Standing Committee for Youth Justice

CRIME AND SECURITY BILL
HOUSE OF COMMONS - SECOND READING
18 January 2010

INTRODUCTION

The Standing Committee for Youth Justice (SCYJ) is a coalition working to promote the welfare of children who become engaged in the youth justice system. It advocates a child-focused 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.

SCYJ is concerned that measures in the Crime and Security Bill threaten children's safety, compromise their welfare and risk inappropriately criminalising them. **For these reasons we oppose the Crime and Security Bill, in so far as it affects children and young people in trouble with the law.**

CLAUSE 1: Police powers of Stop and Search

Clause 1 aims to reduce the reporting requirements on stop and search forms in order to limit the amount of time that police officers spend completing paperwork. The Government's proposals, following the Review of PACE, published in 2008, set out the intention to examine *'through pilot sites, the ability to reduce the need to provide a record of the stop and recording only ethnicity information'*.[1] It is also hoped that greater use of mobile technology to monitor stop and search will ensure more efficient deployment of police resources.

SCYJ is reassured to see that the requirement to monitor ethnicity as a safeguard against discrimination is retained in these new provisions. A 2005 Government report by the Criminal Justice System Race Unit noted that black people (of all ages) are six times more likely to be stopped and searched than white people. The report went on to point out that *'evidence suggests that this imbalance is not simply the result of people from BME groups committing a disproportionate number of crimes.'*[2]

The research report *Just Justice* published by SCYJ member The Children's Society in 2006, which looked at the experiences of black young people in the youth justice system, found that one of the most persistent criticisms of the police relates to the way in which they exercise their powers to stop and search people in the streets.[3] When the Home Affairs Select Committee looked at this issue during the 2006-7 Parliamentary session it concluded:
' Until such a time as the number of young black people in the criminal justice system begins to mirror that of the population as a whole, we urge government to review, revise and redouble its efforts to address overrepresentation and its causes. A great deal depends on its success in doing so.' [4]

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[1] Home Office (2008) *PACE review: government proposals in response to the review of the police and criminal evidence act 1984*
[2] Barclay G, Munley A & Munton T (2005) *Race and the Criminal Justice System: An Overview to the Complete Statistics 2003-2004.* London: Criminal Justice System Race Unit
[3] Sharp D, (2006) *Just Justice Serve and Protect? Black young people's experience of policing in the community.* The Children's Society
[4] Home Affairs Select Committee (2007) *Young Black People and the Criminal Justice System: Second Report of Session 2006-7*. London: The Stationery Office Ltd.

However SCYJ has a number of additional concerns about these proposals which have not been addressed and which we urge parliamentarians to raise during debates on clause 1.

These are:

- The intention to limit monitoring requirements to ethnicity is too narrow. **It should also be possible to disaggregate the use of stop and search by age** in order to ensure that the powers are not being used disproportionately against young people.

- **A record should also be made of the power under which the search is made.** Searches can currently be made under various pieces of legislation and not all of these require a police officer to have 'reasonable suspicion' before stopping a member of the public, for example section 60 Criminal Justice and Public Order Act 1994 and section 44 of the Terrorism Act 2000. There is some evidence that the police are using these very broad powers on a regular basis despite the fact that they are intended for exceptional use and hence it is important that their use is monitored.[5]

- The Government's proposals state the intention to '[r]eplace the requirement for a written record to be provided for stop and searches at the point of contact, with a receipt *provided* that the person exercising the power is using mobile technology with direct input into a force computer system.'[6] **We seek clarification that this system will be able to produce a hard copy of the electronic audit trail for verification and validation purposes and which may be requested by the person stopped.** This information should not be used to gather identification material which can be used in speculative searches, nor be retained indefinitely, if there are no other reasons for retention.

- Finally, the proposed reforms do not address, and possibly exacerbate, a number of longstanding problems with the way stop and search works in practice in relation to children and young people. **In all normal circumstances (where there is not an immediate urgency on the street), searches of children should be conducted at a police station in the presence of an appropriate adult.** If an urgent search on the street is necessary, there should be a requirement to report the search to a senior officer within 24 hours. The senior officer should then notify the child or young person's parents/guardian. We believe that such safeguards are necessary to ensure that stop and searches of children are used correctly and appropriately by the police.

We raised a number of these issues in our submission to the consultation on the Government's proposals in response to the Review of PACE which took place at the end of 2007/8. No Government response to this consultation has yet been published.

CLAUSES 14 – 20: RETENTION, DESTRUCTION AND USE OF FINGERPRINTS AND SAMPLES ETC.

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).[7] 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:

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[5] Lord Carlile of Berriew Q.C. (2009) *Independent Report on the Operation in 2009 of the Terrorism Act 2000*
[6] Home Office (2008) *PACE review: government proposals in response to the review of the police and criminal evidence act 1984*
[7] 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).

- 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);

We do not believe that this 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). Our position is 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.

In any event, the retention of children and young people's DNA profiles **should never be indefinite and should always be subject to regular review, including automatic review when any child whose DNA profile has been retained reaches the age of 18.**

CLAUSES 31 - 36: GANG RELATED VIOLENCE

Clauses 31-36 extends the use of injunctions for gang related violence introduced under section 34 of the Policing and Crime Act 2009, to young people over the age of 14. We are not convinced that extending these injunctions to young people is necessary as there are already a profuse number of civil and criminal justice measures that can be employed to tackle criminal behaviour among young people. Nor do we believe they can be effective in addressing the root causes of problematic behaviour. Many young people involved in gangs often have limited choice in joining them and are perhaps not aware of the implications of being involved. For girls in particular, membership in gangs may be exploitative in nature, and a welfare response rather than a punitive one is required.[8] There is a need for constructive work around the issue of young people's involvement in gangs but this feels like an over-the-top, knee-jerk reaction to the problem.

The standard of proof required before the court can grant an injunction under s. 34 is a matter of serious concern. S. 34(2) states that the court may grant an injunction if it *'is satisfied on the balance of probability the respondent has engaged in, or has encouraged or assisted, gang related violence'.* It is inappropriate to use the lower, civil standard of proof, in relation to allegations of serious criminal conduct; allegations of fraud, for example in the civil courts, and of anti-social behaviour in ASBO applications, have to be proved to a much higher standard. Use of a low standard of proof could also be to open to error/misuse, for example it could result in groups of friends being targeted rather than criminal 'gangs'. We also have reservations about the quality of intelligence on which decisions to apply for injunctions will be made. While in some areas intelligence on gangs is very good, we do not believe this to be the same across the country.

Contents of an Injunction
The list of prohibitions and requirements that can be covered by an injunction is very extensive and includes severe limitations on association and freedom of movement that have serious human rights implications. For example the list of conditions included in s. 35 (3) (b) of the Policing and Crime Act

[8] Catch 22 and Analytica (2009) *Girls involvement in violent offending and gang activity*

2009 allows that a respondent can be required to 'be at a particular place between particular times on particular days'. Subsection 35 (4) notes that this may not be for more than 8 hours.

We know from our experience of working with young people who have been given anti-social behaviour orders (ASBOs) that they find it very difficult to adhere to a long list of prohibitions (as outlined in subsection 35 (2)) and they find non-association clauses particularly difficult (subsection 35 (2) (b)).

Breach of an Injunction

Our strongest criticisms of these proposals are reserved for the provisions on breach contained in clause 36. These create two new orders that can be made by the County or High Court; a Supervision Order and a Detention Order which allows that a young person can be detained in youth detention accommodation for up to three months.

The creation of a new community sentence in the form of the Supervision Order so soon after the introduction of the Youth Rehabilitation Order (YRO), which is intended to streamline community sentences for juveniles, seems perverse. Further, it is entirely inappropriate for a community sentence for a child/young person to be imposed in the civil High Court or county court, rather than in the specialist youth court. It is unacceptable for detention orders to be imposed on children/young people in these circumstances. Unless the full safeguards of the criminal process apply to the proving of breach of the orders, we believe that these proceedings may be contrary to Article 6 ECHR. Despite the safeguards included with the purpose of ensuring that the Detention Order will only be made in the most serious cases of breach, we fear that its creation will inevitably lead to an increase in the use of custody. **Punishing young people for breach of a civil injunction with a custodial sentence is in contravention of article 40 of the UNCRC which requires that custody is only used as a last resort for children – and which reflects the government's stated policy.**

CLAUSES 37 & 38: ANTI-SOCIAL BEHAVIOUR ORDERS

Clause 37 requires that a parenting assessment is conducted for every child aged 10 to 15 who is considered for an ASBO and, for the same age group, **Clause 38** makes a Parenting Order automatic upon breach of a child's ASBO.

SCYJ recognises the value of providing support to parents of children whose behaviour is problematic but we do not believe that it is appropriate to do so through court orders and the threat of sanction. Support should be delivered in such a way as to enable parents to co-operate and we believe that there should always be a preference for encouraging parents to take up help and support voluntarily.

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, NSPCC, The Prince's Trust, Prison Reform Trust, Sainsbury Centre for Mental Health, Secure Accommodation Network, SOVA, TACT and VOICE.

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