

JOINT BRIEFING FOR HOUSE OF LORDS AHEAD OF REPORT STAGE OF THE POLICE, CRIME, SENTENCING AND COURTS BILL

PART 10, CHAPTER 1 (SERIOUS VIOLENCE REDUCTION ORDERS)

JANUARY 2022

Ahead of the Police, Crime, Sentencing and Courts (‘PCSC’) Bill’s Report Stage in the House of Lords, our organisations from across the human rights, privacy and technology, faith, criminal justice, racial justice, and violence against women & girls sectors highlight the following concerns with Part 10, Chapter 1 (Serious Violence Reduction Orders) as it stands.

Part 10, Chapter 1 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 a previous conviction. Such an order could potentially include a range of requirements and prohibitions, that the Secretary of State can specify by way of regulation. Part 10, Chapter 1 would further 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.

We recognise that the intention of the serious violence measures in the PCSC Bill is to protect communities from harm, save lives and prevent injury. These are aims which we wholeheartedly support – serious violence is a human rights issue which devastates communities across the country, hindering many people’s ability to live safe and dignified lives. It demands an evidence-based and just response that works with, not against, communities that bear its brunt.

Instead, the proposals in the PCSC Bill are entirely unsubstantiated by evidence, will sanction injustice and discrimination, and risk fracturing public trust in public services and the authorities – views that are echoed by frontline workers,¹ public health experts,² as well as former senior police officers³ and Prime Ministerial policy advisors.⁴ We continue to believe that SVROs will be fundamentally counterproductive to addressing the root causes of serious violence and that they should be opposed in their entirety.

We strongly urge peers to take the final opportunity in the Bill’s Report Stage in the House of Lords to mitigate the worst effects of the Bill:

- Support amendments 90H to 90L: The amendments to limit the conditions under which an SVRO can be imposed, including:
 - Amendment 90H: Narrowing the offence under which an SVRO can be imposed, in the names of Baroness Meacher, Lord Paddick and the Lord Bishop of Manchester
 - Amendment 90J: Removing the joint enterprise element, in the names of Baroness Meacher, Lord Paddick and the Lord Bishop of Manchester

¹ <https://www.libertyhumanrights.org.uk/issue/frontline-workers-warn-policing-bill-puts-young-people-at-risk/>

² <https://stat.medact.org/uploads/2021/11/The-public-health-case-against-the-policing-bill-web.pdf>

³ <https://www.itv.com/news/2021-10-25/policing-bill-could-undermine-trust-and-exacerbate-violence-ex-chiefs-warn>

⁴ <https://www.mirror.co.uk/news/politics/ex-cop-slams-policing-bill-25355320>

- Amendment 90K and 90L: Removing ‘ought to have known’, in the name of Baroness Armstrong
- Support amendments 90G, 90M, 91C and 90N to 90Q: The amendments to strengthen the procedural requirements, including:
 - Amendment 90G, 90M and 91C: Raising the standard of proof to the criminal standard, in the name of Lord Paddick
 - Amendment 90N, 90P and 90Q: Strengthening the evidential requirements for imposing an SVRO, in the name of Lord Paddick
- Support amendments 91A, 91B and 91D: The amendments to limit the potential harms faced by those with an SVRO, in the name of Lord Paddick including:
 - Amendment 91A and 91B: Narrowing the criminal sanctions for breach of an SVRO
 - Amendment 91D: Limiting the number of times an SVRO can be renewed, in the name of Lord Paddick
- Support amendment 95A to 95C to strengthen the procedures allowing the SVRO regime to commence post-initial pilot:
 - Amendment 95C: Establishing a robust pilot for SVROs, in the names of Baroness Meacher, the Lord Bishop of Manchester and Lord Paddick
 - Amendment 95A and 95B: Establishing a parliamentary vote on the SVRO regime post-the pilot, in the names of Baroness Meacher, the Lord Bishop of Manchester and Lord Paddick
- Vote against Government amendment 91 to allow for the adjournment of proceedings.

AMENDMENTS TO LIMIT THE CONDITIONS UNDER WHICH AN SVRO CAN BE IMPOSED

Narrowing the offence under which an SVRO can be imposed

In the names of Baroness Meacher, Lord Paddick and the Lord Bishop of Manchester

Amendment 90H

Effect

1. This amendment would limit the types of criminal offences for which an SVRO could be imposed to those involving knives and bladed articles, and prevent an SVRO from being applied on a person who simply had a knife on them when they committed the offence.

Briefing

2. The starting point of the proposed amendments is that SVROs – which create an individualised, suspicion-less stop and search power – are a highly oppressive tool, unlike anything on the statute books. Existing stop and search powers are already problematic and yet, in recognition of their ability for harm, have certain safeguards applied to them, including

that previous convictions cannot be a basis on which to stop and search someone (PACE Code A). SVROs extend the most unaccountable form of stop and search – suspicion-less stop and search – and tie it precisely to a person’s previous conviction. We believe this will be fundamentally counterproductive to the fight against serious violence. Below is a summary of our concerns in respect of SVROs’ expansion of suspicion-less stop and search:

- **Current suspicion-less stop and search powers (provided under Section 60 of the Criminal Justice and Public Order Act 1994) are ineffective and liable to misuse.**
 - **There is no evidence that stop and search reduces crime:** 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”.⁵ Similarly, an independent, peer-reviewed study drawing on ten years 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.⁶ In 2012, the Metropolitan Police reduced no-suspicion stop and search by 90% and stabbings and shootings fell by a third and 40% respectively.⁷
 - **The majority of suspicion-less stop and search does not result in further action:** In the year ending March 2020, there was a 35% increase in suspicion-less searches compared to the previous year, with a total of 18,081 people stopped and searched. Of those, no further action was taken after the search in 17,383 cases.⁸
 - **Suspicion-less stop and search is a blunt and ineffective tool:** Recent Home Office data shows that, only 13% of ‘suspicion-based’ stop and searches (i.e. not s.60 stop and searches), result in an arrest. It is understood that this figure includes arrests for offences which do not relate to the object of the search (such as ‘assault/ resist/ obstruct PC’, Public Order Act offences, etc.) and so the percentage of these stop and searches that result in an arrest linked to the object of the search will be even lower than 13%. The arrest rate is even lower for suspicion-less stop and searches: in the year ending March 2020, only 4% of s.60 stop and searches resulted in an arrest, and just 1% of s.60 stop and searches resulted in an arrest for possession of weapons (i.e. the intended object of such searches).⁹

⁵ Pg. 3, 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/stopsearch-operation-blunt-2.pdf

⁶ Matteo Tiratelli, Paul Quinton, Ben Bradford, Does Stop and Search Deter Crime? Evidence From Ten Years of Londonwide Data, The British Journal of Criminology, 58 (5) pp. 1212–1231.

⁷ Ibid.

⁸ Pg. 10, Ali A. and Champion, N. for the Criminal Justice Alliance, *More harm than good - A super-complaint on the harms caused by ‘suspicion-less’ stop and searches and inadequate scrutiny of stop and search powers*, May 2021, available at:

https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf

⁹ Ibid.

- Multiple policing bodies (including HMICFRS¹⁰ and the College of Policing¹¹) and former police chiefs and frontline officers,¹² former Prime Minister and Home Secretary Theresa May,¹³ parliamentarians,¹⁴ and countless community groups¹⁵ have criticised stop and search for being a **major contributor to racial disproportionality in the criminal justice system**. As of the most recent data, Black people are 7 times more likely to be stopped and searched than white people, and when the ‘reasonable grounds’ requirement is removed, Black people are 14 times more likely to be stopped and searched than white people. In its own Equality Impact Assessment, the Home Office acknowledged that **both in terms of who is given an SVRO and who is stopped and searched under SVRO provisions, Black males are likely to be disproportionately affected (even though the Home Office itself would expect the majority of SVROs to be given to white people)**.¹⁶
 - **The exercise of existing suspicion-less stop and search powers lack accountability and transparency:** In 2021, the Government announced its ‘Beating crime plan’, which sought to permanently roll back the existing, minimal safeguards for stop and search (that were created in recognition of the ways that such powers entrench inequality in the criminal justice system) after trialling this in a pilot scheme.¹⁷ The Government was forced to row back on this decision after a legal challenge by Stopwatch and Liberty. Nonetheless, in spite of an intervention by the Information Commissioner’s Office, the Government has failed to publish an evaluation of the pilot.¹⁸
3. It was apparent during the Committee Stage debate that the Minister was under the (incorrect) impression SVROs as currently drafted could only be imposed to those who have been convicted of criminal offences involving knives and bladed articles. For instance, Baroness Williams said she wanted to “remind the Committee that for an SVRO to be made a person must be convicted of an offence involving a knife or offensive weapon.”¹⁹ In actual fact, as drafted, it does not matter whether a person used a knife in the commission of the offence, but simply whether they had a knife on their person at the time – which is not per se

¹⁰ HMICFRS, *Disproportionate use of police powers - A spotlight on stop and search and the use of force*, 26 February 2021, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/disproportionate-use-of-police-powers-a-spotlight-on-stop-and-search-and-the-use-of-force/>

¹¹ College of Policing, *Stop and search: Transparent*, available at: <https://www.app.college.police.uk/app-content/stop-and-search/transparent/>

¹² ITV News, *Policing bill 'disproportionately impacts black men' and 'exacerbates violence', ex-chiefs warn*, 25 October 2021, available at: <https://www.itv.com/news/2021-10-25/policing-bill-could-undermine-trust-and-exacerbate-violence-ex-chiefs-warn>

¹³ Home Office and The Rt Hon Theresa May MP, *Oral Statement to Parliament: Stop and Search: comprehensive package of reform for police stop and search powers*, 30 April 2014, available at: <https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers>

¹⁴ Liberal Democrats, *Ending suspicion-less Stop and Search: your questions answered*, 17 July 2020, available at: <https://www.libdems.org.uk/stopandsearch-qna>; Lammy, D., *Stop and search is inherently unfair, unjust and ineffectual*, The Guardian, 13 October 2018, available at: <https://www.theguardian.com/law/2018/oct/13/stop-and-search-is-unjust-unfair-ineffectual-david-lammy>

¹⁵ See for example: Eugene K., *A sus law by any other name stinks as much*, Stopwatch, 19 March 2021, available at: <https://www.stopwatch.org/news-opinion/a-sus-law-by-any-other-name-stinks-as-much/>; Hackney Account, *Policing in Hackney: Challenges from youth in 2020*, 2020, available at:

<https://static1.squarespace.com/static/5d234a046f941b0001dd1741/t/5f77795b9e2fdb6bf67d3c7d/1601665467995/Final+Draft++Report++Account+%28Online%29.pdf>

¹⁶ <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-equality-statements/home-office-measures-in-the-police-crime-sentencing-and-courts-bill-equalities-impact-assessment>

¹⁷ Stopwatch (represented by Liberty) is bringing a legal challenge against the Government’s announcement that it will relax the BUSSS safeguards for s.60 suspicion-less stop and search.

¹⁸ Criminal Justice Alliance, *Government fails to produce evidence behind expansion of stop and search*, 1 November 2021, available at: <https://www.criminaljusticealliance.org/blog/government-fails-to-produce-evidence-behind-expansion-of-stop-and-search/>; see also Criminal Justice Alliance, *Government refuses to release findings of section 60 stop and search pilot*, 5 January 2022, available at: <https://www.criminaljusticealliance.org/blog/government-refuses-to-release-findings-of-section-60-stop-and-search-pilot/>

¹⁹ HL Deb, 17 November 2021, Vol.816, Col. 48

a criminal offence.²⁰ The clause as currently drafted would enable a court to impose an SVRO on someone who was convicted of driving over the speed limit when on her way to a picnic, at which point she was lawfully carrying a butter knife. Furthermore, any person who was convicted in the same offence could be subject to an SVRO, on the basis that they knew, or ought to have known, that the other person had a knife on them or would use a knife in the commission of an offence (see Amendment 90J, 90K and 90L below).

4. Whilst incorrect, we understand why the Minister would have expected SVROs to be more targeted in their application. The Conservative Party's 2019 Manifesto contained a commitment "to create a new court order to target known knife carriers, making it easier for officers to stop and search those convicted of knife crime". Limiting the SVRO to those who have been convicted of criminal offences involving knives and bladed articles would be consistent with the manifesto promise. That the Minister made this error suggests to us that the current wide application of SVROs is in fact unintended. The effect of this unintended and broad drafting is the criminalisation of people who are not themselves 'known knife offenders' – and may actually be survivors and victims of crime, including young women experiencing criminal exploitation and coercive control (see Amendment 90J, 90K and 90L below).²¹ We note that even if the offence is rightly narrowed, it is highly unlikely that SVROs will be effective at "detect[ing] weapons carrying by individuals".²²
5. SVROs risk being counterproductive to the goals of deterrence and rehabilitation. Although the draft Statutory Guidance states that "SVROs... provide a mechanism to deter habitual knife carriers from reoffending, as well as helping prevent those receiving their first conviction being exploited into continued criminality, including further weapons carrying, by others", we are concerned that people subject to an SVRO will be subject to continual and intrusive surveillance as a result of increased policing through the use of stop and search, as well as reporting requirements and other potential conditions. This will in turn prevent them from escaping situations of violence.²³
6. In a recent event led by the APPG on Race and Community, young people shed light on the stigmatising experience of being stopped and searched, and the risk that being subject to continual suspicion-less stop and search – effectively being treated as a criminal while trying to go about their day-to-day lives – may have detrimental effect on people's physical and mental health. Trauma-informed approaches²⁴ utilise sustained, long-term, and participant-led interventions with people who have had previous experiences of, or engagement with serious violence to divert them from re-offending. Conversely, being subject to an SVRO may risk perpetuating, rather than stopping cycles of criminality. As a young person giving

²⁰ Carrying a knife or offensive weapon, is not per se, a criminal offence; the criminal offence is only committed when the knife is carried without reasonable excuse or lawful authority. For example, an individual may lawfully carry a knife in self-defence provided an imminent attack is anticipated (Evans v Hughes (1972) 56 Cr. App. R. 813).

²¹ Agenda and Alliance for Youth Justice, "I wanted to be heard" *Young women in the criminal justice system at risk of violence, abuse and exploitation*, September 2021, available at: <https://weareagenda.org/wp-content/uploads/2021/10/Young-Women%E2%80%99s-Justice-Project-briefing-paper-I-wanted-to-be-heard-October-2021-FINAL.pdf>

²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1026901/SVRO_Draft_Statutory_Guidance.pdf

²³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1026901/SVRO_Draft_Statutory_Guidance.pdf

²⁴ For example an external evaluation of Fight for Peace in 2011 – a project that has been running in Northern Ireland and England for over a decade – of 800 participants taking part, more than two-thirds of participants say that they are less likely to commit a crime as a result of their time on the project, the majority felt calmer (71%) and most felt more confident and ambitious (94%).

testimony during a meeting of the APPG on Race and Community stated, “someone that gets into that lifestyle – knife crime and these types of things – they’re coming from a place of trauma, so you need to add something in there to help them work on their trauma. To help them be the best possible person they can be. To show them that [you’re] actually interested in their future.”²⁵

7. Being stopped and searched is also a traumatic experience, and for some people, it takes place frequently, even daily: “you just need to be Black to be suspicious ... the Bill gives the police more right to put their hands on people ... it creates a stigma on that person as well”.²⁶ Hackney Account – a youth-led social action project – conducted participatory research with young people in Hackney, and found that the practice of stop and search can have “a damaging impact on mental wellbeing, causing feelings of embarrassment, humiliation or anger”. In particular, stop and search can constitute an attack on young people’s dignity: “Whether being stereotyped as a gang member or treated in a dehumanising manner Stop and Search could be seen as a way that *young people are made to feel they do not ‘matter’*.”²⁷ We note that, given that SVROs may be applied to people who have not used a knife in the commission of any offence, SVROs may further consolidate this feeling. This is further exacerbated by the fact that the police are empowered to use reasonable force to carry out a stop and search if necessary, including using taser, firearms, batons, and handcuffs.
8. Failing to satisfy a requirement and/or condition of an SVRO is a criminal offence that could result in a maximum sentence of two years. We are concerned that this provision will result in people being further plunged into cycles of criminalisation and repeated custodial sentences. Analogous research into another form of ‘quasi-criminal’ civil order – Football Banning Orders – has shown that people are “punished twice for the same behaviour; once by the sentencing court and then again by the civil court imposing the order.”²⁸ Such situations may amount to exposure to double jeopardy, and a person being subject to a higher penalty for their offence that was originally prescribed by law. This is particularly concerning because the longer that an SVRO continues – for example, if an SVRO is renewed for another two years after an initial two-year period – the more remote the SVRO becomes from the original offence on which the first application was made, an issue that also undermines the very concept of rehabilitation. **We urge parliamentarians to support the amendments to narrow the offences for which an SVRO can be imposed.**

Removing the joint enterprise trigger for an SVRO

In the names of Baroness Meacher, Lord Paddick and the Bishop of Manchester

Amendment 90J

Effect

²⁵ APPG on Race and Community Event, “The Lived Experience of the PCSC Bill on Racialised and Minoritized Young People”

²⁶ Ali A. and Champion, N. for the Criminal Justice Alliance, *More harm than good - A super-complaint on the harms caused by ‘suspicion-less’ stop and searches and inadequate scrutiny of stop and search powers*, May 2021, available at: https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf

²⁷ Hackney Account, *Policing in Hackney: Challenges from youth in 2020*, 2020, available at: <https://static1.squarespace.com/static/5d234a046f941b0001dd1741/t/5f77795b9e2fdb6bf67d3c7d/1601665467995/Final+Draft+-+Report+-+Account+%28Online%29.pdf>

²⁸ Pearson, G. (2018). 30 Years of Hurt: The Evolution of Civil Preventive Orders, Hybrid Law, and the Emergence of the Super-Football Banning Order. *Public Law*, (1), 44.

9. This amendment would ensure that only a person who used a knife in the commission of an offence could be given an SVRO.

Briefing

10. Under Part 10, Chapter 1, an SVRO can be imposed on a person ('A') if another person ('B') involved in the commission of the offence used or was carrying a knife, and A knew that was the case; or even if A simply *ought to have known* that B would use or was carrying a knife. In other words, an SVRO could be imposed on someone convicted of an offence who merely **knew or ought to have known** that someone else involved in the offence used a knife when in the commission of the offence, or had a knife in their possession. This is a *de facto* joint enterprise measure as it criminalises people for the actions of others. Moreover, it potentially criminalises people for the actions of others that they simply *ought to have known* about, rather than what they actually knew.
11. **We are concerned that the ability of an SVRO to be imposed on someone who is simply proven – to a civil standard – to have known, or ought to have known – that someone else had a knife, or used a knife in the commission of an offence, will further entrench racial disproportionality in the criminal justice system.** Thousands of people are estimated to have been prosecuted using the joint enterprise doctrine.²⁹ A survey of prisoners suggests that up to half of those convicted on a joint enterprise basis identify as people of colour.³⁰ Research suggests that the proportion of Black/Black British people serving custodial sentences for joint enterprise offences is 11 times greater than the proportion of the general population who are Black/Black British (37.2% compared to 3.3%).³¹
12. Campaigners and experts have highlighted how evidence about people's associations – based on racist stereotypes and prejudices – has been used to support joint enterprise prosecutions, in ways that have resulted in significant racial disproportionality in the criminal justice system. In particular, there is a prevalent public discourse that stereotypes young people of colour, associating them with violence and other criminal activities, including 'gang' involvement. These stereotypes are racist and inaccurate. A 2016 study showed that in Manchester 81% of people identified by the police as involved in gangs were Black; whereas only 6% of people purportedly involved in serious youth violence were Black. In London 72% of people on the Metropolitan Police Service's Gangs Violence Matrix were Black; whereas only 27% of people purportedly involved in serious youth violence were Black.³² Nonetheless,

²⁹ McCleneghan, M., McFadyean, M., and Stevenson, R., *Revealed: Thousands prosecuted under controversial law*, Bureau of Investigative Journalism, 31 March 2014, available at: <https://www.thebureauinvestigates.com/stories/2014-03-31/revealed-thousands-prosecuted-under-controversial-law-of-joint-enterprise>

³⁰ Pg. 19, The Lammy Review: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

³¹ Williams, P. and Clarke, B., *Dangerous associations: Joint enterprise, gangs and racism*, Centre for Crime and Justice Studies, January 2016, available at: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Dangerous%20associations%20Joint%20Enterprise%20gangs%20and%20racism.pdf>

³² Williams, P. and Clarke, B., *Dangerous associations: Joint enterprise, gangs and racism*, Centre for Crime and Justice Studies, January 2016, available at: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Dangerous%20associations%20Joint%20Enterprise%20gangs%20and%20racism.pdf>

weak 'evidence' that people are part of 'gang' is frequently used in joint enterprise prosecutions, particularly in those brought against people of colour. According to one survey of prisoners, where gang narratives have been used in court, 69% of those which resulted in convictions and custodial sentences involved BAME prisoners, whereas only 30% involved white British prisoners.³³ In the words of Andrew Mitchell MP, "young people from ethnic communities have been, essentially, hoovered up for peripheral and in some cases even non-existent involvement in serious criminal acts."³⁴

13. The ongoing misuse of evidence relating to people's associations in the context of the joint enterprise doctrine risks translating into the new SVROs endangering the right to a fair trial and eroding trust in the justice system. Highlighting the ways that joint enterprise creates miscarriages of justice and erodes trust in the justice system, the Lammy Review into the over-representation of Black, Asian, and Minority Ethnic individuals in the criminal justice system has recommended a review of how the Crown Prosecution Service and the police approach gang prosecutions.³⁵
14. Campaigners have also highlighted the ways that joint enterprise affects women and girls. In a 2021 study by academics at Manchester Metropolitan University and the organisation JENGba of 109 joint enterprise cases involving women and girls (the youngest girl being only 13 years old), the majority of those sentenced had convictions for serious violence offences and an average sentence length of 15 years (with almost half serving sentences of up to 30 years). Yet in none of the cases did the woman or girl handle a weapon, in 90% of cases they engaged in no violence at all, and in half of the cases they were not even present at the scene of the crime.³⁶ SVROs risk entrenching the punitive impacts of joint enterprise on women, including survivors of domestic abuse and criminal exploitation who need support.
15. **Our concerns over the SVRO regime's contributions to racial disproportionality within the criminal justice system are exacerbated by the ability of an SVRO to be imposed on someone on the basis that they ought to have known that someone else had or used a knife in the commission of the offence.** This is not an actual state of knowledge, but instead, a hypothetical state of mind. It is unclear how the court will establish if someone ought to have known something. 'Ought to have known' is arguably a lower threshold than 'foresight', which the Supreme Court in *Jogee* established was a reason why the law on joint enterprise had previously taken a "wrong turn".³⁷ Furthermore, the fact that this only has to be proven to a civil standard rather than a criminal standard, and can be based on evidence that would not have been admissible in the criminal proceedings for the original offence, means that this is an extremely low threshold (see Amendments 90G, 90M, 91C and 90N to 90Q below). We are concerned that evidence based on racist and inaccurate stereotypes of young Black people and other people of colour – for example, information about people's associations, use of

³³ To the best of our knowledge, no state agency keeps a centralised record of the use of joint enterprise prosecutions and race.

³⁴ HC Deb, 25 January 2018, Vol.635, Col. 450

³⁵ Gov.uk, *The Lammy Review*, 8 September 2017, available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

³⁶ Becky Clarke and Dr Kathryn Chadwick, *Stories of Injustice: the criminalisation of women convicted under joint enterprise laws*, November 2020, available at: <https://jointenterprise.co/JEwomen.html>

³⁷ *Jogee* [2016] UKSC 8

social media, and even their music taste³⁸ – will be used as evidence for establishing an SVRO on a de facto joint enterprise basis.

16. We echo the concerns voiced by Agenda³⁹ as well as organisations across the VAWG sector, that the SVRO provisions will have a direct impact on young women, especially Black and minoritised women. In particular, SVROs risk criminalising young women – including survivors of domestic abuse and criminal exploitation – for what they are deemed (to a civil standard) to have ‘ought to have known’ about their intimate partners, family members, and friends. As Agenda states, “The proposed terms of an SVRO render invisible the impact of coercion in relationships experienced by many young women drawn into the criminal justice system, or at risk of criminal exploitation.”⁴⁰
17. Crucially, this provision which criminalises those who ‘ought to have known’ - the “absurdity” of which was aptly pointed out by Lord Moylan during the Committee Stage debate⁴¹ - was not included in the Government’s consultation on these orders. We are concerned that this provision negates the progress that was made in the course of debates around the Domestic Abuse Bill (now the Domestic Abuse Act), in respect of raising public awareness of the impact that coercive relationships – and the lack of legal protection – can have on survivors and victims of domestic abuse who are driven to offend.⁴² As the Domestic Abuse Commissioner recently stated in support of Baroness Armstrong’s amendment to remove the term ‘ought to know,’ “more than half (57%) of women in prison report having suffered domestic violence, and 53% report having experienced emotional, physical or sexual abuse during childhood. Where a woman is in an abusive and coercive relationship, neither a judgement that she “ought to have known” or did in fact know her partner was in possession of a knife should be legal basis for imposing SVROs.”⁴³ The ultimate effect will be to pull survivors and victims of domestic abuse into cycles of criminalisation and potentially to deprive them of access to the support they need, with a detrimental effect on the broader fight against VAWG and serious violence.
18. **We urge parliamentarians to support the amendments led by Baroness Meacher to remove the joint enterprise element from the SVRO measures of the Bill. We also support the amendment led by Baroness Armstrong to remove ‘ought to know’ from the face of the legislation.**

³⁸ JUSTICE has found that drill music in particular is often inappropriately misconstrued as bad character evidence, which purports to suggest “that a musical genre unique to a certain demographic is inherently dangerous and criminal, a standard not applied to any other music genre or art form. By presenting an artistic act that shows drive, determination and creativity as dangerous and criminal, it negates positive aspects of a defendant’s character, making a finding of guilt based on weak evidence more likely.”. See JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2020), available at: <https://files.justice.org.uk/wp-content/uploads/2021/02/23104938/JUSTICE-Tackling-Racial-Injustice-Children-and-the-Youth-Justice-System.pdf>

³⁹ Agenda, Committee Stage Briefing for the House of Lords, November 2021, available at: https://linkprotect.cudasvc.com/url?u=https%3a%2f%2fweareagenda.org%2fwp-content%2fuploads%2f2018%2f08%2fPCSC-Bill-HoL-Committee-Stage-Briefing_final.pdf&c=E,1,dNZ8ROz_o6fq7bped1AVZJOoXB1_FM0SiL9gcppmx_JHOHBkHGgYTvwQE5NP2CYs-5z0Qqo7_a8t23VH7YR7Jmt4Q7GeYsf9YzHzhq0xwcOMjZPpuX13-dYfIG8,&typo=1

⁴⁰ Agenda and Alliance for Youth Justice, “I wanted to be heard”: Young women in the criminal justice system at risk of violence, abuse and exploitation, September 2021, available at:

⁴¹ HL Deb, 17 November 2021, Vol.816, Col 296.

⁴² Williams, K.S., Defending Abuse Survivors Who Go On To Offend, Russell Webster, 9 March 2021, available at: <https://www.russellwebster.com/defending-abuse-survivors-who-go-on-to-offend/>

⁴³ <https://domesticabusecommissioner.uk/>

AMENDMENTS TO STRENGTHEN THE PROCEDURAL REQUIREMENTS

Raising the standard of proof for imposing an SVRO

In the names of Lord Paddick

Amendment 90G, 90M and 91C

Effect

19. This amendment would raise the threshold for the standard of proof required to impose an SVRO, from a civil standard (the balance of probabilities) to the criminal standard (beyond reasonable doubt).

Briefing

20. This amendment should be supported alongside a series of other amendments that will clarify and narrow the scope of the harmful SVRO clauses.
21. Procedural fairness is one of the most fundamental principles of our legal system. In the context of criminal law, this means that proof of guilt be held to the appropriate standard, namely ‘beyond reasonable doubt’. Whilst technically a civil order, the potential serious restrictions on liberty that being subject to an SVRO imposes on a person, as well as the criminal sanctions that arise should a person breach the order, means we should hold SVROs at a criminal, rather than civil, standard. As Lord Moylan stated at Committee Stage, and expressing a sentiment shared across the House, this amendment would simply “match the criminal standard of the offence to the process that is followed.”⁴⁴
22. Given that the Minister at Committee Stage admitted she “anticipated[...] in most cases, it will be clear beyond reasonable doubt,”⁴⁵ it is unclear why the criminal standard has not been utilised from the outset, and what the justification might be to enable the civil standard to be used if it is supposedly expected that it won’t regularly be. Rather than leave it to the prerogative of individual judges, a situation that may lead to arbitrary application – particularly on Black and minoritized defendants, furthering disproportionality in the criminal justice system – we urge Parliamentarians to support making this safeguard a reality and prevent SVROs from being an affront to a core principle in English criminal law.⁴⁶

Strengthening the evidential requirements for imposing an SVRO

In the name of Lord Paddick

Amendment 90N, 90P and 90Q

Effect

⁴⁴ HL Deb, 17 November 2021, Vol.816, Col 296

⁴⁵ HL Deb, 17 November 2021, Vol.816, Col 224

⁴⁶ HL Deb, 17 November 2021, Vol.816, Col. 133

23. Amendments 90N, 90P and 90Q would strengthen the evidentiary requirements prior to an SVRO being made.

Briefing

24. Under the current provisions, evidence that would not have been admissible in the proceedings for the offence on the basis of which the SVRO is being imposed, would be admissible in the proceedings to impose an SVRO. What this means is that lower quality evidence than would be allowed in the proceedings in the original offence, would be allowed to be considered in the court's decision as to whether to make an SVRO. This amendment would ensure that only evidence that was admissible in the original proceedings could be used in the court's decision on an SVRO.

AMENDMENTS TO MITIGATE THE HARMS OF BEING SUBJECT TO AN SVRO

Narrowing the criminal sanctions for breach of an SVRO

In the name of Lord Paddick

Amendment 91A and 91B

Effect

25. The terms of 342G(1)(d) have been modified to restrict the offence to circumstances where an individual is directly asked by a constable whether they are under an SVRO; and to create a defence of reasonable excuse. The offence at 342(1)(e) has been removed.

Briefing

26. The purpose of this amendment is to avoid situations where an individual is prosecuted for this offence in circumstances where they have not been directly asked the question of whether they are subject to an SVRO. It also creates a reasonable excuse defence for example, for an individual who had an honest belief, and reasonable grounds for such belief, that they were not or no longer subject to an order, or those who may not have English as a first language and misunderstand the question in the absence of adequate interpretation.
27. The amendment removes the duplicated offence of intentionally obstructing a constable. The existing offence under s.89(2) Police Act 1996 adequately provides for this offence. This provision would otherwise elevate an existing summary only criminal offence to being either way and carrying a higher ultimate sentence.
28. We echo the concerns raised by peers during the Committee Stage debate when they identified the importance of the public being able to scrutinise the actions of police officers in the context of heightened mistrust in policing without fear of being criminalised, particularly

in the aftermath of the murder of Sarah Everard. To this point Lord Marks stated at report stage in the House of Lords, “tragically, Sarah Everard was persuaded to enter Wayne Couzens’s car, with awful results, because he purported to have the right to require her to do so. We should be open to the view that automatic obedience to the requirements of a police officer is not always sensible, and that offenders, even though subject to SVROs, might well have reasonable excuses for non-compliance with police officers’ requirements.”⁴⁷ Similarly, we note a recent YouGov poll which found that only 44% of ethnic minority Britons have trust in the police.⁴⁸ At report stage, the Minister failed to respond directly to this concern nor did she explain or justify why this obstruction offence requires a higher maximum penalty than the existing offence.

Limiting the number of times an SVRO can be renewed

In the name of Lord Paddick

Amendment 91D

Effect

29. This amendment will limit the number of times an SVRO can be renewed to no more than once.

Briefing

30. Under the current provisions, an SVRO can last for a maximum of two years (clause 342D(2)), however it can potentially be renewed indefinitely as there is no limitation on the number of times an SVRO can be renewed. The more time has passed since the making of an SVRO, the more remote the original offence becomes. SVROs risk trapping people in perpetual cycles of potential criminalisation, given the fact that breach of an SVRO is a criminal offence.

AMENDMENTS TO STRENGTHEN THE PROCEDURES FOR ALLOWING THE SVRO REGIME TO COMMENCE POST-INITIAL PILOT

Amendment to establish a robust pilot for the SVRO regime

In the names of Baroness Meacher, the Lord Bishop of Manchester and Lord Paddick

Amendment 95C

Effect

⁴⁷ HL Deb, 17 November 2021, Vol.816, Col. 143

⁴⁸ <https://www.independent.co.uk/news/uk/home-news/police-trust-black-lives-matter-b1973053.html>

31. This provision establishes a framework for a robust pilot to the SVRO programme, with particular attention paid to equalities impacts and impacts on survivors and victims of domestic abuse and criminal exploitation.

Briefing

32. At Committee Stage, the Government sought to reassure the Opposition that the establishment of SVROs by way of a pilot across 4 police forces, would enable them to collect robust data on their use.⁴⁹ We are concerned that pilots and other exercises such as these, do not achieve their purported aims of safeguarding and establishing agreed standards to base further roll out of policy from, but are instead a mere buffer zone between introduction of a policy and its wider roll out.⁵⁰ The only safeguard available to counter the harms that SVROs are likely to cause, is for them not to be created at all.
33. 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”.⁵¹ However, no evidence has been provided to justify claims of effectiveness of civil/criminal orders on which SVROs appear to be modelled, and no evidence to show that existing suspicion-less stop and search works.
34. On the contrary, there is plenty evidence to show that stop and search does **not** work. As identified above, Home Office data shows clear racial disparities in terms of who is affected by stop and search and the former-Home Secretary acknowledged that it was possible to “reduce the number of stops, improve the stop-to-arrest ratio and still cut crime.”⁵² It is therefore concerning that the Bill will introduce a new stop and search power that fundamentally undermines the safeguards introduced by the BUSS scheme, as well as those already in place in existing stop and search practices.
35. We are highly concerned that the Government is rolling out suspicion-less stop and search powers through the creation of SVROs, and is also creating new protest-related stop and search powers in Part 3 of the PCSC Bill, whilst also evading scrutiny over existing powers as contained in s.60 of the CJPOA. Experiences of pilots like the one previously mentioned regarding the Government’s now reversed decision to permanently relax the BUSS

⁴⁹ HC Public Bill Committee 17 June 2021

⁵⁰ For example, the Home Office collects annual data on stop and search. This data has repeatedly shown the disproportionality inherent in these police powers, but the Government is yet to make substantial efforts to rectify these problems. Similarly, the Home Office has delayed their pilot of Knife Crime Prevention Orders – the findings from which may have substantially aided the decision to implement SVROs in the first place.

⁵¹ 5 Pg. 15, Home Office, Serious Violence Reduction Orders: A new court order to target known knife carriers, 14 September 2020,

⁵² *Ibid.*

safeguards,⁵³ and which the Government are refusing to publish evidence of,⁵⁴ do little to assuage concerns that pilots are simply a tickbox exercise to legitimate eventual roll-outs of Government policy. In the event that the SVRO provisions are passed, we believe that there must be a robust pilot that evaluates, among other factors, the equalities impacts of the SVRO regime, and the impact of this regime on particular groups, for example, survivors and victims of domestic abuse and criminal exploitation. **In addition to undertaking a robust piloting and reporting exercise, the Government must commit to stopping any further national roll out and scrap SVROs should the pilot provide evidence that the regime is ineffective and entrenches racial disproportionality in the criminal justice system.**

Amendment to establish a parliamentary vote on the SVRO regime post-the pilot
In the names of Baroness Meacher, the Lord Bishop of Manchester and Lord Paddick
Amendment 95A and 95B

Effect

36. These amendments would make it so that the SVRO regime can only commence once a report on the pilot has been laid before Parliament and both houses have voted on its commencement.

Briefing

37. As evidenced throughout this briefing, SVROs will have significant human rights impact, especially for marginalised communities. In addition to the above amendment that would establish a robust pilot, this amendment aims to strengthen the democratic basis that would allow the regime to be rolled out across all police forces.
38. Pilots are useful insofar as their findings are properly considered and policy amended or discontinued pending the results. As currently drafted, the provisions enacting SVROs may commence after a report of the pilot is laid before Parliament by the Secretary of State. The provisions are silent as to whether further roll-out is contingent on SVROs having proven to be effective at their intended purposes – especially considering their human rights impact – nor do the provisions concerning the pilot contain requirements on the Government to report on whether the SVRO regime is proportionate, fair, and compliant with human rights. We therefore echo the concern expressed by the House of Lords Secondary Legislation

⁵³ <https://www.libertyhumanrights.org.uk/issue/home-secretary-u-turns-on-stop-and-search-decision-after-legal-action-from-liberty-and-stopwatch/>

⁵⁴ ³ Criminal Justice Alliance, Government fails to produce evidence behind expansion of stop and search, 1 November 2021, available at: <https://www.criminaljusticealliance.org/blog/government-fails-to-produce-evidence-behind-expansion-of-stop-and-search/>

Committee when they raised the issue about the “quality of legislation, and the absence of adequate evidence and other supporting information to underpin proposed policy changes.”⁵⁵

39. Much of the detail of the SVRO regime is left to the powers of the Secretary of State, including crucial information regarding potential requirements and prohibitions imposed on people who are given SVROs. As the House of Lords Delegated Powers and Regulatory Reform Committee (DPPRC) stated in their recent report about the relationship between Parliament and the Executive, “the more that is left to secondary legislation, the greater the democratic deficit because of the absence of robust procedures enabling effective parliamentary scrutiny of secondary legislation.”⁵⁶ Furthermore, Clause 141(1) allows the Secretary of State to issue guidance on the exercise of police functions in relation to SVROs. To this, the Delegated Powers and Reform Committee stated “we are particularly concerned about the absence of Parliamentary scrutiny for guidance [on 141] [...] given their controversial nature, we consider that it is particularly important that the guidance is subject to Parliamentary scrutiny and such scrutiny would benefit the police by whom these functions will be exercised as well as the wider public.”⁵⁷ The DPPRC consequently recommended that the affirmative procedure apply to guidance under clause 140(1). The Government has since tabled an amendment applying a negative resolution procedure to the power to issue guidance under subclause 342JA, forgoing the DPPRC’s emphasis on the need for rigorous scrutiny of provisions that are likely to have significant impacts on individuals as well as public trust in institutions.
40. This amendment would go one step further, by ensuring that not just the guidance, but the whole SVRO regime is subject to parliamentary scrutiny by both Houses, along with responses addressing any issues identified in the pilot report by the Home Secretary. **We urge Parliamentarians to support this amendment to strengthen the democratic process underlying the commencement of SVROs.**

GOVERNMENT ADJOURNMENT PROCEDURE AMENDMENT

We urge Parliamentarians to vote against Government amendment 91 to allow for the adjournment of SVRO proceedings.

Effect

⁵⁵ House of Lords Secondary Legislation Scrutiny Committee, *Government by Diktat: a call to return power to Parliament*, November 2021, available at: <https://publications.parliament.uk/pa/ld5802/ldselect/ldsecleg/105/105.pdf>

⁵⁶ *Ibid.*

⁵⁷ Delegated Powers and Regulatory Reform Committee, *Sixth Report*, available at: <https://publications.parliament.uk/pa/ld5802/ldselect/lddelreg/65/6503.htm>

41. Government amendment 91 makes changes to the procedure for applying for an SVRO and allows the court to adjourn proceedings on applications for SVROs “even after sentencing the offender.”

Briefing

42. The Courts have been critical of delays between sentencing and the hearing for the imposition of civil orders. In *Khan* [2018] EWCA Crim 1472, which related to another hybrid civil/criminal order, Criminal Behaviour Orders (CBOs), the court held that “it was most unsatisfactory that the hearing [for the CBO] was more than 7 months after the main sentencing hearing,” stating that “a delay of several months (save in the most exceptional circumstances) is wholly unacceptable.”
43. The ramifications for such adjournment periods are significant for more than those who are subject to an SVRO, including people who police believe are subject to SVROs, as well as their communities, families and friends. With the establishment of a statutory duty on public bodies to prevent and reduce serious violence in Part 2, Chapter 1 of the PCSC Bill, it is likely that similar tactics to those used to police people on the Metropolitan Police Service’s Gangs Matrix may be used to target individuals and communities for chronic over-policing, such as through the continual patrolling and surveillance of the same postcodes. This kind of monitoring not only interferes with people’s right to private and family life, but may alter where they associate (for example, not leaving home or attending events because they know they will attract police attention) or who they associate with (for example, not meeting with particular friends or family) and impact their ability to work or access education.
44. In addition, people who are awaiting a court date to establish an SVRO, are also likely to face intrusive monitoring of their daily lives. The proposed structure of SVROs makes this inevitable, for they are a means through which restrictive and invasive measures can be imposed on individuals without the safeguards of a criminal trial.
45. The amendment places no explicit limitation on adjournment period. Whilst, as noted above, the courts have held delays of several months to be “wholly unacceptable”, it seems plausible, given the courts backlog, that lengthy adjournment may occur. In this way, adjourning proceedings risk creating a system of ‘shadow orders,’ whereby the threat of an SVRO hangs over the individual during the adjournment period, and the effects of the order may attach to individuals even in cases where an application for an order ultimately fails. It is therefore arguable that adjournments may serve to extend the behavioural effects of these orders, beyond the time frame of the orders themselves.
46. Moreover, failure to appear for an adjourned proceeding leads to punitive measures, including the court issuing a warrant for the offender’s arrest, or hearing the proceedings in the offender’s absence, that will only further serve to drag people into the criminal justice system. Whilst the court may only do these where it is satisfied that the individual has had adequate notice of the time and place of the adjourned proceedings, there exists no defence for a failure to attend, and it is plausible that a person may have moved away (such as to leave an area in which they have been involved in criminal activity), has no fixed address, or

has simply been issued with an adjournment court date months or years after their initial sentencing in which they were first considered for the SVRO regime. Rather than preventing crime, SVROs risk creating further cycles of criminalisation by subjecting individuals to the risk of incarceration unnecessarily. For example, an individual could face criminal sanction where they inadvertently fail to appear for proceedings years after their initial conviction, even where the offence had nothing to do with a knife whatsoever. This is compounded by the fact that the proceedings would be subject to an inappropriately low standard of proof that need not have been admissible in the original trial. This would clearly set such an individual up to fail. **We therefore urge Parliamentarians to vote against the Government amendment to allow for the adjournment of SVRO proceedings.**

For further information, please contact:

Sam Grant, Head of Policy and Campaigns, Liberty: samg@libertyhumanrights.org.uk

Habib Kadiri, Research and Policy Manager, StopWatch UK: habib@stop-watch.org

Karla McLaren, Government and Political Relations Manager, Amnesty UK:

karla.mclaren@amnesty.org.uk

Jen Persson, Director, Defend Digital Me: jen@defenddigitalme.com

Griff Ferris, Legal and Policy Officer, Fair Trials: griff.ferris@fairtrials.net

Katrina Ffrench, Director, UNJUST: katrina@unjust.org.uk

Silkie Carlo, Director, Big Brother Watch: silkie.carlo@bigbrotherwatch.org.uk

Tyrone Steele, Criminal Justice Lawyer, JUSTICE: tsteele@justice.org.uk

Nina Champion, Director, Criminal Justice Alliance: nina.champion@criminaljusticealliance.org.uk

Jan Cuncliffe, Campaigner, JENGBA: jointenterpriseinfo@gmail.com

Alba Kapoor, Senior Policy Officer, Runnymede Trust: alba@runnymedetrust.org

Grace da Costa, Public Affairs and Media Manager, Quakers: graced@quaker.org.uk

Tracey Fletcher, Interim CEO, Agenda: tracey@weareagenda.org