



Standing Committee for Youth Justice

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

April 2008

Youth Rehabilitation Order: Legal Representation (II)

THE AMENDMENTS

Amendments 6, 7 and 10 (on the first marshalled list)

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

Schedule 1 Page 121, line 2, leave out "include a local authority residence requirement" and insert "make"

Schedule 1 Page 121, line 5, leave out "at the relevant time"

Schedule 1 Page 121, line 15, leave out sub-paragraph (3)

PURPOSE

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

Amendment 86 (on the second marshalled list)

**Earl of Onslow
Lord Ramsbotham**

Before Clause 59 insert the following new Clause—

"Legal representation for children under 18 in criminal proceedings

(1) Schedule 2 to the Administration of Justice Act 1999 is amended as follows.

(2) In paragraph 5, after sub-paragraph (3) insert—

"(3A) The grant of a right to representation shall be presumed to be in the interests of justice where the individual is under the age of 18 at the commencement of the proceedings.

(3B) Regulations may set out the factors to be taken into account in deciding whether the presumption in sub-paragraph (3A) is rebutted in the circumstances of a particular case."

PURPOSE

To set a presumption that young people under the age of 18 should have an automatic entitlement to legal representation.

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 amendments

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

In his response to debate on this issue on day one of Report Stage the Minister Lord Hunt stated that he had no evidence that the current system, which requires defendants to pass the interests of justice test, is depriving those who need it of representation.

'My Lords, this has been an extremely interesting debate. I congratulate the noble Earl once again on raising the matter. We have shone a light into an area which has not been discussed recently, and we have identified some areas, as he reflected, which probably need further research to discover whether people who ought to get legal representation are not getting it. The evidence for that is very slim indeed. My department has received no representations from organisations involved in the criminal justice sector to suggest that this is a genuine problem ...'

However the experience of members of the Standing Committee for Youth Justice is that decision making in this area is arbitrary and differs significantly between courts.

The table below has been compiled by SYCJ member, Just for Kids Law (JfK), which is a charity providing support, advice and representation to young people who find themselves in trouble with the law in the London region. As the data illustrates there appears to be little consistency in decision-making; of two young people in Court on the same day for possession of cannabis; one was granted legal aid and the other was refused. There are also cases here in which young people that have learning difficulties or mental health problems have been denied representation.

	Age/Personal Info	Offence	Court	Date	Representation
(1)	17 yrs/PYO	Poss of Cannabis	Acton YC	12/02/2008	Refused
(2)	16 yrs/PYO	Poss of Cannabis	Acton YC	12/02/2008 Same day, same Court as (1)	Granted
(3)	16 yrs/PYO Aspergers	Poss of Cannabis	Balham YC	2007	Refused
(4)	17 yrs/ Learning difficulties	Poss of Cannabis	West London YC	2008	Granted
(5)	17 yrs/PYO	S5 Public Order Act	West London YC	2007	Granted
(6)	17 yrs/PYO	Poss of Class A drugs	Balham YC	2007	Refused
(7)	17 yrs/ Unable to read or write	Breach of Attendance Centre Order	Uxbridge YC	2008	Refused

Source: Just for Kids Law, April 2008

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

Young Defendants Pack

On day one of Report Stage peers raised concerns about the process by which young people were made aware of their entitlement to legal representation and given information about the court processes. This has indeed been a longstanding and to date unresolved problem. The *T and V -v- UK* ECHR judgment in December 1999 identified the need to improve young defendants' and their

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

families' understanding of court procedures, to secure fairer trials. In response to this, in 2000, the then Lord Chief Justice, Lord Bingham issued a Practice Direction to the county courts stressing the importance of ensuring that the trial process should not subject young accused to avoidable intimidation, humiliation or distress and required the court and those representing a young defendant to explain each step of the trial to the young accused and ensure as far as possible their full participation in the trial. The following year the Home Office and the Lord Chancellor's Department issued joint guidance in making specific reference to the Practice Direction and the need for the Youth Court, where the majority of youth cases are held, to follow the principles embodied in the Direction.

While these steps were welcomed it was widely acknowledged that this guidance alone would be insufficient. The Youth Justice Board commissioned, and received in November 2002, a scoping study for a Young Defendants Pack ideally in DVD form, at a development cost of £100-150k.² The would provide young defendants with a wide range of information on topics including police and trial procedures, reports to court, court orders, complaints, criminal record disclosures, and pertinent to this discussion obtaining legal advice.

In March 2004, the Government, in its response to the consultation on *Youth Justice – The Next Steps*, endorsed the development of such a pack: "*We propose to develop a Young Defendant's Pack to help young people and their parents or carers understand and prepare for their court experience - to promote understanding and acceptance of responsibility. We shall also examine the scope for involving voluntary agencies in supporting them at and before court, and further promote simple language in court.*"³

Responsibility for delivering this has since transferred to HM Courts Service (HMCS). Following a thematic inspection in Sept/Oct 2006 HMICA, the courts inspectorate, recommended producing pre-court information to prepare young defendants and their parents and carers for appearance at court. HMCS accepted the recommendation and agreed to produce a model guide by February 2008 for distribution to courts. However the guide is still not available although an initial draft has been seen and commented on by members of the SCYJ. We would like to **hear from the Minister on the floor of the House what the process and timescale is for the production and roll-out of the pack.**

Furthermore, what is the timescale envisaged for development of the second phase of the project, that is a feasibility study of additional advice and support services for young defendants and their families?

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

² Plotnikoff and Woolfson, 2001

³ House of Lord, Criminal Justice and Immigration Bill, Report Stage, 26 March 2008. Col. 584

