



Standing Committee for Youth Justice

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

March 2008

Youth Rehabilitation Order (YRO): Proportionality on breach

THE AMENDMENT

**Earl of Onslow
Baroness Falkner of Margravine
Baroness Miller of Chilton Damer
Lord Ramsbotham**

Schedule 2

Page 136, line 8, at end insert ", the age of the offender and the intellectual and emotional maturity of the offender"

Page 138, line 26, at end insert ", the age of the offender and the intellectual and emotional maturity of the offender"

PURPOSE

To ensure that restrictions on liberty in a YRO are proportionate to the defendant's age, emotional and intellectual maturity.

BRIEFING

The Standing Committee for Youth Justice (SCYJ) is very concerned that that further safeguards are needed within the YRO framework to ensure proportionality.

The breach provisions in Schedule 2 cause significant concerns. Young people are prone to challenge, rebel and act on impulse; and this needs to be responded to calmly and with judgement. We are heartened to see that the Government has tabled amendments to allow decisions in relation to breach proceedings to remain subject to National Standards, rather than be governed by statute and to retain the existing power of the court when dealing with breach, to allow the order to continue, without imposing an additional punishment, where it considers that to be the most appropriate course of action. However it is still nevertheless imperative that all decisions made in relation to breach are proportionate to the defendant's age, emotional and intellectual maturity. This was an issue of concern to members of the Joint Committee on Human Rights when they considered this legislation:

'1.21 The Government's response to our inquiry has confirmed our concern that the Bill lacks adequate safeguards to ensure that the use of custody is proportionate, not only to the offence, but to the child's age and intellectual and emotional maturity, as required by the CRC. The Government's emphasis on robust enforcement for wilful and persistent breaches of a YRO, coupled with its assertion that it "needs to maintain confidence in community sentences", appears to us to give rise to a considerable risk that young people will be accelerated into custody not because of the seriousness of their offence but because of their persistent failure to comply with the terms of their community

sentences. We recommend that the Bill be amended to include an explicit reference to the requirement of the CRC that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.¹

The case for a stronger proportionality requirement on the face of the Bill

Children and young people are different from adults. Underneath this apparent statement of the obvious are physiological and psychological realities which should make a major rather than a token difference to how society – including agencies like the courts - respond to crime by young people. Teenagers – even those who are physically large and affect bravado – are developmentally well short of adulthood. The key differences are:

- The physiological development of their brains, in which the amygdala prevails over the frontal lobe. As result they are markedly more impulsive, driven more by fear and gut reactions and react much less rationally than typical adults.²
- Their emotional state. For teenagers challenging behaviour is normal, part of searching for greater independence and autonomy.³
- Their intellectual understanding and judgement. They are still learning about the world and how it works, and do not have the practical experience of situations that adults have.

Among children in trouble with the law progress towards maturity can be particularly uneven and slow because of their experiences of deprivation. This needs to be recognised in decision-making. For example the Government's Social Exclusion Unit found in a 2002 study, that those who end up in custody are amongst the most vulnerable in the country:

- Nearly half had literacy and numeracy levels lower than an average 11 year old, and over a quarter were at or below the average of 7 year olds or younger
- Over half had a history of being in care or of social services involvement.
- 40% of the girls and 25% of the boys reported suffering violence at home. One in three of the girls and one in twenty of the boys reported sexual abuse.
- 40% of the boys and 67% of the girls had serious mental health problems.
- Over half reported dependence on a drug in the year prior to imprisonment.⁴

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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

¹ Joint Committee On Human Rights (2008) - Fifth Report of session 2007-8 *Legislative Scrutiny: Criminal Justice and Immigration Bill*

² National Institute for Mental Health 2001 *Teenage brain: a work in progress*

³ Webster-Stratton & Herbert *Troubled Families – Problem Lives*; Dept of Health *Framework for the Assessment of Children in Need, 2000*

⁴ Reducing re-offending by ex-prisoners. Report of the Social Exclusion Unit (Pages 156-158)