



Standing Committee for Youth Justice

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

March 2008

Youth Rehabilitation Order: Legal Representation

THE AMENDMENTS

**Earl of Onslow
Lord Thomas of Gresford
Baroness Falkner of Margravine
Lord Ramsbotham**

Schedule 1

Page 121, line 2, leave out from "not" to second "in" in line 3 and insert "make an order under Part 1"

Page 121, line 6, leave out paragraph (b) and insert—

"(b) the offender has waived his right to legal representation, having been informed that this may have a strongly negative impact upon the outcome of his case."

Page 121, line 7, leave out sub-paragraph (2)

PURPOSE

To provide that a child must be legally represented before a YRO is imposed

BRIEFING

Legal representation for children and young people

Schedule 1 part 2 paragraph 19 provides for a young person to be legally represented before a local authority residence or fostering requirement can be imposed under a YRO. However no legal representation is required before any other version of the YRO can be imposed, including even the ISS (Intensive Supervision and Surveillance) option.

This is unacceptable because:

- The particular vulnerability of children and young people means that legal representation is required for them to have a fair hearing under Article 6 ECHR – in particular where the consequences for them at the hearing are so serious;
- Breach of a YRO can result in loss of liberty;
- It is also particularly important for the court that the circumstances of the child or young person are fully explained to them in order that the suitability and proportionality requirements of s148 Criminal Justice Act 2003 are met by the YRO, and that all relevant factors are addressed. The child or young person is not well placed to achieve this.
- Inappropriate requirements imposed due to lack of legal representation may result in a high possibility of breach; similarly, it is particularly important that the terms of the order are

- explained fully to the child – for example, in conference with his or her legal representative – to avoid unnecessary breach;
- Article 6 ECHR requires that a child be given free legal representation in criminal proceedings where the interests of justice so require. Because of a child's immaturity and the severity of the consequences for them inherent in the proceedings we believe that, in the absence of an informed waiver of representation, free legal representation must be provided for children being sentenced in the criminal courts.
 - Article 12 of the UN Convention on the Rights of the Child requires that children are able to 'be heard' in judicial proceedings. In order to ensure that children can 'effectively participate' (as required in law) it will usually be important to ensure that they have access to not just representation but good quality representation - even if that process is only to ensure that they waive their right to representation on a properly informed basis with the appropriate safeguards in place (i.e. an appropriate adult).

Quality of legal representation

Recent changes to the legal aid system mean that fewer firms are now doing legal aid work (only 93% of firms renewed their criminal contract towards the end of last year). Under the new system work is now paid according to a fixed fee: therefore working with children, who necessarily take longer, will be expensive for solicitors. This leads to the legitimate anxiety that children may find it harder to find good quality representation. Given these concerns about the quality of representation for vulnerable clients in the current climate, it is all the more important that there is explicit statutory provision for representation for children.

Aim of the amendment

We therefore propose that a child or young person should be legally represented before a YRO is imposed. The proposal in the Bill that legal representation can be removed from a child because he has refused or failed to apply or has behaved badly is inappropriate for a child, who is likely to be unaware of the severity of the consequences of losing legal representation in criminal proceedings, and who – in the case of younger children – cannot be expected to apply for representation on their own account.

The JCHR concurred with this view in its recent report on the bill:

*'We are surprised to learn that there is not a presumption that children are entitled to publicly funded legal representation in criminal proceedings, given the seriousness of the consequences for them and the complex and intimidating nature of those proceedings for the child. We recommend that the Government amend the Bill to provide for a general right of legal representation for children in criminal proceedings.'*¹

The primary reason given by the Minister, Lord Hunt for resisting a similar amendment when it was debated at Lord Committee stage was that it would prohibitively expensive:

*'An estimated cost of agreeing to the noble Earl's amendment would be about £800,000. He may say that £800,000 is not a lot of money, but it is. We have to make sure when taking decisions on legal aid that we have as cost-effective an approach as possible. For those reasons I am going to resist the amendment.'*²

We do not accept this as sufficient reason to deny children their right to representation as required by international human rights standards.

For further information please contact:

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¹ JCHR (2007) Legislative Scrutiny: Criminal Justice and Immigration Bill

² House of Lord, Criminal Justice and Immigration Bill, Committee Stage, 5th February 2008. Col. 1010

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