



Standing Committee for Youth Justice

CRIME AND SECURITY BILL
House of Commons Committee Stage
February 2010

Retention, destruction, and use of fingerprints, samples etc.

AMENDMENTS

Clause 14, page 30, line 42, leave out subsection 64ZE and replace with: –

“64ZE Destruction of data relating to persons under 18

- (1) Material falling within subsection (2) must be destroyed as soon as it has fulfilled the purpose for which it was taken or derived, if it relates to a person who –
 - (a) is arrested for or charged with a recordable offence, and
 - (b) is aged under 18 at the time of the alleged offence.
- (2) Material falls within this subsection if it is—
 - a. Fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
 - b. A DNA profile derived from a DNA sample so taken.
- (3) This section ceases to have effect in relation to the material if the person is convicted of a qualifying offence before the material is required to be destroyed by virtue of this section.

Purpose: To ensure that where a child is not convicted of an offence material relating to that child is not retained.

Clause 14, page 32, line 9, leave out subsection 64ZF and replace with—

“64ZF

- (1) This section applies to material falling within subsection (2) relating to a person who—
 - (a) is convicted of a qualifying offence, and
 - (b) is aged under 18 at the time of the offence.
- (2) Material falls within this subsection if it is—
 - (a) Fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
 - (b) A DNA profile derived from a DNA sample so taken.
- (3) The material must be destroyed—
 - (a) In the case of finger prints or impressions of footwear, before the end of the period of 5 years beginning with the date on which the fingerprints or impressions were taken or when the person attains the age of 18, whichever is sooner,
 - (b) In the case of a DNA profile before the end of the period of 5 years beginning with the date on which the DNA sample from which the profile was derived was taken (or if the profile was derived from more than one DNA sample, the

date on which the first of those samples were taken) or when the when the person attains the age of 18, whichever is sooner.

Clause 14, page 33, line 41, leave out subsection 64ZG

Clause 14, page 34, line 27 , leave out subsection 64ZH

Purpose: To set out that material can only be retained if a child is convicted for a qualifying offence and that then this material is destroyed when the child becomes 18.

BRIEFING

SCYJ welcomed the judgment of the European Court of Human Rights in December 2008 in the case of *S & Marper*, which found that current practice in England and Wales regarding the retention of DNA data on the National DNA Database (NDNAD) violated article 8 of the European Convention on Human Rights (ECHR).¹ The Court severely criticised the ‘*blanket*’ and ‘*indiscriminate*’ holding of data and singled out the damaging impact of such data retention on children and young people.

Following this judgment the provisions in **clauses 14 – 20** set out a revised framework for the retention, destruction and use of DNA data. As far as children are concerned, four separate categories are established:

- Under 18 year olds - convicted of serious offence or more than one minor offence: indefinite retention of fingerprints, impressions of footwear and DNA profile (see substituted section 64(2));
- Under 18 year olds - convicted of single minor offence: retention of fingerprints, impressions of footwear and DNA profile for 5 years (see new section 64ZH);
- 16 and 17 year olds - arrested for but unconvicted of serious offence: retention of fingerprints, impressions of footwear and DNA profile for 6 years (see new section 64ZG);
- All other under 18 year olds - arrested but unconvicted: retention of fingerprints, impressions of footwear and DNA profile for 3 years (see new sections 64ZE and 64ZF);

Human Rights considerations

We do not believe that the proposed framework answers the ECtHR’s criticisms and nor does it meet the UK’s international obligations under the UN Convention on the Rights of the Child (UNCRC).

This legislation must be judged in the wider context of the repeated and severe criticism to which the United Kingdom’s juvenile justice system has been subject by international human rights bodies and domestic NGOs, as well as public concern about the treatment of children and young people in the criminal justice system. This includes the very low age of criminal responsibility in England and Wales, which means that children as young as 10 may have their personal information recorded on the database. The United Kingdom was particularly criticised by the United Nations Committee on the Rights of the Child in last year’s examination, in relation to its failure to respect the privacy rights of children in the juvenile justice system.

Children and young people are developing individuals. They are in need of support and protection to enable them to develop to their full potential. The right to private and family life and to equal treatment under the European Convention on Human Rights, and the right to privacy and protection of physical integrity under the UNCRC (including in the criminal justice sphere), are fundamental rights for children and young people in a democratic society that values their freedoms and civil

¹ The Grand Chamber’s judgment of 4 December 2008 in the case of *S and Marper v The United Kingdom* (Applications nos. 30562/04 and 30566/04).

liberties. In order to ensure that any limitation of those privacy rights for individual children is necessary, proportionate and lawful, children's distinct requirements must be taken into account.

Children who are not convicted

There is no robust evidence to justify the retention of children's DNA profiles after individuals have been found not guilty either by the investigatory or judicial process or by the decision not to proceed in a prosecution. The research used by the Government to justify periods of retention was not carried out in relation to children and young people; its validity in terms of the extrapolation of likely re-offending rates from incomplete statistics has also been called into question.² A report on the forensic use of bioinformation by the Nuffield Council on Bioethics in 2007 also found a '*lack of convincing evidence*' that the retention of DNA profiles from those not charged with or convicted of an offence had any significant impact on crime detection rates.³ This is particularly important when considering the obligation of the Government to actively protect the human rights and best interests of children and young people.

“Convicted” children (including Final Warning Scheme disposals)

We are also concerned at the proposals in relation to “convicted” children. We note that this definition includes children subject to Final Warning Scheme disposals (reprimands and warnings). There are already concerns about such disposals, which can be regarded by children and their parents as little more than a formality, without understanding their very serious implications.

It has not been made clear how the retention of data from children convicted of a “lesser” offence contributes to the protection of the public and the retention periods that have been set appear arbitrary and unfair. Under these proposals, the DNA profile of a child convicted of a lesser offence at age 10 will be retained for five years – a measure we feel is both disproportionate and discriminatory.

Proposed amendments

Our principled position is therefore that DNA samples should not be taken from children following arrest, charge or conviction, unless this is required for the purposes of investigating the offence for which the child was arrested. Children's DNA profiles should be retained for no longer than is required for the purposes of investigating the offence for which the child was arrested.

Before any exceptions are made to this general presumption (e.g. in relation to convictions for certain serious offences) robust evidence should be sought as to the usefulness of taking DNA samples and retaining DNA profiles other than for the purposes of investigating the offence for which a child has been arrested.

With this caveat, the amendment proposed would **permit the retention of material for young people who are convicted for a qualifying (i.e. serious) offence up until that child attains the age of 18 but would not allow any retention of material relating to a child who is not convicted.**

For further information please contact:

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² <http://www.straightstatistics.org> (June 2009), *The DNA database: innocent or guilty, what's the difference?*

³ Nuffield Council on Bioethics (2007), *The forensic use of bioinformation: ethical issues*

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.

Members are: Action for Children, Association of YOT Managers, Barnardo's, Catch22, The Children's Society, Children's Rights Alliance for England, Council for Disabled Children, The Howard League for Penal Reform, Just for Kids Law, JUSTICE, Nacro, National Youth Agency (NYA), National Association for Youth Justice (NAYJ), NCB, TACT, The Prince's Trust, Prison Reform Trust, Sainsbury Centre for Mental Health, Secure Accommodation Network, SOVA and VOICE.

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