



Mental Health Alliance

Criminal Justice System Remand on bail for a mental health report

House of Lords Committee Stage briefing

Amendment

After Clause 20

Insert the following new Clause—

"Chapter 2A
Criminal Justice System Amendments

() Court Mental Health Report for those remanded on bail

Before section 35 (Remand to hospital for report on accused's mental condition) of the 1983 Act, insert—

"34A Remand on bail for a mental health report

(1) In relation to the Crown Court, this section applies to a person who—

- (a) has been sent for trial before the court for an offence punishable with imprisonment and has not yet been sentenced or otherwise dealt with for it (unless he has been convicted of the offence and the sentence is fixed by law),
- (b) has been committed to the court to be sentenced for such an offence and has not yet been sectioned or otherwise dealt with for it, or
- (c) has been committed to the court under section 43 and has not yet been dealt with under that section.

(2) In relation to a magistrates' court, this section applies to a person who has appeared before the court charged with an offence punishable on summary conviction with imprisonment and has not yet been sentenced or otherwise dealt with for it.

(3) Subsections (4) and (5) apply if the court—

- (a) remands on bail a person to whom this section applies, and
- (b) is satisfied on the evidence of a registered medical practitioner that there is reason to suspect that the person is suffering from mental disorder.

(4) The court may require the appropriate authority to arrange for an approved clinician to prepare a report on—

- (a) the person's mental condition, or
- (b) the appropriate medical treatment for that condition,

(or both) in order to assist the court in dealing with the person for the offence.

(5) The court may specify any particular matters which are to be included in the report (including an assessment of the risk posed by the person to members of the public)."¹

Purpose of the amendment

To provide a power for the court to arrange to receive a report on the mental health of a person who is remanded on bail rather than in custody.

Reason for the amendment

This provision - which was included in the 2002 Draft Bill and the 2004 Draft Bill but was dropped for the 2006 Bill – would allow magistrates' courts and the Crown Court to remand an accused person on bail for the preparation of a report on his/her mental condition. Under the Mental Health Act 1983 a court can only remand an accused person to hospital for the preparation of a report. We therefore believe that this amendment is consistent with the principle of courts favouring the least restrictive regime for those accused of crimes.

The Alliance believes that this additional remand provision may help to reduce the numbers of remands in custody by the courts. At the moment the only choice that a judge has under the 1983 Act is between remanding the person in custody or in hospital. However his/her ability to remand the person to hospital may be limited due to lack of available hospital beds. Research also suggests that there is a culture of resistance towards accepting patients via the criminal justice system partly because of the perception that such patients tend to be more 'difficult' than others.¹ Therefore this amendment will help to provide the courts with an alternative and less restrictive course of action when dealing with people with mental health problems.

Although the courts already have the power under the Bail Act 1976 to attach conditions to a bail order, such as requiring attendance for a mental health report or treatment, we believe that including this provision in the 1983 Act will remind courts when considering remand to hospital under mental health legislation that there is a less restrictive alternative.

It is important to recognise that incidence of mental health problems is even higher among remanded prisoners than sentenced prisoners, and that conditions for the remand population can be particularly bleak. One study found that that 54 per cent of remanded males and 61 per cent of remanded females suffering from at least three mental disorders.² On the remand population research by the Prison Reform Trust found that in 2004, 54,556 untried people were remanded into custody – less than half of remanded prisoners go on to receive a prison sentence. It also found a particular problem among female prisoners - just over 1 in 5 of the women's prison population are on remand, one of the fastest growing groups in the prison population.

Given the problems of prison over crowding we believe that this amendment will help to prevent inappropriate and unnecessary remands to custody.

¹ Coid (1998) 'Mentally Disordered Patients on Remand' BMJ 296:97.

² Singleton N et al (ONS 1998), Psychiatric Morbidity among Prisoners in England and Wales