LIBERTY

LIBERTY'S BRIEFING ON THE POLICE, CRIME, SENTENCING AND COURTS BILL FOR SECOND READING IN THE HOUSE OF COMMONS

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ABOUT LIBERTY

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at libertyhumanrights.org.uk/policy.

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INTRODUCTION

1. The Police, Crime, Sentencing and Courts Bill is a fittingly unwieldy name for a piece of legislation with a tremendously broad scope. To publish a 300-page bill on a Tuesday and then hold second reading the Monday after does not give parliamentarians or civil society enough time to fully diagnose the impact of the legislation proposed. As a consequence of this, the following briefing does not touch on every aspect of the Bill, or even every aspect of concern. Instead, we focus our response on some of the most concerning proposals around protest, criminalisation of trespass and the serious violence proposals

2. The Bill contains a concerted attack on the right to protest, arrived at through several different means from amending previous legislation to extend the police's already extensive powers, to creating new offences, and targeting the manner, the method, the location and even the volume of demonstrations. Taken together, these provisions would radically restrict not only our deeply cherished principles of freedom of assembly and expression, but also a vital tool and mechanism available to citizens of democratic countries to stand up to the State and make their voices heard.

3. Gypsy, Roma and Traveller (GRT) communities are among the most persecuted and marginalised in the UK. The proposals to criminalise 'unauthorised encampments' and established trespass as a criminal offence pose significant risks for GRT communities' way of life. The proposals in the Bill are discriminatory, potentially unlawful, and not even wanted by the police,[1] and yet the Home Office has continued with its plans.

4. Liberty supports the aims of the serious violence proposals to protect communities from harm, save lives and prevent injury, but the creation of a new serious violence duty is deeply concerning. We have warned repeatedly about the manifold failings and harms of the Prevent duty.[2] It appears that the Bill would replicate many of these in the name of reducing violence.

5. The proposal to create a new civil order, the Serious Violence Reduction Order (SVRO), would among other things hand police an extraordinary power to stop and search a person at any time, in any place, completely free of suspicion. It would flip on its head the long-established principle in our law of the irrelevance until sentencing of previous convictions. It is an unjust, discriminatory and counter-productive proposal.

[1] Haroon Siddique, 'Revealed: police oppose Traveller and Gypsy camp crackdown', *The Guardian*, 14 November 2019, https://www.theguardian.com/world/2019/nov/14/police-oppose-traveller-and-gypsy-camp-crackdown-foi-shows
[2] See: https://www.libertyhumanrights.org.uk/fundamental/prevent/

6. This is a very significant Bill, in length, scope and the potential effects it may have on us all. Liberty is of the opinion that its progression through Parliament should be paused in order to allow our elected representatives to perform their duty to scrutinise to the level required by the seriousness of the legislation.

STRIKING AT THE HEART OF DEMOCRACY: THREATS TO PROTEST

Existing police powers

7. Over the last 35 years, the State has been vested with significant powers to regulate protest. Police have wide powers to impose conditions on both static assemblies and marches, as well as broad discretion in how those powers are applied. While Policing Minister Kit Malthouse MP recently affirmed that "the right to peaceful protest is a fundamental tool of civic expression", and promised that protest "will never be curtailed by this government",[3] the Police, Crime, Sentencing and Courts Bill seeks to do exactly that.

8. Through various mechanisms – including amendments to the Public Order Act 1986 and Police Reform and Social Responsibility Act 2011, the introduction of the offence of Public Nuisance in statute, new legislation on memorials arising out of the demonstrations of summer 2020, and the criminalisation of trespass – the Bill drastically limits the right to protest. Specifically, it limits the areas in which they may take place, increases criminal penalties for people who fall foul of police-imposed conditions and establishes new offences and criminal penalties altogether. The cumulative effect of these measures – which target the tools that make protest rights meaningful – constitute an attack on a fundamental building block of our democracy.

9. Liberty is yet to hear a compelling case in favour of creating far-reaching new powers or expanding those already on the statute books that already weight the UK's legal landscape for the conduct of protest heavily in favour of the authorities. As then-Home secretary Sajid Javid MP noted: "it is a long-standing tradition that people are free to gather together and to demonstrate their views. This is something to be rightly proud of.... where a crime is committed the police have the powers to act so that people feel protected", citing the vast legislation that "already exists to restrict protest activities that cause harm to others" including the Public Order Act 1986 and the Protection from

[3] Home Office, *Policing Minister Kit Malthouse's statement on Birmingham incident and Extinction Rebellion protests* (7 September 2020) https://homeofficemedia.blog.gov.uk/2020/09/07/policing-minister-kit-malthouses-statement-on-birmingham-incident-and-extinction-rebellion-protests/

Harassment Act 1997, as well as other civil legislation.[4] Similarly, Andrew Gwynne MP has amplified comments made by former Attorney General, Dominic Grieve QC that "no new laws were required if the police used the substantial powers they already have".[5]

Amending the Public Order Act

10. Part 3, Chapter 4 of the PCSC Bill makes significant changes to the already expansive Public Order Act 1986 which gives the police powers to manage public processions, assemblies, and the newly introduced 'one-person protest'.

11. Clause 54 and 55 of the Bill expand police powers in Section 12 and 14 of the Public Order Act under which a senior police officer may impose conditions on public processions and assemblies to bring them into parity with one another. Previously, a senior police officer could only impose the following three conditions that alter a) the place at which an assembly could be held b) its maximum duration or c) the maximum number of persons who constitute it. The distinction between Section 12 and 14 recognised the difference in impact of static protests, as well as the ease with which police might be able to facilitate a static, rather than moving protest. These changes erode that necessary distinction, allowing an officer in England and Wales to impose any condition "as appear to him necessary". These unlimited conditions would mean that a senior police officer could ban a static protest altogether.

12. The Bill expands the reasons for which a senior police officer may impose conditions on protests by expanding the potential consequence of a protest that would warrant police intervention. Clauses 54-55 and 60 subsection 2 introduce "noise generated by persons taking part" as a reason to warrant police-imposed conditions if that noise "may result in serious disruption to the activities of an organisation which are carried out in the vicinity" and also, for static assemblies and marches, if that noise "may have a relevant impact on persons in the vicinity [...] and that impact is significant."

13. The scope of this change is huge, with these proposals seeking to shield those in power from public criticism, and could see protests curtailed outside a broad range of powerful institutions on the basis of inconvenience or disruption.

[4] House of Commons, Abortion Clinic Protest Review, 13 September 2018, https://hansard.parliament.uk/Commons/2018-09-13/debates/18091329000018/AbortionClinicProtestReview?contribution-974CF934-8681-4514-88EC-1A2397C66011
[5] House of Commons, Birmingham Attacks and Extinction Rebellion Protests, 7 September 2020, https://hansard.parliament.uk/Commons/2020-09-07/debates/05C94BEF-35F9-496D-B43F-3F9E95C33CE3/BirminghamAttacksAndExtinctionRebellionProtests#contribution-B6771FD4-5D43-49A1-9EA3-09C2F1134560

14. Furthermore, subsection 4 allows for the Secretary of State to further clarify – by way of secondary legislation – what constitutes serious disruption. This subsection will allow the State to further target the protests of any group it does not like without the scrutiny of primary legislation

15. Liberty also strongly opposes the proposals to reduce the level of knowledge required to establish a criminal offence. The Bill amends Section 12 and 14 to establish an offence where someone breaches a police-imposed condition on a protest where they "ought to have known" the condition existed. This would have the effect of criminalising people who unwittingly breach conditions the police impose and criminalise behaviour that would not in itself be unlawful, but for the imposition of these conditions. This places an additional undue burden on the organisers of protests (to inform protestors of conditions), and on protestors themselves, and potentially may disproportionately criminalise smaller, under-resourced or spontaneous protest groups, as well as digitally excluded protestors (who don't have access to announcements the police put on their website, for example).

16. The Government's proposals to create broad new offences are rendered more worrying by moves to dramatically increase maximum sentences for their breach. The Bill increases the criminal sanctions for an organiser who strays from police-imposed conditions, by a staggering amount – a 266% increase from maximum 3 months to a maximum 11 months' imprisonment. The Bill also increases the fines for both an organiser and an attendee who strays from police-imposed conditions from level 3 to level 4. These changes risk plunging people further into the criminal justice system, simply for exercising their democratic right. And while the 11 months imprisonment is only a maximum, we only need to look to the ways in which protests have been managed during the pandemic to understand how the State will use the full force of the law to restrict it. Just last week, a nurse who organised a socially-distanced protest against the Government's proposed 1% pay rise was fined £10,000.[6]

Amendments to the Police Reform and Social Responsibility Act 2011

17. Clause 57 of the Bill amends Part 3 of the Police Reform and Social Responsibility Act 2011 which constitutes controlled areas around Parliament where particular activities cannot take place. The Bill expands the controlled areas that constitute the vicinity of the Palace of Westminster to include Canon Row, Parliament Street, Derby Gate, Parliament Square

[6] BBC News, 'Covid: Police to review £10k fine for NHS protest organiser', 11 March 2021, https://www.bbc.co.uk/news/uk-england-manchester-5635109

and other roads within the district of Victoria Embankment, as well as expanding the activities prohibited in the above places.

18. This effectively creates a buffer zone around Parliament to include obstruction – broadly defined as anything that "makes the passage of a vehicle more difficult" – "by any item, or otherwise, the passage of a vehicle [...] into or out of [...] the Parliamentary Estate, where that entrance or exit is within, or adjoins, the Palace of Westminster controlled area."

19. Under human rights law, States have an obligation not to place unnecessary obstacles in the way of people wishing to protest, as well as a positive obligation to facilitate protest.[7] Any restrictions on the rights to freedom of assembly and freedom of expression must be defined in law, pursue a legitimate aim and be necessary and proportionate. Moreover, the right to freedom of assembly includes the right to choose the time, place and modalities of any protest.[8] As the Court of Appeal has held, protest "becomes effectively worthless if the protestor's choice of 'when and where' to protest is not respected as far as possible."[9]

20. Liberty is deeply concerned by proposals to restrict protest in the vicinity of the Palace of Westminster. When people are protesting against the practices of those with power – whether in Government or Parliament – it is critical they are facilitated to meaningfully make their voices heard. Banning protest in particular places of power would constitute a retrograde step – one which the public have already expressed their disquiet towards when the same measures were proposed in the Serious Organised Crime & Police Act in 2011.[10]

Public nuisance

21. Clause 59 of the Bill would restate the common law offence of public nuisance in statute. This follows the Law Commission's proposals in 2015 to simplify the criminal law.[11]

22. Liberty welcomes the strengthening of the fault element of the offence by introducing the requirement that the defendant 'intended to cause' or 'was reckless about causing' the

[7] *Ollinger v Austria*, Application no. 76900/01.
[8] *Sáska v. Hungary*, Application no. 58050/08.
[9] *Singh and ors, R (on the Application of) v Chief Constable of West Midlands Police* [2006] EWCA Civ 1118, at para 87
[10] The Government's proposals in effect seek to re-introduce sections of the Serious Organised Crime & Police Act (that were repealed by the Police Reform and Social Responsibility Act 2011). Sections 132-138 of SOCPA caused national anger and disquiet when they placed onerous restrictions on the rights of assembly within the vicinity of Parliament
[11] The Law Commission, 'Simplification of Criminal Law: Public Nuisance and Outraging Public Decency', 24 June 2015, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/438195/50076_Law_Commission_HC_213_print.pdf

kind of harm involved in the offence. Previously, the common law offence followed the tort law fault requirement that the defendant 'ought reasonably to have foreseen' the consequences of the act or omission.

23. However, the offence is incredibly broad, and its introduction into statute in the same section as proposals to limit protest are notable. In the explanatory notes that accompany the Bill, the offence is said to be intended to target conduct "such as hanging from bridges." But the wording of the offence is far wider and includes "any conduct which endangers the life, health, property or comfort of a section of the public" *or* "that obstructs them in the exercise of rights belonging to the public." Given that nearly all protests, arguably, 'obstruct' the public – indeed, it is the whole point of them – protestors may be charged under an offence that involves a sentence of up to 10 years imprisonment.

24. When the common law offence of public nuisance has previously been used to target protestors, such as in the fracking case of *Roberts, Blevins & Loizou v R*, the court quashed the use of custodial sentences as 'manifestly excessive.'[12]

25. Moreover, it is unclear, given the placement of this Clause, that protest would be considered a "reasonable defence." Even if it were, this would only become a defence in court. This sends a clear signal to protestors that, not only will protests be stifled by changes to the Public Order Act, but that protestors may now be charged under the offence of public nuisance. The chilling effect of this proposal is clear, and will prevent people from taking to the streets to make their voices heard.

Criminal Damage to Memorials

26. Clause 46 of the Bill would amend the Magistrates' Courts Act 1980 to remove consideration of monetary value from "any offence committed by destroying or damaging a memorial." In effect, this means that the court is no longer restricted to the maximum sentence of 3 months' imprisonment and/or a fine of up to £2,500, based on the monetary value of the memorial. Instead, courts may issue the maximum penalty under the Criminal Damage Act 1971 of 10 years in prison. This is a clear response to the Black Lives Matter protests over Summer 2020 and the toppling of the statue of slave trader, Edward Colston into Bristol Harbour, among other instances of civil disobedience.

[12] *Roberts, Blevins & Loizou v R*, 2018, https://www.judiciary.uk/wp-content/uploads/2018/12/judgment-roberts-blevins-loizou.pdf.

27. According to the Bill's explanatory notes,[13] this section is based on a Ten Minute Rule Bill advanced by Conservative MP Jonathan Gullis in June 2020, the Desecration of War Memorials Bill.[14] Gullis's bill also proposed to amend the Magistrates' Court Act to exempt damage of a war memorial from the monetary threshold. The big difference between the two was that Gullis's bill specifically referred just to war memorials – those "created, erected or installed to commemorate those involved in or affected by a conflict or war" – while the Police, Crime, Sentencing and Courts Bill is vastly wider. The Bill defines 'memorial' so broadly as to encompass any structure installed or erected on land, as well as "any moveable thing (such as bunch of flowers)" placed on it, which has a "commemorative purpose". This itself is defined as commemorating any individuals, animals or events, with it "immaterial" whether they are or were living or deceased or even capable of being identified. This would extend therefore not just to the war memorials mentioned in the reporting of this section of the Bill but to just about any level of damage (including graffiti) done to just about any statue facing the prospect of a ten-year prison sentence. Liberty does not support the provisions in Gullis's Bill – the monetary threshold in the Magistrates' Court Act is there precisely to avoid the type of vastly disproportionate sentencing that both his Bill and this one attempt to bring about – but the proposals in the PCSC Bill are far wider.

Trespass

28. Trespass is currently a civil law offence and police have no powers to arrest offenders. Part 4 of the Bill would establish a criminal offence for trespass and introduce new police powers to arrest offenders in situ and seize any vehicles or other property immediately. While in the below we discuss the affect that this will have on Gypsy, Roma, Traveller communities, among others, we also point out how these proposals will have a chilling effect on the right to protest overnight and set up protest camps.

CRIMINALISATION OF GYPSY, ROMA AND TRAVELLER COMMUNITIES

29. Gypsy, Roma and Traveller (GRT) communities are among the most persecuted and marginalised communities in the UK.[15] And yet, the hostile measures contained in Part 4 of this Bill enact a direct attack on the way of life for many in these communities.

[13] Desecration of War Memorials Bill, https://bills.parliament.uk/bills/2752
[14] Police, Crime, Sentencing and Courts Bill, Explanatory Notes, §60, https://publications.parliament.uk/pa/bills/cbill/58-01/0268/en/200268en.pdf
[15] See: https://www.equalityhumanrights.com/en/publication-download/britain-fairer-2018

30. Clause 61 of the Bill amends Part 5 of the Criminal Justice and Public Order Act 1994 to create a new offence of "residing on land without consent in or with a vehicle". This broad proposal not only captures the act of residing or having a vehicle, but also the *intention* to reside or have a vehicle on land. Moreover, the offence may be triggered for the cause of 'significant damage, disruption or distress'. It is undoubtable that these powers will be used to target GRT communities.

31. Moreover, the Bill prevents a person returning to a site within a period of 12 months. A person found guilty of this offence will also face harsh criminal punishments, including up to 3 months in jail or a fine of up to £2,500. Furthermore, this offence is accompanied by powers to seize a vehicle. For GRT communities this means the very real threat of having their homes removed and finding themselves homeless. While the Bill attempts to provide reassurance that a vehicle will be held until the conclusion of criminal proceedings, the current backlog in criminal justice systems means a family may be homeless for a very long time.

32. In Liberty's view, these proposals are potential unlawful, in light of the recent Court of Appeal decision which held that "the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another."[16]

33. It is not clear that police forces support the proposals. As research from Friends, Families and Travellers has shown, the overwhelming majority (75%) of police responses to the 2018 consultation on unauthorised encampments indicated that their current powers were sufficient and/or proportionate.[17] Additionally, 84% of police forces did not support the criminalisation of unauthorised encampments and 65% said lack of site provision was the real problem. In its consultation response, the National Police Chiefs Council and the Association of Police and Crime Commissioners, said: "The lack of sufficient and appropriate accommodation for Gypsies and Travellers remains the main cause of incidents of unauthorised encampment and unauthorised development by these groups". It added that criminalisation of trespass would likely breach the Human Rights Act 1998 and the Equality Act 2010.

34. The proposals fail to acknowledge that there is insufficient site provision for Gypsies and Travellers, nor are there any proposals to address this. Unauthorised encampments are often the direct result of a lack of adequate site provision. The Government does not put

[16] *London Borough of Bromley v Persons Unknown and Ors* [2020] EWCA Civ 12, at para 109
[17] Billie Dolling, Victoria Gilmore and Abbie Kirkby, 'Police oppose criminalising unauthorised encampments and call for more sites', *Friends, Families and Travellers*, November 2019, https://www.gypsy-traveller.org/wp-content/uploads/2019/11/FINAL-Police-oppose-criminalising-unauthorised-encampments-and-call-for-more-sites-to-be-published-9am-13.11.19.pdf

forward alternative proposals which seek to address unauthorised encampments in a manner which reflects the lack of adequate site provision and the rights of affected communities, but instead puts forward proposals which the Government's own Consultation Paper acknowledged will have adverse impacts on Gypsies and Travellers.[18]

35. Criminalising trespass will also impact access to the countryside and affect the enjoyment of British land for recreational activities. This runs contrary to the Government's commitment to "[open] up the natural world," as stated in its 25 year Environmental Plan.[19] As a coalition of groups including the Ramblers, the Open Spaces Society, and CPRE, the countryside charity, outlined in an open letter to the Home Secretary last month, these proposals "would send a signal that the countryside is not an open resource accessible to all, but a place of complex rules and regulations, where stepping off a public path could lead to a criminal sentence... the exercise of recreational activities, such as walking, cycling, climbing or canoeing in the countryside, should not put you at risk of committing a crime".[20]

36. Liberty urges the UK Government to abolish proposals to criminalise trespass and quash plans to strengthen police powers; reintroduce pitch targets and a statutory duty onto local authorities to meet the assessed need for Gypsy and Traveller sites and amend the 2015 Planning Policy for Traveller sites definition of a Traveller to include all Gypsies and Travellers who need a pitch to live on.

A NEW LEGAL DUTY TO SUPPORT A MULTI-AGENCY APPROACH TO PREVENTING AND TACKLING SERIOUS VIOLENCE

37. Part 2, Chapter 1 of the Bill places a new statutory duty on bodies such as healthcare authorities, youth services, local authorities and education providers to collaborate with each other to prevent and tackle serious violence.

38. Liberty recognises that the intention of the serious violence proposals is to protect communities from harm, save lives and prevent injury. These are aims which Liberty wholeheartedly supports – serious violence is a human rights issue which devastates communities across the country, hindering many people's ability to live safe and dignified

[18] Home Office, 'Strengthening police powers to tackle unauthorised encampments', 5 November 2019, https://www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments
[19] Government Policy Paper, '25 Year Environment Plan' https://www.gov.uk/government/publications/25-year-environment-plan
[20] CPRE, Ramblers et al., 'Letter to the Home Secretary', 18 January 2021, https://mk0ossociety9jn92eye.kinstacdn.com/wp-content/uploads/2021/01/Dont-criminalise-trespass-joint-letter-to-Home-Office-18th-Jan-2021-1.pdf

lives. It demands an evidence-based and just response that works with, not against, communities that bear its brunt. This Bill, however, is entirely unsubstantiated by evidence, goes against the findings from the Serious Violence Strategy Consultation, and would sanction injustice and discrimination, and risks fracturing public trust in the authorities. This would ultimately exacerbate the harms they purport to ameliorate.

39. The response to serious violence should not be the exclusive domain of law enforcement, and tackling the root causes is a critical element of an effective and sustainable approach. The duty that this Bill mandates, however, raises a breadth of human rights concerns. Without careful attention to the need to take steps to prevent serious violence while upholding basic principles such as confidentiality, non-discrimination and the presumption of innocence, there is significant scope for people's civil liberties to be breached.

40. Liberty is concerned that the application of the duty may provide a foundation for significant, and potentially disproportionate, intrusions into people's private lives. In particular,

    a. the public health duty may be used in conjunction with civil orders which erode the presumption of innocence and lower the bar for criminalisation;

    b. there is a stark lack of clarity as regards the criteria authorities should use in order to identify people who are 'at risk'. The indicators which may be deployed risk chilling freedom of expression and association, and facilitating the disproportionate targeting of minority communities;

    c. the duty would enable and encourage extensive data gathering and sharing without safeguards to protect fundamental rights;

    d. the duty may undermine existing professional obligations, and specifically in relation to safeguarding and confidentiality; and

    e. the scheme does not attempt to address the root causes of serious violence, despite acknowledging that a considered and effective response must do so.

A significant intrusion

41. Liberty is concerned that the application of the proposed duty may provide a foundation for significant intrusions into people's lives, with serious implications for people's human rights and civil liberties.

42. Police-led multi-agency frameworks already operate to identify people as 'at risk' of future participation in criminal activity. These provide an indication of the shape the proposed public health duty might take and the intrusions it may precipitate. For example, people flagged or formally referred to the authorities under the Prevent duty have been subject to intrusive questioning by colleagues or the police about their political opinions or religious beliefs.[21] Liberty acted for a woman who was questioned by a uniformed officer when the primary school of her five and seven year old called the police, concerned about its obligations under the Prevent duty, because the children had been given plastic toy guns as presents.[22]

43. The increasing practice of public agencies categorising young people they suspect may be associated with gangs as 'gang nominals' is also instructive. This is institutionalised by the Metropolitan Police Service (MPS), for example, through a database termed the 'Gangs Matrix'. Research has revealed that people included on the MPS's Gangs Matrix are subject to high levels of police scrutiny, with some interviewees describing being stopped by police several times a day,[23] despite only minimal, uncorroborated and undisclosed evidence being required for them to be entered into the Matrix. Liberty is concerned that the proposed legal duty may facilitate intrusive surveillance and routine over-policing in a similar fashion. The effects of such unwarranted intrusion can be deep and enduring, and may foster a long-term sense of anger and hostility towards the police,[24] ultimately undermining the aim of community safety for which it is deployed.

44. Moreover, the mere act of 'labelling' an individual – whether as an extremist, a gang member, or a future criminal – can be profoundly stigmatising, and leave people feeling isolated and marginalised. As Liberty has documented extensively, the rising use of *automated* risk profiling and predictive policing tools, which rely on profiling to allocate risk and ultimately inform public policy decisions, may exacerbate this dynamic, with significant consequences for labelled individuals, their families, and their social circles.[25]

45. Liberty is further concerned that information passed to the police under this scheme may be used to identify those who are subjected to, or justify the imposition of, punitive civil

[21]See Open Society Justice Initiative, Eroding Trust (October 2016) available at https://www.opensocietyfoundations.org/sites/default/files/eroding-trust-20161017_0.pdf
[22] Esther Addley & Alexandra Topping, 'Council admits racially discriminating against two boys over Prevent toy gun referral', *The Guardian,* 27 January 2017, https://www.theguardian.com/uk-news/2017/jan/27/bedfordshire-local-education-authority-admits-racial-discrimination-brothers-toy-gun-school-police
[23]Patrick Williams and StopWatch, Being Matrixed (2018) available at http://www.stop-watch.org/uploads/documents/Being_Matrixed.pdf
[24] Criminal Justice Alliance, No respect: Young BAME men, the police and stop and search. Available at: http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617-1.pdf
[25] Liberty, 'Policing By Machine', 1 February 2019, https://www.libertyhumanrights.org.uk/issue/policing-by-machine.

orders, such as Knife Crime Prevention Orders (KCPOs).[26] KCPOs allow the imposition of onerous conditions – which may seriously limit the exercise of fundamental rights by proscribing where someone may go, who they may see, when they can be out in public, what they may say or view online, and whether or not they can attend work or education – based on an extremely low standard of proof. Those who do not meet these conditions, or fail to notify the police of specified personal information, could face a prison sentence of two years. Enlisting public sector workers to gather information to impose constraints on people's everyday activities, with criminal sanctions if those constraints are breached, would be a gross perversion of their role. It would likely deter people from seeking help when they need it. Far from preventing crime, by lowering the bar for criminalisation, these orders will serve to fast-track more young people into the criminal justice system and erode basic procedural safeguards.

46. Civil orders may implicate people's right to private life[27] (for example, should the duty trigger surveillance), freedom of expression[28] (for example, where a person's ability to use social media is curtailed) and freedom of assembly[29] (for example, where a civil order is imposed limiting the places someone can travel or people they can see). While these rights may be limited in certain circumstances, in order to be lawful the restriction must be provided by law, necessary, and crucially, proportionate. Additionally, the imposition of quasi-criminal orders may intrude on people's right to liberty,[30] which can only be justified in an exhaustive list of circumstances, as well as the right to a fair trial,[31] including the presumption of innocence.

Identifying 'at risk' individuals

47. Although the Bill places a duty on authorities, rather than on individual professionals, a duty of this nature is likely to have the effect of expecting public sector workers – such as teachers, youth workers or healthcare professionals – to gather the sensitive personal data of individuals to whom they provide care and share it with a range of authorities, including the police and criminal justice institutions, often without a person's knowledge or consent. This would mirror the demands of the Prevent duty – requiring teachers, doctors, nurses and social workers to report people under their care who they suspect of being at risk of engaging in violence or criminality in the future – the Bill does not indicate which criteria, if any, would be used to identify people who are 'at risk'. The

[26] Established by Part 2 of the Offensive Weapons Act, 2019.
[27] Article 8, ECHR
[28] Article 10, ECHR
[29] Article 9, ECHR
[30] Article 5, ECHR
[31] Article 6, ECHR

Serious Violence Strategy, to which the public health duty seeks to give effect, lists a wide variety of risk factors for serious violence, such as local deprivation, delinquent peers, low self-esteem, low-intelligence, domestic abuse, truancy, school exclusions and substance abuse.[32] The list is incredibly broad, capturing a range of normal teenage behaviour and social demographics. The consultation document on the proposed duty offered no guidance as to how specified authorities should narrow their determination of which individuals are likely to participate in or fall victim to serious violence.

48. In the absence of clear criteria, and in light of the 'risk factors' identified in the Serious Violence Strategy, Liberty is concerned that assessments under the proposed duty may be predicated on crude generalisations or profiling, which, worse still, conflate vulnerability to violence with a perceived propensity to commit it.

49. Just as the Prevent duty has disproportionately targeted Muslims and minority ethnic communities, it is likely that these human rights harms would likely be felt most acutely by those already over-policed and over-represented in the criminal justice system, such as BAME or deprived communities. Liberty is concerned that the operation of a serious violence prevention duty would be imbued with the assumptions and stereotypes that stubbornly persist in the policing of serious violence, contrary to the right to non-discrimination[33] and the public sector equality duty.[34]

50. The fact that black men and boys are disproportionately policed is widely acknowledged and clearly established in data, and the way in which serious violence is policed is heavily fuelled by racial stereotypes, many of which centre on the ill-defined and porous concept of the 'gang'. The stark statistics on the MPS's Gangs Matrix, revealed in a report published last year by Amnesty International, lay bare the over-identification of BAME people as gang affiliated – 72 per cent of individuals on the Metropolitan Police's Gangs Matrix are black, yet the Metropolitan Police Services own figures show that just 27 per cent of those responsible for serious youth violence are black.[35] As one equality campaigner recently commented, 'this is institutionally racist policing in its purest form'.[36] Last year, the Mayor's Office for Crime and Policing (MOPAC) acknowledged the disproportionality of the Gangs Matrix and called on the MPS to 'comprehensively

[32] Home Office, 'Serious Violence Strategy', April 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf.
[33] Article 14, European Convention on Human Rights
[34] Section 149, Equality Act 2010
[35] Amnesty International, 'Trapped in the Matrix: Secrecy, stigma and bias in the Met's Gangs Database', May 2018, https://www.amnesty.org.uk/files/reports/Trapped%20in%20the%20Matrix%20Amnesty%20report.pdf.
[36] Stafford Scott, 'The Met's Gangs Matrix is racist policing in its purest form', *The Guardian*, 12 January 2019, https://www.theguardian.com/commentisfree/2019/jan/12/metropolitan-police-gangs-matrix-racist-policing

overhaul' it, by implementing a list of recommendations and recommendations put forward by the Information Commissioner's Office (ICO).[37] Liberty is concerned that assessments of indicators of risk of engagement in serious violence will lead to similarly racially disproportionate outcomes. Moreover, given that community deprivation and family socio-economic status are explicitly characterised as 'risk factors' of serious violence, this invites the targeting of lower income communities.

51. Recent policy and practice – such as the conviction of musicians for breaching gang injunctions,[38] police trawling of music videos on social media to identify gang affiliates,[39] or efforts to compel YouTube to remove music videos the police determine 'glamourise' gang lifestyles[40] – demonstrate the risk that aspects of BAME or working class youth culture, or forms of expression which describe violence without inciting it, will be unjustifiably viewed as a marker of future participation in violence. A duty of this nature may, therefore, lead to the monitoring and censorship of the music people listen to or share online, the clothes they wear, the language they use, the places they go to, and the friends or family with whom they associate. Academic research evidences that the Prevent duty has generated a similar dynamic, prompting young Muslims to alter their behaviour, self-censoring or disengaging from campus life or their studies for fear of being labelled an extremist and stigmatised.[41] Moreover, it may inhibit people's ability to communicate freely about their experiences in pastoral settings for fear they will be reported to the police.

Data collection and sharing

52. Data collection and sharing form a central tenet of the legal duty outlined in the Bill. In the interests of addressing the root causes of serious violence, the Government asserts its intention to "bring organisations together to share information, data and intelligence" to identify those most at risk of becoming affected by serious violence.[42]

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[37] MOPAC, Review of the Metropolitan Police Service Gangs Matrix, December 2018, https://www.london.gov.uk/sites/default/files/gangs_matrix_review_-_final.pdf
[38] Dan Hancox, 'Skengdo and AM: the drill rappers sentenced for playing their song', *The Guardian*, https://www.theguardian.com/music/2019/jan/31/skengdo-and-am-the-drill-rappers-sentenced-for-playing-their-song.
[39] Jen Mills, 'YouTube deletes drill music videos 'inciting violence' after requests from police', *The Metro*, 29 May 2018, https://metro.co.uk/2018/05/29/youtube-deletes-drill-music-videos-inciting-violence-after-requests-from-police-7584811.
[40] Home Office, 'Serious Violence Strategy', April 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf
[41] Jack Neenan, '"Muslims are self-censoring" Prof Scott-Baumann on the battle for free speech on campus', *SOAS Blog*, 14 September 2018, https://www.soas.ac.uk/blogs/study/muslims-are-self-censoring
[42] Home Office, 'Consultation on a new legal duty to support a multi-agency approach to preventing and tackling serious violence: Government consultation', 1 April 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791253/SV_Legal_Duty_Consultation_Document.pdf, p. 9.

53. As a preliminary matter, it is important to distinguish between the collection and analysis of anonymised data in order to identify the problem and create an evidence base, on the one hand, and the collection of personal data to create intrusive risk profiles of individuals to justify actions that may intrude on their fundamental rights, on the other. In regard to the former, Liberty strongly advocates evidence-based policy-making, and the systematic collection of properly anonymised data – with robust safeguards to limit the risk of de-anonymisation – plays a role in providing a comprehensive evidence base for high-quality research and analytics to assess why serious violence occurs. In regard to the latter, Liberty is concerned that this will facilitate the collection, retention and sharing of large amounts of personal data, potentially without people's consent, particularly if the guidance produced requires a referral process similar to that required under the Prevent duty.

54. The gathering of personal information – some of which may have been shared in confidence (Section 9(4) of the Bill provides specifically for this) – and onward sharing with third parties under a nebulous legal duty, raises concerns about compliance with a number of data protection principles, including whether the purposes for which partner agencies use the data are compatible with the purposes for which it was obtained[43] and data minimisation.[44] Moreover, it is not clear whether an individual will be informed that their personal information has been shared,[45] or if there will be any opportunity to challenge the accuracy of that information or any subsequent assessment that is made.[46]

Undermining existing professional obligations

55. Liberty is extremely concerned by the proposal that a multi-agency approach to preventing and tackling serious violence would involve building partnerships 'unconstrained by organisational, professional or geographical boundaries'.[47] Professional boundaries and the obligations to which they give rise – such as confidentiality and safeguarding duties – are essential to protect people's dignity and privacy, fostering relationships of trust, and delivering high quality care. These duties are grounded in domestic[48] and international law,[49] and articulated in professional standards

[43] GDPR, Principle (b)
[44] GDPR, Principle (c)
[45] GDPR, Principle (a)
[46] GDPR, Principle (d)
[47] Home Office, 'Consultation on a new legal duty to support a multi-agency approach to preventing and tackling serious violence: Government consultation', 1 April 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791253/SV_Legal_Duty_Consultation_Document.pdf, p.10.
[48] Section 1, Children's Act 1989
[49] Article 3, Convention on the Rights of the Child.

and guidance.[50] They are particularly acute where public authorities are making decisions in regard to children. It is critical that multi-agency frameworks should not serve to short-circuit these safeguards, and that providing a partnership model should have regard for differing institutional missions and professional obligations of the various agencies engaged.

56. Should the Government clarify that professionals engaged in any multi-agency public health approach should continue to apply their existing professional duties, Liberty is concerned that there may be instances in which the proposed public health duty may be inconsistent with, or distort, those established duties. In the context of healthcare, the common law duty of confidentiality, set out in the NHS Confidentiality Code of Practice, is founded on the principle that information confided should not be used or disclosed further, except with the data subject's subsequent permission. The General Medical Council has published Confidentiality Guidance to inform healthcare professionals' approach to their confidentiality obligations, and sets out the narrow exceptions to the principle of confidentiality, for example where it may be justified in the public interest "if failure to disclose may expose others to a risk of death or serious harm".[51] The broadly drawn proposed public health duty – having regard to the need to prevent or tackle serious violence – may lead to the sharing of information given in confidence where there is a less immediate or acute impetus than exposing others to a risk of death or serious harm.

57. Efforts to suspend or hollow out safeguarding and confidentiality duties will unravel relationships of trust between the teachers, doctors, nurses, social and youth workers who rely on trust to provide care. This has significant potential to undermine engagement with these services. For example, requiring healthcare professionals to disclose the personal information of patients who come to the emergency services with an injury they think is suspicious may deter people from seeking life-saving care. As the Royal Council of Nurses' acting Chief Executive and General Secretary commented in response to the Government's proposals, the 'first duty of healthcare workers is to treat and care for patients, and it's important people aren't deterring from seeking help for fear of being reported.'[52] Similarly, where students feel that they cannot confide in teachers or youth-

[50] Department for Education, 'Working Together to Safeguard Children', 2018, https://www.gov.uk/government/publications/working-together-to-safeguard-children--2
[51] General Medical Council, 'Confidentiality: good practice in handling patient information', 25 April 2017, https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality.
[52] Ruchira Sharma, 'What teachers and nurses think about their new legal duty to spot youth crime', *i News*, 1 April 2019, https://inews.co.uk/news/teachers-nurses-legal-duty-spot-youth-crime-home-office/

workers, this may undermine their function as a safe space and, counter-productively, limit their ability to identify those children most in need of support.

SERIOUS VIOLENCE REDUCTION ORDERS

58. Chapter 1 of Part 10 of the Bill provides for the creation of a new civil order, the Serious Violence Reduction Order (SVRO), which would be imposed on an individual on the basis of their conviction for an offensive weapons offence. It would amend the Sentencing Code in order to confer a new power on the police to stop and search anyone subject to an SVRO whenever they are in a public place, without needing to form reasonable suspicion. This would hand the police a highly oppressive tool, unlike anything currently on the statute books.

59. As it stands, previous convictions cannot be used alone, or in conjunction with other factors, as grounds to conduct a stop and search. The Code of Practice for statutory powers of stop and search, PACE Code A, states that "reasonable suspicion can never be supported on the basis of personal factors" noting that police cannot use, alone or in conjunction, a person's "physical appearance with regard, for example, to any of the 'relevant protected characteristics' set out in the Equality Act 2010...or the fact that the person is known to have a previous conviction" as a basis for a stop and search.[53] These constraints seek to tie reasonable suspicion to factors which are relevant to the likelihood that a person has committed a specific offence, rather than stereotypes, vague hunches or attempts to reduce people to their past behaviour. As the College of Policing recognises, requiring that objective reasonable grounds are established before police can exercise their stop and search powers is "key to fair decision making".[54]

60. What is more, the imposition of an SVRO by a court can be made in response to an incident in which the person in question not only did not use an offensive weapon, but simply that "another person who committed the offence" had such a weapon on them, and they "ought to have known that this would be the case". This means that an extraordinary power to stop and search someone anywhere at any time can be imposed on a person despite no evidence of their ever handled a weapon before. These orders can be set to have effect for between six months and two years, and can be renewed

[53] Police and Criminal Evidence Act 1984 (PACE) Code: A Code of Practice for the exercise by: Police Officers of Statutory Powers of stop and search (December 2015), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903810/pace-code-a-2015.pdf

[54] College of Policing, Authorised Professional Practice, available at https://www.app.college.police.uk/app-content/stop-and-search/legal/legal-basis/#powers-requiring-reasonable-grounds-for-suspicion

indefinitely, in which time they run continuously whenever the person is in a public place. Even existing suspicionless powers provided for by Section 60 of the Criminal Justice and Public Order Act – which Liberty has long objected to as unduly invasive and discriminatory – can only be lawfully exercised during a set time period and over a defined geographical area to provide an exceptional response to violence that has or is anticipated to occur.[55] Although it can be extended, the time period provided for in the Criminal Justice and Public Order Act for suspicionless stop and search is 24 hours, not the 24 months the SVRO provides for. The limited temporal and geographic scope of the already-existing powers reflects that they are exceptional, and were never intended to be exercised routinely.[56]

61. The Bill would create a new offence of breaching an SVRO, for example by failing to do anything required by the order, doing anything prohibited by it, or obstructing a police officer in the exercise of any power relating to it. This would carry a maximum sentence of 12 months imprisonment on summary conviction, two years imprisonment on conviction on indictment, and/or a fine in either case. Liberty is concerned that this could be interpreted broadly, to criminalise people requesting that police provide the legal authority for subjecting them to a stop and search or failing to provide an answer to a question put by a police officer, which may fall foul of the privilege against self-incrimination.[57] Further, making a refusal to co-operate a criminal offence may lead to people being fined or criminalised in circumstances where they do not understand the instructions given by a police officer and therefore fail to comply. This may also detrimentally impact disabled people or people with mental health needs, some of whom may find it difficult to follow directions.

62. It is of course already an offence to carry an offensive weapon. The creation of this extra criminal offence is worrying, not least because the Bill allows the Secretary of State to impose by regulation any "requirement or prohibition on the offender for the purpose of assisting constables to exercise the powers conferred" by the Bill, as long as the court considers it "appropriate". This is remarkably broad. The orders can impose both positive and negative obligations and neither we, nor Parliament, know what they will be, as they will be made in the future by the Secretary of State. This is made more concerning by the lower standard of evidence needed for a court to impose an SVRO. Liberty has long-standing concerns that civil orders – including Public Spaces Protection Orders (PSPOs), Criminal Behaviour Orders (CBO), Knife Crime Prevention Orders (KCPO) and

[55] Section 60, Criminal Justice and Public Order Act 1994.
[56] Though evidence attests that, in practice, police regularly use Section 60 for reasons other than its stated purpose.
[57] *Saunders v United Kingdom* Application No. 43/1994/490/572.

Gang Injunctions – unjustifiably blur the civil and criminal justice systems. The Bill makes clear that "it does not matter" whether the evidence considered in deciding to make an SVRO "would have been admissible in the proceedings in which the offender was convicted". And yet despite this, a person subject to an SVRO may face criminal penalties should they breach it – even if what they breach is the as yet unknown requirements made by the Secretary of State through regulation.

Discriminatory impact

63. The proposals would invite discrimination against ethnic minority and low-income communities, exacerbating existing disparities throughout the criminal justice system. The initial consultation document recognised that a disproportionate number of Black men may be impacted by SVROs;[58] indeed, Black people are 8.9 times more likely to be subject to a stop and search than white people, and other people of colour are 4.1 times more likely to be targeted by the power.[59] Crucially, these disparities widen dramatically when the reasonable grounds requirement is removed.[60] Studies also show that Gypsies, Roma and Travellers (GRT),[61] Muslims,[62] young adults[63] and people from low income backgrounds[64] are also substantially over-represented in the criminal justice system – though official data collection for some of these groups is lacking. It is self-evident SVROs are likely to be imposed disproportionately against people from these groups, subjecting them to significant interferences with their civil liberties. Additionally, there is a significant risk that the people the individual associates with – their friends, families or wider communities – may also be the subject of heightened policing. This means people are more likely to be picked up and charged with minor offences, dragging them yet deeper into the criminal justice system.

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[58] Home Office, 'Serious Violence Reduction Orders: A new court order to target known knife carriers', 14 September 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/917277/SVRO_consultation.pdf, p.15.
[59] Home Office (2020), *Police powers and procedures, England and Wales, year ending 31 March 2020*, https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2020
[60] Ibid.
[61] Traveller Movement (2020), *Overlooked and Overrepresented: Gypsy, Traveller and Roma children in the youth justice system*, available at: https://travellermovement.org.uk/phocadownload/userupload/criminal-justice/Overlooked-and-Overrepresented-Gypsy-Traveller-and-Roma-children-in-the-youth-justice-system.pdf
[62] Maslaha (2020), *Time to End the Silence: the experience of Muslims in the prison system, available at:* https://www.maslaha.org/Project/Time-to-End-the-Silence
[63] Prison Reform Trust (2012), *Old Enough to Know Better? A briefing on young adults in the criminal justice system in England & Wales*, available at: http://www.prisonrformtrust.org.uk/portals/0/documents/oldenoughtoknowbetter.pdf
[64] HM Ministry of Justice, The pre-custody employment, training and education status of newly sentenced prisoners, (2012), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/278832/newly-sentenced-prisoners.pdf

64. As a matter of law, this disadvantage may only be justified if it is a proportionate means of achieving a legitimate aim.[65] While Liberty accepts protecting public safety is a legitimate aim, we do not consider these measures a proportionate means of achieving it given the (i) significant and damaging police intrusions they would sanction into people's everyday lives; (ii) risk that existing disparities will become further entrenched (iii) paucity of evidence that SVROs would have any crime-reducing effects; and (iv) risks that they would actually exacerbate the conditions conducive to serious violence.

Ineffective and counter-productive

65. The proposals turn the established rules on the disclosure of previous convictions in the course of criminal proceedings on their head. In general, a person's previous convictions are not referred to in any criminal proceedings until after conviction and then are only relevant to the sentence that is imposed. Evidence of previous convictions may be admitted at trial in certain circumstances, in accordance with the rules of bad character and similar fact evidence.[66] This is a carefully calibrated rule, designed to recognise the patently prejudicial effects of a jury knowing of people's previous criminal history, while at the same time enabling that information to be admitted in certain controlled circumstances. Stop and search is often the first encounter people have with the police and can be an – often unwarranted – gateway into the criminal justice system. Liberty considers it illogical that a tightly regulated scheme would exist in one part of the criminal process to safeguard against the obvious risk of prejudice, only to be overridden at an earlier stage, when it is used as the sole basis for the initial police contact.

66. Finally, given the proposed new measures pose significant human rights impacts, it is crucial that they are supported by unequivocal evidence that they will meet their stated aim of breaking the "cycle of offending and [protecting] our communities from harm".[67] Liberty supports this aim, so we are concerned that no evidence has been provided to justify claims of effectiveness. The Home Office's own research found that in a previous surge in stop and search during Operation Blunt 2 there were "no discernible crime-reducing effects".[68] Similarly, an independent, peer-reviewed study drawing on ten years

[65] Section 19, Equality Act 2010.
[66] Evidence that falls within the definition of 'bad character' will only be admissible if it is captured by section 101 of the Criminal Justice Act 2003.
[67] Home Office, 'Serious Violence Reduction Orders: A new court order to target known knife carriers', 14 September 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/917277/SVRO_consultation.pdf, p.15.
[68] McCandless, R., Feist, A., Allan, J., Morgan, N. *Do initiatives involving substantial increases in stop and search reduce crime? Assessing the impact of Operation BLUNT 2* (2016) Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/508661/stop-search-operation-blunt-2.pdf, p. 3.

of London-wide data found stop and search has "only a very weak and inconsistent association with crime" and drew no statistically significant links between stop and search and levels of violence.[69] In Liberty's view, the proposals are not only likely to be ineffective, but may also be directly counter-productive. By fomenting injustice, alienation and social exclusion – conditions which have been found to correlate to levels of serious violence – they may deepen the very problem they seek to address.[70]

CONCLUSION

67. The above covers no more than a few of the concerning elements of the Bill, assembled in the few days made available to analyse it for its second reading. The provisions in this Bill will affect everyone. They will affect individuals, who now may find themselves subject to 10-year prison sentences for minor offences or the prospect of constant, suspicionless stop and search. They will affect communities, such as Gypsy, Roma and Travellers who face their entire way of life criminalised. They will affect us all, with the dismantling of hard-won and deeply cherished rights to freely assemble and express dissent. Liberty believes the sections of the Bill commented on above should be resisted and rethought and recommends that the Bill should be paused to allow Parliament to fulfil its necessary constitutional duty to scrutinise and improve this legislation for the good of us all.

[69] Matteo Tiratelli, Paul Quinton, Ben Bradford, *Does Stop and Search Deter Crime? Evidence From Ten Years of London-wide Data*, The British Journal of Criminology, 58 (5) pp. 1212–1231.
[70] On links between violence and public health factors in London, see Greater London Authority, *A Public Health Approach to Serious Youth Violence: Supporting Evidence,* (2019) available at https://data.london.gov.uk/dataset/a-public-health-approach-to-serious-youth-violence