



Standing Committee for Youth Justice

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

March 2008

Youth Rehabilitation Order (YRO): Proportionality

THE AMENDMENT

Schedule 1, page 128, line 6, at end insert—

‘Emotional and intellectual maturity

28A Before making a youth rehabilitation order, the court must obtain and consider information about the offender’s age and emotional and intellectual maturity.’.

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 in the sense of not overloading a sentence. Indeed we fear that a court’s desire to address relevant welfare issues alongside re-offending ones in sentence conditions could even be the straw that breaks the child/ young persons’ back in terms of capacity to comply. YROs should be proportionate to the emotional and intellectual maturity and capacity of the young offender.

While there is a general proportionality requirement by virtue of s148 Criminal Justice Act 2003, this refers only to the seriousness of the offending. S148 also requires that the requirements be ‘suitable’ for the offender, but there is no specific mention in the youth justice context of the age and developmental maturity of the child or young person. Clearly, these are factors that should significantly influence the onerousness of the obligations placed upon them at sentence.

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.¹
- Their emotional state. For teenagers challenging behaviour is normal, part of searching for greater independence and autonomy.²

¹ National Institute for Mental Health 2001 *Teenage brain: a work in progress*

² Webster-Stratton & Herbert *Troubled Families –Problem Lives*; Dept of Health *Framework for the Assessment of Children in Need, 2000*

- 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.

Those in trouble with the law have often had extremely poor starts in life

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 sentencing. 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.³

Proportionality in relation to the defendant's age, emotional and intellectual maturity

The amendment proposed would require that the Youth Rehabilitation Order's (YRO's) total restriction on liberty must be proportionate taking into account offence severity and the young person's age, emotional and intellectual maturity. It aims to minimise the risk of courts, faced with a large menu to choose from, overloading the programme content and requirements of individual sentences. Young people are easily overwhelmed by apparently excessive demands and the risk is that they could be set up to fail.

A further risk is that the breadth of the menu will lead courts to try through a criminal justice sentence to tackle risks *to*, alongside risks *from*, young people in trouble with the law – in other words, to try to adopt a problem-solving approach to health, family, housing etc problems experienced by the child or young person which have become apparent to the court. Whilst risks to children and young people can certainly be relevant to offending behaviour it is inappropriate to tackle them by imposing breachable criminal justice obligations on young people. There needs to be something reminding sentencers that they should not attempt to solve all the child's problems by overloading the YRO requirements.

When a similar amendment was debated in the House of Commons the Minister David Hanson MP resisted it, arguing that the Bill already refers to the need to '*have regard to welfare*' when sentencing in clause 9(3) and to obtain information about and '*have regard to the offender's family circumstances*' in schedule 1 paragraph 27, before making a YRO. He did not respond to the question of why family circumstances were thought appropriate for inclusion in the primary legislation but not other circumstances as suggested by the amendment.

We recognise that in due course there will be Sentencing Guidelines Council and administrative guidance on the operation of the new sentencing structure. However the total weight of obligations in a sentence is an important matter which really should be in statute – just as the present narrower proportionality to the offence requirement is.

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³ Reducing re-offending by ex-prisoners. Report of the Social Exclusion Unit (Pages156-158)

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