



Standing Committee for Youth Justice

www.scyj.org.uk

Legal Aid, Sentencing and Punishment of Offenders Bill Briefing for House of Commons Second Reading

June 2011

1. The Standing Committee for Youth Justice (SCYJ) is a membership body for organisations working on youth justice issues in England and Wales, including children's charities, penal reform groups, professional membership bodies and others. SCYJ and its member organisations are regularly consulted upon law and policy affecting the youth justice system and it responded to the sentencing green paper *Breaking the Cycle* in March 2011.
2. This briefing is intended to highlight SCYJ's main concerns about the Bill's provisions for House of Commons Second Reading. Where we have not commented upon a provision, that should not be taken as an endorsement of its contents.
3. SCYJ broadly welcomes some of the Bill's youth justice reforms, in particular those relating to **remand and youth cautions**. However, we have serious concerns about other of its proposals, in particular:
 - **The proposed extension of curfew requirements to a maximum of 16 hours per day for 12 months; these should never be applied to children; and**
 - **The provisions on breach of detention and training orders, which risk extending such orders far beyond the end date imposed at sentence.**

PART 3 – SENTENCING AND PUNISHMENT OF OFFENDERS

Sentencing

4. SCYJ is concerned that the abolition of the need for medical evidence before a **mental health treatment requirement** can be attached to a Youth Rehabilitation Order (YRO) in clause 68 of the Bill is driven by a desire to save time and costs without consideration of its likely effects. It is in our view wrong in principle to impose such requirements when they may be medically inappropriate and/or when another disposal under the Mental Health Act 1983 would be warranted (matters which the registered medical practitioner is currently required to address). Particularly in relation to children, the need for consent (of a child aged 14-17 or parental consent for under 14s, the latter of which was only added into the Criminal Justice and Immigration Bill following SCYJ lobbying) is not a sufficient safeguard against the incorrect application of such requirements. A mental health treatment requirement can last for up to 3 years and specify that a child is to be a resident in-patient at, for example, an independent hospital. Such a requirement should never be made without medical evidence of its necessity.

5. We also have serious human rights concerns regarding the extension **of curfew requirements** in clause 67 to a maximum of 16 hours per day for up to 12 months. A curfew for so many hours a day could constitute a deprivation of liberty for the purposes of Article 5 European Convention on Human Rights if other aspects of the sentence were unusually destructive of the life the person would otherwise have been living.¹ In order to be lawful, a deprivation of liberty must fall within one of the categories listed in Article 5. One is 'the lawful detention of a person after conviction by a competent court' (Article 5(1)(a)). The government's somewhat cursory human rights compliance assessment in relation to these clauses states that they will be lawful under Article 5 because they fall within Article 5(1)(a). However, we believe that there is a strong argument to the contrary: if the custody threshold has not been

¹ *Secretary of State for the Home Department v AP* [2010] UKSC 24 & 26.

passed (as a matter of domestic law), then the imposition of a curfew constituting a deprivation of liberty would be contrary to domestic law and therefore not 'lawful' for the purposes of Article 5(1)(a).

6. In addition to their potential illegality, we believe that such long curfews are particularly inappropriate for children. Clause 67 is an example of an adult provision (clause 60) being applied to children without consideration of their different characteristics and circumstances. Children – and particularly children who have committed offences – are particularly vulnerable to domestic violence, abuse or neglect at home, where the curfew will trap them. Their opportunity to participate in education and other positive, rehabilitative activities would be limited by such long curfews and they are likely to exacerbate existing mental health problems (of which there is a high rate amongst children who offend). There is a further risk of 'ratcheting up' with this provision; ie that sentencers will fail to use it to divert children from custodial sentences but instead will apply the longer curfews to children who otherwise would be receiving shorter ones. Such a long curfew is also likely to exacerbate hostility to the order by the child and this, together with the chaotic lives led by many children who offend, is likely to result in breach proceedings and in some cases custody.²

7. We welcome the loosening of restrictions upon **referral orders** for children (clause 65) and hope that guidance can ensure that they become a more restorative process with higher levels of victim involvement than at present. Further, we believe that they should also be extended to cases where a child is convicted after trial, providing that following the conviction they admit their involvement in the offence and agree to abide by the referral order. We also welcome the ability to conditionally discharge a child entering a guilty plea at their first conviction, although we would recommend that the criteria regarding cautioning history are removed to allow the court to choose the correct disposal on the basis of all relevant factors.

² See Prison Reform Trust, *Into the Breach*, May 2011.

8. Clause 66, which allows the court to impose repeated further periods of supervision for **breach of a child's detention and training order (DTO)**, with custody as a sanction for breach, in our view is extremely dangerous as it risks a perpetual cycle of supervision orders and periods of detention. It also risks a child or young adult leaving detention with no statutory supervision or support. The intention to ensure that the DTO is complied with is understandable, but its execution in this manner expects perfect compliance from children who, being children sentenced to custody, are likely to have chaotic home lives, and to exhibit high rates of learning disability and mental illness and high levels of welfare need. Those with the highest levels of need are most likely to breach supervision requirements and therefore enter further periods of supervision, detention, etc, further damaging their prospects. This clause is likely to compound disadvantage. If the intention is to support and rehabilitate children through further periods of supervision this would better be done by welfare services that do not form part of the sentence of the court.

9. Children as young as 12 may receive DTOs; with their youth comes a reduced ability to envisage the long-term consequences of their actions. It is important that a DTO is complied with but also that it ends on the end date envisaged when sentencing so that there is finality. If supervision after release on a DTO is breached then we believe the appropriate responses are to resume the order, fine, or alter the supervision requirements.

10. We are also concerned at clause 69, which would allow a **youth rehabilitation order (YRO) to be extended** to a maximum period of three and a half years. This is an incredibly long period in the life of a child during which enormous amounts of development take place. We believe that to aid comprehension of YROs by children and compliance by them with their terms and avoid inhibition of development they should last no longer than 12 months, as is currently the case with Youth Conference Orders in Northern Ireland.³

³ See JUSTICE/The Police Foundation, *Time for a New Hearing*, December 2010, which recommends incorporating many of the features of the Northern Ireland youth justice system in England and Wales.

11. We are further concerned at clause 70 which increases the **fine for breach of a YRO** to £2,500. Children under 16 are unlikely to have any form of independent income; fines will normally be paid by parents and in our view, therefore, a fine will rarely be an appropriate disposal since it is not aimed at the offender him/herself. Many 16 and 17 year olds are also in part or whole dependent upon their parent(s)/guardian(s). This is in part recognised in the current provisions which restrict the fine to £250 for children under 14 and £1000 for 14-17 year olds. We therefore believe that if a fine is to be available for children under 16 it should be capped at £250 and that for 16 and 17 year olds the current £1000 limit should remain.

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The Standing Committee for Youth Justice (SCYJ) www.scyj.org.uk 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: 4Children, Action for Children, Association of Panel Members, 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.