

**FOI reference number: 202200284394**

**Document 1 – email**

**From:** [redacted]

**Sent:** 15 December 2021 15:53

**To:** Cabinet Secretary for Justice and Veterans [redacted]

**Cc:** [redacted] Rennick NS (Neil) [redacted] Gollan J (Jennie) [redacted] Cowan WJ (Willie) [redacted] Dalrymple C (Catriona) [redacted]

**Subject:** FOR CAB SEC CLEARANCE: Scottish Conservative news release victims law consultation - Daily Mail

[redacted] PO:

[redacted]

A Scottish Government spokesperson said:

“We are committed to ensuring victims’ rights are at the heart of the justice system and we are already taking forward measures which relate to several of these proposals.

“For instance, we launched a consultation on Monday (13<sup>th</sup> Dec) on whether the not proven verdict should be abolished and on related reforms. We have also already made changes to parole rules in line with Michelle’s Law and are committed to reviewing the Victim Notification Scheme and enabling more victims to make statements to the court.

“We will consider any detailed proposals carefully.”

Thanks, [redacted]

## Document 2- email

**From:** [redacted]

**Sent:** 17 January 2022 16:06

**To:** Cabinet Secretary for Justice and Veterans [redacted]; Lord Advocate [redacted]

**Cc:** [redacted] Dalrymple C (Catriona) [redacted] Gollan J (Jennie) [redacted] Nicolson S (Stuart) (Special Adviser) [redacted]

**Subject:** CAB SEC / LA CLEARANCE: Victims' law query - Scottish Express

Cab Sec, PO  
Lord Advocate, PO

[redacted]

[redacted]

A Scottish Government spokesperson said:

“We are committed to ensuring victims’ rights are at the heart of the justice system and continue to take forward measures to improve this.

“As enshrined in legislation since 2014 and reflected in the Victims’ Code, victims have an existing right to request a review of a decision not to take prosecutorial action.

“Operational matters relating to the review process are for the Crown Office and Procurator Fiscal Service.”

Thanks [redacted]

### Document 3 - email

**From:** [redacted]

**Sent:** 07 February 2022 16:01

**To:** Cabinet Secretary for Justice and Veterans [redacted]

**Cc:** [redacted] Dalrymple C (Catriona) [redacted] Ingebrigtsen R (Ross) [redacted] Gollan J (Jennie) [redacted] Nicolson S (Stuart) (Special Adviser) [redacted]

**Subject:** CAB SEC CLEARANCE - Comment on SNP failure to deliver promised 'Suzanne's Law' - The Sun

Good afternoon PO, Cab Sec,

[redacted]

**A Scottish Government spokesperson said:**

“The Parole Board for Scotland can, and do, take all relevant matters into account as part of their decision making process.

“The consultation on parole rules, due to be published shortly, will propose a specific provision that ‘a failure to disclose a victim’s body’ will be a matter, amongst others, that a parole tribunal may take account of.

“Following consultation, modernised parole rules will come into force later in 2022.”

Many thanks

[redacted]

[redacted] | Media Manager

**Communications Justice and Constitution / External Affairs and Culture**

Scottish Government, St Andrew's House

[redacted]

## Document 4 - email

**From:** [redacted]

**Sent:** 16 December 2021 08:07

**To:** [redacted]

**Cc:** [redacted]

**Subject:** Jamie Green Members Bill proposal lodged

[redacted]

Just to confirm that the draft proposal appears in today's Business Bulletin pg 22:  
[bb20211216.pdf \(parliament.scot\)](#).

The draft proposal/consultation doesn't appear to have been published just yet, but I would expect it will appear today on the following page: [Proposals for Bills – Scottish Parliament | Scottish Parliament Website](#).

[redacted]

Parliament and Legislation Unit

Scottish Government

[redacted]

## Document 5

### Briefing for First Minister – Dated 17<sup>th</sup> December 2021

**16 Dec:** Conservatives launch consultation for their Victims Law, related to a proposed Members Bill by Jamie Greene MSP. Includes proposals to:

- Remove the not proven verdict from Scots Law.
- Implement Michelle’s Law by allowing victim to request criminals be given exclusion zones when they are released from prison.
- Implement Michele’s Law by allowing victims to speak directly when criminals are considered for release.
- Implement Michelle’s Law by giving victims the reasons for a release decision in full and require their safety to be considered.
- Implement Suzanne’s Law by giving authorities the ability to deny a killer’s release from prison if they continue to hide the location of where they buried the body.
- Allow all victims of crime to make a victim statement to court.
- Enshrine the right of all victims to be notified of a decision not to prosecute their case.
- Overhaul the Victim Notification Scheme to boost take-up of the scheme and make it more sensitive to victims’ needs.
- Impose mandatory timescales for completing Fatal Accident Inquiries.

### **SCOTTISH CONSERVATIVES VICTIMS LAW**

We are committed to ensuring victims’ rights are at the heart of the justice system and we are already taking forward measures which relate to several of these proposals

- For instance, we launched a consultation on Monday (13<sup>th</sup> Dec) on whether the Not Proven verdict should be abolished and on related reforms.
- We have also already made changes to parole rules in line with Michelle’s Law and we are committed to reviewing the Victim Notification Scheme and enabling more victims to make statements to the court.
- We will consider any detailed proposals carefully.

### **NOT PROVEN VERDICT AND CORROBORATION**

**On Monday we published a consultation seeking views on the Not Proven verdict and related reforms, fulfilling a key Programme for Government commitment.**

- Due to the complex and interlinked nature of the jury system, the consultation also seeks views on jury size, the majority required for conviction and the requirement for corroboration.
- We will take an open and consultative approach to these complex matters and seek to capture the views of a broad range of stakeholders including legal professionals, the third sector and those with lived experience of the system. It is important that we consider potential reforms against the landscape of wider work including the recently published recommendations of Lady Dorrian’s review on the management of sexual offence cases.

- We commissioned independent jury research – the largest, most realistic of its kind ever undertaken in the UK – which reported in October 2019 and found inconsistent views on the meaning and effect of the Not Proven verdict.

**We have been clear that since the Scottish jury system is a complex, inter-related system, verdicts must be considered alongside the other key aspects of jury size and majority.**

- This is not to say that one aspect cannot be reformed without corresponding changes to the others.
- However, before any such reform, there must be wider consideration of potential impacts throughout the system.
- These are complex issues and many participants felt that the third verdict should be retained, or highlighted the interconnectedness of the system, so it is right that we consider these issues carefully.

**Stakeholder events in 2020, involving legal professionals, survivors and victims, emphasised concerns with the Not Proven verdict, such as lack of understanding and perceived stigma.**

- These are complex issues and many participants felt the third verdict should be retained, or highlighted the interconnectedness of the system, including the potential interaction with a jury majority, so we must consider these issues carefully.
- The views of the legal profession, as well as others with direct experience of the system including survivors, will continue to inform these considerations.

**I understand concerns that the corroboration rule can be seen as affecting access to justice for survivors of crimes committed in private.**

- That's why we committed in our Programme for Government, to giving corroboration reform further consideration, and included questions on this in the not proven consultation which launched this week.
- Although corroboration has been included alongside not proven, jury size and majority, this is not to say that one aspect cannot be reformed without corresponding changes to the others.
- The engagement events held last year to discuss the findings of our landmark Scottish jury research revealed there is still considerable opposition to reforming corroboration.
- Many legal professionals view the corroboration requirement as a fundamental safeguard that is required to prevent miscarriages of justice.
- However, others have criticised its impact on access to justice for victims of crimes committed in private, including domestic abuse, sexual offences, and abuse of older and vulnerable people.
- I am committed to continuing these discussions, including with people who have direct experience of the system, justice partners, and opposition parties to develop a shared understanding of the evolving legal position, and the implications and potential unintended consequences of corroboration reform.

## **MICHELLE'S LAW**

### **I know the previous Justice Secretary welcomed the opportunity to meet members of Michelle's family on a number of occasions, to hear their experiences and to act on their concerns.**

- The current Justice Secretary has written (22 November), to Michelle's sister, Lisa Stewart, to update her on progress since she last met Mr Yousaf.
- I wrote to Douglas Ross on 6 Dec with a similar update.
- We changed Parole Board rules (in March), in line with the 'Michelle's Law' campaign, to make clear that the Board can take account of the safety and security of victims and families when deciding upon a prisoner's release.
- The Board is able to publish a summary of its decisions, while also providing for a defined process for victims and their families to observe parole hearings.
- Prior to amending the rules the Parole Board trialled attendance at hearings by relatives of victims on two occasions. Learning from these trials helped shape the provisions in the amended rules.
- We also amended the rules so victims can receive a summary of Board recommendations with reasons for the decision.

## **'EXCLUSION ZONES' FOR SERIOUS OFFENDERS ON PAROLE**

### **The Parole Board can already set exclusion zones as a condition of parole licence and with individuals monitored as they wear a tag.**

- Parole licence conditions can include being electronically monitored to stay away from a particular location or from named individuals, as well as monitoring that someone remains at a specified address at certain times.

## **ELECTRONIC MONITORING WITH GPS**

### **We have secured a national contract for electronic monitoring to allow us to introduce GPS technology, which would change the way people are monitored.**

- GPS could allow monitoring across wider geographical areas, although the existing Radio Frequency monitoring will remain a key component of the service/
- The RF it works well for monitoring presence at or away from specific addresses. Indeed, it outperforms GPS in that respect.
- Moving to GPS is a complex change, requiring face-to-face training and engagement between partners, the opportunities for which have been severely constrained by the pandemic for over a year.
- While Covid disruption has meant recent activity on tagging has focussed on maintaining and stabilising the current service, work to incorporate new technology remains a key part of our planning for further expansion of electronic monitoring
- Officials been taking forward some of the groundwork, including some internal piloting of the technology, that is needed prior to putting in place satellite tracking technology.

## **SUZANNE'S LAW**

**My sympathies go to Suzanne Pilley's family. I can only imagine how a refusal to disclose where a victim's body is buried, causes additional pain to loved-ones.**

- Any proposal around denying parole has to be carefully considered in the context of ECHR requirements.
- The previous Justice Secretary met Suzanne Pilley's family in December 2019 and advised them of our proposal to change the Parole Board rules in this area, writing to them again in January (2021) to confirm the timing of the rules rewrite.

**As part of a consultation early next year, on modernising Parole Board Rules, we propose to add a specific provision that a 'failure to disclose a victim's body' will be a matter, amongst others, that a Parole tribunal may take account of.**

**Failure to disclose the location of a body can in certain circumstances already be prosecuted as a criminal offence of attempting to defeat the ends of justice.**

- It can also be taken into account by the presiding Judge when sentencing.

## **VICTIM STATEMENTS**

**We have consulted on extending the scope of the victim statement scheme.**

- Victim statements enable victims to explain to the court how a crime has impacted on them and to help inform sentencing decisions.
- We are committed to expanding the scope of the scheme and looking at different ways statements could be delivered to the court.
- We consulted at the end of 2019 and passed the Criminal Justice (Scotland) Act 2003 (Supplemental Provisions) (Scotland) Order 2021, which provides greater flexibility in how powers relating to victim statements can be used.
- This flexibility will, for example, enable the introduction of pilot projects for victim statements which would not have previously been possible.
- We will bring forward further legislation as required in the light of outcomes of pilot projects, and taking account of responses to the consultation.

## **PROSECUTION DECISIONS AND VICTIMS' FAMILIES**

**Victims have an existing right to request a review of a decision not to take prosecutorial action or discontinue a case.**

- We have legislated to ensure that victims have a right to review prosecutorial decisions, and the Victims Code highlights this right.
- The independent Inspectorate of Prosecution in Scotland has recognised the robust processes the Crown has in place to provide victims of crime with access to justice.
- The Crown Office is committed to the review of prosecutorial decision making and to improving communication with victims of crime.

## **VICTIM NOTIFICATION SCHEME**

**This Government has strengthened the rights of victims and certain relatives to be informed about an offender's status – but we will consider what further improvements could be made to the Victim Notification Scheme.**

- We legislated to make more victims eligible from 2014 – extending the criteria from prison sentences of four years or more to those involving more than 18 months imprisonment.
- And in 2015 we extended the right to receive certain information to victims of offenders sentenced to less than 18 months.
- The Victims Taskforce has agreed to a review of the Scheme that will get underway early next year.

**It is important to note that victims are able to make an informed decision as to whether they wish to sign up to the Scheme, and can do so at any time. Some victims may choose not to do so.**

## **FATAL ACCIDENT INQUIRIES**

**I fully understand the desire of bereaved families to get answers following the sudden death of a loved one.**

- As acknowledged by the Lord Advocate and the Justice Secretary there is more to be done to ensure that the FAI process is completed as quickly as possible to reduce the burden and stress upon bereaved families.
- The Inspector of Prosecution is due to conduct a further review of FAI process in 2022 - we welcome any scrutiny and evaluation of the FAI system that is aimed at ensuring the system delivers for the people of Scotland.
- As a result of successive increases over the course of the last Parliament, the budget of COPFS is over 40% higher than it was five years ago to support a range of improvement work, including modernising processes for investigating deaths.
- Between April 2020 and March 2021, the Crown concluded more FAIs than the previous year – this increase took place despite the backdrop of a more than 40% rise in reported deaths and Covid-related court restrictions.
- We will be taking forward the recently released report into Deaths in Custody and intend that will assist in improving investigations for that class of case.

**Parliament did not support mandatory FAI timescales when it looked at this.**

- Unfortunately, there will always be a small number of deaths that will need a prolonged period of investigation due to their complexity.
- The Justice Committee examined the issue of mandatory timescales in its consideration of Patricia Ferguson’s Bill on Inquiries into Deaths in 2015.
- The Committee’s Stage One report said **[QUOTE]**: *“The balance of evidence suggests that the setting of mandatory timescales in statute...may not be the best way to realise improvements, and may in some cases be counterproductive.”*

## Annex A

### Letter from First Minister to Douglas Ross, sent on Monday (6 Dec).

Rt Hon Nicola Sturgeon MSP  
First Minister of Scotland



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
T: 0300 244 4000

Douglas Ross MSP  
The Scottish Parliament  
Edinburgh  
EH99 1SP

6 December 2021

During First Minister's Questions on Thursday 25 November I said I would provide you and Parliament with an update on progress since the Michelle's Law campaign was launched by the family of Michelle Stewart. Since the launch much of what was asked for has been delivered or is in the progress of being delivered. Michelle's Law asked that we:

- Explicitly require the safety and welfare of victims and their families to be taken into account when parole and early release are considered;
- Increase use of powers to impose 'exclusion zones' on offenders, to offer increased protection to victims and their families;
- Toughen up the Victim Notification Scheme (VNS) so victims and their families are given reasons for an offender's release, and can make representations in person.

The following provides an update on progress under each topic as follows:

#### *Safety and Welfare of Victims*

We changed the Parole Board Rules on 1 March 2021 so now the Board can take into account the safety and welfare of any person, including victims and their families, when deciding on a prisoner's release.

These changes were made through the Parole Board (Scotland) Amendment Rules 2021 ("the Amendment Rules") which brought in changes related to victims. Specifically, they amended rule 8 – 'Matters to be taken into account by the Board' in the Parole Board (Scotland) Rules 2001, to add a provision to consider the safety and welfare of victims and their families.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

### *Exclusion Zones/GPS*

The Parole Board can already set exclusion zones as a condition of parole licence and those zones can be electronically monitored. These can monitor that people stay away from a specified location or person at present. However, it is a matter for the independent Parole Board to determine when and how this is done and the Scottish Ministers cannot intervene in the Board's decisions.

As part of our development of electronic monitoring a number of new policy uses and new technology will be brought in. Regulations to enable the initial stages of those changes were laid before Parliament at the end of last year and once justice partners have confirmed they are operationally ready these changes will be commenced.

Monitoring in the meantime continues to be by virtue of the existing radio frequency system. GPS monitoring will only be introduced at a future date when GPS devices are prescribed by the Scottish Ministers as approved devices. We have made some progress and taken action to provide the legislative basis for GPS, and last year we made contractual provision for a GPS service in the new national contract. Since then we have conducted internal trials of the technology. However this is a significant change for the system and we need to make sure any introduction is done robustly, particularly as the justice system is still working on COVID recovery.

### *Victim Notification Scheme (VNS)*

The Victim Notification Scheme was established in 2004 and since then the Scottish Government has introduced a number of measures to strengthen the Scheme, giving victims of crime – and in certain circumstances their close relatives – greater rights to information about the status of an offender. We legislated to make more victims eligible from 2014 – expanding the criteria from prison sentences of four years or more to those involving more than 18 months imprisonment, and in 2015 we extended the right to receive certain information to victims of offenders sentenced to less than 18 months.

In cases where the offender is in prison and is serving a sentence of life imprisonment and becomes eligible for parole, victims can already choose to make representations to the Parole Board either in writing or in person, whichever they are most comfortable with.

It is important to note that the Scheme is opt-in, meaning that victims can make an informed decision as to whether they wish to join. Not all victims choose to join the Scheme and some leave the Scheme before the offender's release. It should also be noted that some offenders can have more than one victim who is eligible to join the Scheme, so the number of victims will not match the number of offenders. There will also be a number of prisoners serving sentences of up to 18 months where there is no identified victim who would be eligible to receive information.

I noted the figure of 4,500 for the number of prisoners serving sentences of up to 18 months which was quoted in the Chamber. Data held by the Scottish Government puts the number of offenders serving overall sentences of 18 months or less as of 25 November 2021 at 1,004<sup>1</sup>. I appreciate that this number will fluctuate, but for context the average daily figure for prisoners serving index sentences of 18 months or less in 2019/20 was 1,853<sup>2</sup>.

<sup>1</sup> This information is taken from management information at 00:06:40 on 25/11/2021 and is not quality assured.

<sup>2</sup> [Scottish Prison Population Statistics: Legal Status, 2019-20 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/prison-population-statistics-2019-20/pages/10.aspx)

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

I hope this is helpful in relation to your question regarding the situation for victims of prisoners serving sentences of up to 18 months.

As I set out in the Chamber, we recognise that more can be done to further strengthen the Scheme and we will commence a review of the Scheme early next year to ensure it is serving victims effectively. This was agreed by the Victims Taskforce earlier this year and, since then, we have continued to engage with partners to develop plans for the review, building on what was discussed at the Taskforce.

The Taskforce's preference was for the review to be headed by an independent chairperson supported by a working group made up of representatives from the organisations involved in the operation of the scheme and victim support organisations. We intend to take the review forward on this basis.

The detailed approach, scope and remit of the review is being considered, with key matters likely to be possible extensions to the scope of the Scheme, information sharing between agencies and links to the Scottish Government's development of a victim-centred approach.

#### *Reasons for Release*

Another change we made to the rules in March 2021, is that the Parole Board / tribunal must publish a summary of the reasons for deciding a person can be released. This summary can also be provided to victims if they wish to see it. All decision summaries are published on the Parole Board's website.

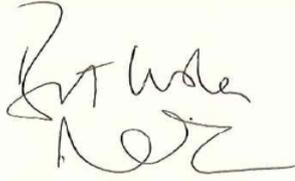
#### *Further progress not related to Michelle's Law*

Since 1 March 2021, and through amendments to the Parole Board rules, it has also been possible for victims to request to observe a parole hearing. These provisions were shaped following two trials carried out by the Parole Board where they allowed the relatives of victims to observe the hearing of the person involved with their case.

Due to the COVID-19 pandemic the Parole Board have unfortunately been unable to grant such requests. The Board continues to work with the Scottish Government, Scottish Prison Service and victims' organisations to make plans to enable victims to observe Tribunals via video link, when it is safe to do so. This will be from a suitable location with appropriate support from members of the Victims Team within the Parole Scotland and/or a Victim Support organisation before, during and after the tribunal hearing, while at the same time ensuring that procedures are in place to protect the confidentiality of proceedings. The extensive work required to identify and equip suitable accommodation around the country is ongoing, and the position is being closely monitored.

In addition, a new Victims' Team has been established within Parole Scotland, the Board's administrative support team, who have responsibility for this area of work. It is hoped that, subject to the easing of COVID-19 restrictions and the resolving of other practical issues, the Board will be in a better position to approve requests from victims to observe hearings soon.

In the meantime, parole hearings have been continuing with all participants, including the prisoner, taking part remotely via teleconference or video link using Microsoft Teams.

A handwritten signature in black ink, appearing to read 'Nicola Sturgeon', written in a cursive style.

**NICOLA STURGEON**

## Document 6

Briefing for First Minister – Dated 24<sup>th</sup> February 2022

### **NOT PROVEN VERDICT AND CORROBORATION**

**In December we launched a consultation seeking views on the Not Proven verdict and related reforms, fulfilling a key PfG commitment.**

- Our approach has been informed by speaking with survivors who have direct experience of the justice system and Scotland's third verdict. However, many stakeholders, particularly in the legal sector, say 'Not Proven' should be retained, or have highlighted the impact of its removal on the rest of the system.
- Before deciding what, if any, reform, is made on these complex issues, we must give careful consideration to the range of views received in the consultation when it closes next month.

**Given concerns that the corroboration rule can be seen as affecting access to justice, we included questions on this in the consultation on Not Proven.**

- The Scottish Government proposed removing the corroboration requirement in the Criminal Justice (Scotland) Bill, introduced in 2013 but there was no parliamentary or legal stakeholder consensus at that time.
- Many legal professionals view the corroboration requirement as a fundamental safeguard that is required to prevent miscarriages of justice – but others criticise its impact on access to justice for victims of crimes, particularly those typically committed in private (domestic abuse and sexual offences).
- Before deciding what, if any, reform is made, we must give close consideration to the range of views received in the consultation, when it closes next month.

**It is also important that we consider potential reforms alongside wider work, including the recommendations of the Lord Justice Clerk Lady Dorrian's review of the management of sexual offence cases.**

- We are considering the Lord Justice Clerk's Review on recommendations.
- We will also legislate in this session of Parliament for a statutory right to lifelong anonymity for complainers in sexual offence cases.

### **SCOTTISH CONSERVATIVES 'VICTIMS LAW'**

**As with any Bill, once laid in Parliament, we will consider the details of any legislative proposals carefully. However, we are already taking forward measures in areas covered by the Tory proposals. For example:**

- We have already made changes to parole rules in line with 'Michelle's Law'.
- We legislated last year to increase flexibility in the victim statement scheme and this year we aim to pilot ways for more victims' voices to be heard in court.
- A review of the Victim Notification Scheme will get underway this year, following measures we introduced in 2014 and 2015 to extend the Scheme.
- We launched a consultation on 13 December on whether the Not Proven verdict should be abolished and on related reforms.

**‘MICHELLE’S LAW’ – PAROLE BOARD CONSIDERATION OF VICTIM SAFETY**  
**Following a number of meetings between members of Michelle’s family and his predecessor as Justice Secretary, Keith Brown wrote (22 Nov 2021), to Michelle’s sister, Lisa Stewart, to update her on progress.**

- I wrote to Douglas Ross on 6 Dec with a similar update.
- We changed Parole Board rules (in March 2021), in line with the ‘Michelle’s Law’ campaign, to make clear that the Board can take account of the safety and security of victims and families when deciding upon a prisoner’s release.
- We also amended the rules so victims can receive a summary of Board recommendations with reasons for the decision.

**The Parole Board may now publish a summary of its decisions, while also providing a process for victims and their families to observe parole hearings.**

- Since March 2021, the Parole Board has published a summary of its decisions to release, with 44 decisions being published in 2021 and 11 to date this year.
- Prior to amending the rules, the Parole Board trialled attendance at hearings by relatives of victims on two occasions. Learning from these trials helped shape the provisions in the amended rules.

**The Parole Board can already set exclusion zones as a condition of parole licence and with individuals monitored as they wear a tag.**

- Parole licence conditions can include being electronically monitored to stay away from a particular location or from named individuals, as well as monitoring that someone remains at a specified address at certain times.

**ELECTRONIC MONITORING WITH GPS**

**We have a national contract for electronic monitoring to allow us to introduce GPS technology, which would change how people are monitored.**

- GPS could allow monitoring across wider geographical areas, albeit the existing Radio Frequency monitoring will remain a key component of the service.
- The Radio Frequency system works well for monitoring presence at or away from specific addresses; Indeed, it outperforms GPS in that respect.

**Moving to GPS is a complex change, requiring face-to-face training and engagement between partners, the opportunities for which have been severely constrained by the pandemic.**

- While Covid disruption meant recent activity on tagging has focussed on maintaining and stabilising the current service, work to incorporate new technology is a key part of our planning for further expansion of electronic monitoring.
- Officials have been taking forward some of the groundwork, including some internal piloting of the technology, that is needed prior to putting in place satellite tracking technology.

**‘SUZANNE’S LAW’ – PAROLE BAR FOR REFUSAL TO DISCLOSE BODY**

**My sympathies go to Ms Pilley’s family. I can only imagine how a refusal to disclose where a victim’s body is buried causes further pain to loved-ones.**

- Failure to disclose the location of a body can, in certain circumstances, be prosecuted as a criminal offence of “attempting to defeat the ends of justice”.

- It can also be taken into account by the presiding Judge when sentencing.

**In considering a person's potential release under parole licence conditions, the Parole Board already can, and does, take all relevant matters into account as part of their decision-making process.**

- Any proposal around denying a person parole must be carefully considered in the context of the ECHR requirements – and avoiding a potential legal action which would be in no-one's interests, certainly not that of victims.

**Our forthcoming public consultation on parole rules will propose a specific provision making clear that "a failure to disclose a victim's body" will be a matter, amongst others, that a parole tribunal may take account of.**

- Following the consultation, we expect to bring modernised parole rules into force later this year.
- The previous Justice Secretary met Suzanne Pilley's family in December 2019 and advised them of our proposal to change the Parole Board rules in this area, writing to them again in January 2021 to confirm the timing of the rules rewrite.
- The rules rewrite was delayed to allow the reprioritisation of work to respond to the Covid pandemic. Our officials have been working with the Parole Board to enable the delivery of updated rules within revised timescales.

**A similar campaign, Helen's Law, in England led to legislative change to the life sentence release test – but the provision by the UK Government does not amount to the 'no body – no parole' rule suggested by the Scottish Tories.**

- To deny parole automatically would lead to ECHR issues and a potential legal challenge from prisoners seeking damages. Clearly that wouldn't be in the interests of any victim.

## **VICTIM STATEMENTS**

**We are committed to expanding the scope of the Victim Statement scheme and looking at different ways statements could be delivered to the court.**

- We consulted at the end of 2019 and passed the Criminal Justice (Scotland) Act 2003 (Supplemental Provisions) (Scotland) Order 2021, which provides greater flexibility in how powers relating to victim statements can be used.
- This flexibility will enable the introduction of pilot projects for victim statements that would not have previously been possible.
- This includes looking at widening the scheme to include more types of offences and also changes to how the statement could be delivered to the court.
- We plan for the pilots to commence this year and will bring forward further legislation as required in the light of their outcomes and taking account of responses to the consultation.

## **VICTIM NOTIFICATION SCHEME**

**This Government has strengthened the rights of victims and certain relatives to be informed about an offender's status – but we are considering what further improvements could be made to the Victim Notification Scheme.**

- We legislated to make more victims eligible from 2014 – extending the criteria from prison sentences of four years or more to those involving more than 18 months imprisonment.

- And in 2015 we extended the right to receive certain information to victims of offenders sentenced to less than 18 months.
- The Victims Taskforce is to begin reviewing the Scheme in the coming months to consider improvements and possible extensions to its scope.
- Victims are able to make an informed decision as to whether they wish to sign up to the Scheme, and can do so at any time. Some chose not to. The processes relating to this is something that the review can explore.

## **PROSECUTION DECISIONS AND VICTIMS' FAMILIES**

### **Victims have an existing right to request a review of a decision not to take prosecutorial action or discontinue a case.**

- We have legislated to ensure that victims have a right to review prosecutorial decisions, and the Victims Code highlights this right.
- The Crown Office advise all victims of any decision to take no action or no further action in all cases on request.
- The Crown Office also proactively notifies victims of decisions not to prosecute in all serious cases, including victims of sexual offences, domestic abuse and hate crime.

## **FATAL ACCIDENT INQUIRIES**

### **I fully understand the desire of bereaved families to get answers following the sudden death of a loved one.**

- As acknowledged by the Lord Advocate and the Justice Secretary, there is more to be done to ensure that the FAI process is completed as quickly as possible to reduce the burden and stress upon bereaved families.

### **Parliament did not support mandatory FAI timescales when it looked at this.**

- Unfortunately, there will always be a small number of deaths that will need a prolonged period of investigation due to their complexity.
- The Justice Committee examined the issue of mandatory timescales in its consideration of Patricia Ferguson's Bill on Inquiries into Deaths in 2015. Its Stage One report said **[QUOTE]**: *"The balance of evidence suggests that the setting of mandatory timescales in statute...may not be the best way to realise improvements, and may in some cases be counterproductive."*
- The Inspector of Prosecution is due to conduct a further review of FAI process this year. We welcome any scrutiny and evaluation of the FAI system that is aimed at ensuring the system delivers for the people of Scotland.

### **Due to successive increases over the last Parliament, the Crown Office budget is over 40% higher than five years ago – to support a range of improvements, including modernising processes for investigating deaths.**

- Between April 2020 and March 2021, the Crown concluded more FAIs than the previous year – this increase took place despite the backdrop of a more than 40% rise in reported deaths and Covid-related court restrictions.
- We will be taking forward the recently released report into Deaths in Custody and intend that will assist in improving investigations for that class of case.

## Document 7

**BRIEFING FOR CABINET SECRETARY FOR JUSTICE AND VETERANS – dated 25<sup>th</sup> January 2022**

### **SCOTTISH CONSERVATIVES VICTIMS LAW**

**We are committed to ensuring victims’ rights are at the heart of the justice system and we are already taking forward measures which relate to several of these proposals**

- For instance, we launched a consultation on 13<sup>th</sup> Dec on whether the Not Proven verdict should be abolished and on related reforms.
- We have also already made changes to parole rules in line with Michelle’s Law and we are committed to reviewing the Victim Notification Scheme and enabling more victims to make statements to the court.
- As with any Bill, once brought to the Parliament, we will consider the details of any legislative proposals carefully.

### **PROSECUTION DECISIONS AND VICTIMS’ FAMILIES**

**Victims have an existing right to request a review of a decision not to take prosecutorial action or discontinue a case.**

- We have legislated to ensure that victims have a right to review prosecutorial decisions, and the Victims Code highlights this right.
- The Crown Office advise all victims of any decision to take no action or no further action in all cases on request.
- The Crown Office also proactively notifies victims of decisions not to prosecute in all serious cases, including victims of sexual offences, domestic abuse and hate crime.

### **NOT PROVEN VERDICT AND CORROBORATION**

**We have published a consultation seeking views on the Not Proven verdict and related reforms, fulfilling a key Programme for Government commitment.**

- Due to the complex and interlinked nature of the jury system, the consultation also seeks views on jury size, the majority required for conviction and the requirement for corroboration.
- We will take an open and consultative approach to these complex matters and seek to capture the views of a broad range of stakeholders including legal professionals, the third sector and those with lived experience of the system. It is important that we consider potential reforms against the landscape of wider work including the recommendations of Lady Dorrian’s review on the management of sexual offence cases.
- We commissioned independent jury research – the largest, most realistic of its kind ever undertaken in the UK – which reported in October 2019 and found inconsistent views on the meaning and effect of the Not Proven verdict.

**We have been clear that since the Scottish jury system is a complex, inter-related system, verdicts must be considered alongside the other key aspects of jury size and majority.**

- This is not to say that one aspect cannot be reformed without corresponding changes to the others.

- However, before any such reform, there must be wider consideration of potential impacts throughout the system.
- These are complex issues and many participants felt that the third verdict should be retained, or highlighted the interconnectedness of the system, so it is right that we consider these issues carefully.

**Stakeholder events in 2020, involving legal professionals, survivors and victims, emphasised concerns with the Not Proven verdict, such as lack of understanding and perceived stigma.**

- These are complex issues and many participants felt the third verdict should be retained, or highlighted the interconnectedness of the system, including the potential interaction with a jury majority, so we must consider these issues carefully.
- The views of the legal profession, as well as others with direct experience of the system including survivors, will continue to inform these considerations.

**MICHELLE'S LAW**

**I know the previous Justice Secretary welcomed the opportunity to meet members of Michelle's family on a number of occasions, to hear their experiences and to act on their concerns.**

- The current Justice Secretary has written (22 November), to Michelle's sister, Lisa Stewart, to update her on progress since she last met Mr Yousaf.
- I wrote to Douglas Ross on 6 Dec with a similar update.
- We changed Parole Board rules (in March), in line with the 'Michelle's Law' campaign, to make clear that the Board can take account of the safety and security of victims and families when deciding upon a prisoner's release.
- The Board is able to publish a summary of its decisions, while also providing for a defined process for victims and their families to observe parole hearings.
- Prior to amending the rules the Parole Board trialled attendance at hearings by relatives of victims on two occasions. Learning from these trials helped shape the provisions in the amended rules.
- We also amended the rules so victims can receive a summary of Board recommendations with reasons for the decision.

**'EXCLUSION ZONES' FOR SERIOUS OFFENDERS ON PAROLE**

**The Parole Board can already set exclusion zones as a condition of parole licence and with individuals monitored as they wear a tag.**

- Parole licence conditions can include being electronically monitored to stay away from a particular location or from named individuals, as well as monitoring that someone remains at a specified address at certain times.

**ELECTRONIC MONITORING WITH GPS**

**We have secured a national contract for electronic monitoring to allow us to introduce GPS technology, which would change the way people are monitored.**

- GPS could allow monitoring across wider geographical areas, although the existing Radio Frequency monitoring will remain a key component of the service/
- The Radio Frequency system works well for monitoring presence at or away from specific addresses; Indeed, it outperforms GPS in that respect.
- Moving to GPS is a complex change, requiring face-to-face training and engagement between partners, the opportunities for which have been severely constrained by the pandemic.

- While Covid disruption has meant recent activity on tagging has focussed on maintaining and stabilising the current service, work to incorporate new technology remains a key part of our planning for further expansion of electronic monitoring.
- Officials been taking forward some of the groundwork, including some internal piloting of the technology, that is needed prior to putting in place satellite tracking technology.

### **SUZANNE'S LAW**

**My sympathies go to Suzanne Pilley's family. I can only imagine how a refusal to disclose where a victim's body is buried, causes additional pain to loved-ones.**

- Any proposal around denying parole has to be carefully considered in the context of ECHR requirements.
- The previous Justice Secretary met Suzanne Pilley's family in December 2019 and advised them of our proposal to change the Parole Board rules in this area, writing to them again in January 2021 to confirm the timing of the rules rewrite.

**As part of a forthcoming consultation, on modernising Parole Board Rules, we propose to add a specific provision that a 'failure to disclose a victim's body' will be a matter, amongst others, that a Parole tribunal may take account of.**

**Failure to disclose the location of a body can in certain circumstances already be prosecuted as a criminal offence of attempting to defeat the ends of justice.**

- It can also be taken into account by the presiding Judge when sentencing.

### **VICTIM STATEMENTS**

**We have consulted on extending the scope of the victim statement scheme.**

- Victim statements enable victims to explain to the court how a crime has impacted on them and to help inform sentencing decisions.
- We are committed to expanding the scope of the scheme and looking at different ways statements could be delivered to the court.

**We consulted at the end of 2019 and passed the Criminal Justice (Scotland) Act 2003 (Supplemental Provisions) (Scotland) Order 2021, which provides greater flexibility in how powers relating to victim statements can be used.**

- This flexibility will, for example, enable the introduction of pilot projects for victim statements which would not have previously been possible.
- We will bring forward further legislation as required in the light of outcomes of pilot projects, and taking account of responses to the consultation.

### **VICTIM NOTIFICATION SCHEME**

**This Government has strengthened the rights of victims and certain relatives to be informed about an offender's status – but we are considering what further improvements could be made to the Victim Notification Scheme.**

- We legislated to make more victims eligible from 2014 – extending the criteria from prison sentences of four years or more to those involving more than 18 months imprisonment.
- And in 2015 we extended the right to receive certain information to victims of offenders sentenced to less than 18 months.
- The Victims Taskforce has agreed to a review of the Scheme that will get underway early this year.

- Key matters for the review will be improvements to the administration of the Scheme, possible extensions to its scope and the development of a trauma-informed approach.
- Victims are able to make an informed decision as to whether they wish to sign up to the Scheme, and can do so at any time. The processes relating to this is something that the review can explore.

## **FATAL ACCIDENT INQUIRIES**

### **I fully understand the desire of bereaved families to get answers following the sudden death of a loved one.**

- As acknowledged by the Lord Advocate and the Justice Secretary there is more to be done to ensure that the FAI process is completed as quickly as possible to reduce the burden and stress upon bereaved families.

### **Parliament did not support mandatory FAI timescales when it looked at this.**

- Unfortunately, there will always be a small number of deaths that will need a prolonged period of investigation due to their complexity.
- The Justice Committee examined the issue of mandatory timescales in its consideration of Patricia Ferguson’s Bill on Inquiries into Deaths in 2015.
- The Committee’s Stage One report said **[QUOTE]**: *“The balance of evidence suggests that the setting of mandatory timescales in statute...may not be the best way to realise improvements, and may in some cases be counterproductive.”*
- The Inspector of Prosecution is due to conduct a further review of FAI process in 2022. We welcome any scrutiny and evaluation of the FAI system that is aimed at ensuring the system delivers for the people of Scotland.

### **As a result of successive increases over the last Parliament, the budget of COPFS is over 40% higher than it was five years ago to support a range of improvement work, including modernising processes for investigating deaths.**

- Between April 2020 and March 2021, the Crown concluded more FAIs than the previous year – this increase took place despite the backdrop of a more than 40% rise in reported deaths and Covid-related court restrictions.
- We will be taking forward the recently released report into Deaths in Custody and intend that will assist in improving investigations for that class of case.

## Document 8

### **BRIEFING FOR CABINET SECRETARY FOR JUSTICE AND VETERANS – dated 3<sup>rd</sup> February 2022**

#### **Q: Will the Cabinet Secretary commit to backing Jamie Greene MSP's draft proposal for a Victims Law?**

- As with any Bill, once brought to the Parliament, we will consider the details of any legislative proposals carefully.
- We are committed to ensuring victims' rights are at the heart of the justice system and we are already taking forward measures which relate to several of these proposals
- For instance, we launched a consultation on 13<sup>th</sup> Dec on whether the Not Proven verdict should be abolished and on related reforms.
- We have also already made changes to parole rules in line with Michelle's Law and we are committed to reviewing the Victim Notification Scheme and enabling more victims to make statements to the court.

#### **SCOTTISH CONSERVATIVES 'VICTIMS LAW'**

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- For instance, we launched a consultation on 13<sup>th</sup> Dec on whether the Not Proven verdict should be abolished and on related reforms.
- We have also already made changes to parole rules in line with Michelle's Law and we are committed to reviewing the Victim Notification Scheme and enabling more victims to make statements to the court.
- As with any Bill, once brought to the Parliament, we will consider the details of any legislative proposals carefully.

#### **NOT PROVEN VERDICT AND CORROBORATION**

#### **I have been clear that he has concerns with the not proven verdict and there is a strong case that can be made for its abolition.**

- That is why in December we published a consultation seeking views on the Not Proven verdict and related reforms, fulfilling a key Programme for Government commitment.
- My views has been informed by speaking with survivors who have direct experience of the criminal justice system and Scotland's third verdict.
- However, this is not a straightforward issue, and many stakeholders, particularly from the legal sector, believe the not proven verdict should be retained, or highlighted the impact of its removal on the rest of the system.
- Before deciding what reforms, if any, are necessary on these complex matters, it is important that we give careful consideration to the range of views received in the consultation.
- We are committed to delivering a justice system in which the survivors of sexual abuse can have confidence.
- Our Programme for Government committed to legislating in this session of Parliament for a statutory right to lifelong anonymity for complainers in sexual offence cases and giving serious consideration to the recommendations of the

Lord Justice Clerk's Review on improving the management of sexual offence cases.

**I understand concerns that the corroboration rule can be seen as affecting access to justice.**

- We included questions on the corroboration rule in our recent consultation on the not proven verdict.
- Many legal professionals view the corroboration requirement as a fundamental safeguard that is required to prevent miscarriages of justice, while others criticise its impact on access to justice for victims of crimes particularly of crimes committed in private, including domestic abuse and sexual offences.
- We will continue these discussions to develop a shared understanding of the evolving legal position, and the implications and potential unintended consequences of corroboration reform.

**MICHELLE'S LAW**

**I know the previous Justice Secretary welcomed the opportunity to meet members of Michelle's family on a number of occasions, to hear their experiences and to act on their concerns.**

- I have written (22 November 2021), to Michelle's sister, Lisa Stewart, to update her on progress since she last met Mr Yousaf.
- The First Minister also Douglas Ross on 6 Dec with a similar update.
- We changed Parole Board rules (in March 2021), in line with the 'Michelle's Law' campaign, to make clear that the Board can take account of the safety and security of victims and families when deciding upon a prisoner's release.
- The Board is able to publish a summary of its decisions, while also providing for a defined process for victims and their families to observe parole hearings.
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**As part of a forthcoming consultation, on modernising Parole Board Rules, we propose to add a specific provision that a 'failure to disclose a victim's body' will be a matter, amongst others, that a Parole tribunal may take account of. Failure to disclose the location of a body can in certain circumstances already be prosecuted as a criminal offence of attempting to defeat the ends of justice.**

It can also be taken into account by the presiding Judge when sentencing.

## **VICTIM STATEMENTS**

**We consulted at the end of 2019 and passed the Criminal Justice (Scotland) Act 2003 (Supplemental Provisions) (Scotland) Order 2021, which provides greater flexibility in how powers relating to victim statements can be used.**

- This flexibility will, for example, enable the introduction of pilot projects for victim statements which would not have previously been possible.
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## **VICTIM NOTIFICATION SCHEME**

**This Government has strengthened the rights of victims and certain relatives to be informed about an offender's status – but we are considering what further improvements could be made to the Victim Notification Scheme.**

- We legislated to make more victims eligible from 2014 – extending the criteria from prison sentences of four years or more to those involving more than 18 months imprisonment.
- And in 2015 we extended the right to receive certain information to victims of offenders sentenced to less than 18 months.
- The Victims Taskforce has agreed to a review of the Scheme that will get underway early this year.

- Key matters for the review will be improvements to the administration of the Scheme, possible extensions to its scope and the development of a trauma-informed approach.
- Victims are able to make an informed decision as to whether they wish to sign up to the Scheme, and can do so at any time. The processes relating to this is something that the review can explore.

## **PROSECUTION DECISIONS AND VICTIMS' FAMILIES**

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- The Crown Office advise all victims of any decision to take no action or no further action in all cases on request.
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## **FATAL ACCIDENT INQUIRIES**

### **I fully understand the desire of bereaved families to get answers following the sudden death of a loved one.**

- As acknowledged by the Lord Advocate and the Justice Secretary there is more to be done to ensure that the FAI process is completed as quickly as possible to reduce the burden and stress upon bereaved families.

### **Parliament did not support mandatory FAI timescales when it looked at this.**

- Unfortunately, there will always be a small number of deaths that will need a prolonged period of investigation due to their complexity.
- The Justice Committee examined the issue of mandatory timescales in its consideration of Patricia Ferguson's Bill on Inquiries into Deaths in 2015.
- The Committee's Stage One report said **[QUOTE]**: *"The balance of evidence suggests that the setting of mandatory timescales in statute...may not be the best way to realise improvements, and may in some cases be counterproductive."*
- The Inspector of Prosecution is due to conduct a further review of FAI process in 2022. We welcome any scrutiny and evaluation of the FAI system that is aimed at ensuring the system delivers for the people of Scotland.

### **As a result of successive increases over the last Parliament, the budget of COPFS is over 40% higher than it was five years ago to support a range of improvement work, including modernising processes for investigating deaths.**

- Between April 2020 and March 2021, the Crown concluded more FAIs than the previous year – this increase took place despite the backdrop of a more than 40% rise in reported deaths and Covid-related court restrictions.
- We will be taking forward the recently released report into Deaths in Custody and intend that will assist in improving investigations for that class of case.

## Document 9

**BRIEFING FOR CABINET SECRETARY FOR JUSTICE AND VETERANS – dated 8<sup>th</sup> February 2022**

### **SCOTTISH CONSERVATIVES ‘VICTIMS LAW’**

**We are committed to ensuring victims’ rights are at the heart of the justice system and we are already taking forward measures which relate to several of these proposals**

- For instance, we launched a consultation on 13th Dec on whether the Not Proven verdict should be abolished and on related reforms.
- We have also already made changes to parole rules in line with Michelle’s Law and we are committed to reviewing the Victim Notification Scheme and enabling more victims to make statements to the court.
- As with any Bill, once brought to the Parliament, we will consider the details of any legislative proposals carefully.

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- My view has been informed by speaking with survivors who have direct experience of the criminal justice system and Scotland’s third verdict.
- However, this is not a straightforward issue, and many stakeholders, particularly from the legal sector, believe the not proven verdict should be retained, or highlighted the impact of its removal on the rest of the system.
- Before deciding what reforms, if any, are necessary on these complex matters, it is important that we give careful consideration to the range of views received in the consultation.
- It is also important that we consider potential reforms against the landscape of wider work including the recommendations of Lady Dorrian’s review on the management of sexual offence cases.
- We are committed to delivering a justice system in which the survivors of sexual abuse can have confidence.
- Our Programme for Government committed to legislating in this session of Parliament for a statutory right to lifelong anonymity for complainers in sexual offence cases and giving serious consideration to the recommendations of the Lord Justice Clerk’s Review on improving the management of sexual offence cases.

**I understand concerns that the corroboration rule can be seen as affecting access to justice.**

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- Many legal professionals view the corroboration requirement as a fundamental safeguard that is required to prevent miscarriages of justice, while others criticise

its impact on access to justice for victims of crimes particularly of crimes committed in private, including domestic abuse and sexual offences.

- We will continue these discussions to develop a shared understanding of the evolving legal position, and the implications and potential unintended consequences of corroboration reform.

## **VICTIM NOTIFICATION SCHEME**

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- We legislated to make more victims eligible from 2014 – extending the criteria from prison sentences of four years or more to those involving more than 18 months imprisonment.
- And in 2015 we extended the right to receive certain information to victims of offenders sentenced to less than 18 months.
- The Victims Taskforce has agreed to a review of the Scheme that will get underway early this year.
- Key matters for the review will be improvements to the administration of the Scheme, possible extensions to its scope and the development of a trauma-informed approach.
- Victims are able to make an informed decision as to whether they wish to sign up to the Scheme, and can do so at any time. The processes relating to this is something that the review can explore.

## **VICTIM STATEMENTS**

**We consulted at the end of 2019 and passed the Criminal Justice (Scotland) Act 2003 (Supplemental Provisions) (Scotland) Order 2021, which provides greater flexibility in how powers relating to victim statements can be used.**

- We have consulted on extending the scope of the victim statement scheme.
- Victim statements enable victims to explain to the court how a crime has impacted on them and to help inform sentencing decisions.
- We are committed to expanding the scope of the scheme and looking at different ways statements could be delivered to the court.
- This flexibility will, for example, enable the introduction of pilot projects for victim statements which would not have previously been possible.
- We will bring forward further legislation as required in the light of outcomes of pilot projects, and taking account of responses to the consultation.

## Document 10

### BRIEFING FOR CABINET SECRETARY FOR JUSTICE AND VETERANS – Dated 25<sup>th</sup> February

The Conservatives held a parliamentary debate in December calling for the abolition of the not proven verdict and are also currently consulting on this as part of their Victims Law consultation, closing on 9 March.

further detail on their proposed Victims Law at Annex D

Jamie Greene's proposed Victims, Criminal Justice and Fatal Accident Inquiries Bill would include provisions that would move Scotland to a two verdict system of guilty and not guilty. Mr Greene's consultation asks consultees to indicate how supportive they are of the proposed removal of the not proven verdict and to explain why but does not ask any further questions about what other reforms might be required as a result.

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- I know your Victims Law consultation is also still open and has a question on the not proven verdict so I welcome the opportunity to have a discussion with you on these issues.

#### Annex D

#### CONSERVATIVES' VICTIMS LAW

**16 Dec:** Jamie Greene launched consultation on 'Victims Law' Bill plan, incl:

- Removing not proven verdict from Scots Law.
- Implementing 'Michelle's Law' by allowing victim to:
  - request criminals be given exclusion zones when released from prison.
  - speak directly when criminals are considered for release.
  - be given full reasons for a release decision and require their safety to be considered.
- Implementing 'Suzanne's Law' by enabling authorities to deny a killer's release from prison if they continue to hide the location of where they buried the body.
- Allowing all victims of crime to make a victim statement to court.
- Overhauling Victim Notification Scheme to boost take-up of scheme and make it more sensitive to victims' needs.
- Imposing mandatory timescales for completing Fatal Accident Inquiries.

#### TOP LINES

**As with any Bill, once laid in Parliament, we will consider the details of any legislative proposals carefully. However, we are already working to ensure victims' rights are at the heart of Scotland's justice system.**

**We are already taking forward measures in areas covered by the Tory proposals. For example:**

- We have already made changes to parole rules in line with 'Michelle's Law'.

- We legislated last year to increase the flexibility of the victim statement scheme and we will pilot ways for more victims to make their voices heard in court.
- A review of the Victim Notification Scheme will get underway this year, following measures we introduced in 2014 and 2015 to extend the Scheme.
- We launched a consultation on 13 December on whether the Not Proven verdict should be abolished and on related reforms.

## **MICHELLE’S LAW – PAROLE BOARD CONSIDERATION OF VICTIM SAFETY**

### **I know the previous Justice Secretary welcomed the opportunity to meet members of Michelle’s family on a number of occasions, to hear their experiences and to act on their concerns.**

- I wrote (22 November 2021), to Michelle’s sister, Lisa Stewart, to update her on progress since she last met Mr Yousaf.
- The First Minister wrote to Douglas Ross on 6 Dec with a similar update.
- We changed Parole Board rules (in March 2021), in line with the ‘Michelle’s Law’ campaign, to make clear that the Board can take account of the safety and security of victims and families when deciding upon a prisoner’s release.

### **The Board may publish a summary of its decisions, while also providing for a defined process for victims and their families to observe parole hearings.**

- Prior to amending the rules, the Parole Board trialled attendance at hearings by relatives of victims on two occasions. Learning from these trials helped shape the provisions in the amended rules.
- We also amended the rules so victims can receive a summary of Board recommendations with reasons for the decision.

### **The Parole Board can already set exclusion zones as a condition of parole licence and with individuals monitored as they wear a tag.**

- Parole licence conditions can include being electronically monitored to stay away from a particular location or from named individuals, as well as monitoring that someone remains at a specified address at certain times.

## **ELECTRONIC MONITORING WITH GPS**

### **We have a national contract for electronic monitoring to allow us to introduce GPS technology, which would change how people are monitored.**

- GPS could allow monitoring across wider geographical areas, although the existing Radio Frequency monitoring will remain a key component of the service.
- The Radio Frequency system works well for monitoring presence at or away from specific addresses; Indeed, it outperforms GPS in that respect.

### **Moving to GPS is a complex change, requiring face-to-face training and engagement between partners, the opportunities for which have been severely constrained by the pandemic.**

- While Covid disruption has meant recent activity on tagging has focussed on maintaining and stabilising the current service, work to incorporate new technology is a key part of our planning for further expansion of electronic monitoring.

- Officials have been taking forward some of the groundwork, including some internal piloting of the technology, that is needed prior to putting in place satellite tracking technology.

## **SUZANNE'S LAW**

### **My sympathies go to Ms Pilley's family. I can only imagine how a refusal to disclose where a victim's body is buried causes further pain to loved-ones.**

- Failure to disclose the location of a body can, in certain circumstances, be prosecuted as a criminal offence of "attempting to defeat the ends of justice".
- It can also be taken into account by the presiding Judge when sentencing.

### **In considering a person's potential release under parole licence conditions, the Parole Board already can, and does, take all relevant matters into account as part of their decision-making process.**

- Any proposal around denying a person parole must be carefully considered in the context of the ECHR requirements – and avoiding a potential legal action which would be in no-one's interests, certainly not that of victims.

### **Our forthcoming public consultation on parole rules will propose a specific provision making clear that "a failure to disclose a victim's body" will be a matter, amongst others, that a parole tribunal 'may' take account of.**

- Following the consultation, we expect to bring modernised parole rules into force later this year. The previous Justice Secretary met Suzanne Pilley's family in December 2019 and advised them of our proposal to change the Parole Board rules in this area, writing to them again in January 2021 to confirm the timing of the rules rewrite.
- The rules rewrite was delayed to allow the reprioritisation of work to respond to the Covid pandemic. Our officials have been working with the Parole Board to enable the delivery of updated rules within revised timescales.
- A similar campaign, Helen's Law, in England resulted in a change in primary legislation to the life sentence release test.
- This provision does not amount to 'no body – no parole' as to deny parole would lead to ECHR issues.

## **VICTIM STATEMENTS**

### **We are committed to expanding the scope of the Victim Statement scheme and looking at different ways statements could be delivered to the court.**

- We consulted at the end of 2019 and passed the Criminal Justice (Scotland) Act 2003 (Supplemental Provisions) (Scotland) Order 2021, which provides greater flexibility in how powers relating to victim statements can be used.
- This flexibility will, for example, enable the introduction of pilot projects for victim statements which would not have previously been possible.
- We will bring forward further legislation as required in the light of outcomes of pilot projects, and taking account of responses to the consultation.

## **VICTIM NOTIFICATION SCHEME**

### **This Government has strengthened the rights of victims and certain relatives to be informed about an offender's status – but we are considering what further improvements could be made to the Victim Notification Scheme.**

- We legislated to make more victims eligible from 2014 – extending the criteria from prison sentences of four years or more to those involving more than 18 months imprisonment.
- And in 2015 we extended the right to receive certain information to victims of offenders sentenced to less than 18 months.
- The Victims Taskforce has agreed to a review of the Scheme that will get underway early this year.
- Key matters for the review will be improvements to the administration of the Scheme, possible extensions to its scope and the development of a trauma-informed approach.
- Victims are able to make an informed decision as to whether they wish to sign up to the Scheme, and can do so at any time. The processes relating to this is something that the review can explore.

## **PROSECUTION DECISIONS AND VICTIMS' FAMILIES**

### **Victims have an existing right to request a review of a decision not to take prosecutorial action or discontinue a case.**

- We have legislated to ensure that victims have a right to review prosecutorial decisions, and the Victims Code highlights this right.
- The Crown Office advise all victims of any decision to take no action or no further action in all cases on request.
- The Crown Office also proactively notifies victims of decisions not to prosecute in all serious cases, including victims of sexual offences, domestic abuse and hate crime.

## **FATAL ACCIDENT INQUIRIES**

### **I fully understand the desire of bereaved families to get answers following the sudden death of a loved one.**

- As the Lord advocate and I have acknowledged, there is more to be done to ensure that the FAI process is completed as quickly as possible to reduce the burden and stress upon bereaved families.

### **Parliament did not support mandatory FAI timescales when it looked at this.**

- Unfortunately, there will always be a small number of deaths that will need a prolonged period of investigation due to their complexity.
- The Justice Committee examined the issue of mandatory timescales in its consideration of Patricia Ferguson's Bill on Inquiries into Deaths in 2015.
- The Committee's Stage One report said **[QUOTE]**: *"The balance of evidence suggests that the setting of mandatory timescales in statute...may not be the best way to realise improvements, and may in some cases be counterproductive."*
- The Inspector of Prosecution is due to conduct a further review of FAI process in 2022. We welcome any scrutiny and evaluation of the FAI system that is aimed at ensuring the system delivers for the people of Scotland.

### **Due to successive increases over the last Parliament, the Crown Office budget is over 40% higher than five years ago – to support a range of improvements, including modernising processes for investigating deaths.**

- Between April 2020 and March 2021, the Crown concluded more FAIs than the previous year – this increase took place despite the backdrop of a more than 40% rise in reported deaths and Covid-related court restrictions.
- We will be taking forward the recently released report into Deaths in Custody and intend that will assist in improving investigations for that class of case.