



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

March 2008

Youth Rehabilitation Orders: Pre–Sentence Reports

THE AMENDMENT

46 (on the Revised Marshalled List)

Lord Kingsland
Lord Henley

After Clause 9 insert the following new Clause–

“Pre-sentence report

(1) Section 156 of the Powers of Criminal Courts (Sentencing) Act 2000 (c.6) is amended as follows.

(2) Add new subsection

‘(9) In a case where an offender is aged under 18, the pre-sentence report considered by the court under this Section before it imposes a community sentence or custody must be in writing.’”

PURPOSE

To ensure that before a court imposes a community sentence or custody on a child or young person, it shall have considered a written Pre-Sentence Report (PSR).

BRIEFING

Background

At previous stages of the Bill amendments have been debated that aim to ensure that a Youth Rehabilitation Order's (YRO's) total restriction on liberty is proportionate taking into account offence severity and the young person's age, emotional and intellectual maturity. In the course of debates on these amendments, the Pre-Sentence Report (PSR) has been cited by Ministers as a key tool for making available the necessary information to allow sentencers to ensure that sentences are proportionate to the individuals' circumstances. However the Standing Committee for Youth Justice (SCYJ) has some concerns that the current framework surrounding the operation of PSRs is inadequate to guarantee that this is the case.

The current situation

Under section 156 Powers of Criminal Courts (Sentencing) Act 2000 a PSR is already before a court can impose a higher tariff community sentence or custody. The current National Standards clearly state that this PSR **must be in writing**. However an anomaly is created by the existence of what is know as a 'Stand Down' report. National Standards state that where it will facilitate the prompt conclusion of a case and where there are recent reports (but no time limit is given on what should be considered recent), the YOT may prepare a report **verbally** or in writing on the same day as the court hearing on a 'stand down' basis.

National Standards state that rigorous quality assurance arrangement must be put in place for monitoring and evaluating the quality of PSRs but no such standards are in place for 'stand down' reports. In addition there is no indication from the YJB of what the minimum quality standard is. There is no clear guidance on what is considered 'recent', YOT's will have varied views on the length of time after which a report becomes 'old'; anything between a matter of weeks up to 6 months and possibly longer. Pressures placed on the Court in

respect of the 'Swift Administration of Justice agenda' is influential in persuading YOT's to deliver these verbal reports or 'stand down reports'.

The Minister resisted this amendment at Lords Committee Stage saying that a 'stand down' report would only be permitted in the case of a minor offence. Such a cases usually require Specific Sentence Reports that address the possibility of first tier sentences – discharges, reparation orders and referral orders. Those reports may legitimately be given orally, and the SCYJ is not pressing for any change affecting them.

However we understand from leading practitioners that some more serious cases – leading to community sentences or custody – are in practice the subject of oral PSRs. See for example case study below:

CASE STUDY

On April 4th 2007 Camberwell Youth Court insisted that the YOT should table the last PSR presented on a child in a previous case, so that it could move to sentence without adjournment. The child had entered a guilty plea on the new offence of attempted dwelling burglary and was sentenced to custody - something the old PSR had not addressed because the child at that stage was only being considered for a community penalty.

The primary concern about this is that the 'recent' report may be out of date or otherwise irrelevant to the sentence now under consideration. In looking to the future, if the sentencing Court is to offer assurances before a custodial sentence can be made that the alternatives including the ISS and Intensive Fostering options been fully considered how can they do so if the report is not current? The Court would not be able to claim to have given full consideration to other alternatives without being told what the other alternatives would involve, the court would need to consider a concrete plan and they cannot without a current written report that has been quality assured.

To ensure that this practice is ended on the ground the law can readily be clarified by the updated amendment proposed above, which makes it clear that **PSRs before community sentences or custody must be in writing**. If contrary to our information the Minister maintains that they always are, he should have no reason to object to its going into statute.

However the Minister may well say that it is sufficient to rely on revision of and better monitoring of compliance with YJB national standards to ensure that reports are submitted in writing. **In this case we would like to hear assurances from the Minister on the floor of the House about the process and timescale he has for ensuring that such improvements are made.**

For further information please contact:

Simon Hickson, Policy Adviser (Children in trouble with the law), The Children's Society
Email: simon.hickson@childrenssociety.org.uk Tel: 020 7841 4509
Katherine Hill (née Sullivan), Parliamentary Adviser, The Children's Society
E Mail: katherine.hill@childrenssociety.org.uk Tel: 020 7841 4480

*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

ANNEX

Extract from Joint inspection of Youth Offending Teams - Annual Report 2006/2007

REPORTS TO COURT (pp 38-39)

'Over the year we read more than 600 reports...

In many YOTs, the quality of pre-sentence reports often brought the overall score for this section down. Whilst sentencers were usually very satisfied with the quality of reports, inspectors felt that they could be better and assessed the overall quality of reports as sufficient or excellent in just over half of those seen. As a document, the pre-sentence report should be objective but also persuasive as it is the 'shop window' of the YOT work. The current high numbers of children and young people in secure establishments, both over time and in comparison with other countries, suggests that we can afford to deal with more in the community without a detrimental effect on crime statistics.

Thus, the pre-sentence report is a document which in most cases will be outlining how that individual can be deterred from offending whilst in the community. Its success depends on whether it can put a persuasive case forward to the sentencer to use a community disposal that is likely to be less damaging to the individual but can also protect the public from harm and reoffending. Excellent relationships may exist between the YOT and sentencers, but the proof is in the confidence of the sentencer to go with the proposal....

STRENGTHS

- Almost all children and young people were interviewed at least once for the purpose of the report, with parents/carers included in most cases
- A clear proposal, commensurate with the seriousness of the offence, was included in almost all reports
- Report content was free from discriminatory language and stereotypes.

AREAS FOR IMPROVEMENT

- 20% of reports were not based on Asset.
- A description of the offence, as distinct from an analysis, was present in just over half of reports. Clear likelihood of reoffending and Risk of Harm differentiation was not present in 47% of reports, and how the report dealt with issues of Risk of Harm was sufficient or excellent in only 45% of those read.
- Victim impact was not adequately addressed in almost two-thirds of reports.
- Whilst safeguarding issues had been identified in three-quarters of reports, attention had been paid to vulnerability (i.e. Risk of Harm from self or others) in 61%.
- We analyse our data based on gender and race/ethnicity but overall we did not find statistically significant variation in the data between either of these categories.

... We have drawn to the attention of the Youth Justice Board our view that there should be more guidance on pre-sentence reports and our understanding is that this will be available in 2008.'

¹ Joint Inspection of Youth Offending Teams – Annual Report 2006/2007