

## Criminal Justice & Courts Bill

### House of Lords – Committee Stage (Day Two)

### Monday 21 July 2014

The Criminal Justice and Courts Bill is the fourth Ministry of Justice-led criminal justice bill introduced by the Coalition Government. Plans for secure colleges and mandatory prison sentences for knife possession could drive up the numbers of children and young people in custody following a welcome period of decline both in youth imprisonment and youth crime. This briefing prepared for the House of Lords Committee Stage (Day Two) debate focuses on key amendments to the Bill including:

#### Part One

- Clause 25: Possessing an offensive weapon or bladed article in public or on school premises: sentencing for second offences for those aged 16 or over

#### Part Two - Secure colleges

- Amendments to remove secure colleges from the Bill (Clause 29, Clause 30, Schedule 5 and Schedule 6)
- Parliamentary scrutiny and oversight of secure college provision (43, 43A, 43C, 43D, 44, 44A)
- Size of secure colleges (43A, 43C, 43D)
- Girls and children under 15 (42F, 42G, 43C)
- Use of force (42L, 42M, 42N, 46, 46A, 46B, 46C)
- Provision in secure children's homes (42E, 42K)
- Standards of educational and welfare provision; minimum safeguards and requirements; staff training and qualifications (42H, 43C, 43D, 44A, 44B, 44C, 45, 45A, 47, 48)
- Sentencing guidelines in respect of secure colleges (43B)

#### For further information contact:

Mark Day | Head of Policy and Communications  
020 7689 7746 | [mark.day@prisonreformtrust.org.uk](mailto:mark.day@prisonreformtrust.org.uk)

Alex Hewson | Policy and Programmes Officer  
020 7689 7738 | [alex.hewson@prisonreformtrust.org.uk](mailto:alex.hewson@prisonreformtrust.org.uk)

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. PRT provides the secretariat to the All Party Parliamentary Penal Affairs Group. [www.prisonreformtrust.org.uk](http://www.prisonreformtrust.org.uk)

**Clause 25: Possessing an offensive weapon or bladed article in public or on school premises: sentencing for second offences for those aged 16 or over**

LORD MARKS OF HENLEY-ON-THAMES  
BARONESS HAMWEE  
LORD DHOLAKIA  
LORD PADDICK

*The above-named Lords give notice of their intention to oppose the Question that Clause 25 stand part of the Bill.*

This amendment would remove Clause 25 from the Bill. Clauses 25 would impose a mandatory jail sentence of at least six months on people aged 18 or over, and at least four months on people aged 16 and 17, for a second conviction of carrying an offensive weapon or having an article with a blade or point in a public place or on school premises. The Clause was introduced at Report Stage in the House of Commons as a result of amendments to the bill tabled by the Conservative MP Nick De Bois.

The new Clause will lead to the inappropriate imprisonment of children and young people. While the Government has yet to provide an impact assessment of the clause, we estimate that it could lead to the imprisonment of around 200 children and 2,000 adults per year. Knife crime is a serious problem in some inner-city communities but the term covers a wide-range of offences from those involving threat or injury to the much less serious offence of possession. Research shows that the majority of children and young people who carry knives do so out of fear and for protection; not to threaten or injure others.<sup>1</sup> The number of possession-related offences has fallen by 34 per cent for children and 23 per cent for adults over the past three years.<sup>2</sup> Over the same period levels of youth crime and the numbers of children in custody have also declined. Courts already have sufficient powers to deal appropriately with repeat offenders and the existing framework is working to deter children and adults from committing further knife possession offences.

The new Clause is likely to lead to children and young people being exposed to more serious offenders in prison. It is also likely disproportionately to affect black and ethnic minorities who are already over-represented in the child and adult prison population. This is because a significant proportion of knife possession offences are likely to be detected through stop and search and black people are up to seven times more likely to be stopped and searched than white people.<sup>3</sup> The Home Affairs Select Committee is currently conducting an inquiry into gangs and youth crime.<sup>4</sup> Its remit includes “*the effectiveness of current law enforcement and legislation, including gang injunctions, knife and gun crime legislation*”. In its 2009 report on knife crime, the Committee said “*evidence suggests that the prospect of a custodial sentence may not deter young people from carrying knives*”.<sup>5</sup> It would be premature of Parliament to legislate in this area without the opportunity to take into the account the findings and recommendations of the Committee’s new inquiry. **We would urge Peers to seek to remove this new Clause from the Bill.**

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<sup>1</sup> Stephen Roe and Jane Ashe, Young People and Crime: findings from the 2006 Offending, Crime and Justice Survey, Home Office Statistical Bulletin (Home Office, July 2008), p.14

<sup>2</sup> Table 2, Knife possession sentencing quarterly brief: January to March 2014

<sup>3</sup> Home Secretary Theresa May gave a statement to Parliament on police stop and search powers <https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers>

<sup>4</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news/140327-new-inquiry-gangs/>

<sup>5</sup> Home Affairs Committee (2009) Seventh Report: Knife Crime.

## **Part 2**

### **Secure Colleges**

#### **Amendments to remove Secure Colleges from the Bill**

Clause 29, Clause 30, Schedule 5 and Schedule 6 introduce provision for secure colleges for boys and girls aged 12-17. This builds on plans in the recent Government consultation, Transforming Youth Custody. The Prison Reform Trust, together with the Standing Committee for Youth Justice of which the Prison Reform Trust is a member, has serious concerns regarding the Government's proposals for secure colleges. **We urge Peers to oppose the question that Clause 29, Clause 30, Schedule 5 and Schedule 6 stand part of the Bill.**

However, if plans for secure colleges go ahead, safeguards are needed in the primary legislation to ensure that, as far as possible, the establishments meet the needs of detained children, provide a decent education and promote rehabilitation. Existing provision for vulnerable groups should be maintained and protected. This requires effective Parliamentary scrutiny and oversight of the Government's plans. **We urge Peers to speak in support of the amendments below which seek to address specific concerns regarding provision for secure colleges.**

#### **Amendments to improve Parliamentary scrutiny and oversight of secure college provision - 43, 43A, 43C, 43D, 44, 44A**

These amendments seek to improve Parliamentary scrutiny and accountability of secure college provision. Secure colleges are an expensive experiment at a time when youth justice budgets are being stretched. The "pathfinder" secure college will cost £85million. At the same time the MoJ budget has been cut and youth offending teams and other services are being squeezed. No new money has been made available for the "pathfinder" so further cuts will be made to existing services to pay for it. With youth crime falling and the number of children in custody at a record low, the money would be better spent on improving provision in existing establishments instead of diverting limited resources to a new and unneeded institution.

Secure colleges have little evidence base and no small-scale pilots have been tested. There is a lack of detail in the Bill about exactly what secure colleges will look like – for instance there is no detail on the education to be provided. The Government has already commissioned a contractor to build the pathfinder secure college but has not yet commissioned a provider of the service. There is scant detail in the Bill on how they will be run, who will run them, and how they will ensure standards of teaching, welfare and safeguarding of vulnerable children in their care. Parliament is not being provided with adequate detail and is instead being asked to trust that all of these issues will be dealt with in rules and guidance, rather than spelt out in statute. The Government has promised to consult on the Secure College Rules to assist scrutiny of the Bill. However, it is likely that the consultation will be completed after the Bill has finished its passage through Parliament, thereby limiting effective Parliamentary scrutiny and oversight of the Rules.

**We support amendments tabled by Peers which seek to improve Parliamentary scrutiny and oversight of secure college provision.**

#### **Amendments which seek to limit the size of secure colleges – 43A, 43C, 43D**

These amendments variously seek to limit the size of secure colleges along with other provisions. The proposed size of secure colleges (300 plus) is too large given the needs of,

and challenges presented by, children and young people in serious trouble with the law. It also mitigates against the guiding principle of closeness to home and the development of good family contact and links with local authorities for children in care. Small, local, intensively staffed units are safer and more effective than putting hundreds of teenagers together in over-large institutions. Of the 16 deaths of children in custody since 2000, all occurred in young offender institutions (YOIs) and secure training centres (STCs) – the largest types of institution in the secure estate for children. None occurred in secure children's homes (SCHs). In its recent report on the Bill, the Joint Committee on Human Rights said: “*We emphasise the importance of existing international human rights standards to [secure college] provisions: for example, that the State should set up small open facilities where children can be tended to on an individual basis and so avoid the additional negative effects of deprivation of liberty; and that institutions should be decentralised to allow for children to continue having access to their families and their communities.*”<sup>6</sup>

**We support amendments tabled by Peers which seek to limit the size of secure colleges.**

**Amendments which seek to exclude girls and children under 15 from secure college provision – 42F, 42G, 43C**

These amendments seek to exclude girls and children under 15 from secure colleges. Plans for secure colleges to hold such a diverse age group, holding children as young as 12 with 17 year olds, as well as mixing boys and girls together in one large establishment, present serious safeguarding risks. There are a very small number of girls and younger children in custody: in 2012/13, 95% of children in custody were male, 96% were 15-17 years old. This means each secure college will hold a very small number of young children and girls with a large number of older boys. The Government does not seem to have assessed the impact of secure colleges on girls and younger children. The Joint Committee on Human Rights said: “*We note that the Government does not appear to have carried out any equality impact assessments of the proposed secure colleges policy, and we recommend that such assessments should be carried out and made available to Parliament at the earliest opportunity, assessing in particular the impact on girls and younger children of detaining them in large mixed institutions holding up to 320 young people including older children up to the age of 18.*”<sup>7</sup>

One of the Government’s main arguments against removing young children and girls from secure colleges is that a mix of age ranges and genders are already held together in STCs and SCHs. However, STCs and SCHs are much smaller units than the proposed 300-place secure college, where it is easier to create a sympathetic environment in which children can mix safely and securely. Small local units can provide intensive support, close to a child’s home, with well-trained and highly qualified staff and high staff to child ratios. The Government proposes to hold young children in secure colleges in separate units. However, a variable population makes it difficult for staff to meet the specific needs of certain groups. The Youth Justice Board (YJB) has moved away from the use of split sites and young people held on split site young offender institutions (YOIs) consistently reported poorer experiences than in dedicated YOIs.

**We support amendments tabled by Peers which seek to exclude girls and children under 15 from secure college provision.**

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<sup>6</sup> Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill - Human Rights Joint Committee

<sup>7</sup> Ibid.

### **Amendments on the use of force – 42L, 42M, 42N, 46, 46A, 46B, 46C**

These amendments seek to limit the use of force in secure colleges. Schedule 6 sets out the powers available to the Secretary of State in contracting out provision and running of secure colleges. Section 10 authorises staff to use 'reasonable force' to ensure good order and discipline within the establishment. The courts have made clear that restraining a child for 'good order and discipline' is illegal and inquests into the deaths of children have shown that such methods have, in some cases, contributed to their deaths. Primary legislation needs to be clear on where the use of force is permissible; it is too important to be left to Secure College Rules. The Joint Committee on Human Rights has found that: "*it is incompatible with Articles 3 and 8 ECHR for any law, whether primary or secondary legislation, to authorise the use of force on children and young people for the purposes of good order and discipline... we recommend that the relevant provision in Schedule 4 [now 6] of the Bill should be deleted, and the Bill should be amended to make explicit that secure college rules can only authorise the use of reasonable force on children as a last resort; only for the purposes of preventing harm to the child or others; and that only the minimum force necessary should be used.*"<sup>8</sup>

**We welcome efforts by Peers in amendments to limit the use of force in secure colleges in line with court rulings and international human rights standards. Any final amendment agreed to will need to be carefully worded to ensure that the use of force on children is authorised only as a last resort; only for the purposes of preventing harm to the child or others; and that only the minimum force necessary should be used.**

### **Amendments on provision in secure children's homes – 42E, 42K**

These amendments seek to clarify the provision of Secure Children's Home (SCH) places under the Government's plans. The reduced provision of Secure Children's Homes (SCH) places under the Government's proposals gives cause for concern. SCHs are small and intensively staffed facilities run by local authorities with between 8-40 beds. They provide for 10-17 year olds, including some of the youngest and most vulnerable. They also accommodate children looked after by local authorities where courts have authorised that they may be detained for welfare reasons. On 1 April 2014, the YJB reduced the number of SCH places from 166 to 138 across nine homes.<sup>9</sup> This is the latest in a series of announcements in the past few years decommissioning SCH places. The Government is clear that secure colleges will accommodate some of the children currently detained in SCHs and STCs. Paragraph 33 of the Government's response to the Transforming Youth Custody consultation states:

*"It is our intention that all 12–17 year olds accommodated in STCs and some of those accommodated in SCHs will in future be accommodated in Secure Colleges where the intensive and enhanced provision will ensure that the more complex needs of this group continue to be met. The larger sizes of Secure Colleges will allow a broader curriculum and range of services to be provided at a lower cost, without any compromise in the safeguarding of young people. While we develop Secure Colleges we will continue to provide places in STCs to ensure that the needs of all young people in custody are met, but we intend to withdraw from costly STC provision once replacement Secure College capacity is available."*<sup>10</sup>

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<sup>8</sup> Ibid.

<sup>9</sup> Hinnigan, L (2014) Intention to award secure children's homes contracts, Letter to Juliet Lyon, 11 February 2014

<sup>10</sup> <https://consult.justice.gov.uk/digital-communications/transforming-youth-custody>

The Government has made an ambiguous commitment to maintaining some SCH places for the most vulnerable. Paragraph 34 of the Government's response to the consultation states:

*"We accept that there is always likely to be a small number of the very youngest, most vulnerable and most challenging young people who will be unsuited to the mainstream provision in a Secure College and will require specialist custodial services. To cater for this population we are continuing to provide sufficient places in SCHs, while seeking to secure improvements in service and reductions in cost."<sup>11</sup>*

The Prison Reform Trust is concerned that the Government's plans are being driven by cost cutting and economies of scale and could lead to some of the youngest and most vulnerable children being inappropriately accommodated in overly large and understaffed establishments. Large institutions such as secure colleges are particularly damaging for the most vulnerable children. Existing Young Offenders Institutions have a poor record on child safety, education and rehabilitation and result in children being detained far from their homes. This has a negative impact on their relationships and makes resettlement more difficult. As highlighted above, of the 16 deaths of children in custody since 2000, all occurred in YOIs and Secure Training Centres (STC). None occurred in SCHs.<sup>12</sup>

**We support amendments by Peers which seek to clarify the provision of Secure Children's Home places under the Government's plans.**

**Amendments which seek to ensure standards of educational and welfare provision; minimum safeguards and requirements; staff training and qualifications – 42H, 43C, 43D, 44A, 44B, 44C, 45, 45A, 47, 48**

These amendments seek variously to ensure standards of educational and welfare provision; minimum safeguards and requirements; and staff training and qualifications. Responding effectively to the complex and multiple needs of children in custody will require suitably qualified staff and resources and effective cooperation across Government departments and agencies. While education is vital, provision for children must take account of mental health needs, learning disabilities and difficulties, addictions and childhood abuse or neglect.

We are not convinced that the Government's vision of secure colleges, with its emphasis on 'self-discipline' and 'responding with safe methods to control behaviour where necessary', places sufficiently rigorous expectations on potential providers to deal proactively with a population characterised by the Chief Inspector as "very unhappy young people".<sup>13</sup> The Government's response to the Transforming Youth Custody consultation suggests that secure colleges will be able to provide the intensive services needed by children who are sent to custody. However, there is no detail about this in the Bill and it is difficult to see how these services will be delivered at the same time as cutting costs.

In 2010 the Prison Reform Trust published a report Punishing Disadvantage - a profile of children in custody.<sup>14</sup> The report is based on a census of all children who received custodial sentences or remands in the second half of 2008, approximately 6,000 in total, along with a more detailed examination of the backgrounds of 300 of these children. The findings reveal the multiple layers of complex disadvantage that characterise the backgrounds of the

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<sup>11</sup> Ibid.

<sup>12</sup> <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Fatally%20Flawed.pdf>

<sup>13</sup> HM Inspectorate of Prisons (2013) Report on an unannounced inspection of HMYOI Hindley 19-23 November 2012 The Stationery Office: London

<sup>14</sup> <http://www.prisonreformtrust.org.uk/Portals/0/Documents/PunishingDisadvantage.pdf>

majority of children and young people in custody, including mental health problems, learning disabilities, problems with drugs and alcohol, family breakdown:

- At least three quarters of the sample had absent fathers, and a third absent mothers
- Half lived in a deprived household and/or unsuitable accommodation
- Just under half had run away or absconded at some point in their lives
- More than a quarter had witnessed domestic violence
- More than a quarter had experienced local authority care
- 20% of the sample is known to have harmed themselves; 11% to have attempted suicide
- 12% were known to have lost a parent or sibling through bereavement

Research shows that over 60% of children who offend have communication difficulties and, of this group, around half have poor or very poor communication skills. Around a quarter of children who offend have an IQ of less than 70. 43% of children on community orders have emotional and health needs, and the prevalence amongst children in custody is higher.<sup>15</sup>

**We support amendments by Peers which seek to ensure standards of educational and welfare provision; safeguards and requirements; and staff training and qualifications.**

**Amendment 43B – Sentencing guidelines in respect of secure colleges**

Amendment 43B sets conditions for sentencing guidelines in respect to secure colleges. It addresses two concerns regarding the Government's proposals. First, the introduction of secure colleges could result in more children being sent to prison and fewer receiving a community sentence. This is because the option of sentencing a child to a period in custody with education could prove superficially attractive to the courts and result in an increased use of custodial sentences. A comparison can be drawn with the introduction of the Detention and Training Order in 2000. This helped contribute to a record increase in the numbers of children in custody to over 3,000 by 2003/04.<sup>16</sup>

The second concern that the amendment seeks to address is that the introduction of secure colleges could result in children receiving longer prison sentences in order to be held for a period long enough to complete a course of education. Sentencing should be fair and proportionate and be consistent with sentencing guidelines. It should not be determined by external factors such as the provision of education or other services in prison. Instead of ensuring a sufficient period of custody to complete educational courses, attention needs to be paid to ensuring continuity of education between prison and the community when a custodial sentence is unavoidable.

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<sup>15</sup> For full references see Talbot, J (2012, Fair access to justice? London: Prison Reform Trust. Available at (<http://www.prisonreformtrust.org.uk/Portals/0/Documents/FairAccessToJustice.pdf>)

<sup>16</sup> YJB et al (2002) Detention and Training: Assessment of the Detention and Training Order and its impact on the secure estate across England and Wales, London: Youth Justice Board