Families Outside welcomes the Justice Committee’s Call for Views on the Management of Offenders (Scotland) Bill. We are a national independent charity that works on behalf of children and families affected by imprisonment in Scotland. We do this through provision of a national freephone helpline for families and for the professionals who work with them, as well as through face-to-face support, delivery of training, and development of policy and practice.

Before answering the Committee’s specific questions, we have a general concern about the language used in the Bill. Previous legislation such as the Community Justice (Scotland) Act 2016 managed to avoid use of the term ‘offender’, except when citing previous legislation. The label emphasises and perpetuates stigma for people involved in the criminal justice system and their families and, as such, is likely to be unhelpful in promoting their resettlement. The term also excludes people who are on bail or custodial remand but have not yet been – and may not be – convicted of an offence. The Bill could usefully be renamed the Management of Offending Bill, with reference to ‘people’ or ‘individuals’ with convictions or subject to criminal justice measures. The change of terminology may not be practical in every case, but in view of the need to integrate people within their communities, every effort should be made to avoid perpetuation of offence-related labels.

Our answers to the specific questions in the Call for Views are outlined below.

**Electronic Monitoring**

1. **Overall, do you support Part 1 of the Bill concerning the electronic monitoring of offenders?**

Families Outside supports electronic monitoring (EM) as a means of reducing the use of imprisonment while maintaining enough control to keep communities safe. We have stated previously that, with adequate supports in place, EM reduces the prison population as well as the likelihood of family breakdown, loss of housing, and loss of employment – all factors related to risk of future offending.

The concern we have is that Part I of the Bill focuses solely on surveillance and monitoring, with no reference to or provision for the support essential to make this work. Without structured supports in place, EM becomes a purely punitive measure that fails to address the reasons for the offending or to reduce the likelihood of breach due to pressures of unstable housing, substance misuse, poverty, chaotic environments, and damaging relationships. This risks increasing rather than reducing the prison population as people in need of support subsequently breach the terms of their EM order.
2. The Scottish Government wishes electronic monitoring to play a greater role within the criminal justice system. Will the reforms in Part 1 of the Bill help enable this? If not, what further changes (legislative or non-legislative) are required?

The reforms in Part I of the Bill extend the options for use of EM, which is welcome. However, without including structured support to go with this, the risk is that increased use of EM will set people up to fail, effectively increasing rather than reducing the use of custody due to the likelihood of breach. The Bill should also recognise the likely impact on the family or other co-residents\textsuperscript{1} and ensure that measures of support take this impact into account.

In increasing requirements for support – an essential component for effective implementation of EM – availability of community-based supports also needs to increase. At present, the availability of such support is inconsistent across the country, with the risk that judges will make variable use of EM depending on their confidence in the support available, and rates of breach will also vary geographically depending on a person’s access to support. As noted in the submission from the Criminal Justice Voluntary Sector Forum (CJVSF), “The ‘postcode lottery’ for support needs to be addressed before EM can be used effectively and fairly.”

3. Do you have any views on any specific aspects of Part 1? – for instance, revisions to the list of circumstances in which electronic monitoring may be imposed or the creation of a power to enable future monitoring devices to contain GPS technology or technology that can measure alcohol or drug ingestion.

Families Outside was under the impression that the Bill would introduce the use of EM as a condition of bail, both to increase protection of the public and to reduce the use of custodial remand. However, the Bill seems to make no note of the use of EM for Supervised Bail or Structured Deferred Sentences. With families (and children especially) feeling the impact of custodial remand often as much as a custodial sentence, this opportunity to reduce the use of custodial remand should be included explicitly in the legislation.

The ability to use monitoring devices in relation to consumption of drugs and alcohol is again a potentially useful provision. However, this too must be part of a wider package of support, ideally used on a voluntary basis to support broader efforts at recovery. Use of an alcohol bracelet, for example, could provide an additional incentive or an excuse for people who wish to abstain to do so. Use of such devices as a punitive measure only however is inconsistent with recovery-based approaches and is likely to fail. Again, we underline the need to include support as a core element of EM and therefore embedded in the legislation.

\textsuperscript{1} See for example Vanhaelemeesch, Vander Beken, and Vandevelde 2013: http://journals.sagepub.com/doi/abs/10.1177/1477370813493846
Disclosure of convictions

4. Overall, do you support Part 2 of the Bill? The Scottish Government’s view is that it will provide a more appropriate balance between the public’s right to protection and a former offender’s right to “move on” with their life, by, overall, reducing the legal need for disclosure. Do you agree?

Families Outside welcomes the reduced disclosure periods as outlined in Part 2 of the Bill.

It does not however address common practice in employment to have a ‘tick box’ at the initial application stage to ask whether someone has ever had a criminal conviction. Anecdotally we understand that this box is used to eliminate applications with criminal convictions at the outset, without hearing the details or circumstances of the offence of consideration of whether it prevents them from carrying out the job in question.

In our own organisation, we do not ask this question but state that successful applicants will be subject to an appropriate level of criminal records check. This system works very well for us. Convictions should not in themselves rule people out of employment, and people should have a fair assessment of their appropriateness for a role without being disbarred automatically at the first stage. This Bill provides an opportunity for the Scottish Government to take a lead in improving employment practice and therefore resettlement for people with criminal convictions.

5. Do you agree with the Scottish Government that other reforms in Part 2 will make the law on disclosure of convictions more intelligible, clear and coherent?

The Bill is unlikely to make laws on disclosure more intelligible, clear, and coherent. By their very nature such laws are complex, and our understanding is that the Bill reduces the length of disclosure periods more than simplifying the legislation as a whole. This is not however our area of expertise.

6. Do you have any further views on law and policy around disclosure of convictions?

Part 2 of the Bill makes no provision for data held electronically. The internet has considerably increased public access to information, and deletion of such data is difficult at best. The concern is that, even if someone is not legally required to disclose previous convictions, a basic search of the internet is likely to reveal press coverage and comment about the original offence. In our experience, this has resulted in loss of employment as well as failure to hire, both for the person in question and for their family through ‘stigma by association’. We would therefore welcome consideration in the Bill of how this type of information can become ‘spent’ in the same way as requirements for disclosure.
Parole Board for Scotland

7. Do you support Part 3 of the Bill, which makes provision for the Parole Board for Scotland, in terms of its membership and appointment system; its functions and requirements in relation to prisoners, its independence, and its administration?

Part 3 of the Bill falls outside our area of expertise. We would however refer the Committee to our submission to the consultation on Parole Reform in October 2017, below.

8. Do you have any further views on the role, purpose and functions of the Parole Board?

Part 3 of the Bill falls outside our area of expertise. We would however refer the Committee to our submission to the consultation on Parole Reform in October 2017, repeated here:

“While discussing the specific aspects of the operation of the parole board and procedures is important, we wish to emphasise the critical importance of engagement with the families of the person in question throughout the parole process. Decisions made by the Parole Board have a direct impact on families – on their income, their wellbeing, their housing, their physical and mental health, their personal safety, and the prospects for their children, among other issues. Imprisonment of a household member is one of ten Adverse Childhood Experiences (ACEs) that have long-term negative consequences for health and wellbeing.2

“Families can offer tremendous support to people in prison that has a measurable impact on reduction of reoffending.3 Indeed, the 2014 Joint Thematic Review by Her Majesty’s Inspectorates of Prisons and Probation and Ofsted concluded that “An offender’s family are the most effective resettlement agency”.4 Conversely, families can be put under considerable pressure when someone is being considered for release from prison. They can also be used inappropriately as a ‘tool’ in a prisoner’s resettlement, sometimes subject to coercive and abusive relationships that make continued family contact unsafe.

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“The material point is that a person’s support from and relationship with his or her family outside prison are important considerations in a decision to release or recall someone from prison, as well as consideration of any license conditions. The impact on a family needs to be considered alongside other factors, and the families should be actively engaged in that discussion where possible. Lord Farmer’s review in England and Wales, published in August 2017, recommended specific involvement of families in public protection decisions:

Policy frameworks should require evidence of the involvement of families or other supportive relationships in sentence planning, resettlement planning and decisions regarding the use of [Release on Temporary License]. (Farmer Review 2017: 48)

“While the Consultation document did not focus on this specific element of reform to parole processes, we wished to take the opportunity to highlight the need for more systematic involvement of families in parole processes where possible, both as a potential support for the person leaving prison, but also as people in need of support and consideration in their own right.”

Thank you for the opportunity to comment, and we are happy to respond to further queries from the Justice Committee should you have them.

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Chief Executive
Families Outside
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