



Criminal Justice & Courts Bill

House of Commons - Report Stage (Day One)

Monday 12 May 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 could drive up the numbers of children in custody following a welcome period of decline both in youth imprisonment and youth crime. Many of the provisions of the Bill are unnecessary and will increase the size of the prison population. They will raise public costs and add significantly to the work of criminal justice agencies in general, and the Parole Board in particular, at a time when resources and budgets are already overstretched. Many of the provisions involve significant transfers of powers to the Secretary of State, limiting the discretion of operational managers and reducing scope for effective Parliamentary scrutiny.

This briefing focuses on key amendments to the Bill including:

Secure colleges

- Amendments to remove secure colleges from the bill (amendments 16, 17 & 18)
- Limiting use of secure colleges to offenders aged 15 upwards (amendment 15)
- Excluding girls from being placed in secure colleges (amendment 14)
- Staff qualifications (amendment 10)
- Specialist health and welfare provision (amendment 12)
- Specialist educational provision (amendment 19)
- Use of Secure Children's Homes (amendment 13)
- Limiting the use of force in secure colleges (amendment 11)

New clauses

- Term of imprisonment for murder of a police or prison officer (new clause NC10)
- Knife crime (new clauses NC6 and NC7) *PRT will produce a further briefing on these new clauses prior to the debate on the second day of report.*

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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

Secure colleges (Clauses 19, 29 and schedule 4)

Amendments 16, 17 and 18

Amendments to remove secure colleges from the Bill

Plans for secure colleges could drive up the numbers of children in custody following a welcome period of decline both in youth imprisonment and youth crime. While education is vital, provision for children must take account of mental health needs, learning disabilities and difficulties, addictions and childhood abuse or neglect. This requires cooperation across government and not just another criminal justice-led response to tackling entrenched social problems.

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. It is not clear where.

Secure colleges have little evidence base and no small-scale pilots have been tested. There is a lack of in detail in the Bill about exactly what secure colleges will look like – for instance there is no detail on the education to be provided. Much is left to regulation (The Secure College Rules). 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.

Secure colleges mark a step back to the days of the borstal, with scant detail on how they will be run, who will run them, and how they will ensure 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.

These amendments would remove secure colleges from the Bill by leaving out clauses 19, 20 and schedule 4. The Prison Reform Trust is a member of the Standing Committee for Youth Justice and is coordinating with members of the committee on the Bill. **We urge MPs to vote for amendments 16, 17 and 18 and speak to specific concerns addressed by amendments 10, 11, 12, 13, 14 and 15.**

Amendment 15

An amendment to remove people aged under 15 from secure college provision

Clause 19, page 19, line 16, at end insert—

‘(2A) No person who is aged under 15 shall be detained in a secure college established under subsection (1)(c).’

The Prison Reform Trust is concerned at plans for secure colleges to hold such a diverse age group, holding children as young as 12 with 17 year olds. This amendment would ensure that children aged under 15 are excluded from secure college provision.

Children aged 12-14 are a small minority within the population of under 18 year olds in custody. Most of this age group is currently accommodated in small, local and intensively staffed Secure Children's Homes (SCHs). As of 3 January 2014 (the latest date for which published provisional data is available), there were 53 children aged 14 or under in custody. Of these, 32 were placed in Secure Children's Homes and the rest in Secure Training Centres (STCs).¹ Existing Young Offender Institutions (YOIs) only hold boys who are 15 or over.

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. We have seen no evidence that the government has considered the impact of secure colleges on younger children. If it has not done so it will be failing to meet the requirements of the Public Sector Equality Duty, set out in the Equality Act 2010.

One of the government's main arguments against removing young children from secure colleges is that a mix of age ranges 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 offenders (YOIs) consistently reported poorer experiences than in dedicated YOIs. For instance, HM Inspector of Prisons annual report states: *"As with previous reports, the experiences of young men in dedicated sites was broadly more positive than those in split or mixed sites. Notably, young men in dedicated sites were less likely to say that they had ever felt unsafe in their establishment. They also reported better experiences with health care and were more likely to be involved in purposeful activity. In light of these findings, the move by the YJB towards a focus on dedicated sites is encouraging."*²

Large institutions such as secure colleges could be particularly damaging for younger children. Similar-sized YOIs 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. **We urge MPs to speak to amendment 15.**

Amendment 14

An amendment to remove young women from secure college provision

Clause 19, page 19, line 16, at end insert—

'(2A) A young woman may not be placed in a secure college established under subsection (1)(c).'

¹ YJB (2014), FOI Request, 20 February 2014

² HMIP (2013) HM Chief Inspector of Prisons for England and Wales, Annual Report 2012-13, London: The Stationery Office

The “pathfinder” secure college will hold 320 children over the age of 12. It seems there will be a mixture of girls and boys. We understand other secure colleges will be similar.

In 2012/13, 95% of people in custody were male, and 96% of under 18 year olds in custody were male. As of December 2013 there were only 59 girls held in custody.³ This means each secure college will hold a very small number of young children and girls with a large number of older boys. This creates serious safeguarding risks.

YOIs only hold boys who are 15 or over. In July 2013 the Youth Justice Board announced that, due to the “welcome and continued reduction in the number of young people in custody”, it had “decided to withdraw fully from the remaining three girls’ under-18 YOI units.” This, it said, was “a positive step, since the YJB and NOMS accept that prison custody may not represent the most appropriate provision for young women with complex needs and that it may be more beneficial for the small number of girls who are placed custody to reside in STCs and secure children’s homes, rather than YOI accommodation.”⁴

Given the acknowledgement by the YJB and NOMS that prison custody may not be the most appropriate provision for young women with complex needs, and that there is sufficient capacity in STCs and SCHs for the small minority of girls in the child custodial population, it is unclear why the government seems to be including girls in secure college provision. We have seen no evidence that the government has considered the impact of secure colleges on girls. If they have not done so they will be failing to meet the requirements of the Public Sector Equality Duty, set out in the Equality Act 2010.

As with younger children, the government’s arguments against removing girls and young women from secure colleges is that a mix of genders are already held together in STCs and SCHs and that girls and young women will be held in separate units. Our objections to these arguments are outlined above.

Lord McNally, Chair of the Youth Justice Board, has expressed reservations about mixing boy and girls in secure colleges. In evidence to the Justice Select Committee, he said: “Let me give you a personal view. I would want to advise the Secretary of State to think very hard about whether young females should be there [in secure colleges] ... Of course, co-education has its attractions, but I would not want the scheme to fail because of difficulties in trying to accommodate mixed groups—that has to be looked at. However, that is a personal view; we are at a drawing board stage.”

It would be a retrograde step to include girls in secure college provisions, especially given the recent and significant welcome reduction in the numbers of girls in custody. Economies of scale could only be achieved by creating one or two units attached to boys secure colleges. This would lead to girls being held far from home in an environment unsuited to their needs. **We urge MPs to speak to amendment 14.**

³ YJB (2013) Monthly Youth Custody Report - December 2013, Table 2.7

⁴ YJB (2013) Reduction in YJB commissioned places in the secure estate for children and young people, Letter from Francis Done, former YJB chair, to Juliet Lyon, director of the Prison Reform Trust, 2 July 2013

Amendment 10, 12 & 19

Amendment 10

An amendment to ensure staff employed in secure colleges are suitably qualified

Schedule 4, page 74, line 17, at end insert—

‘Staff

4A (4) All staff employed as teachers, counsellors or nurses at a secure unit must hold

qualifications as one of the following—

- (a) qualified teachers;
- (b) accredited member of the British Association of Counsellors and Psychotherapists; and
- (c) registered nurse (children).’.

Amendment 12

An amendment to ensure specialist provision to cater for the health and wellbeing of young people in secure colleges

Clause 19, page 20, line 30, at end insert—

‘(14) The Secretary of State must make arrangements to ensure there is adequate specialist provision to cater for the health and wellbeing needs of all young persons detained in a secure college.’.

Amendment 19

An amendment to keep special educational provision in secure colleges under review

Schedule 4, page 76, line 16, at end insert—

‘(3) The Principal shall—

- (a) keep special educational provision in the secure college under review;
- (b) keep SEN and disability training of secure college workforce under review;

(c) ensure persons detained who may have a special educational need are brought to the attention of their home local authority; and

(d) carry out (a), (b) and (c) with advice from the secure college SEN coordinator.’.

While education is vital, provision for children must take account of mental health needs, learning disabilities, addictions and childhood abuse or neglect. It will also be vital to ensure that staff have sufficient training and qualifications to meet the needs of a population characterised by complex and multiple disadvantage.

In 2010 the Prison Reform Trust published a report Punishing Disadvantage - a profile of children in custody.⁵ 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.

⁵ <http://www.prisonreformtrust.org.uk/Portals/0/Documents/PunishingDisadvantage.pdf>

The findings reveal the multiple layers of complex disadvantage that characterise the backgrounds of the 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.⁶

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. 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".⁷

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. **We urge MPs to speak to amendments 10, 12 and 19.**

Amendment 13

An amendment to ensure sufficient places in secure children's homes

Clause 19, page 20, line 30, at end insert—

'(14) The Secretary of State shall make arrangements to ensure that sufficient places are available in secure children's homes to enable young persons, for whom detention in a secure children's home is deemed more appropriate by the relevant authority than detention in a secure college or young offender institution, to be so detained.'

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

⁶ 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>)

⁷ HM Inspectorate of Prisons (2013) Report on an unannounced inspection of HMYOI Hindley 19-23 November 2012 The Stationery Office: London

accommodate children looked after by local authorities where courts have authorised that they may be detained for welfare reasons.

The Youth Justice Board has recently confirmed that 28 SCH beds are to be decommissioned. From 1 April 2014, the YJB reduced the 166 SCH places previously contracted to 138 places across nine homes.⁸ 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. 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."⁹

The government has made an ambiguous commitment to maintaining some SCH places for the most vulnerable children. 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."¹⁰

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.

Jake Hardy and Ryan Clark, both of whom killed themselves in custody, were detained in the largest Young Offenders Institutions (YOIs) in the country. Of the 16 deaths of children in custody since 2000, all occurred in YOIs and Secure Training Centres (STC). None occurred in SCHs.¹¹

Small local units which provide intensive support, close to a child's home, with well-trained and highly qualified staff and high staff to child ratios, are safer and more

⁸ Hinnigan, L (2014) Intention to award secure children's homes contracts, Letter to Juliet Lyon, 11 February 2014

⁹ <https://consult.justice.gov.uk/digital-communications/transforming-youth-custody>

¹⁰ Ibid.

¹¹ <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Fatally%20Flawed.pdf>

effective than putting vulnerable children together with hundreds of teenagers in over-large institutions. The well-known expression “colleges of crime” was coined for a reason. This amendment would help ensure that there are sufficient places available in SCHs for the youngest and most vulnerable children under the government’s plans. **We urge MPs to speak to amendment 13.**

Amendment 11

An amendment to limit the use of force in secure colleges in line with court rulings and international human rights standards

Schedule 4, page 77, line 20, leave out from ‘where’ until the end of line 21 and insert ‘a young person poses an imminent threat of injury to himself or others, and only when all other means of control have been exhausted.’

Schedule 4 of the Bill sets out the powers available to the Secretary of State in contracting out provision and running of secure colleges. Whilst secure college custody officers do not have the same powers as constables, as afforded to prison officers in the Prison Act 1952, it is a matter of great concern that section 10 authorises staff to use ‘reasonable force’ to ensure good order and discipline (GOAD) 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. Previously, the Secure Training Centre Rules allowed restraint to be used to maintain GOAD. In 2008 the Court of Appeal ruled that this was unlawful because it amounted to “inhuman or degrading treatment” and the government had not shown that use of force to maintain GOAD was necessary.¹² The rules thus breached Article 3 of the European Convention on Human Rights.

The UN Committee on the Rights of the Child, in its 2007 general comment on children’s rights in juvenile justice said:

“Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment.”¹³

The Prison Reform Trust has been informed by MoJ officials that it is the intention for rules governing the secure colleges to outline cases in which restraint can be legitimately used. However, we are concerned that this does not provide adequate protection and that primary legislation remains the best place to ensure that restraint is only used as a last resort.

As the recently announced independent review into the deaths of young people (18-24) in custody seeks to learn lessons, it would be a tragedy if the government proceeds with plans which could put children at greater risk of suicide and self-harm. It is a matter of concern that under-18s have been excluded from the independent review at the same time as the government is proceeding with untried and untested plans for secure colleges for 12-17 year olds. Force should only be used in

¹² http://www.gardencourtchambers.co.uk/imageUpload/File/Judgment_re_R_28%2007%2008.pdf

¹³ <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

exceptional circumstances when children pose a direct and immediate threat to the safety of themselves or others. **We urge MPs to speak to the amendment.**

New clauses

New clause NC10

A new clause to increase the starting point for the term of imprisonment for murder of a police or prison officer to a whole life order

To move the following Clause:—

‘(1) Schedule 21 to the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence) is amended as follows.

(2) In paragraph 4(2) (cases for which a whole life order is the appropriate starting point), after paragraph (b) insert—

“(ba) the murder of a police officer or prison officer in the course of his or her duty.”.

(3) In paragraph 5(2) (cases for which 30 years is the appropriate starting point), omit paragraph (a).

(4) The amendments made by this section apply only in relation to an offence committed on or after the day on which they come into force.’.

This new clause provides that the court should normally start by considering a whole life term when sentencing an offender for the murder of a police or prison officer in the course of his or her duty.

The murder of a police or prison officer is already recognised as an especially serious and heinous crime in law. Currently, the starting point for the murder of a police or prison officer is a minimum term of 30 years. This does not preclude a judge from setting a longer minimum tariff if the circumstances of the case require it. However, the decision should be for the judge to make based on the facts of the individual case as presented in a court of law. **We are concerned that this amendment will limit judicial discretion and could lead to the imposition of a whole life tariff even in cases where there are mitigating factors that need to be taken into account.**

This amendment would extend the use of whole life tariffs at a time when their use is subject to scrutiny under human rights law. Currently there are only about 50 people serving a whole life tariff in prisons in England and Wales. Scotland does not have a whole life tariff and whole life tariffs are also not available in many other European countries.

The murder of a police or prison officer is a grave offence but it is unclear why the murder of a doctor or teacher is any less serious. It is unwise to legislate to single out particular professions and could lead to other groups calling for similar protection in statute. Currently a whole life tariff is the starting point only in the case of the murder of two or more persons, where each murder involves any of the following—

(i) a substantial degree of premeditation or planning,

(ii) the abduction of the victim, or

(iii) sexual or sadistic conduct,

(b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,

(c) a murder done for the purpose of advancing a political, religious or ideological cause, or

(d) a murder by an offender previously convicted of murder.¹⁴

We urge MPs to vote against this new clause.

New clauses NC6 and NC7

Possessing an offensive weapon or bladed article in public or on school premises: sentencing for second offences for those aged 16 or over (NC6) and 18 or over (NC7)

These new clauses 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. **These new clauses are not scheduled for debate on Monday 12 May but, given the widespread coverage the proposals have received, the Prison Reform Trust urges MPs to vote against these amendments when they come up on the second day of the report stage.**

There is little evidence to suggest that mandatory sentencing works with children and young people. A study by Pentonville Prison Governor Nicola Marfleet found that the threat of a prison sentence for carrying a knife was ineffectual.¹⁵ The Centre for Social Justice has said: “An increase in the number of people imprisoned for knife possession does not warrant celebration, particularly when we know that the majority of young people carry knives out of fear and ... custody exposes young people to more hardened criminals.”¹⁶

Custodial sentences have the worst outcomes of all the sentencing options available with nearly 70% of children reconvicted within a year of release.¹⁷ The courts already have the power to sentence an under-18 year old to a maximum of four years in prison for possession in a public place.¹⁸ In addition, the latest Ministry of Justice knife possession statistics show that the number of offences committed by children in the last quarter reduced by 30% compared to the same period three years ago.¹⁹ Imposing mandatory prison sentences on children and young people is not an appropriate, proportionate or effective response to the problem of knife crime. **We urge MPs to vote against these new clauses.**

¹⁴ Criminal Justice Act 2003, Schedule 21

¹⁵ Marfleet, N (2008) *Why carry a weapon?* London: The Howard League for Penal Reform

¹⁶ Centre for Social Justice (2009) *Dying to belong*, London: CSJ

¹⁷ Ministry of Justice (2014) *Annual youth justice statistics 2012-13*, London: Ministry of Justice

¹⁸ Violent Crime Reduction Act 2006 c.38

¹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/289552/knife-possession-sentencing-q4-2013-tables.xls