



## **Criminal Justice Bill**

### **House of Commons Report Stage, May 2024**

#### **Briefing from the Centre for Women's Justice**

### **Preventing the unjust criminalisation of victims of domestic abuse and other forms of violence against women and girls (VAWG)**

#### **About the Centre for Women's Justice**

1. Centre for Women's Justice (CWJ) is a lawyer-led charity focused on challenging failings and discrimination against women in the criminal justice system. We carry out strategic litigation and work with frontline women's sector organisations to challenge police and prosecution failings around VAWG. Our evidence base is built on the experience of frontline women's sector support workers discussed during our training sessions with them, the requests for legal advice they send to us, and our research. In 2023 we responded to 579 legal enquiries, including 388 in which we gave legal advice.
2. Our series of short films telling the stories of five survivors of domestic abuse who were accused of offending, and accompanying resources, are free to view and download here: [www.centreforwomensjustice.org.uk/stop-criminalising-survivors](http://www.centreforwomensjustice.org.uk/stop-criminalising-survivors)

#### **Summary**

#### **Statutory defences for victims of domestic abuse who are accused of offending**

3. The Bill does not address the gaps in law and practice that can lead to the unjust criminalisation of victims of domestic abuse and other forms of VAWG and exploitation. New Clauses 49 and 50, and New Schedule 1, would help to address this by adding new statutory defences to the Bill to provide effective defences for those whose alleged offending results from their experience of domestic abuse.

**Please support New Clauses 49 and 50, and New Schedule 1, tabled by Jess Phillips MP, which would provide effective defences for victims of domestic abuse who are accused of offending.**

#### **Decriminalisation of street prostitution and expunging of criminal records resulting from exploitation in prostitution**

4. The Bill does not address the gaps in law, policy and practice that can lead to the unjust stigmatisation and criminalisation of victims of sexual exploitation. New Clauses 45 and 46 would address this by:
  - a. Decriminalising conduct falling within section 1(1) of the Street Offences Act 1959, in other words street prostitution offences; and

- b. Establishing, through the Bill, a mechanism to expunge criminal records for street prostitution offences.

**Please support New Clauses 45 and 46, tabled by Jess Phillips MP, which would decriminalise the outdated offence of loitering and soliciting, and provide a mechanism for past criminal records for street prostitution offences to be expunged.**

## **Statutory defences for victims of domestic abuse who are accused of offending**

### **How domestic abuse can lead to victims being criminalised**

5. At least 57% of women in prison and under community supervision by probation services are victims of domestic abuse, and for many this is directly linked to their offending.<sup>1</sup> The true figure is likely to be much higher because of barriers to women disclosing abuse.<sup>2</sup> Yet whereas there is a legal, policy and practice framework in place to protect victims of trafficking who offend as a result of their exploitation, there is no such protection for victims of domestic abuse and other forms of VAWG who offend as a result of their experience of abuse. Gaps in law and practice mean that women's experience of abuse is often not properly taken into account when they are themselves accused of offending. Legal reforms have been introduced in other similar jurisdictions and are overdue here.<sup>3</sup>
6. CWJ's Double Standard report sets out how women's offending is often directly linked to their own experience of domestic abuse, and how victims can be unfairly criminalised.<sup>4</sup> This is also reflected in cases referred to CWJ's legal advice team, and in the work of Justice for Women and Harriet Wistrich over many years. It has been further underlined by our 2022 No Safe Space report findings, based on discussions with women with lived experience and frontline practitioners in the West Midlands.<sup>5</sup> Our 'Women who kill' report (2021) illustrates how failings in law and practice lead to injustice for women who kill abusive men.<sup>6</sup> Research by Julia Pitman illustrates the injustices faced by victims who are coerced into offending by their abuser.<sup>7</sup>
7. Black, Asian, minoritised and migrant women are particularly vulnerable to being unfairly swept into the criminal justice system.<sup>8</sup> This is because they experience additional barriers to disclosing abuse and accessing support, and they face systemic racism from criminal justice agencies. This is partly due to a lack of cultural competency as agencies fail to respond appropriately to evidence of abuse, misinterpret women's behaviour, and fail to ensure women are able to understand and participate fully in proceedings against them. Migrant women are put at greater risk by 'hostile environment' policies, including the lack of a firewall to prevent the police sharing information about victims' immigration status with immigration authorities, inhibiting victims' disclosure of abuse.
8. Women and practitioners taking part in our research have described the barriers victims face in disclosing their experience of abuse, when they are accused of offending, with one woman commenting:<sup>9</sup>

*They are not giving us a safe space.*
9. Our research highlights how even where there is clear evidence of domestic abuse, this is frequently overlooked when victims find themselves accused of offences. This differs from the position for victims of trafficking, for whom a statutory defence is available. As one prosecutor told us:<sup>10</sup>

*Modern slavery is more likely to be considered ... than the impact of domestic violence.*

10. Key facts include the following:

- As well as being victims of VAWG and exploitation, the majority of women in contact with the criminal justice system are experiencing multiple disadvantage including mental health needs, harmful substance use and poverty.<sup>11</sup>
- Women are three times more likely to be arrested than their male partners at a domestic abuse incident involving counter-allegations, often where they have used force to protect themselves from further harm from their abuser.<sup>12</sup>
- 63% of girls and young women (16–24) serving sentences in the community have experienced rape or domestic abuse in an intimate partner relationship.<sup>13</sup>
- Of 173 women screened at HMP Drake Hall, 64% reported a history indicative of brain injury and for most this was caused by domestic violence.<sup>14</sup>
- More than half of arrests of women for alleged violence result in no further action<sup>15</sup>, highlighting the need for the police to respond to incidents of alleged violence in a gender-informed way.
- Women are more likely than men to commit an offence to support someone else's drug use (48% to 22%).<sup>16</sup>
- Some women are coerced into offending by abusive partners or face malicious allegations, as abusers use the criminal justice system as a way of extending control over their victim.<sup>17</sup>

#### **Lack of effective defences for victims in these cases and proposed reforms**

11. Current legal defences do not protect survivors of domestic abuse from prosecution or conviction when they are accused of offending in the context of their own experience of abuse. New Clauses 49 and 50, and New Schedule 1, would address this:

- a. New Clause 49 would amend the law on self-defence, and is modelled on the provisions for householders in Section 76 of the Criminal Justice and Immigration Act 2008. This would allow survivors acting in self-defence against their abuser the same protection as householders defending themselves against an intruder (the 'self-defence proposal').
- b. New Clause 50 and Schedule 1 would introduce a statutory defence for survivors, modelled on Section 45 of the Modern Slavery Act 2015. This would give survivors of domestic abuse similar protection to victims of trafficking who are compelled to offend (the 'Section 45 proposal').

12. **Why the self-defence proposal is needed:** The law on self-defence allows the use of reasonable force and requires the degree of force to be proportionate. Whereas householders have legal protection where they act in self-defence against an intruder, no such protection is available to victims/survivors acting in self-defence against their abuser. Research by CWJ and others has made clear that law reform is

needed to address the difficulties faced by victims of domestic abuse in establishing reasonableness and proportionality when accused of using force in these circumstances.

**Case study - Ioanna<sup>18</sup>**

Ioanna was convicted for attacking her abusive partner with a knife, having been subject to long-term coercion and control by him. When he became threatening during an argument at home, she grabbed a knife lying nearby in the kitchen and raised it towards him. He tried to catch the knife and in the process received a small cut on his finger. He contacted the police. Ioanna received a community order.

13. **Why the Section 45 proposal is needed:** Research by CWJ and others has made clear that the common law defence of duress is ineffective in the context of domestic abuse. Whereas victims of trafficking rightly have a statutory defence to protect them from prosecution where they have been compelled to offend as part of their exploitation, there is no equivalent defence available for victims/survivors of domestic abuse. This leaves survivors with no effective defence where they are compelled to offend as part of, or as a direct result of their experience of domestic abuse.

**Case study - YS<sup>19</sup>**

YS is charged with driving whilst disqualified, driving with excess alcohol, driving without insurance and dangerous driving. An officer noticed a vehicle with its brake lights permanently illuminated and swerving from side to side. He activated the siren, indicating for the vehicle to stop. The vehicle did not stop, and a chase continued for five minutes. In the driving seat was a woman, YS.

YS explained she had been dragged from her home partially dressed by her partner, forced to drive, and that he threatened to kill her if she did not drive on. The partner was screaming at her throughout, punching her in the ribs and trying to grab the steering wheel.

The police stop this vehicle and YS is prosecuted. Despite running duress, and despite her being viewed as credible, she is convicted. Her conviction was upheld on appeal to the High Court.

14. Our proposals are based on legal precedents in place to protect other groups and are not gender specific. They would reflect improved public understanding of domestic abuse, address gaps in legal protection for survivors, strengthen recognition of the links between victimisation and offending, and deter inappropriate prosecutions.

*As long as there is no legal defence available, women who offend due to domestic abuse will continue to be criminalised.*

Working Chance<sup>20</sup>

15. These reforms should be accompanied by a cross-government policy framework to aid implementation. This should include provision of support for survivors and special measures to protect vulnerable defendants. Statutory guidance, training for criminal justice agencies and judicial directions would also be required. The legislation and surrounding framework would have the significant added benefit of encouraging earlier disclosure of abuse<sup>21</sup> and access to support, and helping to break the cycle of victimisation and offending. This new framework should include a

review of the public interest test for prosecutors to take account of abuse and coercive control and measures to ensure this is implemented consistently.

## **Decriminalisation of street prostitution and expunging of criminal records resulting from exploitation in prostitution**

### **The problems we aim to address**

16. Women who have been subjected to sexual exploitation and trafficking are now recognised as victims, in particular since the enactment of the Modern Slavery Act 2015 (MSA). Section 45 of that Act provides a statutory defence to anyone who commits a wide range of criminal offences because they were compelled to do so by reason of slavery or exploitation.
17. However, many thousands of women who were convicted of soliciting and loitering before the MSA continue to be stigmatised and disadvantaged by the mandatory retention of criminal records as a result of being historically subjected to violence and exploitation by pimps and traffickers. Some of these women were children at the time they were first exploited and convicted. Many of these women were trafficked, including within the UK, for the purposes of being prostituted.
18. It is also worth noting that before 2003, the offence was discriminatory on the basis of sex, such that only women could be convicted. Even after the offence was made sex-neutral, women continued to be disproportionately affected<sup>22</sup>.

### **Increased understanding of sexual exploitation**

19. International human rights conventions have increasingly recognised prostitution as a form of sexual exploitation and identified this as a key issue in ending violence against women and girls. The Palermo Protocol<sup>23</sup> aims to prevent, suppress and punish trafficking, especially of women and children, internationally. It recognises that “exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation”.
20. The Independent Inquiry into Child Sex Abuse identified a number of case studies where children had been criminalised as a result of their exploitation, with life-long consequences. One of the themes highlighted in the Inquiry’s final report<sup>24</sup> was that “young people, particularly those experiencing sexual exploitation, were sometimes arrested by the police and criminalised for offences arising from their exploitation, while the exploiters remained at liberty to continue offending”.
21. The Committee on the Elimination of Discrimination against Women (CEDAW) in its Concluding Observations to the UK specifically recommended that the UK should “Revise legislation to decriminalize women in prostitution and clear the criminal records of women who have been convicted for offences related to prostitution to enable them to seek alternative forms of employment.”<sup>25</sup>

### **Retention of criminal record data**

22. Despite this better understanding of exploitation and the UK’s international obligations, the law in England and Wales continues to require the retention of all criminal record data, including biometric data and data of the utmost sensitivity. There are no exceptions or mechanisms to allow for removal.

23. This strict approach is not replicated in the majority of Council of Europe states, whether they have adopted the sex buyer model which decriminalises only those exploited and not those who profit from prostitution ('pimps' and brothel owners) and those who benefit from it ('punters'). Prostitution has been fully decriminalised in Austria, Belgium, Denmark, Germany, Greece, and the Netherlands, while Sweden, Norway, Iceland, Northern Ireland, the Republic of Ireland and France have adopted the sex buyer model. It does not appear that any other Council of Europe state has a similar approach to the retention of prostitution-related criminal conviction data.

### **Legal challenges**

24. In a legal challenge supported by CWJ, *QSA and others v Secretary of State for the Home Office*, three survivors of sexual exploitation successfully challenged the so called "multiple conviction" rule which required the mandatory disclosure of s.1 Street Offences Act (SOA) offences under the Disclosure and Barring Scheme. However, they were unsuccessful in challenging the mandatory retention of such records until they reach the age of 100.
25. CWJ last year lodged a communication with CEDAW, under the Optional Protocol, concerning both the retention and criminalisation of s.1 SOA offences on behalf of two of those women. This is currently awaiting determination.

### **Conclusion**

26. Parliamentary debate remains unresolved about decriminalisation of prostitution and which model best addresses the harms of prostitution for women.<sup>26</sup> However most proponents of either model agree that s.1 offences should be decriminalised. It is also widely agreed that the expunging of these criminal records is necessary to end the unjust stigmatisation that these women continue to experience. The Home Affairs Committee has recommended that "the Home Office should change existing legislation so that soliciting is no longer an offence" and "legislate for the deletion of previous convictions and cautions for prostitution from the record of sex workers by amending the Rehabilitation of Offenders Act".<sup>27</sup>
27. Decriminalising s.1 offences and allowing for the expunging of historical convictions which were a result of abuse and exploitation would allow these women to seek better employment and pursue careers which have been barred to them as a result of the fear of disclosure. Many just want to be finally free of the record of their abuse and the stigma they have endured for decades.

**Centre for Women's Justice**  
**8 May 2024**

**For further information go to:** [www.centreforwomensjustice.org.uk/stop-criminalising-survivors](http://www.centreforwomensjustice.org.uk/stop-criminalising-survivors) or **contact us at:** [info@centreforwomensjustice.org.uk](mailto:info@centreforwomensjustice.org.uk)

## End notes

<sup>1</sup> [Ministry of Justice \(2018\) Female Offender Strategy](#)

<sup>2</sup> [Gelsthorpe, L., Sharpe, G., and Roberts, J. \(2007\) Provision for Women offenders in the community; Centre for Women's Justice \(2021\) Women who kill: how the state criminalises women we might otherwise be burying](#)

<sup>3</sup> [Centre for Women's Justice \(2023\) Making self-defence accessible to victims of domestic abuse who use force against their abuser: Learning from reforms in Canada, New Zealand and Australia](#)

<sup>4</sup> [Centre for Women's Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls](#)

<sup>5</sup> [Centre for Women's Justice \(2022\) No Safe Space: lessons for national policy and local practice from the West Midlands multi-agency response to women involved in offending or alleged offending who are victims of domestic abuse](#)

<sup>6</sup> [Centre for Women's Justice \(2021\) Women who kill: How the state criminalises women we might otherwise be burying](#)

<sup>7</sup> [Pitman, J \(2022\) Invisible victims: What are the barriers to police recognising female offenders as victims of coercive control \[Masters thesis: Portsmouth University\]](#)

<sup>8</sup> [Centre for Women's Justice and Tackling Double Disadvantage Partnership \(2023\) Westminster Hall debate to be held on 5 July: That this House has considered the criminalisation of victims of violence against women from ethnic minority and migrant communities – Briefing for MPs](#)

<sup>9</sup> [Centre for Women's Justice \(2022\) No Safe Space: lessons for national policy and local practice from the West Midlands multi-agency response to women involved in offending or alleged offending who are victims of domestic abuse](#)

<sup>10</sup> Ibid.

<sup>11</sup> [Ministry of Justice \(2018\) Female Offender Strategy; Home Office \(2007\) The Corston Report: A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System](#)

<sup>12</sup> [Hester, M. \(2012\) Portrayal of Women as Intimate Partner Domestic Violence Perpetrators](#). Professor Hester studied the following three sample groups: (1) All women recorded by the police as sole domestic violence perpetrator in a heterosexual relationship (N=32); (2) a random sample of sole male perpetrators; and (3) a random sample involving 32 cases where both partners were recorded at some time as perpetrator. These different sets of cases were then compared to assess differences and similarities in the rate of arrest where allegations were made. Analysis showed that an arrest was three times more likely to follow where the allegations were made against a woman, than where they were made against a man.

<sup>13</sup> [Wong, K. et al. \(2017\) T2A Final Process Evaluation Report, Policy Evaluation Research Unit](#)

<sup>14</sup> [The Disabilities Trust \(2019\) Making the link: Female offending and brain injury](#)

<sup>15</sup> Five police forces responding to a Freedom of Information request by the Howard League provided data on 317 arrests of women for alleged violent incidents. More than half of the arrests for alleged violence (163) resulted in no further action or release without charge.

<sup>16</sup> [Light, M. et al \(2013\) Gender differences in substance misuse and mental health amongst prisoners](#)

<sup>17</sup> [Centre for Women's Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls](#)

<sup>18</sup> Case study provided by Women in Prison. Ioanna is not her real name.

<sup>19</sup> Case study provided by Paramjit Ahluwalia of Lamb Building, taken from factual matrix within R v YS [2017] EWHC 2839

<sup>20</sup> [Working Chance \(2021\) Domestic abuse survivors who offend need a legal defence: here's why](#)

<sup>21</sup> For evidence of women defendants' non-disclosure of abuse, and the negative implications of this for their case, see: [Sakande, N. \(2020\) Righting Wrongs: What are the barriers faced by women seeking to overturn unsafe convictions or unfair sentences in the Court of Appeal \(Criminal Division\)](#)

<sup>22</sup> For the period 1 May 2004 to 2014, there were a total of 11,341 convictions or cautions handed down or given to women, under section 1, Street Offences Act 1959. For the same period, there were a total of 213 convictions or cautions handed down or given to men i.e. less than 2% of the number affecting women. (Response from Ministry of Justice to Freedom of Information Request by Birnberg Peirce dated 27 May 2016, reference 246-16 FOI 104795)

<sup>23</sup> [General Assembly Resolution 55/25, 15 November 2000: Protocol to prevent, suppress and punish trafficking in persons especially women and children, supplementing the United Nations Convention Against Transnational Organised Crime](#)

<sup>24</sup> [Jay, A. et al \(2022\) The Report of the Independent Inquiry into Child Sexual Abuse](#)

<sup>25</sup> [CEDAW \(2019\) Concluding observations on the eighth periodic report on the United Kingdom of Great Britain and Northern Ireland](#)

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<sup>26</sup> On stigma, difficulties exiting prostitution and proposed reforms, see this government-commissioned research: [Hester, M. et al \(2019\) The nature and prevalence of prostitution and sex work in England and Wales today](#). See also: [Matthews, R. et al \(2014\) Exiting Prostitution: A Study on Female Desistance](#).

<sup>27</sup> [Home Affairs Committee \(2016\) Prostitution: Third Report of Session 2016-17](#)