Standing Committee for Youth Justice

CRIMINAL JUSTICE AND IMMIGRATION BILL
HOUSE OF LORDS – REPORT STAGE
March 2008

Powers of the court in relation to breach of a youth rehabilitation order: sentences available

THE AMENDMENTS

Baroness Falkner of Margravine
Baroness Miller of Chilthorne Domer

Schedule 2

Page 136, line 44, leave out sub-paragraphs (12) to (16)

Page 139, line 10, leave out sub paragraphs (11) to (15)

Purpose
To preclude the court from imposing an intensive supervision and surveillance requirement, or a custodial sentence, for breach of a youth rehabilitation order where the original offence did not warrant custody or was non-imprisonable.

BRIEFING

The Bill's proposal
The Bill provides that, in the event of a 'wilful and persistent failure to comply', the court can:

- Impose an intensive supervision and surveillance (ISS) requirement, even if the original offence was not sufficiently serious to warrant it
- Where the requirement breached is intensive supervision and surveillance make a custodial sentence even if the original offence was not so serious that custody could have been imposed
- Where the requirement breached is intensive supervision and surveillance, impose a detention and training order of up to four months even if the original offence is non-imprisonable.

Concerns
The SCYJ is concerned at these proposals for a number of reasons.

1. First, there has been a considerable rise in the number of cases returned to court for breach in recent years. In 2000, for instance, just 7% of supervision orders imposed on young people were breached; by 2004, that proportion had risen to 21%. The escalation in enforcement proceedings is one of the factors driving high levels of custody, since the proportion of breach proceedings resulting in a custodial outcome also rose over the same period, from 18% to 25%.[1] The provisions in the Bill are likely to exacerbate this trend.

[1] Bateman T (2006) 'Youth justice news' in *Youth justice,* 6(1)

2. Breach of intensive supervision and surveillance programmes (ISSP) is already particularly high. During 2005/ 06, for instance, 2,738 young people were returned to court for non-compliance with ISSP, representing almost half of those commencing the intervention. Moreover, breach in such cases increasingly results in custody. In the same year, 1,540 young people were sentenced to custody for failing to comply with an ISSP, equivalent to almost 22% of custodial penalties imposed during the year, and representing a rise of 98% over the previous 12 months.[2] In these circumstances, making intensive supervision and surveillance available to young people whose original offending did not warrant it, will almost certainly increase non-compliance and lead to a further escalation in the use of custody, particularly given that proposal relates to young people who have found it difficult to cooperate with less restrictive forms of intervention.

3. The SCYJ considers that the purpose of introducing an ISS requirement as a possible element of YRO is to provide a robust and credible alternative to custody. There is considerable evidence that where such measures are available in cases which would not otherwise attract custody, that tends to undermine their effectiveness as an alternative.[3] In that event, the ISS would not serve to constrain the use of custody in the manner anticipated.

4. To allow the use of custody in cases where the original offence was not sufficiently serious to warrant it, is not obviously consistent with the purposes of sentencing contained in the Bill. There is no evidence that such a response would prevent offending, reform or rehabilitate, protect the public, encourage reparation, or promote the welfare of the young person. Nor, by definition would it constitute a proportionate punishment. Conversely, there is considerable evidence that disproportionate responses to young people's offending behaviour are likely to increase recidivism.[4] In addition, to permit custody where the offending does not warrant it, does not appear to be consistent with the requirement is Article 37 of the United Nations Convention on the Rights of the Child that custody for children 'shall be a measure of last resort'.

5. Finally, the proposal that a custodial sentence should be available for a non-imprisonable offence is in the view of the SCYJ wrong in principle, particularly where the defendant is a child. There is no equivalent provision for adult offenders in breach of a community order. The SCYJ believes that the Government's proposal is not therefore compatible with equal treatment on the basis of age, and may contravene Article 14 of the European Convention on Human Rights.

The amendment

The amendment would limit the powers of the court where it revokes a youth rehabilitation order, and re-sentences the young person for the original offence, to those that are commensurate with the seriousness of that offence and any associated offending.

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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,

[2] Derived from Youth Justice Board (2007) *Youth justice annual statistics – 2005/ 06.* London: Youth Justice Board

[3] Nacro (2005) *A better alternative: reducing child imprisonment* London: Nacro

[4] See for instance McAra, L and McVie, S (2007) 'Youth Justice?: The Impact of System Contact on Patterns of Desistance from Offending' in *European journal of Criminology 4(4)*