

include YOUTH

Evidence to Justice Committee Justice Bill 2014

September 2014

For further information contact Paula Rodgers
Policy Co-ordinator, Include Youth, Alpha House, 3 Rosemary Street,
BELFAST, BT1 1QA

028 9031 1007 Paula@includeyouth.org
www.includeyouth.org @includeyouth

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 or alcohol, undertaking unsafe sexual behaviour or other harmful activities, or of being harmed themselves.

The Give and Take Scheme aims to improve the employability and increase the self-esteem of young people in need or at risk from across Northern Ireland. The Scheme works with approximately 145 young people from a care or criminal justice background. The Scheme aims to support young people to overcome particular barriers that prevent them from moving into mainstream training or employment and towards independent living. Seventy-five per cent of young people on the Scheme are care experienced, while over a third has a background in offending.

Include Youth also delivers an Employability Service on behalf of two of the 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.

The organisation also leads on the collaborative initiative START which operates across several sites in Northern Ireland, working with community based organisations to improve education, employment and training outcomes for the most disadvantaged young people.

Include Youth's Young Voices programme is a way of delivering participative democracy to marginalised young people in Northern Ireland. Its main aim is to support marginalised young people at risk or with experience of the criminal justice system, to become involved in decision making processes which impact on their lives, particularly in social welfare, education and criminal justice matters. The project works with a range of groups of young people in the community and in custody.

Include Youth's policy advocacy 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.

Reflecting the profile of the young people we work with and with our service provision, Include Youth's two main policy priority areas are employability and youth justice. In light of this we have approached this consultation through the lens of those two areas as it were, as that is where both our expertise and interests lie.

Specific Comments

We welcome the opportunity to share a number of issues concerning the Justice Bill with members of the Justice Committee.

We will limit our comments to four specific aspects of the Bill:

- Part 4 Victims and Witness
- Part 5 Criminal Records
- Part 7 Violent Offences Prevention Orders
- Part 8 Aims of the Youth Justice System

PART 4 VICTIMS AND WITNESSES

We welcome the moves to improve the experiences of victims and witnesses in the criminal justice system and to clearly set out the services that are to be provided and the standard of service that witnesses and victims can expect to receive. Include Youth welcome the development of the Victim Charter as this will be an important vehicle by which victims and witnesses can ensure they are receiving the necessary information and are made fully aware of what support services exist. It will also provide a vehicle through which victims and witnesses can seek advice and support about how to address failings in the system and to ensure their voices are heard when procedures are not followed correctly. Providing a statutory entitlement to make a victim personal statement will allow victims to describe the impact of the offence but we would guard against Victim Impact Statements being used as a means for victims to influence the sentence ordered by the Court.

While we welcome this progressive piece of legislation with regards to the needs of victims and witnesses we are somewhat disappointed about the lack of emphasis on the needs of young people as victims of crime.

As the evidence indicates that children and young people are more likely to be victims of crime than any other group in our society, it is essential that the Department makes every effort to ensure that the needs of children and young people are central to the Victim Charter.

Our work with young people would suggest that there is much work to be done with young people who are victims of crime to make them feel that they are a key stakeholder in the development and outworking of the Victim Charter. Our experience is that the majority of young people we come into contact with do not have faith in the criminal justice system and if they become a victim of crime do not believe that their views will be listened to or respected.

Include Youth has worked in partnership with Victim Support to seek out the views of young people on their experiences of crime and to assess their level of awareness of support services available to them. These focus groups have demonstrated that young people who are victims of crime, are largely unaware of victim's organisations, have serious reservations about reporting a crime and do not have a great deal of faith in a positive outcome if they do report a crime. The following quotes are an example of some of the views of the young people we spoke to in the Juvenile Justice Centre, the Young Offenders Centre and the community.

'That would be the last thing I would do (report to police) If I went to the police and said someone hit me, they'd laugh at me! Cos they don't like me. And I don't like them.'

'No I don't like the police so I wouldn't go to them. Because if you're already a criminal and you say something happened to you they'd laugh at you, tell you to float.'

"Even if the house was robbed I wouldn't tell the peelers."

"I do report it but nothing gets done."

"I have reported stuff before, but it didn't get dealt with – nothing happens."

"Nothing ever happens anyway, it's always the way."

"You just get on with it and deal with it yourself."

This brief overview of the material gathered from a small number of focus groups clearly demonstrates the need to ensure that children and young people benefit from the development of the Victim Charter.

It is imperative that young people who are victims of crime are aware of what standard of service they can expect to receive from the system. Young victims should be made fully aware of their rights and informed and supported through each stage of the process, in a form which is appropriate to their capacity. Furthermore, they should also be informed about what methods of redress exist if they are not content with the service or standard of information they receive.

The criminal justice system can be complex and overwhelming for all who come in contact with it, but it is especially confusing for children and young people.

We agree with the need to treat victims and witnesses with respect, dignity and sensitivity and this principle is especially relevant when dealing with children and young people.

The principle of equality of access to the justice system is particularly relevant for young people who experience crime. The level of underreporting from young people suggests that this is clearly an issue for young victims, and it is hoped that the Charter will improve accessibility for this group of victims.

Our view is that failing to include this significant representation of young victims and witnesses opinions and experiences would be a significant omission in the development of the Charter and the Charter will potentially be less effective as a result.

We would voice our concern about the current gap in information on the experiences of young victims and the urgent need to prioritise evidence gathering on this. This is especially urgent given that the NI Victims and Witness Survey does not include under 18 year olds. There is a need for detailed research on the nature of crimes committed against children and young people.

PART 5 CRIMINAL RECORDS

Include Youth has a number of concerns regarding the impact of disclosure of criminal records on young people.

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 have 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 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. The filtering period for under 18s receiving a Caution is two years, one

year for an Informed Warning and 5.5 years for those convicted with non-custodial sentences. 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.¹

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.

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

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 highlights the importance of securing education, training and employment as a key strand in reducing offending. 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 imperative that we do not put more unnecessary barriers in the way of young people who are wanting to turn their lives around and to reintegrate into society. The following quotes from young people indicate the importance of securing employment.²

"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."

PART 7 VIOLENT OFFENCES PREVENTION ORDERS

Include Youth has been engaged in the discussion on Violent Offences Prevention Orders for some time. Our critique of the intention to apply VOPOs to all people aged 10 and over is well rehearsed. Include Youth do not support the use of VOPOs for children and young people. We raised our initial concerns in August 2013 in a written

² Include Youth response to Department of Justice Reducing Offending Strategy, September 2012.

response to the Department of Justice proposals for legislation.³We welcome the Department of Justice's willingness to engage in dialogue with us surrounding our concerns and we have met with officials on several occasions over the past months. However, we believe that the issues we raised have still not been adequately addressed. We therefore welcome the opportunity to inform the members of the Justice Committee of our key concerns regarding the introduction of this legislation.

In July 2011 the Department of Justice issued a consultation outlining proposals for Sexual Offender Notifications and Violent Offender Orders (VOOs). The proposals for VOOs did not make reference to a minimum age but through the clearly stated intention to replicate the legislation in England and Wales (page 41 of consultation document) it was reasonably inferred by consultees that the intention was to apply these orders to adults (over the age of 18) only. Indeed none of the respondents to the consultation raised the age threshold as an issue.

It would seem that following the closure of the consultation, stakeholders within the criminal justice system have stated that they feel there may be children who require a VOPO in exceptional circumstances, akin to the use of the Sexual Offences Prevention Order. This has brought the Department of Justice to the position we have today wherein it is intended that VOPOs should, therefore, be applied to all people aged 10 and older who meet the "criteria". This represents a significant shift in Departmental thinking and we are deeply concerned that this decision has been taken with no explicit consultation with regards to whether and how VOPOs should apply to children.

We note that the VOOs which exist in England and Wales cannot be applied to under 18s. It is therefore even more surprising that the Department of Justice has decided that the order will apply to children and young people under 18 in NI, without appropriate consultation, given the fact that the model in England and Wales formed the basis for the original proposals.

International Standards

Include Youth believe that the introduction of VOPOs to children and young people is in contravention of the fundamental principles of the United Nations Convention on the Rights of the Child (UNCRC) and is not in keeping with a child's rights compliant youth justice system. The UNCRC article of particular relevance to these proposals

³ Include Youth response to Violent Offences Prevention Orders: Current Department of Justice Proposals for Legislation, August 2013.

is Article 40. The provisions contained within article 40 place an obligation on government to ensure that all children in contact with the juvenile justice system are ‘treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society’.

In line with the UNCRC and other relevant international standards⁴, reintegration and rehabilitation should be a key aspect of the juvenile justice system. The Youth Justice Review Team also made reference to the need to prioritise rehabilitation and reintegration.⁵

It is therefore disappointing that the current proposals under VOPOs appear to ignore the need to address the rehabilitation and reintegration of children on release from custody. The emphasis of VOPOs appears to be predominantly on the need to restrict the movements of young people and reduce risk. We are not disputing the need to address these issues and are completely in agreement with the need to ensure public safety at all times, but the reintegration and age-specific treatment of the child is the most effective way of achieving this goal.

Evidence to support introduction of VOPOs for children

Include Youth has consistently asked the Department of Justice to provide evidence to support the need for the introduction of VOPOs to children. We still have not been provided with any evidence to suggest that there are children who would meet the criteria for a VOPO. The Department have provided minimal information on their reasoning for having no minimum age threshold for the application of VOPOs. In a document published in February 2014⁶ the Department stated:

‘Key stakeholders within the criminal justice agencies, particularly PSNI and PBNI, have confirmed that there may be a need in exceptional cases for a VOPO to be used to manage risk from a person under 18.’

⁴ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules).

⁵ A Review of the Youth Justice System in Northern Ireland, September 2011, recommendation 20, page 85.

⁶ Department of Justice, February 2014, Violent Offences Prevention Order: Current Proposals for Legislation, para 12, page 4.

The Department has not elaborated on the definition of ‘exceptional cases’ nor have they given any information as to how a VOPO should be applied to children given that their maturity, needs and capacity are vastly different to adults.

In correspondence with the Head of the Criminal Policy Branch in February 2014⁷, the Department noted that:

‘based on the most recent data, we would expect that those with eligible offences for a VOPO may be less than 10 a year’.

We would welcome further explanation of this figure and a detailed outline of the data used to reach this figure.

Before any decision is made to extend VOPOs to children, there must be an examination of the data with regards to children convicted of violent offences to ascertain whether any would have benefited from a VOPO and whether such a move would have afforded more protection to the public or potential victims and would have reduced the child’s recidivism. As stated above it is recognised internationally and within domestic legislation and practice that children and young people under the age of 18 must be treated differently from adults if they are to desist from offending. As such any new provision that applies to be implemented following full consideration of the evidence of numbers of young people involved with this sort of violent offending and the most effective ways of ensuring that the others are safe from a repeat of such violence.

Despite repeated request we have not had sight of any robust evidence to support the extension of VOPOs for children. We are concerned that the Department of Justice are proposing legislation with no published evidence base for its need or likely effectiveness.

Existing Orders

Furthermore, we do not think it is necessary to apply VOPOs to children as there are already a number of custodial orders that can be used for children found guilty of violent offences which have as an integral element, supervision and prohibition of activities on release. A Juvenile Justice Centre Order (JJC Order) entails a child to be detained in custody for a period of time, followed by a period of supervision in the

⁷ Letter from Amanda Patterson, Head of Criminal Policy Branch to Koulla Yiasouma, Director of Include Youth, 26 February 2014.

community. A JJC Order can be for a minimum of 6 months and a maximum of 2 years, with half of the time spent in custody and the remaining in the community under the supervision of the PBNI. Breach of supervision is treated extremely seriously and may result in the child being returned to detention.

There are also mechanisms already in place to deal with children convicted of 'serious' or 'specified' offences, which can relate to violent or sexual offences. Children can only be released on supervision on these orders if the court is satisfied that they no longer represent a danger to the public. We would question why it is necessary to replicate these protections by allowing the application of VOPOs to children. It would seem to us that protections already exist under current procedures. We are not convinced that the application of VOPOs to children will give any added value.

Section 75

Include Youth believes that the Department of Justice has not complied with its statutory equality obligations with regard to the current proposals. Section 75 of the Northern Ireland Act 1998 makes explicit the duties placed on public bodies with regards to the promotion of equality of opportunity across 9 groups, of which age (older and younger) is one. The Department of Justice Equality Scheme 2011 – 2015⁸ (approved by ECNI, March 2012) specifies that:

“All consultations will seek the views of those directly affected by the matter/policy, the Equality Commission, representative groups of S75 categories, other public authorities, voluntary and community groups.....”

It is apparent that in the case of the application of VOPOs to children, the Department of Justice did not conduct a full consultation and as such it has failed to comply with this commitment. The Department appears to have consulted only with some “other public authorities”, crucially doing nothing to consult with those “*directly affected*” or “*voluntary and community groups*”.

Additionally, chapter 6 of the Equality Scheme goes some way to outlining the Department’s specific commitment to engaging directly with children and young

⁸ Department of Justice Equality Scheme 2011-2015, para 3.4.

people, and the Department has signed the Northern Ireland Commissioner for Children and Young People's Participation Policy Statement.⁹

Despite us raising these concerns with the Department we are still waiting to be furnished with evidence that consultations have been conducted with those directly affected and with voluntary and community groups, specifically on the application of VOPOs to children. We would like the Department to provide us with any responses they have had to date from stakeholders which indicate a desire to apply VOPOs to children.

Therefore Include Youth believes that the Department of Justice has clearly breached the commitments that were made in their Equality Scheme.

As part of the equality consultation on the Justice Bill in May 2013, the Department stated that initial screening had indicated that there would be some potential for adverse impact on young males, given the fact they are statistically more likely to commit such offences than any other group in the Northern Ireland offending population. Include Youth took issue with the subsequent decision to not conduct an EQIA, and disagreed with the reasoning given to justify this decision. It was erroneous to decide not to screen the document wholly on the basis that the impact will only be on those young males who offend, rather than young males as a whole. The fact that the policy could potentially impact on young males is reason enough for it to be screened in. In our opinion, this policy should not have been screened out and a full equality impact assessment should have been conducted.

These proposals will undoubtedly impact on children and young people and as a result they must be consulted on the detail of their application.

PART 8 MISCELLANEOUS

Aims of Youth Justice System

In line with our response to the recommendation from the lengthy Youth Justice Review that Section 53 of the Justice (NI) Act 2002 (the aims of the youth justice system) should be amended to fully reflect the best interest principles as espoused in Article 3 of the UN Convention¹⁰ we welcome this clause which compels all those

⁹ Ibid para 6.6.

¹⁰ A Review of the Youth Justice System in Northern Ireland, September 2011, recommendation 28, page 118.

working in the youth justice system to take account of the best interests of the child with whom they are working as a primary consideration. We believe that the introduction of this clause will help to ensure children and young people involved with offending do not offend further.

CONCLUSIONS

Include Youth is pleased to have the opportunity to provide the members of the Justice Committee with this written evidence and are happy to provide any further information as required. We believe that this Bill will begin to address some of the legislative challenges within the system but we caution against any provision which has no evidence base.