



**CRIMINAL JUSTICE AND IMMIGRATION BILL
HOUSE OF LORDS – REPORT STAGE**

March 2008

Principal aim of the Youth Justice System

THE AMENDMENT

**Lord Thomas of Gresford
Lord Wallace of Tankerness**

After Clause 9, insert the following new Clause-

- (1) Section 37 of the Crime and Disorder Act 1998 (c. 37) (aim of the youth justice system) is amended as follows.
- (2) Leave out subsection (1) and insert-
 - (1) It shall be the principal aim of the youth justice system to promote the welfare of children and in so doing have particular regard to the need to prevent offending (including reoffending).

PURPOSE

To extend the principal aim of the Youth Justice System to encompass the promotion of child welfare.

BRIEFING

Current arrangements for dealing with children who break the law in England and Wales are seriously flawed, as evidenced by high rates in the use of custody and recidivism. The Youth Justice System continues to be dominated by a punitive approach, deriving from a determination to be tough on all crime while considerations of child welfare, essential to an effective strategy for reducing youth crime, have been allowed to fall by the wayside.

A restrictive focus on the prevention of offending

The duty to ensure that in all actions undertaken by institutions including courts of law, the best interests of the child shall be a primary consideration is enshrined in Article 3 of the United Nations Convention on the Rights of the Child. In domestic law The Children Act 1989 establishes that decisions taken by the family court, dealing with a whole range of children's issues, must be taken in the child's best interests through the use of the welfare checklist.

Regrettably the Crime and Disorder Act 1998 made an exception, solely for children who offend, by stressing the primary aim of preventing offending above all other considerations. These children are not of course fundamentally different – in almost all cases youth crime springs from the same complex of personal and social issues, as do other problems. The unintended effect of this restrictive focus has been that the Youth Justice System often neglects considerations of child welfare, so essential to an effective strategy for reducing youth crime.

Since the CDA 1998 Act was passed, child welfare legislation has been further strengthened under the auspices of the Children Act 2004. This legislation requires all agencies and authorities that come into contact with children (including governors of YOIs, directors of secure training centres

and youth offending teams) to work consistently towards the aim of safeguarding them and promoting their welfare. The SCYJ believes that it would be timely to use this Bill to update the principal aim of the youth justice system as outlined in section 37 of the Crime and Disorder Act 1998 to reflect these advances. We welcome the Government's move during the passage of the Bill to amend the principal aim to include not only offending, but also re-offending but believe that rebalancing is also required .

The case for a greater emphasis on welfare

There is much evidence indicating that maltreatment is one of the key factors that can lead to offending behaviour.^{i ii iii iv v vi vii viii} In addition, children in trouble with the law are much more likely to have grown up in an environment of poor parental supervision with a lack of discipline or harsh and erratic parenting. They have an increased likelihood of living in poor housing and experiencing family conflict, and many have parents with a history of anti-social behaviour^{ix}.

Yet there are very few opportunities for children in custody or serving community sentences to receive therapeutic interventions, counselling or support to enable them to overcome any effects of abuse, to change their offending behaviour, or to discuss any problems or difficulties they have with a safe, trusted adult. Systematic consideration of the child's welfare throughout the process of addressing offending behaviour would enable it to be tackled in more constructive way.

Furthermore there is evidence that at various points within the youth justice system the subordination of children's welfare to preventing offending is leading to breaches of their human rights. In its recent report on The Use of Restraint in Secure Training Centres (STCs) the Joint Committee on Human Rights made the following comment about the treatment of children in custody.

'The United Nations Convention on the Rights of the Child 1989 ("UNCRC"), ratified by the UK in 1991, emphasizes a recognition of the dignity and worth of children. In the context of detained children and young people, this principle is vital to the rehabilitation of the child and to his or her ability to be an effective citizen when released. However, law and practice in the UK relating to children and young people in detention calls into question the Government's commitment to that principle.'

Future reform of the Youth Justice System

The Children's Plan published by the Department for Children, Schools and Families in December 2007 acknowledges that the current system is in need of fundamental reform. It calls for:

*'more effective action by children's services and youth justice agencies to **reduce youth crime** through a reformed approach to youth justice, that has a stronger emphasis on prevention, rehabilitation and action to stop repeat offences by young people.'*

We welcome this commitment to re-evaluate the direction of youth justice policy, with the outcome due to be set out in the Youth Crime Action Plan. However this is a proposal for the future. We do not know when any resultant changes might be implemented, but they are unlikely to be quick. The more radical the changes the more they will require general and detailed debate, and the more substantial the place they will require in the oversubscribed legislative programme.

Meanwhile, updating the principal aim of the YJS to bring it in line with recent developments in child welfare legislation would achieve an overdue improvement in the treatment of the current generation of young people in trouble with the law - without prejudicing the future direction of travel under the Youth Crime Action Plan.

For further information please contact:

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The **Standing Committee for Youth Justice (SCYJ)** is a membership body which:

- Provides a forum for organisations, primarily in the non-statutory sector, working to promote the welfare of children who become engaged in the youth justice system; and
- Advocates a child-focussed youth justice system that promotes the integration of such children into society and thus serves the best interests of the children themselves and the community at large.

Its members are: Barnardo's, Children's Rights Alliance for England, Just for Kids Law, JUSTICE, Nacro, Association of YOT Managers, National Association for Youth Justice, National Children's Bureau, NCH, NSPCC, Prison Reform Trust, Rainer, Secure Accommodation Network, SOVA, The Children's Society, The Howard League for Penal Reform, The National Youth Agency, The Princes Trust and VOICE

The contents of this briefing do not necessarily reflect the views of all member organisations.

ⁱ Boswell, G. (1996). *The prevalence of abuse and loss in the lives of Section 53 offenders*. Young and Dangerous – the background and careers of Section 53 Offenders. Avebury.

ⁱⁱ Hawkes, C., Jenkins, J.A. and Vizard, E. *Roots of Sexual Violence in Children and Adolescents* in Ved Varma (Ed) 1997. *Violence in Children and Adolescents*. Jessica Kingsley Publishers. London.

ⁱⁱⁱ Hamilton, C. E., Falshaw, L. and Browne, K. D. (2002). *The Link between recurrent maltreatment and offending behaviour*. International Journal of Offender Therapy and Comparative Criminology. 46(1) pg75-94.

^{iv} Lader, D, Singleton, N and Meltzer, H. (2000). *Psychiatric morbidity among young offenders in England and Wales*. London Office for National Statistics, London.

^v Weeks, R and Widom, C.S. (1998). *Self-reports of early childhood victimization among incarcerated male felons*, Journal of Interpersonal Violence, Vol 13. No. 3, pp346-61.

^{vi} Shields, A.M., Cicchetti, D. and Ryan, R.M. (1994) *The development of emotional and behavioural self-regulation and social competence among maltreated school-age children*, Development and Psychopathology, Vol. 6, pp. 5–75.

^{vii} Widom, C.S. (1989) *Child abuse, neglect, and adult behaviour: research design and findings on criminality, violence, and child abuse*, American Journal of Orthopsychiatry, Vol. 59, No. 3, pp. 355–67.

^{viii} Jonson-Reid, M. and Way, I. (2001) *Adolescent sexual offenders: incidence of childhood maltreatment, serious emotional disturbance and prior offences*, American Journal of Orthopsychiatry, Vol. 71, No. 1, pp. 120–30.

^{ix} Utting, D, Monteiro, H and Ghate, D (2007) *Interventions for children at risk of developing antisocial personality disorder*. London: Policy Research Bureau.