



Sentencing Bill

House of Lords – Committee Stage (November 2025)

Remand for own protection or welfare

Joint briefing on amendment 140

1. This briefing calls on peers to support amendment 140, in the names of Baroness Chakrabarti and Baroness Hamwee, which would **remove the power of courts under the Bail Act to remand defendants in custody for their own protection, or for their welfare in the case of children.**¹ This misguided power is currently available even when the defendant is not facing a criminal charge that could result in custodial sentence.²

When is remand for own protection used

2. Although no official data is collected, evidence from practitioners and research shows this power is used to detain some of the most vulnerable people in the criminal justice system - often where there have been serious failings of care and protection in the community.
3. We have come across cases where it appears the power has been employed to detain defendants:
 - In acute mental health crises.
 - Suffering from addiction.
 - Experiencing homelessness.
 - At risk of harm from others, in particular reprisals from criminal groups.

¹ Bail Act 1976, Schedule 1, Pt 1, para 3; Part 1A, para 5; Part 2, para 3.

² Bail Act 1976, Schedule 1, Part 2, para 3.

4. Cases can involve individuals with a combination of complex vulnerabilities. We are aware of instances where the offence would most likely not have attracted a custodial sentence, or where the case was subsequently dropped on public interest grounds.
5. There is evidence that this practice disproportionately affects women and girls.³ Concerningly, two-thirds of women remanded in custody are later acquitted or receive non-custodial sentences.⁴

Remand for own protection is ineffective

6. Remanding individuals in custody for their own protection or welfare stems from the mistaken belief that prisons are suitable places for people at risk of harm. However, prisons are not places of care and cannot address the social issues that often underpin this use of remand. This is especially true given the current prison capacity crisis and the limited support available to people in prison, particularly for those on remand.⁵
7. Remand prisoners consistently face poorer access to healthcare and rehabilitative services compared to sentenced prisoners.⁶ The majority are held in reception prisons, which are the most crowded in the estate, and report some of the worst outcomes.⁶ Remand prisoners have the highest rates of self-harm.⁷ Uncertainty and prolonged remand periods further harm mental health.⁸ Prisons also fail to protect against substance misuse.⁹ HM Chief Inspector of Prisons this year reported “overwhelming

³ For instance, a 2024 inspection of HMP Styal reported that “many vulnerable and very mentally unwell women” were imprisoned due to gaps in community services - a finding echoed at HMP Eastwood Park in 2025.

⁴ As per the Justice Committee, “many of these cases involve the ‘own protection’ provisions in the Bail Act 1976.” See Justice Committee, Seventh Report of Session 2022-23, The role of adult custodial remand in the criminal justice system, HC 264 (2023).

⁵ Justice Committee, Seventh Report of Session 2024-26, Ending the cycle of reoffending – part one: rehabilitation in prisons, HC 469 (2025); Justice Committee, Seventh Report of Session 2022-23, The role of adult custodial remand in the criminal justice system, HC 264 (2023).

⁶ HM Chief Inspector of Prisons. (2025). [Annual report 2024-25](#). HM Stationery Office; Prison Reform Trust, [Written Evidence to the Justice Committee’s Inquiry on rehabilitation and resettlement: ending the cycle of reoffending](#) (2025), p. 5.

⁷ Chief Medical Officer for England, [The health of people in prison, on probation and in the secure NHS state in England](#) (2025)

⁸ Independent Advisory Panel on Deaths in Custody, [Written Evidence to the Justice Committee’s Inquiry on the role of adult custodial remand in the criminal justice system](#) (2022).

⁹ Justice Committee, Sixth Report of the Session 2024-26, [Tackling the drugs crisis in our prisons](#), HC 557 (2025).

amounts of illegal drugs” in prisons, with nearly 40% of prisoners saying drugs are easy to access.¹⁰

8. Remanding a person to prison is no guarantee that they will be kept safe from harm by others. Rates of violence between prisoners rose 10% in the 12 months to March 2025.¹¹ In this timeframe, there were 20,570 prisoner on prisoner assaults – an average of 56 per day.¹² Courts have no power to specify where the person is held or with whom.¹³ Lawyers have told us clients frequently express concerns about being placed in custody with potential aggressors and/or their associates.
9. Remanding people for their own protection or welfare often removes them from key protective factors in the community, such as family and support services. Prisons generally cannot meet the needs or address the vulnerabilities that led to their remand, and in some cases, imprisonment exposes them to greater risks than they would face in the community.

Alternatives to remand for own protection

10. For the reasons set out above, prisons are not appropriate substitutes for care or protection in the community. There are a variety of alternative mechanisms in place to address vulnerability without resorting to the ineffective and costly use of custodial remand.¹⁴ For instance, liaison and diversion services operating in courts¹⁵ can connect individuals with mental health needs, neurodivergence, substance misuse issues, or other vulnerabilities to appropriate health or social care, including specialist support.¹⁶ Local authorities also have statutory duties under the Care Act 2014 and the Children Act 1989 to safeguard vulnerable individuals. Where mental health needs are sufficiently serious to trigger a need for protection, then the Mental Health Act 1983 can be used.

¹⁰ HM Chief Inspector of Prisons. (2025). [Annual report 2024-25](#). HM Stationery Office.

¹¹ HM Chief Inspector of Prisons. (2025). [Annual report 2024-25](#). HM Stationery Office.

¹² Ministry of Justice and HM Prison and Probation Service, [Safety in Custody summary tables to March 2025](#), Gov.uk, Table 4.

¹³ All Party Parliamentary Group on Women in the Penal System, [Prison for their own protection: the case for repeal](#) (2020).

¹⁴ In 2022-23 the average cost of sending someone to prison for a year was 51,724. [Question for the Ministry of Justice](#), tabled on 30 August 2024.

¹⁵ This service has 100% coverage across England and Wales. Howard Ryland, Tim Exworthy and Andrew Forester, [Over 30 years of liaison and diversion in England and Wales: How far have we come, and what is now needed?](#) (2022).

¹⁶ Some areas also benefit from specific schemes designed to reduce reliance on custodial remand, particularly for children and young people, or those who are otherwise vulnerable. See, the [Greater Manchester Remand Pilot](#), the [Health and Justice Hub](#) in the Northeast.

11. If a defendant is at risk of harm due to criminal exploitation, they should be referred to the National Referral Mechanism. The NRM offers tailored support for at least 30 days while a case is considered, including accommodation and protection.¹⁷ Where support and protection are not available through the NRM, defendants at risk of retaliation or reprisals, are still entitled to protection from the police, in the same way as any witness in a criminal case would be. Remanding someone in custody for this reason alone, particularly when they have not been convicted, is wrong in principle and, for the reasons set out above, unlikely to be effective in keeping them safe from violence. Failures in care and protection in the community cannot justify prison as a default option.

Provisions in the Mental Health Bill are not sufficient

12. We welcome the provisions of the Mental Health Bill which would remove the courts' power to remand a defendant in custody for their own protection solely on mental health grounds. However, this change is not sufficient to prevent vulnerable individuals from being placed in harmful prison environments that are unsuitable for their needs. First, the Bill would only remove remand for own protection where mental health is the *sole* concern.¹⁸ In reality, many defendants experience multiple overlapping vulnerabilities. There is a risk that mentally unwell people will continue to be remanded for their own protection, due to the presence of other factors, such as neurodivergence, homelessness, or addiction, that may be considered to lead to a need for protection.¹⁹

13. Second, and as outlined above, even where mental health is not a key concern, prison is not a suitable environment for vulnerable individuals. As HM Chief Inspector of Prisons, Charlie Taylor, told the Justice Committee: *"It is hard to think who could or should be remanded to custody for their own protection."*²⁰ There is no principled or practical reason not to remove the power to remand for own protection/welfare in all circumstances.

Recommendation

¹⁷ Home Office, [National Referral mechanism guidance: adult](#) (2025).

¹⁸ Mental Health HL Bill (2025), cl 49.

¹⁹ HM Chief Inspector of Prisons, [Written evidence submitted in response to the draft Mental Health Bill](#) (2022).

²⁰ HM Chief Inspector of Prisons, Oral evidence to the Justice Committee's Inquiry into the role of adult custodial remand in the criminal justice system, Q 181.

14. Custodial remand is a severe deprivation of liberty, which should be reserved for those who pose a risk to the public, or to the criminal justice process. Imprisonment must never be used as a substitute for care or protection - it punishes vulnerability instead of addressing it. Using prison as a default response to failures of care in the community is wrong in principle and harmful in practice.

15. We therefore **urge peers to support amendment 140 in the names of Baroness Chakrabarti and Baroness Hamwee which would repeal the courts power to remand individuals in custody under the Bail Act for their own protection or welfare.**

Amendment 140

After Clause 41, insert the following new Clause—

“Removal of power to remand in custody for a person’s own protection or welfare

(1) Schedule 1 to the Bail Act 1976 (persons entitled to bail: supplementary provisions) is amended as follows.

(2) In Part 1 of that Schedule omit paragraph 3.

(3) In Part 1A of that Schedule omit paragraph 5.

(4) In Part 2 of that Schedule omit paragraph 3.”

Member's explanatory statement

The amendment would repeal the power of the courts to remand a person in custody for their own protection or, if they are a child or young person, for their welfare.

Annex: previous calls to abolish remand for own protection/welfare

16. The case for abolishing remand for an individual’s own protection or welfare is well made out. The below table includes some of the calls made over the last 5 years in support of abolishing the power to remand individuals in custody for their own protection or welfare.

All Party Parliamentary Group on Women in the Penal System	2020	Prison for their own protection: the case for repeal. ²¹	“The case for abolishing the power of the courts to remand for ‘own protection’ or ‘own welfare’ is overwhelming... Whilst primary legislation is being drafted to achieve [removal of remand for ‘own protection’ on mental health grounds], the APPG urges...that the amendment of the Bail Act 1976 should
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²¹ <https://howardleague.org/wp-content/uploads/2020/10/APPG-For-their-own-protection-FINAL.pdf>

			not be limited to removal of the power to remand for ‘own protection’ or ‘own welfare’ on mental health grounds...a principles and practical approach requires repeal of this outdated power in its entirety.” (p.8)
Labour when in opposition	2021	Alex Cunningham MP, then Shadow Minister for Courts and Sentencing, during the Public Bill Committee of the Police, Crime, Sentencing and Courts Bill. ²²	‘The Opposition think that this excellent new clause makes up for the missed opportunity in the Bill... The new clause would repeal the power of the criminal courts to remand a defendant into custody for their own protection—or in the case of a child, for their own welfare—pending trial or sentence... The Opposition agree that this power in the Bail Act is completely outdated, and that it has no place in a modern justice system. We urge the Government to support the new clause so that we can do away with it.”
House of Commons Justice Committee	2021	Mental health in prison. Fifth Report of Session 2021-22. ²³	“The Courts use the provisions in the Bail Act 1976 to remand people to prison for their own protection or welfare only because proper alternatives in the community are not available. We are concerned about the lack of safeguards under this provision, the length of time men, women and children may be remanded, and the unsuitability of prison for them. The use of prisons in this way is wrong in principle. (para 103) The Government should bring forward legislation by 31 March 2022 to amend the Bail Act 1976 so that it is unlawful to remand anyone to custody simply for their own protection or welfare.” (para 104)

²² [https://hansard.parliament.uk/commons/2021-06-22/debates/5ac0058c-9311-4974-92dd-3097aae3e1e4/PoliceCrimeSentencingAndCourtsBill\(SeventeenthSitting\)](https://hansard.parliament.uk/commons/2021-06-22/debates/5ac0058c-9311-4974-92dd-3097aae3e1e4/PoliceCrimeSentencingAndCourtsBill(SeventeenthSitting))

²³ <https://committees.parliament.uk/publications/7455/documents/78054/default/>

Mayor's Office for Policing and Crime (MOPAC)	2021	Justice Committee on Women in Prison, Supplementary Evidence from the Mayor's office for Policing and Crime. ²⁴	"MOPAC also supports the call for the repeal of the Bail Act 1976, whereby courts can remand a woman for her own 'protection', without her being convicted or sentenced, and when the criminal charge she faces is unlikely to, or even cannot, result in a prison sentence. As a matter of principle, it is wrong to use imprisonment, to make up for failings in care and protection in the community. Prisons should never be used as a place of safety for women in distress or for welfare purposes. It is disconcerting that scrutiny and transparency is virtually non-existent, as the government does not collect data about how often this group of women are detained."
House of Commons Justice Committee	2022	Women in Prison. First Report for Session 2022-23. ²⁵	"We continue to believe that it is not acceptable for the custodial environment to be used as a 'place of safety' for the acutely unwell, or for a person's 'own protection'. Community settings also have a duty of care to individuals, and prisons should not be regarded as a solution to the failings of care and protection in the community. <i>We reiterate the recommendations made in our Report 'Mental Health in Prison', and seek an update from the Government on the steps it is taking to address the use of prison as a place of safety or for a person's own protection.</i> " (para 131).
HM Chief Inspector of Prisons	2022	Written evidence submitted in response to the draft Mental Health Bill. ²⁶	"We suggest consideration is given to further limiting the use of remand for own protection. Clause 42 of the draft Mental Health Bill removes the ability to remand individuals under for their own protection under the Bail Act "by reason only of concerns about the defendant's mental health" but does not provide a definition of mental health. The amendment leaves open the possibility that individuals may be

²⁴ <https://committees.parliament.uk/writtenevidence/39618/html/>

²⁵ <https://committees.parliament.uk/publications/23269/documents/169738/default/>

²⁶ committees.parliament.uk/writtenevidence/111796/pdf/

			remanded for their own protection by reason of neurodivergence, which is not appropriate. It also leaves open the possibility that those who are acutely mentally unwell will still be remanded to prison for their own protection when there is another circumstance that may be considered to lead to a need for protection.” (para 5). “...it is hard to envisage circumstances in which remanding a vulnerable person to prison for their own protection, where they may be held in poor conditions and spend much of their day locked in a cell, would be more appropriate than providing them with care and support in the community.” (para 6)
Independent Advisory Panel on Deaths in Custody	2022	Written evidence to the Justice Committee’s inquiry into the role of adult custodial remand. ²⁷	“Prison should never be used as a so-called ‘place of safety’ or for a person’s own protection, and alternatives must be found in community sentencing or in the provision of secure health beds.” (para 14).
HM Chief Inspector of Prisons	2022	Oral evidence to the Justice Committee’s Inquiry into the role of adult custodial remand in the criminal justice system. ²⁸	“My final point on this is that it is hard to think who could or should be remanded to custody for their own protection. If the change by the Ministry of Justice means that mentally ill people should not be remanded for their own protection, who are the people who should be remanded for their own protection? It feels fairly flimsy to us.” (Q181)
House of Commons Justice Committee	2023	The role of adult custodial remand in the criminal justice system. Seventh Report of Session 2022-23. ²⁹	“We welcome the draft Mental Health Bill 2022 which legislates for the removal of using prisons as a place of safety for those with mental health difficulties. <i>However, we call on the Government to go further, removing the provision in the Bail Act 1976 for remanding people into custody for their own protection in all situations, and providing adequate provision in the community for those people who would</i>

²⁷ <https://committees.parliament.uk/writtenevidence/108079/html/>

²⁸ <https://committees.parliament.uk/oralevidence/11399/pdf/>

²⁹ <https://committees.parliament.uk/publications/33530/documents/182421/default/>

			<i>have been remanded to custody solely for their own protection.” (para 60).</i>
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