
**BRIEFING ON THE CRIME AND SECURITY BILL
SECOND READING - HOUSE OF COMMONS
18th January 2010**

INTRODUCTION

1. The Howard League for Penal Reform is the oldest penal reform charity in England and Wales. It was established in 1866, is entirely independent of government and is funded by voluntary donations. We work on a full array of criminal justice matters and run a legal team for vulnerable children and young adults.
2. The Howard League is concerned that measures in the Crime and Security Bill, while only tampering around the edges of tackling crime in England and Wales, will make conditions for some of England and Wales' most vulnerable people worse, increasing further the gulf of inequality between those who regularly come into contact with the criminal justice system and those who do not.

PROBLEM AREAS

Fingerprints and DNA records

3. The bill contains provisions to give additional powers to the police to take and store fingerprints and DNA samples from people who have been arrested, charged or convicted in England and Wales for a recordable offence.
4. The Howard League for Penal Reform is concerned that this bill would allow the retention of fingerprint and DNA data of people under the age of 18.
5. Under 18 year olds who commit either a serious offence or more than one minor offence will have the data of their fingerprints, impressions of their footwear and DNA profile retained forever (substituted section 64), while 16 to 17 year olds who are arrested but not convicted of a serious offence could have the same data kept for six years (under new section 64ZG)
6. We believe clause 14 of the Crime and Security Bill will isolate vulnerable young people already on the margins of our society. This bill creates an incentive for police to wrongfully arrest a young person suspected of a crime and procure their DNA. It is our belief that children should not be exposed to the criminal justice

system unless there is solid evidence supporting an assumption of guilt. Any lower standard is a breach of both the UNCRC (UN Convention on the Rights of the Child) and article 8 of the HRA (Human Rights Act 1998).

- 7. We support the removal of clauses 14-20 of this bill in their entirety but express particular concern about the treatment of vulnerable young people in replacement sections 64(2), 64ZH, 64ZG, 64ZE and 64ZF. The majority of children should not be held in secure accommodation, they certainly should not face increased persecution from law enforcement and permanent registration for an act committed before they have even reached the school leaving age.**

Police powers to stop and search

8. Clause 1 of the bill contains provisions to reduce the reporting requirements on the police when they stop and search individuals. While the Howard League is pleased to see that the new legislation places importance on recording the racial origins of the search victim, we are alarmed to see that the requirements to record data such as the name of the search victim are being removed.
9. Many solicitors have clients who may have been stopped by police two or three times in one day. This can be a crucial fact in mounting a defence in a legal hearing.
10. The Howard League also believes this bill currently overlooks a crucial opportunity to record the age of the person being stop searched by the police. Such data is currently not collated and consequently there is very little data about law enforcement's treatment of vulnerable young adults and children.
11. While the Howard League does agree that police should be on the streets and not continually bogged down by paperwork we do not feel the inclusion of both a name and an age requirement in a stop and search report would add extra hours to an officer's day.
- 12. Stop and searching is one of the most controversial practices exercised by British law enforcement and whether it should be done at all is matter for some debate under the auspices of the HRA. However, if it is to be carried out, it must be done with proper checks and adequate information.**

Anti-social behaviour and parenting orders

13. The Howard League has frequently expressed its opposition to ASBOs in the past. Such legislation has the effect of widening the net of the criminal justice system, by criminalising children and their parents, the mentally ill and those in social housing. This bill is more of the same.
14. Anti-social behaviour legislation relies on a low burden of proof. It does not rely on an objective test of behaviour but on the reaction to that behaviour by others. Yet anti-social behaviour legislation uses the criminal justice system to reinforce it if

the original orders are breached. There is a blurring of the boundaries between civil and criminal law.

15. Relying on family and community interventions is vital in supporting vulnerable young people who commit crime. However placing family situations in court and criminalising parents for failing to turn up will widen the criminal net and the result will be the application of the blunt instrument of prison to a complex social challenge.
- 16. The Howard League believes that social assessments of vulnerable young people brought to court could be a positive step. However we would be more comforted by the court's increased use and reliance upon s.17 Children Act 1989 assessments of the young person and their family, not parenting orders. Section 17 assessments are undertaken by the local authority and require an impact analysis of how social care and support might help avoid further breach of an ASBO in the long-term.**

Gang-related activity

17. The bill contains provision (clauses 31-36) to extend the powers in the Policing and Crime Act 2009 under which the police or a local authority will be able to apply to a court for an injunction against a person, aged 14 to 17 suspected of involvement in gang activity. If that person breaches such an injunction, the court may make a supervision order or a detention order.
18. The Howard League for Penal Reform believes that vulnerable young people who get caught up in gang-related crime require support from local authorities and not exclusion. Children as young as 14 involved in gang activity are likely to be victims of abuse and mistreatment themselves and do not fit the 'hardened criminal' label that this bill assigns them.
19. We are particularly concerned about the current scope and the ease of applicability of these gang injunctions. Injunctions are wide reaching and work by mandating a young person not to be in a certain place at a certain time or forcing them to regularly report to an authority, these are heavy requirements. However the evidential burden for the assignment of an injunction is not decided on the standard of beyond all reasonable doubt, but instead by using the lower threshold, the balance of probabilities.
20. The Howard League for Penal Reform believes that the majority of children should not be assigned criminal responsibility at all but this should certainly not happen without adequate judicial process. The low evidential burden is a breach of the UNCRC. Children in breach of an injunction can be punished with a sentence of three months in jail.
- 21. The young people who become involved in gang violence tend to live chaotic lives and the majority will not be capable of sticking to the rigid application of an injunction. The result will be further criminal sanctions assigned by bureaucratic process for vulnerable children. This is a violation**

of England and Wales' human rights obligations to children. The Howard League opposes the extension of this law to younger children.

New crime of using a mobile phone in prison

22. Clause 41 of this bill creates a new criminal offence of using a mobile phone in prison. The clause makes such a crime punishable by 12 months in prison.
23. While a few prisoners are coordinating serious crime from their cells the majority are trying to contact their families. These men and women are responding to being locked in their cell for up to 23 hours per day with nothing to do and no one to communicate with. The majority are also reacting to having been sentenced too heavily by a state determined to punish not reintegrate and the idea of further criminalising these people will achieve very little while perpetuating a cycle of state dependency.
- 24. This new law is redundant. It is already a violation of prison service orders to have a mobile phone in prison and it is already an offence to smuggle a mobile phone into a prison. To a long-term prisoner who has not seen his family in over ten years the chance of receiving an extra 12 months in prison will provide little disincentive. There is no need for further legislation on this matter, prison governors have everything they need to tackle the problem already.**