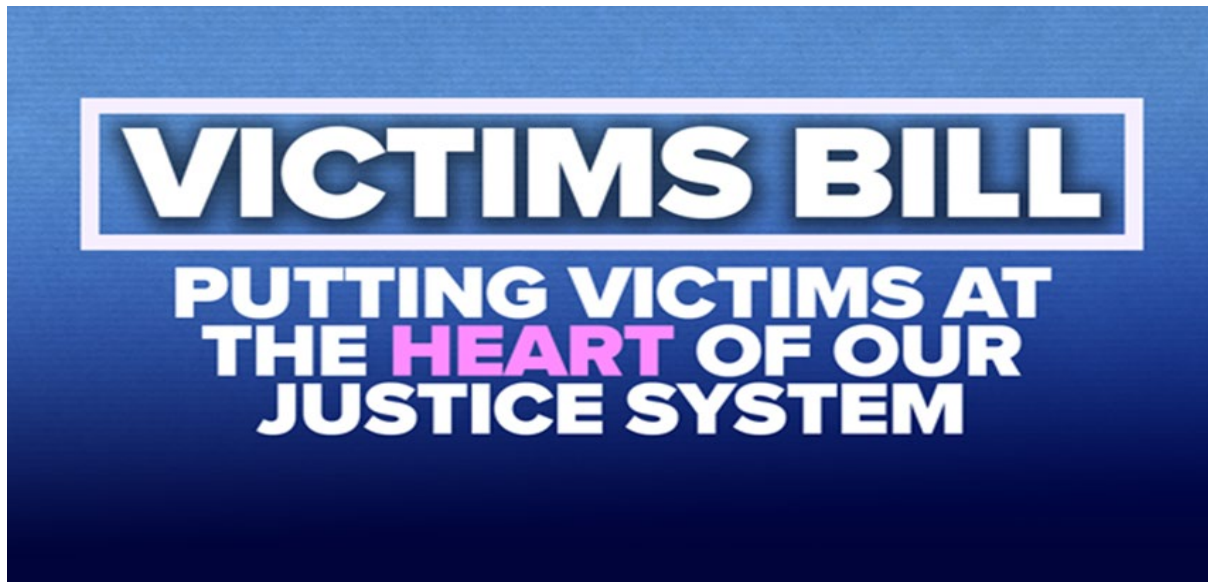


Proposed Victims, Criminal Justice and Fatal Accident Inquiries (Scotland) Bill



A proposal for a bill

(a) To make changes to the criminal justice system and increase the rights of victims, including by:

- i) Increasing measures for victims and their families to make representations and access relevant information;
- ii) Improving and introducing measures for considerations relevant to:
 - the safety and wellbeing of victims and their families, and
 - the offender's cooperation in the disclosure of information, to be taken into account when decisions are made on, and related to, release of offenders;
- iii) Removing the not proven verdict; and

(b) To expand the criteria for mandatory fatal accident inquiries, and set maximum timescales for mandatory and discretionary fatal accident inquiries.

Consultation by Jamie Greene MSP, Member for West Scotland (Region)

15 December 2021

Contents

Foreword 4

How the Consultation Process works 6

Aim of the Proposed Bill 7

Background 7

Detail of the Proposed Bill 9

Removal of the “Not Proven” verdict from Scots law 9

Michelle’s Law 11

Suzanne’s Law 17

Victim Statements to Court..... 18

Notification of a decision not to prosecute 19

Victim Notification Scheme Improvements 21

Statutory Timescale for Fatal Accident Inquiries 24

Financial implications 26

Impact on human rights, equalities, sustainability and data protection..... 28

About you 31

Your views on the proposal 32

How to respond to this consultation 42

Data Protection 45

Foreword



All of us hope we are never victims of crime. No matter the severity of the crime, it leaves us feeling vulnerable, scared, traumatised and can scar us for life. In an ideal world, there would be no victims of crime. Regrettably, this is not the case. There are thousands of victims of crime every year in Scotland. Behind each one of these crimes is a story – you are likely to know of one personally. Whether it's you or one of your friends or family, everyone has an experience of crime. Being aware of that experience should drive decision-makers to make the victim's interaction with the justice process as good as it possibly can be. Unfortunately, there are far too many shortcomings in the system.

Scotland's justice system is currently imbalanced and often favours the criminal over the victim, with the victim often feeling that their voice is not heard at various stages of the criminal justice process, whether that be in court, when the criminal is being considered for release and all other stages in between. At a moment where a victim feels powerless because of what has happened to them, it is of the utmost importance that they feel empowered to speak about their experience and make a difference.

Not only are victims' voices being neglected but they often lack basic information about the criminal in their case. A lot of victims are not even eligible for initiatives such as the Victim Notification Scheme that provide them with some information about the criminal in their case. Even when victims are entitled to access these schemes, the information is scarce, contains loopholes and often comes at short notice. On top of this, the process of a case going through the courts can often be opaque and leave victims feeling left in the dark. Sometimes, victims are not even notified of the current status of their case and have to actively find out themselves – which can lead to further traumatisation. When it comes to the treatment of victims in Scotland, they are often neither listened to nor heard.

There are too many deficiencies in Scots law regarding victims' rights and this ambitious proposal will comprehensively address multiple areas where shortcomings have been identified. There are areas where the consultation will have vital input into the finalised proposals but nonetheless it is clear that more needs to be done to put the rights of victims first. I intend to fully address the concerns of victims so that I can accurately say that in Scotland, victims are at the heart of our justice system.

Victims have already experienced the trauma of crime – that in itself is a failure of the state to protect that individual. Therefore, I believe that the Scottish Government should give priority to the rights of victims because victims have already been failed by having a crime committed against them. Of course, a crime committed can never be undone, but the victim feeling a sense of justice and that their rights have been respected and upheld throughout our justice system is still achievable. Obtaining this goal is not going to be easy and will require justice stakeholders to review current procedures and go further than they've ever gone before in order to put victims' rights first. The bold measures outlined in this document will boost those rights and go some way to rectify the wrongs that victims of crime currently experience.

The aim of this proposal is to put victims at the heart of Scotland's justice system and ensure that their voice is heard at every stage of the justice process. This proposal for a Bill would achieve this by giving victims the right to have their direct say in the justice process - whether this be through making a statement to court, being able to make representations during parole hearings and temporary release applications, or through strengthening the provisions and eliminating the deficiencies in the Victim Notification Scheme. This proposal will empower victims to make a difference and guarantee that their rights aren't neglected in Scotland's criminal justice process. I believe this is one of the most ambitious proposals for a Member's Bill that the Scottish Parliament has ever seen – but that is what it will take to give victims the rights they deserve.

A handwritten signature in cursive script that reads "Jamie Greene". The signature is written in black ink and is positioned above the typed name and date.

Jamie Greene
December 2021

How the Consultation Process works

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

[Standing Orders | Scottish Parliament Website](#)

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. Several months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me on 0131 348 6137 or jamie.greene.msp@parliament.scot

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An online copy is available on the Scottish Parliament's website.

Aim of the Proposed Bill

Background

The aim of this proposal is for a Bill to strengthen the rights of victims in Scotland's justice system through a series of measures that would enshrine several rights for victims that currently do not exist in Scots law. It proposes changes to existing law to make improvements in areas where victims' groups have expressed concern that current arrangements are inadequate for the victims of crime and also for their families in many instances.

Current legislation and policy

The latest major piece of legislation directly concerning victims was the Victims and Witnesses (Scotland) Act 2014 (the 2014 Act).¹ The 2014 Act gave victims and witnesses a right to request certain information about their case. For example, upon a victim's request, police or prosecutors may disclose information such as a decision not to proceed with a criminal investigation. However, this is not a right and such a request can be denied on the grounds that it would be inappropriate to disclose the information. There are also other types of information which might be desired, that the legislation does not entitle a victim to receive, such as information regarding certain details about guilty pleas.

The 2014 Act also created a duty on organisations within the justice system to set out clear standards for victims and witnesses. However, the legislation did not prescribe any minimum standards for victims and witnesses – nor did it require any input from victims themselves into the creation of these standards. Given the limited nature of these requirements, it is unsurprising that there are so many areas for improvement when it comes to victims' rights in Scotland.

Relevant secondary legislation includes the Parole Board Amendment (Scotland) Rules 2021, which amend the Parole Board (Scotland) Rules 2001 and govern the extent to which victims are allowed to be involved with parole hearings. Under the rules, parole boards may take into account the safety and security of victims – but it is not a requirement for them to consider this². Victims are not allowed to make in-person representations at parole hearings. They are only allowed to be “silent observers” and even that small step was only introduced this year³. These rules also place restrictions on the publication of a parole board's decision – meaning that victims can be refused access to vital information.

¹ Legislation.gov, *Victims and Witnesses (Scotland) Act 2014*, [link](#)

² Legislation.gov, *Parole Board (Scotland) Rules Amendment 2021*, [link](#)

³ Scottish Parliament, *Written Parliamentary Question Answer from Humza Yousaf MSP*, 26 January 2021, [link](#)

In terms of temporary release from prison, the latest iteration of the temporary release directions state that, when considering an application from a prisoner for temporary release, the prison governor must consider the views of any victims and the views of persons residing in the community in which the prisoner will spend the temporary release, where those views are made known to the governor⁴. However, a Freedom of Information response from the Scottish Prison Service reflects that only victims registered with the Victim Notification Scheme are invited to make such representations. The Scottish Prison Service does not record how many representations are made⁵ – so there appears to be no available information on the prevalence of these representations.

The Scottish Government's Victims Taskforce⁶ papers also show areas where more action could be taken. The latest "Victims' Voices" paper mentions specific points where victims want their voices to be heard⁷. Three key areas that were highlighted were:

- giving input during court processes,
- completing victim impact statements, and
- being heard during parole decisions.

In addition, receiving regular updates from criminal justice agencies during the whole process of a criminal case was another area that the paper suggested required improvement within the current system.

The paper also states that there is a lack of support and information on how to participate in the justice process as a victim - a key barrier to victims making their voices heard. In particular, the inconsistency in the information received at different stages of the justice process was disconcerting for victims.

The latest Victims Taskforce papers also discussed the need for a review of the Victim Notification Scheme.⁸ A further concern raised was that victims are often asked to join the scheme at an unsuitable time and this is not followed up in the future⁹.

The above examples and others later in this document reflect the need for change: to ensure the voices of victims become a valued factor in decision-taking processes within the justice system, that the welfare and safety of victims are considered in full, and that

⁴ Scottish Prison Service, *Scottish Prison Rules (Temporary Release) Direction 2021*, [link](#)

⁵ Scottish Prison Service, *Freedom of Information Response HQ20291*, 23 March 2021

⁶ Scottish Government, *Victims Taskforce March 2021 - Workplan*, 10 March 2021, [link](#)

⁷ Scottish Government, *Victims Taskforce March 2021 – Victims Voices*, 10 March 2021, [link](#)

⁸ Scottish Government, *Victims Taskforce Papers March 2021 – Victim Notification Scheme Review Discussion*, 10 March 2021, [link](#)

⁹ Criminal Justice Committee, *Written Submission from Victim Support Scotland*, 22 September 2021, [link](#)

victims receive information that can be so important to them in a manner that does not re-traumatise. Wherever appropriate, the proposals also extend to the families of victims.

These are all concerns that have been highlighted directly to the Scottish Government - but still it is not doing enough to address them.

Detail of the Proposed Bill

The proposed Bill seeks to address several issues in the Scottish justice system to ensure that the concerns of victims are prioritised and placed at the heart of the legal process. The proposed Bill will seek to introduce a range of measures listed here and set out in more detail throughout this document:

- Remove the “not proven” verdict from Scots law.
- Implement Michelle’s Law by:
 - guaranteeing that victims’ safety and welfare are considered;
 - giving victims and their families a right to make representations when a criminal is being considered for release;
 - using exclusion zones more to prevent criminals from coming near victims and their families in their own community; and
 - providing victims/their families with reasons for the decision to release a criminal.
- Implement Suzanne’s Law to seek to prevent killers from being released if they refuse to reveal the location of their victim’s body.
- Allow all victims of crime to give a statement to court.
- Enshrine in law the right of all victims to be notified when a decision not to prosecute their case has been made.
- Address deficiencies in the Victim Notification Scheme to ensure all victims can access information relevant to their case, including on the offender, and that updates are received in a timely manner where victims wish to receive them.
- Establish timescales for Fatal Accident Inquiries to prevent excessive delays for families and explore expanding the number of circumstances where mandatory investigations are held.

Removal of the “Not Proven” verdict from Scots law

Scotland currently has three verdicts that can be issued in any trial: guilty, not guilty and not proven. Both not guilty and not proven are acquittal verdicts.¹⁰ The latest Criminal Proceedings statistics from 2019-20 show that, in the reported period, the not proven verdict was used 1,039 times – or in 20 per cent of acquittal verdicts.¹¹

¹⁰ Mygov.scot, *Verdicts*, 22 May 2018, [link](#)

¹¹ Scottish Government, *Criminal Proceedings Statistics 2019-20*, 18 May 2021, [link](#)

Previous research from the Scottish Government in a mock jury study found that the not proven verdict was often misunderstood by jurors and there was confusion over what its effect was.¹² In particular, the idea that the accused was guilty – but that guilt could not be proven to the necessary standard for conviction, frequently occurred during juror deliberations.

According to the Scottish Government’s study, the verdict originated in the 17th century from a change in court procedure, whereby juries ceased to declare the accused guilty or not guilty and instead used ‘special verdicts’, such as not proven. By the 19th century lawyers had come to view the ‘special verdicts’ as irrelevant, but not proven had become a “legal fixture”, so juries continued to use it alongside guilty and not guilty verdicts.

The not proven verdict is not defined in statute or in case law. The standard texts on Scottish criminal procedure state that jurors should not be told anything about the verdict’s meaning.¹³

Various women’s rights organisations, such as Rape Crisis Scotland, Scottish Women’s Aid and Scottish Women’s Rights Centre, have outlined their support for ending the not proven verdict.¹⁴¹⁵¹⁶

One of the simpler arguments that has been made for its abolition is that a jury’s job is about establishing guilt, or lack of it, so a third verdict serves no useful purpose, especially as there are no legal differences between not proven and not guilty. Removing the verdict would simplify existing procedures and eliminate any of the misconceptions associated with the verdict.

Victims of accused who were acquitted with this verdict have set out a strong case for abolition. A prominent example of this is campaigner, Miss M. She is a rape victim, but when her case went before a criminal court the case against her attacker was found not proven. She later took her case to a civil court and won.¹⁷ Miss M said the not proven verdict meant rape victims were “unfairly left without justice”.¹⁸

In response to this injustice, Miss M launched the “End Not Proven” campaign with Rape Crisis Scotland. The campaign group say there is a real worry that the existence

¹² Scottish Government, *Findings from a large scale Mock Jury study*, 9 October 2019, [link](#)

¹³ Scottish Government, *Findings from a large scale Mock Jury study*, 9 October 2019, [link](#)

¹⁴ Scottish Parliament, *Official Report*, 22 September 2021, [link](#)

¹⁵ Scottish Women’s Rights Centre, *Scottish Women’s Rights Centre comment on the acquittal in Alex Salmond’s sexual assault trial*, 23 March 2020, [link](#)

¹⁶ Twitter, *Scottish Women’s Aid*, 13 November 2018, [link](#)

¹⁷ BBC News, *Rape victim raises ‘not proven’ verdict with Nicola Sturgeon*, 4 December 2019, [link](#)

¹⁸ Rape Crisis Scotland, *End Not Proven*, [link](#)

of the verdict gives juries in rape trials an “easy out” that contributes to guilty people walking free.

In terms of statistical evidence, the Criminal Proceedings in Scotland statistics in 2019-20 referred to above show that 20 per cent of acquittal verdicts are not proven for all cases before a criminal court. When looking specifically at the use of acquittal verdicts for sexual crimes, the percentage of acquittals that are not proven increases to 37 per cent. For cases of rape, the disproportionate use of the verdict is higher, with it given in 44 per cent of acquittals.¹⁹

In summary, the lack of a distinct purpose for the verdict, the trauma experienced by victims because of the verdict and the confusion surrounding its definition are the key arguments for the abolition of not proven and is why I intend to abolish the verdict in this legislative proposal.

The proposed Bill would include provisions that would move Scotland to a two-verdict system of “guilty” and “not guilty”.

Michelle’s Law

In 2008, Michelle Stewart was murdered by her ex-boyfriend John Wilson on the streets of Drongan in Ayrshire after being stabbed 10 times.²⁰ Wilson pled guilty to the murder and was sentenced to 12 years minimum in jail. The family said that, as a result of a plea bargain, his minimum sentence was reduced from 16 to 12 years.²¹ In 2018, Wilson was spotted in and around Ayr numerous times as a result of being on temporary release.²² The family described how the thought of encountering Wilson would make them scared.²³

As a result of Wilson’s sightings in Ayr and the Stewart family’s sense of injustice at how that made them feel, the family started to campaign for Michelle’s Law.²⁴ The campaign proposed that:

¹⁹ Scottish Government, *Criminal Proceedings Statistics 2019-20*, 18 May 2021, [link](#)

²⁰ Daily Record, *Documentary of murdered Ayrshire teen highlights family's continued fight for justice*, 18 February 2021, [link](#)

²¹ Daily Record, *Documentary of murdered Ayrshire teen highlights family's continued fight for justice*, 18 February 2021, [link](#)

²² Daily Record, *Documentary of murdered Ayrshire teen highlights family's continued fight for justice*, 18 February 2021, [link](#)

²³ “The original sentence was not nearly long enough and now we face, just 9 years on, the prospect of seeing my sister’s killer on the street, on the bus or in the shops. It is unbelievably painful.” Lisa Stewart (sister of Michelle Stewart), BBC News, *Family of murdered teen meet justice secretary*, 3 August 2018, [link](#)

²⁴ Scottish Conservatives, *Campaign for Michelle’s Law is launched to improve victims rights*, 3 August 2018, [link](#)

- Victims' rights should be improved so that there was an explicit requirement for the safety and welfare of victims and their families to be taken into account when parole and temporary release for prisoners were considered;
- The use of powers to impose exclusion zones on offenders should be increased to offer more protection to victims and their families;
- Victims should be allowed to make representations in person when parole hearings and temporary release applications are considered;
- The parole board and Scottish Prison Service should give victims and their families a reason for their decision.

In September 2020, Michelle's father, Kenny, said he felt like "zero" action had been taken to address these aims.²⁵ My proposal intends to rectify this by addressing the demands made in Michelle's Law so that victims and their families no longer feel excluded from the process of considering the release of a criminal back on to the streets – and that the safety and welfare of the victim are properly considered upon the conclusion of that process.

Consideration of a victim's safety and welfare

The proposals in Michelle's Law are designed to address the feeling of distress that victims and their families experience. Requiring parole boards and the Scottish Prison Service to take into account the safety and welfare of victims and their families when considering applications for release will give victims some reassurance that they should not be endangered as a result of a prisoner being released and, if there is such a threat, then that prisoner can be denied, by law, from being released.

Current rules state that parole boards "may" take into account the effect on the safety or security of any other person, including in particular any victim or any family member of a victim, but it is **not** required.²⁶ As noted above in the section on current legislation, prior to granting any form of temporary release, a Prison Governor must consider the views of any victims of that offence(s), and the views of those in the community where the prisoner will be released, but only where those views are made know to the Governor.²⁷ **My proposal would make the consideration of the safety and welfare of any victim and their family a requirement when considering the release of any offender for parole and for all forms of temporary release.**

Exclusion zones

²⁵ BBC News, *Michelle's Law: Father's anger at 'zero' action*, 25 September 2020, [link](#)

²⁶ Legislation.gov, *Parole Board (Scotland) Rules 2001*, [link](#), as amended by the *Parole Board (Scotland) Amendment Rules 2021*, [link](#)

²⁷ *Scottish Prison Rules (Temporary Release) Direction 2021*, [link](#)

The use of exclusion zones is another way to prevent the threat to victims and their families in their community from having to confront the possibility of coming across the released criminal.

Exclusion zones can be used to allow the parole board and the Scottish Prison Service to exclude a prisoner from a specified area. The Management of Offenders (Scotland) Act 2019 references that an electronic monitoring requirement can be imposed upon an offender when they are released on licence concerning their “whereabouts in some way (including being at, or not being at a particular place)”²⁸. At time of drafting, the main provisions concerning electronic monitoring are not yet in force²⁹; however, this framework could be used and built upon to prevent the offender from entering into the area where the victim and/or their family live.

Currently, the Scottish Prison Service does not keep aggregated data on the number of times exclusion zones are used when prisoners are granted temporary release³⁰. There is a similar lack of clarity surrounding their use by the Parole Board for Scotland.

My proposal would, in cases where criminals are being considered for temporary release or parole, allow a victim (or their family in cases where the victim is deceased) the right to request an exclusion zone be given to the criminal so that the offender can be prevented from entering the community of their victim. In cases of temporary release, this would apply to applications for unescorted day release, home leave or temporary release for work.

This could assist in safeguarding the victim’s mental health and provide comfort to the victim/family impacted by the actions of that criminal by reducing the likelihood of re-traumatisation caused by coming into contact with the criminal. The parole board/prison governor evaluating such a request would be required to consider the benefits to the safety/welfare of the victim/family whenever making a decision to approve a request for an exclusion zone to be used.

The consultation responses could consider whether a statutory presumption that the parole board or prison governor accept this request could be a practicable option.

Oral representations

Another concern I have is that victims and their voices are not being heard throughout the entirety of the process of a criminal’s release, including at the key points where it is important to ensure victims and their families have the right to express their position to

²⁸ Legislation.gov, *Management of Offenders (Scotland) Act 2019*, [link](#)

²⁹ Scottish Parliament, *Written Parliamentary Questions Answer S6W-03717*, 1 November 2021, [link](#)

³⁰ Scottish Prison Service, *Freedom of information response HQ20289*, 17 March 2021, Available upon request.

inform deliberations. Michelle's Law aims to address this through the use of direct oral representations.

For example, even if a victim's safety and welfare is required to be considered by parole boards and by the Scottish Prison Service, these considerations may not filter through to the victim or their family. This is because the summary of a parole board's decision may not include details of the safety and welfare considerations that have been taken into account in the preparation of their report – as the summary of the decision is not required to include these details and is subject to the requirement that it should not include information which identified, or could be used to identify, any person concerned in the proceedings. Information may also be withheld from the summary if it is considered that publication would be contrary to the public interest or the interests of justice³¹.

Being able to make oral representations during the course of proceedings would ensure that victims and their family's voices are heard directly, and any specific concerns, including on welfare and safety can be addressed through this mechanism.

New rules brought in in 2021 allow certain victims to attend parole board hearings³² but, as observers, they must remain silent throughout proceedings.³³ The only representations that victims are currently allowed to make is to a member of the board who is not dealing with that victim and their offender's case – and this is only in the case of life prisoners.³⁴ For comparison, all prisoners are entitled to attend oral hearings for their case³⁵ which demonstrates a clear imbalance in the current system.

My proposal would allow for direct oral representations during parole hearings – regardless of whether the prisoner has been convicted for life. In cases where the victim is deceased this would also apply to the victim's family.

Oral representations would be permitted for temporary release applications so that victims (and their families in cases where the victim is deceased) still have an opportunity to make oral representations. I propose that this would apply for temporary release applications pertaining to unescorted day release, home leave or temporary release for work. I would be interested to hear respondents' views about the form these representations could take which are sensitive to victims needs whilst still being convenient for the prison governor.

Giving reasons for a decision

³¹ Legislation.gov, *Parole Board (Scotland) Amendment Rules 2021*, [link](#)

³² Legislation.gov, *Parole Board (Scotland) Amendment Rules 2021*, [link](#)

³³ Scottish Parliament, *Written Parliamentary Question Answer S5W-34554*, 26 January 2021, [link](#)

³⁴ Legislation.gov, *Criminal Justice (Scotland) Act 2003*, [link](#)

³⁵ Legislation.gov, *Parole Board (Scotland) Rules 2001*, [link](#)

Once the application of the offender has been considered, the relevant authority should then be required to make the reasons clear to victims and their families why the authority has come to its decision.

The latest iteration of the parole board rules allows for the publication of a summary of the decision to direct the release of a prisoner.³⁶ However, victims are not entitled to a non-summarised version of the decision.

Prison governors are required to record a decision, in writing, regarding a temporary release application but prison rules do not elaborate on the extent to which this written decision can be shared with the victim³⁷.

My proposal intends to allow for the provision, in full, of a prison governor or parole board's decision to direct that a prisoner be released, to be shared with a victim. The need to ensure that any relevant party's right to privacy is not violated would need to be taken into account.

In cases of temporary release, the full decision would be provided in relation to applications for unescorted day release, home leave, temporary release for work.

The mechanism through which a decision report is provided to a victim could be through those signed up to the Victim Notification Scheme. However, I am interested to hear respondents' views on how else victims could access a decision report.

Where release is not directed, the victim can be provided with a summary decision – and this would be extended to decisions relating to relevant temporary release applications as well.

Furthermore, this decision report must be trauma-informed and sensitive to the victim's needs. Currently, summaries of parole board decisions are framed in very matter-of-fact and insensitive ways to victims. For example, one recent decision states: "The offender committed a very serious index offence, resulting in fatal harm to the victim. However, they had no other convictions for violence."³⁸ It must be very traumatic for a family to read that the killer was released partially because they had no other convictions for violence – bearing in mind this family's loved one had been victim to a crime of extreme violence.

Under the status quo, only victims registered with the Victim Notification Scheme have access to rights such as making representations to prison governors during temporary

³⁶ Legislation.gov, *Parole Board (Scotland) Amendment Rules 2021*, [link](#)

³⁷ Scottish Prison Service, *Scottish Prison Rules (Temporary Release) Direction 2021*, [link](#)

³⁸ Parole Board Scotland, *Decision Summary*, 26 August 2021, [link](#)

release applications.³⁹ This creates the potential for excluding many victims who may wish to access this scheme's benefits but have not signed up due to lack of awareness of the scheme or being asked to consider joining it at an inappropriate time.

Ideas to give more victims the right to access information are set out later on in this document.

In summary, the proposed Bill would:

- **Give victims the right to make oral representations during parole hearings and temporary release applications for work, unescorted day release and home leave by allowing victims or their families (in cases where the victim is deceased) to make such representations**
- **Allow victims (or their family in cases where the victim is deceased) the right to request an exclusion zone imposed on a criminal so that prisoners are not released into the communities of those they have traumatised. When such a request is made, there could potentially be a statutory presumption towards granting the request. This would apply when release decisions are considered on parole and on temporary release applications relating to unescorted day release, home leave and temporary release for work.**
- **Require that the safety and welfare of victims and their families are considered during all parole hearings and temporary release applications relating to any crime.**
- **Ensure that victims of all crimes can, if they wish to receive them, receive the reasons in full as to why the parole board or prison governor has come to their decision to release a prisoner, whilst respecting the right to privacy for any relevant party and taking into account relevant data protection requirements. If release has not been directed, a trauma-informed summary decision can be provided to the victim.**

These provisions will apply to the victim of the crime. In cases where the victim has died, the provisions will apply to families of that victim. Currently only four relatives can join the Victim Notification Scheme if the victim has died.⁴⁰

By implementing these provisions, this proposal would expand the rights available to victims as well as increasing the number of victims eligible to exercise these rights.

³⁹ Scottish Prison Service, *Freedom of information response HQ20289*, 17 March 2021, Available upon request.

⁴⁰ Scottish Government, *Relatives who can take part in the Victim Notification Scheme*, 17 August 2018, [link](#)

Respondents could also consider the types of temporary release applications to which Michelle’s Law applies. I have initially stated that it would apply to unescorted day release, home leave and temporary release for work but I am interested to hear respondents’ views on whether this scope is too narrow or too broad. In addition, they could consider what form the oral representations could take from victims when these temporary release applications are considered.

Respondents could also consider the application of these reforms in practice. I want to ensure any victim who wishes to access these rights can do so but appreciate that there may be some situations where this will be difficult. I would therefore welcome views on the best proportionate means to identify the cohort of victims that would require to access each of the rights set out above in relation to Michelle’s Law. For example, whether the victim would need to be eligible for the Victim Notification Scheme in order to be able to access these rights.

Suzanne’s Law

Suzanne Pilley went missing in Edinburgh in May 2010. She was killed by David Gilroy and her body is believed to be somewhere in Argyll and Bute, but no-one knows, because the killer has never disclosed the location of Suzanne’s body.⁴¹ Suzanne’s family have described the ‘limbo’ they are in – never being able to get closure due to this situation. They have said that they do not feel like they can say a proper goodbye until Suzanne’s body is found.

Suzanne’s Law aims to prevent killers being released from prison if they fail to disclose the location of their victim’s body which might allow the victim’s family this information to have some degree of closure. This would help secure community safety by potentially allowing any outstanding investigations into the killing to be concluded, enabling authorities to uncover further evidence, and assist the communities affected by the killing.

Where killers refuse to disclose such information, parole boards would have the power to deny the release of a killer until they disclosed the location. As well as amending parole board rules, these proposals would be replicated into rules regarding temporary release.

These measures are intended to deter killers from concealing this information, which, in turn, would enable any outstanding investigations to conclude and allows for the families of victims to get closure by saying a proper goodbye to their loved ones.

⁴¹ BBC News, *Suzanne Pilley murder: 'We cannot say a proper goodbye'*, 4 May 2020, [link](#)

The provisions below, based on Suzanne's Law, reflect the additional trauma where a killer refuses to disclose the location of their victim and the belief there should be further repercussions for any killer who behaves in such a way.

My proposal would:

- **enshrine into parole board rules the ability to deny a killer's release on licence on the grounds that they have failed to disclose the location of their victim's body; and**
- **replicate such conditions in the Scottish Prison Temporary Release rules, allowing prison governors to deny an application for temporary release for work, unescorted day release and home leave to killers who withhold information about the location of their victim's body.**

Responses could also consider a stronger option where there would be a guaranteed denial of parole or temporary release to killers who admit to the killing and the hiding of the body, but still refuse to disclose the location of their victim.

In addition, consideration might be given as to whether there would need to be a differentiation between the convicted killers who deny knowledge of a victim's location and those who openly acknowledge the fact that they have hidden the body, and how such a system would operate in practice.

For example, there might be an element of the system that acknowledged there may be circumstances where a body cannot be located by an individual, such as where there has been a miscarriage of justice.

Views might also be given on the types of temporary release applications to which Suzanne's Law applies. I have initially stated that it would apply to unescorted day release, home leave and temporary release for work, but I am interested to hear respondents' views on whether this scope is too narrow or too broad.

Victim Statements to Court

Victim statements to court provide victims with the opportunity to describe to the court how a crime has affected them physically, emotionally and financially. The victim statement is given to the court after the accused pleads guilty or if they're found guilty,

before sentence is imposed.⁴² Currently, only victims of certain crimes are able to provide such statements. These crimes include murder, culpable homicide and rape.⁴³

A Scottish Government consultation analysis published in February 2021 on the issue asked respondents for their views on the types of crime where victims should be eligible to make such a statement. Seventy-nine per cent favoured the most generous option, expanding eligibility to all cases heard under solemn proceedings (heard before a jury) as well as a list of offences that would be heard under summary proceedings.⁴⁴

Although the Scottish Government did not explicitly provide this as an option, 18 respondents, or 61 per cent who expressed a preference, stated that all victims, regardless of the nature of the offence, should be able to make a victim statement. One respondent to the consultation stated that no one knows what impact even the most minor of offences could have on a victim, therefore they should be able to express this impact, just like other victims of crime.⁴⁵

The number of respondents stating, on an entirely unprompted basis, that all victims should be able to make a statement to court, demonstrates the strength of feeling on this issue. Including all offences also prevents the situation of having to arbitrarily distinguish between what offences are more serious than others, ensuring that all victims are treated equally.

In this proposal, all victims will be allowed to make a statement to court, regardless of the nature of the offence – so that their feelings are directly heard in court before a sentence is handed out. This could be done either through the victim reading the statement live or pre-recorded via video. In circumstances where the victim has died, such a statement could be made by a family member. Qualifying family members who could make a statement on behalf of a deceased victim is set out in Section 14(10) of the Criminal Justice (Scotland) Act 2003.⁴⁶

Views on the proposal are welcome, including how the system might work in practice, such as formats of providing statements and the circumstances in which other individuals such as family members could deliver such statements.

Notification of a decision not to prosecute

The Victims' Right to Review scheme run by the Crown Office and Procurator Fiscal Service (COPFS) allows victims to review a decision by a Procurator Fiscal not to

⁴² Mygov.scot, *Make a Victim Statement*, 8 January 2020, [link](#)

⁴³ The Victims Statements (Prescribed Offences) (No.2) (Scotland) Order 2009, *Schedule*, [link](#)

⁴⁴ Scottish Government, *Widening the scope of the current victim statement scheme*, 19 February 2021, [link](#)

⁴⁵ Scottish Government, *Widening the scope of the current victim statement scheme*, Page 7, 19 February 2021, [link](#)

⁴⁶ Legislation.gov, *Criminal Justice (Scotland) Act 2003*, [link](#)

prosecute a criminal case or to discontinue prosecution. This was established by the COPFS in 2015.⁴⁷ In 2019-20, there were 33,733 cases where the Crown Office either discontinued prosecution or decided not to prosecute a case. In the same year, 226 applications were received by victims requesting a review of the decision.⁴⁸

A Thematic Report on the Victims' Right to Review scheme was conducted by the Inspectorate of Prosecutions in Scotland in 2018. The report documented several cases where the victim was not proactively notified of a decision not to prosecute. For example, in a case involving a charge of careless driving, the victim was only made aware of a decision not to prosecute after they contacted the Crown Office for an update on their case.⁴⁹

A similar occurrence took place in a case of vandalism⁵⁰, when the victim contacted the Procurator Fiscal's office. The review was only submitted by the victim days before the expiry of the time bar as they were not aware of any decision not to prosecute taking place. The Thematic Review stated that the policy of not notifying all victims of a decision not to prosecute had the potential to deny victims an effective remedy. It was recommended that COPFS work towards a system of notifying all victims of a decision not to prosecute their case, so they could seek a review of the decision where the victim believed a prosecution should have taken place.

The then Lord Advocate, James Wolffe QC, stated in March 2021 that while victims of solemn cases and some summary cases are notified of a decision not to prosecute, other victims have to proactively request an update on whether prosecution has been discontinued.⁵¹ Victims of crime who do not fall within the remit of the COPFS Victim Information and Advice (VIA) service are not automatically notified of a decision not to prosecute. Crimes that fall under the remit of the VIA service include domestic abuse, hate crime, sexual crime or other crimes that would be heard before a jury⁵².

There are no exact figures for how many victims are not automatically notified under the current arrangements, but data from the Victims' Right to Review paper highlights the disparity in usage between solemn and summary cases.

In 2019-20, the number of applications in one year that would have resulted in solemn proceedings stood at 90. The number of applications that would have resulted in summary proceedings stood at 117⁵³. In that same year, around 88,000 summary

⁴⁷ COPFS, *Right to Review: Strengthened rights for victims of crime in Scotland*, 1 July 2015, [link](#)

⁴⁸ COPFS, *Victims Right to Review Annual Report 2019-20*, 20 November 2020, [link](#)

⁴⁹ Inspectorate of Prosecution in Scotland, *Thematic Report on the Victims' Right to Review Scheme*, May 2018, [link](#)

⁵⁰ Inspectorate of Prosecution in Scotland, *Thematic Report on the Victims' Right to Review Scheme*, May 2018, [link](#)

⁵¹ Scottish Parliament, *Written Parliamentary Question*, 3 March 2021, [link](#)

⁵² COPFS, *Victim Information and Advice Service*, [link](#)

⁵³ COPFS, *Victims Right to Review Annual Report 2019-20*, 20 November 2020, [link](#)

cases were concluded in court and approximately 6,000 solemn cases were concluded.⁵⁴ Although not a perfect estimate, these statistics imply that the proportion of cases solemn cases reviewed is significantly higher than the proportion of summary cases reviewed.

The low numbers of reviews sought for crimes that would result in summary proceedings highlight the need for expanding entitlement of a notification for a decision not to prosecute to include all victims.

Less than one per cent of victims currently apply for a review. Of these, 12 per cent of applications reviewed led to the overturning of the decision not to prosecute.⁵⁵

Increasing the take-up of the Victim Right to Review scheme should boost the number of victims who get the prosecution of the case they're entitled to – that is why it is vital this proposal is included in the proposed Bill. **It would enshrine the right of all victims to be notified of a decision not to prosecute or to discontinue prosecution so that victims have the opportunity to request a review of this decision, should they wish.**

Victim Notification Scheme Improvements

The Victim Notification Scheme (VNS) was set-up in 2004 and entitled eligible victims to certain information about their offender.⁵⁶ To be eligible for the current scheme, an individual must be a victim of a crime where the offender was sentenced to 18 months or more in prison. To register, a victim must fill out a form to send to the Scottish Prison Service, which manages the scheme. The VNS entitles the victim of the crime to a limited amount of information.

Under Part 1 of the scheme, the victim is entitled to be told within 48 hours:

- the date of an offender's release,
- if the offender dies before being released,
- if the offender is transferred out of Scotland,
- if the offender is eligible for temporary release,
- if the offender escapes or absconds,
- if the offender returns to prison and the reason is connected to the victim's case, or
- if a certificate is granted giving the offender unescorted detention from hospital for the first time.⁵⁷

⁵⁴ Scottish Courts and Tribunals Service, *Monthly Management Information June 2021*, 20 July 2021, [link](#)

⁵⁵ COPFS, *Victims Right to Review Annual Report 2019-20*, 20 November 2020, [link](#)

⁵⁶ Scottish Prison Service, *VNS*, [link](#)

⁵⁷ Mygov.scot, *Victim Notification Schemes*, 10 January 2020, [link](#)

In terms of Part 2 of the scheme, victims have the right to:

- be advised if the offender is being considered for parole or for release with an electronic tag,
- send written comments to the Parole Board when it is considering a victim's case,
- send written comments to the Scottish Prison Service when it is considering releasing an offender with a tag, or
- be advised by the Parole Board/Scottish Prison Service if the offender has been directed for release and if there are any changes to the condition of the release.

The Victims' Rights (Scotland) Regulations 2015, amended the Victims and Witnesses (Scotland) Act 2014 to allow victims to receive limited information about offenders who were sentenced to 18 months or less. Where an offender is sentenced to imprisonment for such a period, the Scottish Ministers must, if a victim requests it, notify the victim of the lawful release of the offender – or if the offender has escaped from prison.⁵⁸ This notification must include any licence conditions that have been imposed under the Prisons (Scotland) Act 1989⁵⁹ or the Prisoners and Criminal Proceedings (Scotland) Act 1993⁶⁰. An exemption is applied if the Scottish Ministers identify a risk of harm to the offender when notification occurs.

The take-up of the VNS is around one in four⁶¹. This means three quarters of eligible victims are unable to access basic information about their offender because they did not sign up for the scheme.

Victim Support Scotland said in a newspaper report⁶² that barriers to improving the VNS take-up rate included that the scheme was complicated to understand and that victims are often asked at the most unsuitable times whether they want to join the scheme, such as too soon after the incident has taken place.

Additionally, in a recent written submission to Scottish Parliament, Kate Wallace of Victim Support Scotland noted that victims receive no regular information about their case and, when victims have signed up to the scheme, the onus is placed on the victim to update their details with the system – a system that still uses home addresses only, with no option for text or email communication.⁶³

⁵⁸ Legislation.gov, *Victims Rights' (Scotland) Regulations 2015*, [link](#)

⁵⁹ Legislation.gov, *Prisons (Scotland) Act 1989*, [link](#)

⁶⁰ Legislation.gov, *Prisoners and Criminal Proceedings (Scotland) Act 1993*, [link](#)

⁶¹ Scottish Parliament, *Written Parliamentary Question Answer*, 10 August 2021, [link](#)

⁶² The Scottish Sun, *Scots victims must be at the heart of our social justice system*, 14 September 2020, [link](#)

⁶³ Scottish Parliament, *Victim Support Scotland Written Submission*, 22 September 2021, [link](#)

Furthermore, a loophole in the scheme has also been highlighted. If a criminal's sentence for one offence expires, but they remain in prison for another offence, the victim will be told that the offender's sentence has expired but they remain in prison due to a separate offence. The victim is then told their data is destroyed and so they will not be contacted again. This means the victim will not necessarily be told when the criminal in their case will be released.⁶⁴

Kate Wallace of Victim Support Scotland reflected on many accounts of victims being re-traumatised when they received letters without prior warning, updating victims about the whereabouts of an offender⁶⁵. The fact that the VNS provides inadequate notice of important updates about the offender can clearly make a victim's experience of their ordeal even more distressing.

So, accessibility and lack of information are two key problem areas.

The proposed Bill would seek to overhaul the Victim Notification Scheme to ensure all victims of eligible crimes who may wish to access information under the scheme are included in the scheme. Options for changing the scheme could include retaining an opt-in process but revising it to ensure the eligibility criteria include more categories of victims.

This opt-in process would also include safeguards to ensure victims are given sufficient information about the scheme at appropriate points in an appropriate way, to ensure victims can engage with their right to join the scheme on their terms.

An alternative option would be to create an opt-out system where all victims were included in the scheme as a matter of course, removing the barrier of registering during a time of heightened trauma. However, I am extremely mindful that a system intended to assist and support victims should not have the effect of re-traumatising those who do not wish to be privy to information provided by it. An opt-out system would need to have safeguards to ensure individuals have clear opportunities to remove themselves from the system and therefore should not receive information they do not wish to see.

I offer these as possible models but am very aware of the specialist expertise that exists in this area and welcome any contributions in consultation responses in this area.

⁶⁴ Sunday Mail, 'Scandalous' prison loophole means Scots violent crime victims not told about attacker's release, 29 November 2020, [link](#)

⁶⁵ Sunday Mail, 'Scandalous' prison loophole means Scots violent crime victims not told about attacker's release, 29 November 2020, [link](#)

Regardless of which model is preferred, it is clear that more regular contact with the victim is required and more sensitive and timeous notification of updates about the offender is necessary; my proposal would ensure that these principles are embedded into law.

Changing the current requirement that an offender be sentenced to 18 months or more is an option for expanding eligibility of the Victim Notification Scheme and I would be interested to hear respondents' views on this option.

The proposal also intends to address current deficiencies in the operation of the VNS, such as missing the notification of an offender's release, that have been identified in the scheme could be addressed under this proposal. Ensuring sufficient prior notification about updates in an offender's case could also be included in the proposed changes to prevent further victim traumatisation.

I would appreciate input from victim organisations and others on how to address these matters in practice including, for example, comment on appropriate timescales for prior notification.

As mentioned in the Michelle's Law proposals, only four relatives of victims who have passed away are able to join the VNS. Respondents could consider whether this limit should be expanded.

The listed initiatives here are not exhaustive and I am keen to consider other improvements that could be implemented in relation to the VNS.

Statutory Timescale for Fatal Accident Inquiries

Fatal Accident Inquiries (FAIs) are types of court hearings that publicly investigate the circumstances of a death. They are presided over by a sheriff in a Sheriff Court. The types of death where mandatory investigations take place are fatal accidents at work or deaths in legal custody or, in the case of a child, happened whilst kept or detained in secure accommodation. Other inquiries can also take place at the Lord Advocate's discretion.⁶⁶

As a follow-up review in 2019 of FAIs conveyed⁶⁷, there are currently no statutory requirements governing the timescales of an FAI. For example, there are no upper time limits.

⁶⁶ COPFS, *Our role in investigating deaths*, [link](#)

⁶⁷ Scottish Government, *Follow up review of Fatal Accident Inquiries*, 7 August 2019, [link](#)

Excessive delays are unacceptable to families who are having to wait a decade in some cases to find out the truth behind their loved one's death.

Following the passage of the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, a requirement was imposed upon the Lord Advocate to publish a Family Liaison Charter which sets out information available to families, including timescales for the giving of information.⁶⁸ However, this has not prevented notable delays from taking place in the running of FAIs.

In July 2021, the Crown Office completed an FAI more than nine years after Roderick MacLean disappeared while fishing off the coast of the Orkney Islands.⁶⁹ This is not an isolated case. Other examples include in 2019 when it was reported that there were two deaths being investigated where the deaths had occurred more than eight years ago and one inquiry in 2015 was completed ten years after the death had taken place.⁷⁰

There is also evidence of deficiencies in the current system where discretionary inquiries are not instructed. These take place where the Lord Advocate considers that a death was sudden, suspicious, unexplained or occurred in circumstances that give rise to serious public concern and decides that it is in the public interest for an inquiry to be held.

An FAI was not held in the case of Milly Main's death at the campus of the Queen Elizabeth University Hospital in Glasgow, despite calls for one to take place.⁷¹ This is an example of a prominent case that I consider satisfied the criteria for a discretionary FAI. It is now subject to a police investigation.⁷²

This and other examples reflect that there are circumstances where an FAI could have taken place and the Lord Advocate could have exercised the discretionary powers to instruct one. I consider that there is scope to expand the number of circumstances where a mandatory FAI must take place for deaths that give rise to serious public concern and are in the public interest.

In addition, this would enable more families to establish the facts behind their loved ones' death. FAIs can also lead to recommendations for change where there are issues identified. However, this is another area where concerns have been highlighted. For

⁶⁸ Scottish Government, *Follow up review of Fatal Accident Inquiries*, 7 August 2019, [link](#)

⁶⁹ The Times, *Apology for inquiry delay over sea death*, 17 May 2021, [link](#)

⁷⁰ The Times, *Families wait ten years for death inquiries*, 4 February 2019, [link](#)

⁷¹ Daily Record, *Anas Sarwar urges Nicola Sturgeon to back Fatal Accident Inquiry into death of tragic Milly Main*, 24 March 2021, [link](#)

⁷² BBC News, *Milly Main: Criminal investigation over hospital deaths*, 25 September 2021, [link](#)

FAIs conducted into deaths in prison, in 90 per cent of cases no recommendations were made.⁷³

FAI rules require the sheriff at a preliminary hearing of the FAI to set out the likely length, timetable and date for the start of the inquiry. In the First Notice of the FAI must make clear whether the inquiry is mandatory or discretionary.⁷⁴

The proposal seeks to establish a statutory timescale for FAIs so that families can get answers about their loved one's death much sooner than is currently experienced in some cases. This would provide certainty to families by giving them assurances that they will not have to wait longer than a certain period of time for answers.

In the last three financial years, the majority of FAIs have been completed within two years.⁷⁵ However, I believe that ambitious targets should be set for the completion of all FAIs.

I am proposing a statutory timescale of 12 months for the completion of FAIs but I am open to flexibility on this target. For example, I am interested to hear from respondents whether there could be different targets for mandatory and discretionary inquiries – as there may be procedural reasons for one taking longer than the other.

The proposal also intends to expand the list of circumstances where deaths are automatically investigated through the mandatory FAI process.

I am keen to hear from respondents about situations where they believe an automatic FAI should be initiated where it is currently at the Lord Advocate's discretion to decide whether to instruct an FAI - for example, whether an automatic FAI should take place when any sudden and unexplained death occurs in a building for which a public authority is responsible.

Financial implications

Given that many of the proposed Bill's measures relate to changes in legal process, they are not expected to have significant cost implications.

Removing the "not proven" verdict could lead to more individuals being sentenced and therefore increase costs for the Scottish Prison Service and those responsible for overseeing community sentencing.

⁷³ BBC News, *No finding in nine out of 10 prison death FAIs*, 15 September 2021, [link](#)

⁷⁴ Legislation.gov, *Act of Sederunt (Fatal Accident Inquiry Rules) 2017*, [link](#)

⁷⁵ COPFS, *Freedom of information response R-01693-21*, 5 August 2021, Available on request.

Implementing Michelle's Law could lead to increased administration costs from maintaining closer contact with the victim's family in decision making around the release of an offender for organisations, including the Parole Board for Scotland and the Scottish Prison Service.

Implementing Suzanne's Law could lead to increased costs for the Scottish Prison Service in cases where parole is refused, or temporary release is rejected.

Allowing a victim statement in court could lead to increased administrative costs for the Scottish Courts and Tribunals Service as the Victim Statement Scheme does not currently permit this.

Notifying every victim of a decision not to prosecute could lead to increased administrative costs for the Crown Office and Procurator Fiscal Service as they currently do not do this.

Extending the Victim Notification Scheme could lead to increased administrative costs for the Scottish Prison Service.

Increasing the number of FAIs completed by increasing the criteria for automatic FAIs would have cost implications.

I do not expect that establishing timescales for FAIs will necessarily have any cost implications, although I note that a lack of resources in the existing system has been cited as an issue in relation to the lengthy timescales for FAIs to be completed amongst other factors.⁷⁶

Where there are costs, there already exists a budget for funding victims' support. For 2021-22, the Scottish Government's draft budget set out an allocation of £18.2 million⁷⁷. More generally the Scottish Government claims to have spent around £60 million in 2020-21 on projects "to support victims and survivors of crime".⁷⁸ While I believe that this level of support should be increased, it is clear that there is a budget to deliver on the Bill's provisions.

The Justice portfolio budget in 2021-22 is more than £3 billion⁷⁹ and the various justice organisations that are affected by the policies outlined in this document have a sufficient budget allocation to meet the minor costs associated with this proposal.

I am keen to hear views through this consultation from relevant justice organisations on their analysis of the cost.

⁷⁶ SG, *Thematic Review of Fatal Accident Inquiries*, August 2016, [link](#)

⁷⁷ *Scottish Budget 2021 to 2022*, 28 January 2021, p106, [link](#)

⁷⁸ *SG Press Release*, 14 January 2021, [link](#)

⁷⁹ SG, *Scottish Budget 2021 to 2022*, 28 January 2021, p100, [link](#).

Impact on human rights, equalities, sustainability and data protection

Human rights

The provisions in Suzanne's Law would allow the parole board and prison governors to deny killers to be released when they have not disclosed the location of their victim's body. In England and Wales, the Prisoners (Disclosure of Information About Victims) Act 2020 required parole boards to take into account, the Board not knowing where and how the victim's remains were disposed of and believes that the prisoner has information on this. They must factor in the non-disclosure and the reasons, in the Parole Board's view for this, when considering a public protection decision about a life prisoner's release.⁸⁰ The Ministry of Justice said of the Act's compliance with the ECHR 'there is no interference with Article 5 [right to liberty and security], either on its own or in conjunction with Article 14 [prohibition or discrimination]'⁸¹. I consider this to be an indication that proposals to make similar changes in Scots law will not violate the convention.

Michelle's Law would grant the right of victims to request an exclusion zone for the offender in their case. The legislative framework for the use of exclusion zones already exists⁸² - my proposal intends to increase the usage of these conditions and so I would also consider this to be an indication that it will be compliant with human rights legislation. Michelle's Law would also allow for victims to have access to a non-summarised version of the Parole Board's decision to release. I want to ensure this initiative is compliant with the ECHR, with particular regard to Article 8. I am interested to hear respondents' views on how to maximise the information available to the victim without violating this right.

Equalities

An initial screening exercise has been carried out and, at this stage, it does not appear that the proposed Bill would have a disproportionately positive or negative impact on the protected characteristics groups set out in the Equality Act 2010.

The proposed Bill may increase equality in certain areas in terms of having a positive impact, for example:

⁸⁰ Legislation.gov, *Prisoners (Disclosure of Information About Victims) Act 2020*, [link](#)

⁸¹ Ministry of Justice, *Prisoners (Disclosure of Information About Victims) Bill – European Convention on Human Rights*, 3 January 2020, [link](#)

⁸² Legislation.gov, *Management of Offenders (Scotland) Act 2019*, [link](#)

- The removal of the “not proven” verdict encouraging more women from to come forward to report cases of rape or sexual assault or domestic abuse, if it is not possible that not proven might be the outcome.
- Victims who may feel more vulnerable and targeted because of certain protected characteristics (such as age, disability, race or sexual orientation) may feel safer in their own communities due to measures such as exclusion zones and being reassured that they should not come into contact with the perpetrator of the crime.
- Victims in certain groups who may feel that they do not have a voice and are not heard within the justice system may benefit and feel empowered from being able to make a statement in court – this may apply to characteristics of sex, race, sexual orientation and age (both young and elderly).

There may be other groups who might be impacted negatively: for example, if there are people with protected characteristics (such as sex or age) who are more commonly connected to instances of crime, they may be affected adversely by the expansion of the Victim Notification Scheme by having information about their involvement with the justice system made available to their victims, or by being excluded from their local neighbourhood through application of an exclusion zone.

I would welcome views on the impact of the proposed Bill on any other issues in connection with protected characteristics and equality.

Sustainability

In making an initial assessment of the sustainable development elements of the draft proposal, a number of relevant principles have been considered, including:

- living within environmental limits
- ensuring a strong, healthy and just society
- achieving a sustainable economy
- promoting effective, participative systems of governance
- ensuring policy is developed on the basis of strong scientific evidence.

It is considered that the proposed Bill might support sustainable development in a number of ways, including:

- promoting effective, participative systems of governance by increasing participation and accountability through measures such as allowing victims to make a statement in court and receive more information about their case and the offender in the justice system;
- ensuring a strong, healthy and just society by increasing the wellbeing and safety of families, providing a reassurance through the use of exclusion zones that an offender is unlikely to appear in their community; and setting out a timeframe for an FAI could allow a degree of closure for families.

In terms of negative impacts, these might include the effects on offenders and their families - for example, a sense that if a sentence has been served, the offender should no longer be subject to further measures, such as exclusion from their local community and proximity to their family, and possibly from earning a livelihood in their local environment, or not being released if the location of a body is not disclosed.

Overall, is it considered at this stage, that the positive effects of these measures on sustainability are likely to outweigh any negative impacts by, for example, contributing to more transparency in the justice system, and a greater sense of fairness for those impacted by being a victim of crime.

Views are sought in responses to the consultation.

Data protection

An initial screening exercise has been carried out which reflects that a number of elements of the proposals relate to the processing of personal data. These include:

- Proposal that the safety and welfare of victims and their families be considered when deciding on release – involves processing of personal data of victims and their families
- Proposal that victims are given reasons in full as to a prisoner's release – involves processing of personal data of the offender
- Proposal to allow all victims to make victim statements – involves processing of personal data of the victim
- Proposal to notify all victims of decisions regarding prosecution – involves processing of personal data of victim and offender
- Proposal to make changes to the Victim Notification Scheme, including around eligibility and registration for the Scheme and the provision of more information to victims about an offender's case – involves processing of personal data of victims and offenders

Therefore, a data protection impact assessment has been carried out and this consultation will be sent to the UK Information Commissioner's Office for comment. As the proposal develops further into a final proposal and a Bill its provisions will be closely monitored to ensure any impact on the processing of personal data is kept under review and scrutinised.

Questions

About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:

- an individual – in which case go to Q2A
- on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)

- Politician (MSP/MP/peer/Councillor)
- Professional with experience in a relevant subject
- Academic with expertise in a relevant subject
- Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation.

2B. Please select the category which best describes your organisation:

- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
- Commercial organisation (company, business)
- Representative organisation (trade union, professional association)
- Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
- Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:

- I am content for this response to be published and attributed to me or my organisation
- I would like this response to be published anonymously
- I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. (**Note: your reason will not be published.**)

4. Please provide your full name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

5.Data protection declaration

- I confirm that I have read and understood this [Privacy Notice](#) to this consultation which explains how my personal data will be used.

If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

- Please ONLY tick this box if you are UNDER 12 years of age.

Your views on the proposal

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

I welcome comments on any aspect of this proposal. In particular, I am interested in hearing from respondents on the below and should you have any comments on any of these points you can leave them in the comment box associated with that question – as well as any other comments you may wish to make about any other element of the proposal.

Michelle’s Law – Oral representations (Question 4)

- Respondents could consider the form oral representations could take for temporary release applications which are sensitive to victims’ needs whilst still being convenient for the prison governor.

Michelle’s Law – Exclusion Zones (Question 5)

- Respondents could consider whether a statutory presumption that the parole board or prison governor accept a victim's request for an exclusion zone could be a practicable option.

Michelle's Law – General (Questions 4, 5 and 6)

- Respondents could also consider the types of temporary release applications to which Michelle's Law applies.
- Respondents could also consider the best proportionate means to identify the cohort of victims that would require to access each of the rights in Michelle's Law. For example, whether the victim would need to be eligible for the Victim Notification Scheme to be able to access these rights.

Suzanne's Law (Question 8)

- Respondents could consider an option in Suzanne's Law where there would be a guaranteed denial of parole or temporary release to killers who admit to the killing, and to the hiding of the body, but still refuse to disclose the location of their victim.
- Views might also be given on the types of temporary release applications to which Suzanne's Law applies.

Victim statements to court (Question 9)

- Views on the format of providing statements to court and the circumstances in which other individuals, such as family members, could deliver such statements, are welcome.

Victim Notification Scheme Changes (Question 11)

- Options for changing the scheme could include retaining an opt-in process but revising it to increase take-up rate. For example, victims could be asked to join at a more convenient time.
- An alternative option would be to create an opt-out system where all victims were included in the scheme as a matter of course, removing the barrier of registering during a time of heightened trauma.
- Changing the current requirement that an offender be sentenced to 18 months or more is an option for expanding eligibility of the Victim Notification Scheme and I would be interested to hear respondents' views on this.

- I would appreciate input from respondents on appropriate timescales for how far in advance victims should be notified of an update about an offender’s status as well as the regularity of these updates.
- A maximum of four relatives of victims who have passed away are able to join the VNS. Respondents could consider whether this limit should be expanded.

Fatal Accident Inquiries (Question 12)

- I am proposing a statutory timescale of 12 months for the completion of FAIs but I am open to flexibility on this target but respondents could consider the feasibility of this timescale and whether it could apply in different types of FAIs (mandatory or discretionary).
- I am keen to hear from respondents about situations where they believe an automatic FAI should be initiated where it is currently at the Lord Advocate’s discretion to decide. For example, whether an automatic FAI should take place when any sudden and unexplained death occurs in a building for which a public authority is responsible.

Aim and approach

1. Which of the following best expresses your view of the proposed Bill?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

2. Do you think legislation is required, or are there other ways in which any of the Bill’s aims could be achieved more effectively? Please explain the reasons for your response.

Not proven (pages 8 – 10)

3. Which of the following best expresses your view of the proposed removal of the “Not Proven” verdict in Scots Law?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response.

Michelle’s law

Oral representations (pages 10 – 16)

4. Which of the following best expresses your view of the proposal that victims (or their families in cases where the victim is deceased) are allowed to make representations in person when parole board hearings and temporary release applications are considered?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Exclusion zones (pages 11 – 12)

5. Which of the following best expresses your view of the proposal that victims should have the right to request exclusion zones are imposed on offenders on their release to offer more protection to victims and their families?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Safety and welfare of families (page 11)

6. Which of the following best expresses your view of the proposal that there should be an explicit requirement that the safety and welfare of victims and their families is considered during parole hearings and temporary release applications?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Notification of decisions for all crimes (pages 14 – 15)

7. Which of the following best expresses your view that victims of crimes are given access to the reasons in full as to why the parole board or prison governor has come to a decision to release an offender?

- Fully supportive
- Partially supportive

- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Suzanne’s law (pages 16 – 17)

8. Which of the following best expresses your view of the proposed aims of implementing Suzanne’s law, whereby an offender convicted of murder could be denied release on the grounds that they have failed to disclose the location of the victim’s body?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Victim Statements (pages 17 – 18)

9. Which of the following best expresses your view of the proposal to allow all victims to make a Victim Statement to court?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Notification of decision not to prosecute (pages 18 – 20)

10. Which of the following best expresses your view of the proposal for all victims to have the right to be notified of a decision not to prosecute their case?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response.

Changes to Victim Notification Scheme (pages 20 – 23)

11. Which of the following best expresses your view of the proposals to increase uptake of the Victim Notification Scheme (VNS) and to make other improvements to the scheme?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Fatal Accident Inquiries (pages 23 – 25)

12. Which of the following best expresses your view of the proposal to set maximum timescales for Fatal Accident Inquiries (FAIs)?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response.

13. Which of the following best expresses your view of the proposal to expand the list of circumstances where deaths are automatically investigated through the fatal accident inquiry process?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Financial implications (pages 25 – 26)

14. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

- a significant increase in costs
- some increase in costs
- no overall change in costs
- some reduction in costs
- a significant reduction in costs
- unsure

Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc). You may also wish to suggest ways in which the aims of the Bill could be delivered more cost-effectively.

Equalities (pages 27 – 28)

15. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

- Positive
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response. Where any negative impacts are identified, you may also wish to suggest ways in which these could be minimised or avoided.

Sustainability (pages 28 – 29)

16. In terms of assessing the proposed Bill's potential impact on sustainable development, you may wish to consider how it relates to the following principles:

- living within environmental limits
- ensuring a strong, healthy and just society
- achieving a sustainable economy
- promoting effective, participative systems of governance
- ensuring policy is developed on the basis of strong scientific evidence.

With these principles in mind, do you consider that the Bill can be delivered sustainably?

- Yes
- No
- Unsure

Please explain the reasons for your response.

General

17. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/VictimsCriminalJusticeandFAIs/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available via the Smart Survey link above, at various points throughout the consultation, and [here](#).

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

jamie.greene.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Jamie Greene MSP
M2.08

Scottish Parliament
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the [Privacy Notice](#).

You may also contact my office by telephone on (0131) 348 6137

Deadline for responses

All responses should be received no later than **1 June 2022** (originally 9 March 2022). Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website: victimslaw.org

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The [Privacy Notice](#) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The [Privacy Notice](#) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response. There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The [Privacy Notice](#) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

www.itspublicknowledge.info.