



**Response to Department of Justice  
Draft Guidance for the Operation of the  
Criminal Records Filtering Review  
Mechanism**

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## **Include Youth**

Include Youth is an independent non-governmental organisation that actively promotes the rights, best interests of and best practice with disadvantaged and vulnerable children and young people.

The young people we work with and for include those from socially disadvantaged areas, those who have had poor educational experiences, those from a care background, young people who have committed or are at risk of committing crime, misusing drugs and/or alcohol, engaging in unsafe or harmful sexual behaviour, or at risk of being harmed themselves. We provide a range of tailored employability programmes for these young people, including programmes in partnership with community based organisations.

Our Give & Take Scheme adopts a youth work approach to improving the employability and increasing the self-esteem and confidence of young people aged 16 to 24 who are not yet ready to participate in mainstream training.

Many of these young people have experienced social exclusion, poverty or have other complex challenges in their lives and therefore need additional support to overcome these barriers and positively progress their education, training or employment needs. Seventy-five per cent of young people on the Scheme are care experienced, while over a third have a background in offending. We offer a range of tailored programmes including

- Core - for young people referred to us through the Health Trusts
- Start Programme – a collaborative partnership programme with community based organisations, targeted at young people in the North Down, Ards and Belfast areas
- Outreach - for groups or organisations throughout Northern Ireland
- One to One - for young people at risk of child sexual exploitation
- Transitional support - for those moving on from our Scheme and into mainstream education, training or employment

Our main offices are in Belfast, Armagh, Ballymena, Derry, Enniskillen, Newtownards and Omagh.

Include Youth also delivers an Employability Service on behalf of two of the five Health Trusts for young people aged 16 + who have had experience of the care system. This service is designed to offer tangible and concrete opportunities to assist young people leaving care to prepare for, and engage in work. We also deliver a joint employability mentoring project with Business in the Community.

Include Youth also engages in policy advocacy work in the areas of employability, youth justice and policing. This work is informed by relevant international human rights and children's rights standards, is evidence based, including that provided by young people and practitioners and is based on high quality, critical analysis.

As part of our preparations to respond to this consultation document we spoke to two groups of young people from our Belfast and Newtownards Give and Take programme. Nine young people in total were consulted.

## **General Comments and Background**

Include Youth welcomes the opportunity to comment on the draft guidance for the operation of the criminal records filtering review mechanism. We acknowledge that the Independent Review mechanism is an important development in allowing people the opportunity to seek a review in certain circumstances, where a conviction or disposal has not been filtered from their record. We particularly welcome the fact that children and young people will be given special consideration in the review process.

While we understand that this consultation is specifically concerned with the newly established filtering review mechanism, we feel it is important to firstly reiterate our general position on the impact of criminal records on children and young people, within the context of the findings and recommendations of the youth justice review.

We welcome the review process and in particular it's approach to the particular vulnerabilities to children and young people, but our general and more wider concerns remain about the current operation of criminal records disclosure for children and young people.

Include Youth has a number of concerns regarding the impact of disclosure of criminal records on young people. These concerns are compounded by the fact that children can be criminalised at the age 10.

We believe that the system of disclosure as it currently stands fails to recognise the damaging impact having a criminal record can have on a young person. It can affect a young person's ability to secure education, training and employment. Shackling young people with a criminal record for a seemingly unending period of time, and all that that entails, runs counter to the argument that we need to get young people who have been in contact with the criminal justice system into jobs and education, if they are stand a chance of keeping out of the justice system.

Despite the fact that many of the young people we work with who have a criminal record, have not been convicted of a serious offence or been deemed as being a risk

to public safety, they still have to disclose the conviction in a wide range of circumstances.

A criminal record can have an impact on:

- Gaining employment
- Accessing further or higher education opportunities
- Accessing training opportunities
- Accessing volunteering opportunities
- Opening a bank account

This issue has become even more pertinent over the years as legislation has placed more requirements on individuals to disclose their past convictions. The Rehabilitation of Offenders legislation dates from 1978 and 1979. Over the years we have seen the development of complex and ad hoc legislation. The legislation is not well understood by all concerned which has resulted in mistakes and inconsistencies in practice. Access NI procedures can be abused or misunderstood by employers and we are calling for full accountability in Access NI's operation.

There has been a failure to inform young people that diversionary disposals such as cautions, informed warning and diversionary youth conferences will still be disclosed on certain checks, regardless of the length of time that has passed since the disposal was issued.

The new arrangements for 'filtering' criminal records which has been recently introduced means that individuals may be required to disclose involvement in diversionary youth conferences for offences committed when they were less than 18 years old. It is concerning that Informed Warnings for under 18s should be disclosed for any period of time and we recommend that such disposals should always be filtered out from record checks.

We believe that special consideration should be given to the disclosure of young people's criminal records for employment purposes and that these should only be released where there is a proven risk of harm.

We support the recommendations made by the Youth Justice Review on this matter.

Recommendation 21 of the Youth Justice review stated that:

- young offenders should be allowed to apply for a clean slate at age 18
- diversionary disposals should not attract a criminal record or be subject to employer disclosure

- for those very few young people about whom there are real concerns and where information should be made available for pre-employment checks a transparent process for disclosure of information, based on a risk assessment and open to challenge, should be established.<sup>1</sup>

We remain disappointed that Recommendation 21 is the only recommendation to not be accepted by the Minister for Justice.

Sunita Mason's recommendations following the review of the criminal records regime differ considerably from those of the Youth Justice Review. Mrs Mason recommended that Access NI should routinely disclose informed warnings, cautions and details of diversionary youth conferences on Standard and Enhanced checks. The Department of Justice has said that they agree with Mrs Mason's view that to protect the public adequately there continues to be a need to retain diversionary information on an individual's criminal record for criminal justice purposes.

Young people already face numerous barriers to employment and we are concerned that young people with convictions and criminal records find it doubly hard to access employment, education and training. Employers and trainers in FE and HE sectors may be reluctant to engage with a young person who has declared a conviction. There can also be lack of awareness on behalf of the employer in understanding the implications or seriousness of the disclosed offence or record.

Non conviction information such as informed warning, cautions and diversionary youth conferences can significantly decrease the chances of a young person gaining employment or accessing training. Therefore we believe that non convictions should be 'spent' immediately and should only be subject to disclosure in limited circumstances.

The Department of Justice Reducing Offending Strategy<sup>2</sup> highlights the importance of securing education, training and employment as a key strand in reducing offending. The recently published 'Supporting Change: A Strategic Approach to Desistance' also talks about the need to 'tackle the practical barriers faced by individuals on their respective journeys through the criminal justice system e.g. difficulties accessing healthcare, issues maintaining accommodation, **problems with gaining employment**<sup>3</sup>. We agree that sustainable employment is a key factor in reducing reoffending and this is evidenced by the work of our Give and Take Scheme and our commitment to helping young people improve their chances at accessing training, education and securing employment opportunities. It is

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<sup>1</sup> A Review of the Youth Justice System in Northern Ireland, September 2011, Department of Justice, page 85.

<sup>2</sup> Department of Justice, Reducing Offending Strategy,

<sup>3</sup> Department of Justice, Supporting Change, A Strategic Approach to Desistance, September 2015, p7.

imperative that we do not put more unnecessary barriers in the way of young people who want to turn their lives around and to reintegrate into society. The following quotes from young people indicate the importance of securing employment.<sup>4</sup>

*“See if I had a job, I wouldn’t do any crime.”*

*“You need support – to get a job and stay off drugs, help to try and get on with your life.”*

*“There should be work out there, businesses, who would take you on and give you a chance.”*

*“In 10 years I will be 26 – I will have a record that will stick with me for the rest of my life.”*

While we welcome the review process we have to state from the outset that we disagree with diversionary disposals being made subject to disclosure.

## **Specific Comments**

### **Automatic review for childhood offences**

Include Youth welcome the fact that cases relating to convictions and disposals received before 18 years of age will be referred automatically to the independent reviewer. We would like to seek some clarity as to whether this refers to the individual being under 18 at the time of the conviction or at the award of the disposal OR at the time of the offence.

### **Specified Offences**

We are also concerned by the large number of offences which are deemed as ‘specified offences’. This is an extensive list and includes many offences for which young people are commonly charged with. Research commissioned by NIACRO reveals that 18 out of the 25 highest occurring offences are listed on the specified list and under the current regime would never be filtered. Furthermore, 53% of the total 330 categories of offences charged between 2010 and 2014 are set out in the specified list.<sup>5</sup>

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<sup>4</sup> Include Youth response to Department of Justice Reducing Offending Strategy, September 2012.

<sup>5</sup> Dr Nicola Carr et al, Young People, Criminal records and employment barriers, in New Directions: Understanding and Improving Employment Pathways in Youth Justice in NI, NIACRO and The Bytes Project, 2015., page 36.

Children and young people are unclear about what is included in the list of specified offences. They may be aware of the more serious offences that are included but are not aware of those less serious offences which are included, and for which young people are commonly charged for. Some attempt should be made within the guidance to expand further on specified offences and what sort of offences are included, particularly those that are most commonly associated with young people.

### **Timescales for filtering and accessing review process**

While we welcome the fact that the timescales for filtering are considerably shorter for under 18 year olds than over 18 year olds, we do still feel that young people should not have to wait so long before they can ask for an independent review. Given the fact that we know that the largest numbers of young people receiving disposals are in the 15 – 17 year old age range, it is clear that this age group of young people are most likely to be impacted on by the filtering and review process. These are formative years in a young person's life, when they will be trying to access education, training and employment opportunities. Very often these young people have been charged with minor offences but the continued presence of these on their criminal record can have a significant impact on their future choices. We would recommend that young people are able to seek a review earlier than proposed, to enable to them to get on with their lives, safe on the knowledge that a minor misdemeanour will not resurface or block their progression through education, training and employment. This approach is entirely in line with recommendation 21 of the youth justice review.

### **Limits of the review mechanism and the role of the police**

While we welcome the review process with regard to children and young people we are still concerned about the potential of the police to override the independent reviewer's decision to filter information. We acknowledge that some information regarding the role of the police is included in page 14 of the young person's draft guidance and page 10 of the general guidance, but we would recommend further clarity on the matter. Young people will be keen to know what influence police information may have on the decision of the independent reviewer and these processes must be made fully accountable and transparent, if young people are to trust the review process. We would welcome further detail on when the police can decide what information to disclose and how this impacts on the review process and the subsequent decision of the independent reviewer. For example, would the police ever disclose information relating to non- conviction cases?

### **Multiple convictions**

We welcome the fact that individuals with more than one conviction will be able to apply for a review.

### **Factors to be considered by the independent reviewer**

We note the fact that the independent reviewer will take into account the human rights of the individual (page 10 of main guidance document) under Article 8 of the Convention. We recommend that reference is also made to relevant children right's standards with regard to disclosure of information and reintegration and rehabilitation.

### **Independent Reviewer**

We note that there has been some discussion about the intention to merge the roles of the Independent Reviewer and Independent Monitor. We are concerned that this could result in some confusion regarding roles and responsibilities.

Given the context of the political conflict here and in particular how that impacts on patterns of youth offending, it is vital that the Independent Monitor is familiar with the Northern Ireland context.

Young people were confused about the role of the Independent Reviewer and were unclear about how the review process would benefit them. Some of the young people were put off by the fact that they would have to write to the Independent Reviewer to provide further information, and would prefer to speak to someone face to face.

It would be beneficial to provide young people with more information about the role of the Independent Reviewer, what type of person will do the job and on what criteria they will be selected to fulfil the role.

### **Support**

We believe that young people will require considerable support to fully understand how to navigate the review process. Any information which is sent to young people should be fully accessible and should clearly indicate where they can seek advice and support. Given the fact that young people have only 10 days to provide any further information should the Independent reviewer decide to disclose information, it is especially important that young people are able to seek practical help in completing their written response. Young people will most likely need to seek help from voluntary organisations or agencies that they are familiar with. It is therefore important that voluntary organisations and community groups working with young

people are provided with the necessary materials to guide the young people through the process. It is essential that young people are able to access independent advice.

We know from the experience of our own staff team in Include Youth that practitioners would welcome training in the implementation of the review process so that they can give the young people they work with the best possible support and advice.

We welcome the fact that representations can be made by a third party in cases of automatic referral.

## **Employers**

We recommend that employers are provided with advice and guidance in relation to understanding criminal records. It is vital that employers are able to access independent and practical advice in relation to criminal record checks. This is particularly relevant given the tendency for some employers to be risk averse when it comes to employing someone with a criminal record.

## **Young people's general understanding of the guidance**

As the whole issue of criminal records and disclosure generally is a confusing topic for many young people, the group discussions were taken up largely by trying to explain general information on criminal records. The young people had varying degrees of knowledge on the topic.

*“you don't want someone who has been convicted of a crime (sexual offence) getting a job in a nursery.”*

*“schools, nurseries, banks, old people's homes, children's homes, youth work, hospitals.”*

*“Anything to do with vulnerable adults.”*

*“Banks, I applied for a job in a bank.”*

*“You're best to be honest with them, you've nothing to lose and they might give you a chance.”*

They were aware of the need to and the importance of sharing information with prospective employers and were knowledgeable about which types of employers would be most interested in this type of information.

However, many of the young people were not aware that diversionary disposals would be included on a criminal record.

*“Diversionary conferences, are like instead of giving you a criminal record, they take you in for three to six months and they do work around anger management and stuff.”*

Some of the young people thought that a criminal record would be ‘cleared’ when they turned 18 years old, while others thought it depended on whether you committed a further offence.

*“I always thought it was as long as you stayed out of trouble, because if you got into trouble again it would stay on it.”*

Some of the young people had heard of Access NI and had experience of filling out the forms out.

The young people found it hard to get their heads around the review process and to fully comprehend how the process would operate. Given the complexity of the criminal records process in general and the need to for each case to be looked at on an individual basis, it is hardly surprising that the intricacies and the steps involved in the process were difficult for the young people to grasp and comment on.

This exercise demonstrates the need for young people to be able to access independent, child friendly, tailored advice on the criminal records process, including filtering and review. While it is a necessity to provide child and young people friendly written guidance on the operation of the review mechanism, it seems likely that an informed adult will have to explain the process step by step as well, if a young person is to fully understand how the guidance relates to their individual circumstances.

It also once again reminds us of the lack of clarity generally on what disposals attract a criminal record and the long last implications of a criminal record. Further work must be done on this first level of understanding before we can expect children and young people to grasp the detail of the filtering and review processes.

While the young people were unsure of how to respond to the consultation, they were very sure of the negative impact having a criminal record can have on their future choices and opportunities.

*“I have no chance of getting a job, most of them ask you now.”*

*“I would be put off applying for a job because of my criminal record.”*

Some young people thought that the review process may give them a better chance of getting a job if they were charged with minor offences.

We know from our direct work with young people that many of those who have criminal records can feel despondent about their prospects of securing employment or training and can see their criminal record as an insurmountable obstacle that will prevent them progressing in employment. It is essential that young people and those working with them understand the possibilities that the review process may offer them and this in turn could contribute to giving them hope for the future.

### **Concluding comments**

While this review mechanism is welcome and will go some way to improving the situation for children and young people, we still regard the overall operation with regard to criminal records disclosure to be in contravention of children and young people's rights to reintegrate fully and to avail of rehabilitation opportunities. However, we will support the young people we work with to engage with the review process where appropriate. We will be keen to see the outworkings of the process and will continue to provide the Department with the necessary support in the development of the mechanism.

