



**Standing Committee for Youth Justice**

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

March 2008

**Accommodation in which persons aged under 18 may be detained**

**THE AMENDMENT**

**# 81 on the Revised Marshalled List**

**LORD THOMAS OF GRESFORD  
BARONESS FALKNER OF MARGRAVINE**

After Clause 53 to move the following new Clause:-

- '(1) No person aged under 18 shall be detained in a young offender institution or a secure training centre.
- (2) In section 107(1) of the Powers of Criminal Courts (Sentencing Act) 2000 (meaning of "youth detention accommodation") -
  - (a) omit paragraphs (a) and (b); and
  - (b) in paragraph (c) after "by order specify" insert "but not including a secure training centre or young offender institution".
- (3) At the end of section 92(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (detention under sections 90 and 91: place of detention etc.) substitute the full stop for a comma.
- (4) At the end of section 92(1) insert -

"provided that such place is not a secure training centre or young offender institution."
- (5) Delete sections 23(7A) and 23(7B) of the Children and Young Persons Act 1969.
- (6) Delete section 98 of the Crime and Disorder Act 1998.'

**PURPOSE**

The aim of this amendment is to prevent children who are detained on sentence or remand, being detained in either a secure training centre (STC), or a young offender institution (YOI), and to ensure that the only accommodation used for this purpose is local authority secure children's homes (SCHs).

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**BRIEFING**

The Standing Committee for Youth Justice notes the strength of feeling among Peers in relation to the care and treatment received by children in custodial settings. We welcome the commitment of

Peers to ensure human rights standards developed especially to safeguard children are reflected in criminal justice legislation. We believe this amendment provides for essential reform of children's custodial settings, if we are to stop failing children and wider society in this critical area.

At any one time there are about 3,000 children held in juvenile custody in England and Wales and over a third of these are officially classed as vulnerable.<sup>1</sup> Despite the Youth Justice Board's target of a 10% reduction in children entering custody between 2005 and 2008 (approved by the Home Office), the numbers of children entering custody have risen, not decreased. Four in every 100 children in custody are subject to a care order. Six more children have died in custody since the UK was last examined by the UN Committee on the Rights of the Child in 2002: this brings to 30 the total number of child deaths in custody since 1990. Custody is known to be one of the least effective, and most harmful, of criminal justice disposals for children, with eight out of 10 re-offending within two years of release. Public surveys show consistent and strong support for tackling juvenile crime without resort to imprisonment.

In the year ending March 2007, the Youth Justice Board spent £280 million on custody for children (notwithstanding the costs of support in the community for these children and their families). A reduction in the numbers of children in custody would release considerable resources for improved prevention and rehabilitation where it can be most effective, as noted by the Audit Commission, Public Accounts Committee<sup>2</sup> and many others.

While reducing the numbers of children in custody must be the primary aim of legislators, radical reform of custodial settings is also required to protect the human rights, safety and dignity of children who are sent to custody – and to make rehabilitation a realistic objective.

### **Application of human rights standards**

Article 37(b) of the UN Convention on the Rights of the Child ("CRC") requires that "*detention or imprisonment*" will only be used as "*a measure of last resort for the shortest appropriate period of time*".

The United Nations Rules for the Protection of Children Deprived of their Liberty require that "*the number of juveniles detained in closed facilities should be small enough to enable individual treatment*".<sup>3</sup> Facilities should be "*small-scale*" and "*integrated into the social, economic and cultural environment of the community*".<sup>4</sup>

These provisions imply that only a small number of children should ever be in custody, and that those should be in settings of high quality care.

Article 40.3 of the CRC requires States Parties to "*promote the establishment of*" child-centred settings for children. Custodial settings must be places where "*the best interests of the child shall be a primary consideration*" (CRC article 3), where children's "*survival and development*" are ensured (CRC article 6), and where they are protected from all forms of violence and ill-treatment including "*physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse*" (CRC article 19). They must be properly educated (CRC article 29) and their views must be taken seriously (CRC article 12). They must be treated with "*humanity and respect*" (CRC article 37(c)), and their rehabilitation must be promoted (CRC article 39).

The Beijing Rules<sup>5</sup> also require (rule 26.2) that "[j]uveniles in institutions shall receive care protection and all necessary assistance ... that they may require".

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<sup>1</sup> Written answer to Parliamentary Question, 28 March 2007: Column 1653W

<sup>2</sup> Committee of Public Accounts Press Notice No. 44 of Session 2005-06, dated 6 June 2006 National Offender Management Service: Dealing with increased numbers in custody (HC 788)

<sup>3</sup> United Nations Rules for the Protection of Children Deprived of their Liberty, Article 30.

<sup>4</sup> Ibid.

<sup>5</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

The fact that 29 children have died in YOIs or STCs since 1990<sup>6</sup> clearly demonstrates that these institutions are not fit for the purpose of protecting the children in their care and upholding their rights.

### **Vulnerable children**

Children sent to custody are already amongst the most vulnerable in the country. The Social Exclusion Unit found in 2002<sup>7</sup> that:

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

However, the experience of custody is rarely therapeutic and often causes further damage – both to children and to the prospects of changing their offending behaviour. Lord Carlile found in his 2006 inquiry<sup>8</sup> that some treatment of children in custody would “*in any other circumstances trigger a child protection investigation and could even result in criminal charges*”.

For such vulnerable children, it is even more important that detention settings should be child centred, and specialised to their needs.

YOIs and STCs are not tailored to meet the needs of vulnerable children. Efforts must be focused on alternatives to custody and, where custody is absolutely necessary, investing in specialist staff and settings that can meet children’s needs and facilitate their rehabilitation in a safe environment.

The failures of the current system were summed up by the comments of the Serious Case Review Panel who reported to Lancashire Safeguarding Children Board in September 2007 on the circumstances surrounding the tragic death of 14 year-old Adam Rickwood in Hassockfield STC in 2004, shortly after being restrained. Concluding that, based on the evidence available to them, Adam should probably not have been restrained, the panel commented generally that “*the ‘whole [criminal justice] system’ treated AR as a child in need of custody, rather than a child in need of care*”.<sup>9</sup>

The Panel noted that crucial gaps remain in child protection in the secure estate generally (including, for example, a lack of clarity about the legal status of children who are subject to remand to local authority accommodation with a secure requirement) but commented that “[r]egardless of their legal status, these children/young people need to be afforded the same level of care and protection as any other child”.<sup>10</sup>

There are undoubtedly some excellent specialist, child centred staff in both YOIs and STCs, who are doing their best to provide good care against insurmountable obstacles, and no criticism of them is intended. It would be desirable for their talents to be redeployed to SCHs.

### **The Prison Service – an Adult Institution**

The prison service is an adult institution. It is designed for adults, who are 96% of its clientele. This is reflected in arrangements for management, staffing, training, and regime content. Holding children in Prison Service accommodation is in direct contravention of article 40.3 of the CRC which requires detention facilities to be “*specifically applicable to children*”.

<sup>6</sup> Bromley Briefings – Prison Factfile, Prison Reform Trust, page 21.

<sup>7</sup> Reducing re-offending by ex-prisoners. Report of the Social Exclusion Unit (Pages 156-158)

<sup>8</sup> Howard League, February 2006: “An independent inquiry into the use of physical restraint, solitary confinement and forcible use of strip searching in prisons, secure training centres and local authority secure children’s homes”.

<sup>9</sup> Report of the Serious Case Review Panel upon the circumstances surrounding the death of AR at Hassockfield Secure Training Centre on 9<sup>th</sup> August 2004 (LSCB, 3 September 2007), Part II, page 12, first para.

<sup>10</sup> Ibid, page 12, second para.

YOIs that hold children are managed by area managers with generic responsibility for all prisons. This creates the real risk that balancing the demands of adult prisons with those of children's custody will jeopardise a genuinely child centred approach.

Within YOIs, the lack of specialist children's management means that to further their careers, prison managers with an aptitude and interest in working with children have to move to posts in the adult prison service, thus limiting the build up of children's expertise and experience. Similarly recruitment of prison service operational staff is insufficiently specialised, so that staff may not have a particular interest in working in child custody as opposed to adult facilities. In such circumstances there may well be a much stronger emphasis on security, control and the prevention of escape, than on child welfare.

Several key bodies have recommended we move away from prison settings for children. These include the Parliamentary Joint Committee on Human Rights<sup>11</sup>, the International Centre for Crime and Justice Studies at King's College<sup>12</sup> and the Local Government Association.<sup>13</sup> The Joint Committee on Human Rights stated in 2004 that "*local authority secure accommodation should be used wherever possible for children, with use of prison service custody reduced to an absolute minimum*".

Recent reports from the Chief Inspector of Prisons raise serious concerns. A report published in February 2006<sup>14</sup> raises concerns about children self-harming in prison (1,324 incidents in 2004-05 – that is 25 incidents of children self-harming in prison every week). Anne Owers repeats concerns about the use of force on children in prison, commenting, "*In many establishments, a significant proportion of child protection referrals concern allegations of abuse or rough handling during the use of force; some have resulted in injuries, such as broken bones*". In her most recent report<sup>15</sup> the Chief Inspector describes her continuing concern about unresolved issues and goes on to say, "*Underlying these (issues) is the question of whether prison is the right or appropriate environment for many of the young people who end up there – and in growing numbers which siphon off the resources needed to provide appropriate mental health services, and other support mechanisms and interventions in the community*".

YOIs are clearly not settings "*specifically applicable to children*" and their use for custody for children should be stopped.

### **Secure Training Centres – Unfit for the Purpose of Caring for Children**

In 1994, when in opposition, the Labour Party opposed the introduction of STCs and instead advocated the use of SCHs.

STCs are institutions designed and run on Prison Service lines. The Secure Training Centre Rules 1998 ("STC Rules 1998") are based on the Young Offender Institution Rules 1988 and similarly fail to take a child centred approach.

STCs are, moreover, run by private companies seeking to make profits for their shareholders. There is therefore the clear potential for a conflict of interest for those who own and manage STCs, between children's welfare and commercial concerns.

There are serious concerns that training received by STC staff is not adequately child centred, and concentrates on areas of security, control, and the prevention of escape. The recent avoidable deaths of Gareth Myatt and Adam Rickwood in STCs have both been the subject of inquests in which the running of the relevant STCs was heavily criticised by the coroners. Both deaths were linked with a restraint episode.<sup>16</sup> The Lancashire Safeguarding Children Board's report on the death of Adam

<sup>11</sup> JCHR (December 14 2004) Third Report; deaths in custody.

<sup>12</sup> Allen, R. (September 2006) "From punishment to problem solving – a new approach to children in trouble".

<sup>13</sup> "A Position Paper: Children in Trouble" (LGA, June 2006).

<sup>14</sup> Annual Report of HM Chief Inspector of Prisons for England and Wales 2004/2005, page 56.

<sup>15</sup> Annual Report of HM Chief Inspector of Prisons for England and Wales 2005/2006, page 44.

<sup>16</sup> See INQUEST briefings on the deaths of Gareth Myatt and Adam Rickwood: [www.inquest.org.uk](http://www.inquest.org.uk)

Rickwood<sup>17</sup> echoes these concerns, recommending that “[t]he use of restraint in the whole of the secure estate is reviewed nationally...”. By contrast, no child has died in a SCH.

The culture that pertains in STCs is not child centred or child friendly. Their design and layout is based on a model for adult prisons, with small, spartan cells and communal areas that are designed for security and control. This is in contrast to the more homely and child friendly design of SCHs.

STCs are unfit for the purpose of caring for children, and their use for the custody of children should stop.

### **Conclusion**

YOIs and STCs are intrinsically unsuitable for caring for children in custody and their use for this purpose should stop. This goal will be hard to achieve with the current, unjustifiably high level of children’s custody, and it is likely that plans to phase out the use of YOIs and STCs will have to be co-ordinated with reductions of the children’s custodial population.

### **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

<sup>17</sup> Report of the Serious Case Review Panel upon the Circumstances Surrounding the Death of AR at Hassockfield Secure Training Centre on 9<sup>th</sup> August 2004.