



Standing Committee for Youth Justice

POLICING AND CRIME BILL
HOUSE OF COMMONS – REMAINING STAGES
19 May 2009

PART 2 – Sexual Offences and Sex Establishments

Amendment to offence of loitering etc. for purposes of prostitution

Amendment

Dr Evan Harris

NC4

To move the following Clause:—

‘(1) The Street Offences Act 1959 (c. 57) is amended as follows

(2) In subsection (1) of section 1, after “prostitute”, insert “aged 18 or over”.

Purpose

To exempt children from the offence of loitering or soliciting for the purposes of prostitution

Briefing

The Standing Committee for Youth Justice (SCYJ) regrets that, despite the Government’s repeatedly stated intention to make clear that involving children in prostitution is a form of child abuse, this Bill does not abolish the power to prosecute a child over the age of ten for offences under s.1 Street Offences Act 1959 which the Bill amends.

This view is shared by the Joint Committee on Human Rights which made the following recommendation in its recent scrutiny report on the Policing and Crime Bill:

We are therefore unconvinced by the Government’s explanation of the continuing need for the criminalisation of children involved in prostitution, which is in direct opposition to the conclusions of the UN Committee on the Rights of the Child. In particular, we are not persuaded by the assertion that the criminal justice system may be needed to enable children to access support. The provision of revised guidance is insufficient to address our central point of concern. We recommend that the Government reconsider its opposition to decriminalising children involved in prostitution and suggest an amendment to the Bill below:

Page 16, line 28, clause 15 after “person” insert “aged 18 or over”.¹

¹ The Joint Committee on Human Rights (April 2009), Tenth Report of Session 2008-09, Legislative Scrutiny: Policing and Crime Bill, p.25

Children and young people have a right to be protected from all forms of sexual exploitation including involvement in 'on street' prostitution and this right is enshrined in both international conventions and domestic legislation. Articles 34 and 39 of the UN Convention on the Rights of the Child require states to take action to protect children from sexual exploitation and take measures to enable them to recover from the impact of exploitation. Guidance which accompanied the 1989 Children Act outlined the duties on local authorities to safeguard and treat exploited children and the Sexual Offences Act 2003 introduced new offences in relation to exploitation.

Because of the nature of exploitation it is difficult to estimate how many children and young people may be involved. But in 2005/6 Barnardo's services worked with 2148 young people² aged between 12 and 24 and research undertaken by them in 2005 indicated that as many as 1000 young people in London alone were at risk of or involved in exploitation.³

The sexual exploitation of children takes many different forms which may include involvement in 'formal' prostitution. It is only relatively recently that there has been a recognition that children and young people who would once have been referred to as 'child prostitutes' should be seen and treated as abused children in need of care and protection and much progress has been made to develop preventative work and services to enable children and young people to 'escape' and recover from exploitative situations and relationships. A crucial part of the change in responses to these children and young people has been the understanding that they do not choose (as most of us would understand the concept) to be involved. In all cases of exploitation, including 'on street' prostitution, those exploiting the children and young people will have power over them by virtue of their age, gender, physical strength or economic or other resources. While some element of intimidation is common, the involvement in exploitation is characterised for the child or young person by 'choices' borne out of their social, emotional and economic vulnerability.

Research indicates that children likely to be most at risk of sexual exploitation are those who have had a disrupted family life, including being in care; a history of abuse and disadvantage; disengagement from education; poor mental or physical health and a history of going missing from home or care.⁴

Children and young people will not initially recognise or acknowledge that they are in exploitative situations and assisting them to 'escape' is not something that can be done quickly. Many children and young people will return to these situations several times and while this may be seen as a 'persistent' choice we would argue that this is not the case given their histories, background and circumstances.

It is to be commended that during the passage of the Criminal Justice and Immigration Act 2008 when these measures were previously discussed the Minister acknowledged that children involved in sexual exploitation are victims and said that he wishes to give a '*clear message that child sexual exploitation is a grave crime that will not be tolerated and that the child is always the victim*'.⁵ This position is reiterated in the statutory guidance *Safeguarding children involved in prostitution*, which is currently being updated.⁶ It is therefore difficult to see that there could be any argument for retaining a criminal prosecution measure that is applicable to the victim of the crime. **There are no other circumstances where this would be the case.**

In its concluding observations on the United Kingdom, published on 3 October 2008, the United Nations committee on the rights of the child recommended that '*The State party should always*

² Barnardo's (2006) *Fact Sheet: 'Sexually Exploited Girls'*, London

³ Harper, Z and Scott, S (2005) *Meeting the needs of sexually exploited young people in London*, Barnardo's, London

⁴ Barnardo's (2006) *Reducing the risk*

⁵ Hansard, House of Commons Tuesday 27th November. Column 537ff

⁶ DoH (2000) *Safeguarding Children involved in Prostitution*

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4006037

*consider, both in legislation and in practice, child victims of these criminal practices, including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders.*⁷

The numbers of children aged under 18 who have been prosecuted under s.1 of the Street Offences 1959 are extremely low – one prosecution and two cautions in 2005.⁸ We believe that this is another demonstration that there is no reason to keep this offence for under 18s on the statute book and would argue therefore that the provision should be removed.

The harmful effect of maintaining the power to prosecute

Furthermore the fact that the offence remains is potentially very damaging, because even though the levels of prosecution are very low the young people on the street are not aware of that. What they will know, or be told, is that it continues to be illegal and therefore they are at risk of prosecution. That alone is likely to make a young person sceptical of working with the authorities.

Even more worrying, however, is research that suggests that continuing to criminalise young people in this way actively assists the controlling influence of those who exploit them. It has been demonstrated that ‘pimps’ are able to exercise control by threatening to report the young people to the police. Literature on the use of threats within domestic child abuse demonstrates that such threats can seem real and exercise a controlling influence over a child or young person and yet again this literature appears to be ignored.⁹

Fear of the police can also result in young people taking health risks; children involved in commercial sexual exploitation may be reluctant to be found with condoms for fear that this may be used as evidence against them on charges of loitering and soliciting.¹⁰ This is obviously very concerning as it puts both young people and their clients at increased risk of HIV infection and other sexually transmitted diseases, as well as risk of becoming pregnant.

The current legal situation undermines the excellent work which has been done by Government and others to place the focus on the crimes committed by the exploiters and is contrary to the approach which acknowledges the vulnerability of these children and young people and the need to offer persistent and long term support to enable them to disengage from exploitative and abusive situations and relationships. The Bill must abolish the power to prosecute children for prostitution.

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.

Members are: Action for Children, Association of YOT Managers, Barnardo’s, Catch22, Children Law UK/TACT, The Children’s Society, Children’s Rights Alliance for England, Council for Disabled Children, The Howard League for Penal Reform, Just for Kids Law, JUSTICE, Nacro, National Youth Agency (NYA), National Association for Youth Justice (NAYJ), NCB, NSPCC, The Prince’s Trust, Prison Reform Trust, Sainsbury Centre for Mental Health, Secure Accommodation Network, SOVA and VOICE.

The contents of this briefing do not necessarily reflect the views of all member organisations

⁷ UN Committee on the Rights of the Child (2008) Consideration of reports submitted by states parties under article 44 of the Convention. Concluding observations: United Kingdom of Great Britain and Northern Ireland . para. 74

<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

⁸ *ibid.*

⁹ Gillespie. A. A., Web Journal of Current Legal Issues (2007) Diverting children involved in prostitution.

¹⁰ Carsick, L., (2002), “Youth prostitution: A literature review.” In Child Abuse Review v 11, issue 4 pp 230-52, especially p. 240, p. 48