated with risk of reoffending, then patterns of use of electronic monitoring in parole may change.

Question 5: Do you think that victims and their families should receive information on the reasons for the Parole Board's decisions in their case?

YES:

This seems essential as a matter of justice. Victims and their families clearly have a legitimate interest not only in knowing the reasons for the sentence passed but also the reasons behind key decisions pertaining to its implementation (including decisions to release and recall). That said, sentenced persons and their families also have rights to

privacy and the forms of information provided to victims and their families would need to balance these interests and rights.

Following parole reforms in England and Wales last year, upon request, the Parole Board there has provided more than 800 decision summaries to victims, their families and the public (as at February 2019). There remain some provisions to prevent disclosure of a summary in exceptional circumstances, and this is set out in their Parole Board rules. We support the introduction of this option of decision summaries upon request in Scotland as a way of improving communication and transparency about parole here.

Question 6: Should others be routinely entitled to attend parole hearings?

NO:

We are unclear which 'others' the Government may have in mind. Presumably, any relevant 'others' would need to have a legitimate interest in the case in question. As with victims and their families, we think much greater thought would need to be given to the purpose and potential impact of their attendance – and of what reasonable expectations they might be given about the same.
There are two lines of questioning here in respect of which we would welcome more detailed information and in-depth analysis. Firstly, what are the privacy considerations, information-sharing and data protection implications of these proposals to open up attendance at parole hearings – for the person in prison being considered for parole, the victim(s), families, and for Parole Board members and any other professionals involved? The second line of questioning is to ask about international evidence and experience. Which cognate jurisdictions in Europe and beyond currently allow 'other' members of the public to attend parole hearings? Why? What rationale and evidence are available to support this proposed change in Scotland?

Given the likely nature of crimes for which some people are serving long-term sentences, what would be done, for example, to prevent members of the public involved in vigilante activities from attending, where they might make claims about a legitimate interest in a case and it being 'in the interests of open justice'? Also, what are the potential implications of a journalist choosing to routinely attend parole hearings? Increased politicisation of parole and negative controversy in tabloid news media is one possible outcome. We contend that allowing parole decision summaries in writing is ethical and effective, but there remain significant concerns and practical considerations about the proposal of opening up *attendance* of parole hearings themselves.

Question 7: Should information be routinely shared with others?

NO:

Our answer here would be similar to our answer to Question 5 if and only if the 'other' had a legitimate interest in the case in question – and subject to the same caveats and qualifications.

Question 9: Do you think the work of the Parole Board is sufficiently visible?

NO:

We would encourage a public communications and education approach which engages Scottish communities in better understanding parole and the work of the Parole Board for Scotland. It is to these communities which citizens with convictions return. Public awareness and perceptions of legitimacy are central to public trust in criminal justice. Parole cases which often involve tragic and distressing offences will continue to feature in news headlines. Proactive and clear communication and visibility can help dispel any myths or misunderstandings, to inform and improve public perceptions.

Question 11: Do you think that prisoners currently receive the information they need to enable them to participate in the parole process?

NO:

Our professional and personal interactions with people going through the parole process suggest that they are often kept in the dark about its progress. Time frames can be unclear and when parole is denied, the reasons for this decision are often not shared or understood. From the perspective of sentenced people in prison, one reason for anger is that getting parole often relies on the timely access to courses or transfers to the open estate, which are often not forthcoming, thus meaning the prisoner serves a longer sentence than merited by their crime. We believe that improving the proportions of people released at the earliest opportunity should be a formal measure of the performance of the Scottish Prison Service– although we accept that it is not an outcome that they deliver in the absence of support from the Government and others in significantly reducing the prison population and working in other ways to support progression, release and reintegration of people in prison.

Currently, the parole process can destabilise the lives of people in prison, with the hope for but uncertainty of early release making imprisonment much more difficult to cope with. Many choose, in fact, not to 'chase parole' and instead to 'max out' in order to avoid disappointment. All these factors could be ameliorated by greater focus on early progression and parole within the prison establishment, and by greater openness and

consultation by the Parole Board with the person concerned. Frequent contact with the Lifer Liaison Officer or Early Release Liaison Officer, giving the opportunity to ask questions and get updates, would be one way of achieving this. If this contact starts early on in the sentence, ERLOs or LLOs may also be tasked with highlighting the urgency of admittance to courses or the open estate to the prison administration, in order to make early parole possible.

Question 12: Do you think that more could be done to make sure that prisoners understand their licence conditions and the consequences of breaching them?

YES:

Ideally, license conditions would be decided in dialogue with the person who will be on license, with the reasons for each condition explained and consensus sought as part of the process of informing the release decision. A wide body of criminal justice research on legitimacy and 'procedural justice' shows that people are much more likely to comply with the law and with criminal justice agencies when they understand and agree with the reasons for decisions, conditions and actions (e.g. Crawford and Hucklesby, 2011). To make parole more procedurally just requires positioning the sentenced person as a respected and active participant in their own reintegration. Of course, the parole board would retain the right (and duty) to overrule the person if they thought conditions that the person disagreed with essential in the public interest, but this ought to be an opportunity for a further explanation of why these conditions were essential. Explanations by the Lifer Liaison Officer or Early Release Liaison Officer or newly appointed official might enhance understanding, but are less likely to have an impact on the motivation to comply.

Question 13: Is there a requirement for an additional review process (at least initially)?

YES:

Wherever possible, we would support the idea of introducing community-based face-to-face parole review hearings (involving Parole Board members, supervising social workers, people subject to release licenses and their legal representatives) as an alternative to recall to custody. Although we acknowledge there are some serious circumstances where this option might not be provided for, where recall would need to be swift for demonstrable risk management and public protection reasons. Overall, the numbers recalled to custody have grown very rapidly in recent decades, and many are recalled for technical violations rather than further offending (Weaver, Tata, Munro and Barry, 2012). As such, we suspect that the current use of recall may be excessively precautionary; it is certainly extremely expensive; and it is often counter-productive in frustrating efforts at desistance and reintegration.

Question 14: In relation to revocation of licence and recall to custody. Do you consider social workers should be able to refer directly to the Parole Board?

YES:

Giving the supervising social worker the power to refer the person to the Parole Board for a community-based review (of the sort discussed above) when they deem this would be helpful (for example, in reinforcing the importance of compliance with supervision, or equally importantly to lift or loosen licence conditions in recognition of good progress) is preferable to regular and early reviews that are scheduled in advance.

This would mean that reviews are triggered by need, rather than pre-scheduling.

Question 15: Do you agree that a transfer to the Scottish Tribunals would enhance the independence of the Parole Board?

In the absence of more detailed information about this proposal we are unable to offer an opinion. We note however, that effective parole decision-making requires non-legal as well as legal forms of expertise (for example, from those in health and social work professions).

Question 16: A review and appeal are available in the Scottish Tribunals. Do you consider these processes should be available for the Parole Board?

YES:

Parole decisions affect many citizens in different ways. With respect to sentenced persons, they have profound effects on their lives, liberty, privacy and family life. As such, we would support more accessible review and appeal processes, in the interests of justice. That said, this does not necessarily require moving the functions of the Parole Board within the Scottish Tribunals.

We are willing to provide further clarification or information about this submission and research sources referred to within it, upon request.

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Research informing this submission:

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