Crime and Security Bill

Briefing on Second Reading
House of Commons

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Introduction

1. JUSTICE is a British-based human rights and law reform organisation, whose mission is to advance justice, human rights and the rule of law. JUSTICE is regularly consulted upon the policy and human rights implications of, amongst other areas, policing, criminal law and criminal justice reform. It is also the British section of the International Commission of Jurists.

2. This briefing is intended to highlight JUSTICE's main concerns regarding the Crime and Security Bill for House of Commons Second Reading. Where we have not commented upon a certain provision in the Bill, this should not be taken as an endorsement of its contents.

3. Our concerns about the Bill's provisions at this stage focus upon the following four areas:

    - The reduction in reporting requirements for stop and search goes too far and may compromise the accountability of police officers;

    - The proposed DNA retention regime is excessive and disproportionate, and represents only a marginal improvement over the current blanket retention policy;

    - Domestic violence protection orders may not be appropriate in some circumstances and further safeguards for individual rights should be provided;

    - The regime for 'gang injunctions' for children and young people is likely to contravene fair trial provisions and is contrary to youth justice principles.

POLICE POWERS OF STOP AND SEARCH

Clause 1 - Records of searches

4. The provisions reduce reporting requirements under section 3 of the Police and Criminal Evidence Act 1984 (PACE) to exclude details on whether anything was found as a result of the search and also whether and injury or damage resulted as a consequence of the search.

5. While we understand the importance of reducing police bureaucracy and time spent form-filling by individual officers, we are concerned that these provisions may compromise the accountability of officers for unlawful searches. In particular, if injury or damage is caused this may be the subject of a future complaint and/or litigation and in those circumstances, it is important that the police officer makes a contemporaneous record of his/her account of whether injury/damage was caused, and if so what, how and by whom.

6. We would expect instances of injury/damage to property to occur only rarely in the course of searches and therefore the need for a record could be covered by a simple tick-box yes or no that, if yes, could be expanded upon in a brief note.

7. The lack of a requirement to record the name of the person searched (and their being given a 'receipt' to record the stop and search without their name on it) could also lead, if there is a subsequent complaint/litigation, to dispute as to whether the person was in fact stopped and searched. This is a particular risk if the stop and search occurs on a day when a large number of people are being stopped and searched by a particular officer.

8. If an illegal item such as drugs or a weapon is found in the course of a stop and search, this should also be recorded; we seek clarification that this will be recorded in the police officer's record of arrest as it is now to be omitted from the stop and search record.

9. Finally, we are aware of recent, disturbing media reports of the use of stop and search against young children. While monitoring of statistics on stop and search by ethnicity will continue as a result of the continued recording of the ethnic origin of a person searched, we believe that, at least where a person appears to be under the age of 21, their age is recorded in case they are under 18 so that the use of stop and search against children and young people – and the age of those children and young people – can also be monitored.

10. In general, we are doubtful that the reduction in recording requirements from ten items to seven will make a large difference to the time taken to make a record of the stop and search. We are concerned, however, that the reduction may make it more difficult to bring an effective complaint or civil suit in the case of an unlawful stop and search. The recent European Court of Human Rights judgment in *Gillan and Quinton v UK*[1] on the stop and search regime under ss44 and 45 Terrorism Act 2000 has highlighted the importance of sufficient safeguards being in place to prevent the arbitrary use of stop and search powers. Complaints and litigation provide safeguards against this and it is therefore important that their efficacy is not compromised.

11. Further, if the *Gillan and Quinton* judgment is implemented, the total number of stops and searches should decrease. In these circumstances the time saved by avoiding the unnecessary stops and searches can be used to ensure proper recording of those that continue to occur.

[1] App. no. 4158/05, judgment of 12 January 2010

FINGERPRINTS AND DNA SAMPLES

12. Reform of the law on DNA retention is long overdue. In December 2008, the Grand Chamber of the European Court of Human Rights held that the existing provisions of the Police and Criminal Evidence Act 1984 breached the right to private life under Article 8 of the European Convention on Human Rights. Specifically, the Grand Chamber said that the 'blanket and indiscriminate nature' of the existing law, under which the police may retain indefinitely the DNA of any person arrested regardless of whether or not they are convicted or even charged, failed to 'strike a fair balance between the competing public and private interests'.[2]

13, Unfortunately, the proposed replacement measures contained in this Bill are only a marginal improvement on the existing regime: those arrested but not charged or convicted may still have their DNA profile kept on the National DNA Database (NDNAD) for at least six years and as many as eight. In JUSTICE's view, retaining the DNA profile of an innocent person for six years is excessive and unnecessary. The government has failed to follow the much more proportionate retention model provided by the Scottish Criminal Procedure Act 1995, under which the DNA of persons arrested but not convicted is destroyed following an acquittal or a decision not to charge.[3] If enacted, the government's proposals would replace the existing 'blanket and indiscriminate' retention policy with one that is only slightly less sweeping but still disproportionate.

14. Clauses 2-13 of the Bill deal with the power of police to take fingerprints, DNA samples and other biometric information from suspects (clauses 8-13 address separately the situation in Northern Ireland).

15. Clauses 14-20 of the Bill contain the proposed new rules governing the retention of DNA by police following a suspect's arrest.

Clause 2 – Power to take material in relation to offences

16. This clause broadens the power of police to take fingerprints, DNA samples, and other biometric material from suspects without their consent if they have been arrested for a recordable offence.

17. It is important to distinguish between the routine taking of fingerprints on arrest, and the routine taking of a DNA sample. Fingerprints contain little in the way of sensitive personal information, other than as an identifier for forensic purposes. By contrast, a single sample of DNA contains an

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[2] Para 125, *S and Marper v United Kingdom* (2008) ECHR 1581.

[3] The 1995 Act as amended does allow for the retention of a suspect's DNA profile for up to three years where the person was arrested in relation to a violent or sexual offence. Additionally in such cases, Sheriffs may authorise retention for an additional two years on application by a Chief Constable.

individual's entire genetic history. In the words of the European Court of Human Rights, a DNA sample contains 'intimate information' about a person.[4]

18. Given the highly personal nature of DNA material, JUSTICE believes that the power of police to take DNA samples from an arrested person without their consent should be limited to those cases where the police reasonably believe that the taking of the DNA will assist with the investigation of a particular offence. In other words, the power to take fingerprints or DNA samples should not extend to those cases where the police have no reason to believe that the taking of such information will assist in the investigation of a particular offence, e.g. someone arrested for computer fraud where their identity is not at issue. We therefore recommend that the power in clause 2 should be modified to prevent the routine collection of DNA material from arrested persons.

Clause 3 – Power to take material in relation to offences outside England and Wales

19. Clause 3 allows for fingerprints, DNA samples and other biometric information to be taken from persons convicted of offences outside England and Wales. The only limitation is that 'the act constituting the offence would constitute a qualifying offence [mostly serious sexual or violent offences – see clause 7] if done in England and Wales'.

20. Although this power may well be justifiable in relation to those convicted of offences in another EU country or a common law jurisdiction such as Australia or Canada, it is not limited to those jurisdictions and takes no account of whether the person was convicted following a fair trial or not. The Foreign and Commonwealth's 2008 Human Rights Report draws attention to a number of countries with serious fair trial problems, including Afghanistan, China, Cuba, the Democratic Republic of Congo, North Korea, Iran, Pakistan, Russia, Saudi Arabia, Syria and Uzbekistan. For example, the FCO report notes that the majority of the 7000 condemned prisoners on death row in Pakistan 'are those convicted under trials that do not comply with minimum standards'.[5] And yet, under clause 3, anyone convicted of a qualifying offence in Pakistan would be liable to have their DNA taken and retained by police in the UK.

21. In light of the lack of fair trial procedures in a significant number of foreign countries, we recommend that the power of police to take DNA from a person solely on the basis of a foreign (non-EU) conviction be subject to judicial authorisation, rather than the authorisation of senior police office. Unlike the police, UK courts are well-placed to assess the fairness of foreign convictions as it is an issue that arises regularly in extradition and asylum cases. In the great majority of cases, an application to take a person's DNA on the basis of a foreign conviction would

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[4] Para 132, *S and Marper*.

[5] Foreign and Commonwealth *Office, Annual Report on Human Rights in* 2008 (March 2009), p154.

take no more time than an application by police to search a person's house, but it would provide the person in question with the opportunity to make representations to the court about the circumstances of their foreign conviction.

Clause 5 – Speculative searches

22. Clause 5 allows for any fingerprints and DNA samples taken from an arrested person to be matched against any samples from unsolved cases. This reflects the existing practice and is a sound forensic measure. However, we draw attention to our comments in relation to clause 2. In particular, it is apparent that police take DNA from suspects routinely upon arrest, regardless of whether the taking of DNA would be useful in the investigation of a particular offence. In our view, the sensitive nature of DNA material is too important to be gathered routinely. While we recognise the value of speculative searches for investigation purposes, we do not believe it is appropriate to take a person's DNA upon arrest as a matter of routine, simply in order to facilitate a speculative search.

Clause 6 – Power to require attendance at police stations
Clause 7 – Qualifying offences

23. Clause 6 introduces a schedule of powers enabling police to require a person's attendance at a police station for the purposes of taking their fingerprints or a DNA sample. We recognise that, in some cases, this power may be appropriate. If, for example, it is discovered that the DNA sample taken from a suspect released on bail is unusable, it would a reasonable restriction to require the suspect to reattend at the police station in order for another sample to be taken.

24. However, the schedule set out in clause 6 applies not only to people who have been charged with an offence but also anyone convicted of a criminal offence up to a period of two years from the date of their conviction. In addition, anyone convicted of a qualifying offence – as defined in clause 7 – is liable to be required to give a sample at any time, even if the conviction is decades old. We note that most of the offences in clause 7 are mostly serious sexual or violent offences, or terrorism offences as defined by the Counter-Terrorism Act 2008.

25. Although we consider that it may be sometimes justified for police to seek to take DNA samples of those convicted of serious crimes, even where the convictions are very old, we are concerned that such a substantial power lacks any safeguard against misuse. For example, a 60-year old man who was convicted of an offence of serious violence when he was 18 may have been fully rehabilitated in subsequent decades. In such a case, it would be irresponsible for police to require the man to attend a police station for the taking of a DNA sample unless they had reasonable grounds for believing that it would assist in the investigation of a particular offence. As for those with overseas convictions, an appropriate safeguard would be to require police to seek judicial

authorisation for their request to take a sample, in any case where the qualifying conviction was more than 15 years old.

Clause 14 – Material subject to the Police and Criminal Evidence Act 1984

26. Clause 14 sets out the government's proposals for the new DNA retention regime. In 2008, the European Court of Human Rights made clear that the existing indefinite retention rules were in breach of the right to respect for private life under Article 8.

27. In response, the Bill proposes a 6 year retention period for the DNA of those arrested but not charged or convicted. We regret to say that the 6 year period contained in the current Bill is only a marginal improvement on the current regime of indefinite retention. In JUSTICE's view, allowing the police to retain the DNA profile of an innocent person for 6 years following their arrest is 6 years too long. The new retention regime put forward in the Bill remains excessive and disproportionate.

28. In particular, it is a cause of great dismay that the government continues to rely on poor quality research to justify its proposals. In its May 2009 consultation paper, the Home Office put forward material from the Jill Dando Institute that purported to show that persons arrested but not charged or convicted pose the same risk of criminal offending as those previously convicted of criminal offences. The research contained significant and substantial methodological flaws, and was the subject of much adverse comment.[6] Dr Ben Goldacre writing in the Guardian newspaper described it in the following terms:[7]

> [the] study from the Jill Dando Institute, attached to [the Home Office] consultation paper as an appendix, is possibly the most unclear and badly presented piece of research I have ever seen in a professional environment.

29. Mr Justice Beatson, the outgoing President of the British Academy of Forensic Science and a High Court judge, said in his valedictory address in June 2009:[8]

> [The consultation paper] relies almost entirely on a piece of research undertaken since the decision of the Strasbourg Court by Professor Ken Pease of the Jill Dando Institute. The research focuses exclusively on the risk posed by unconvicted people who have been arrested as compared with the risk posed by unconvicted people who

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[6] See e.g. 'DNA database plans based on 'flawed science' warn experts', *The Guardian*, 19 July 2009.

[7] Ben Goldacre, 'Home Office research so feeble someone ought to be locked up', *The Guardian*, 18 July 2009:

[8] Mr Justice Beatson, 'Forensic Science and Human Rights: The Challenges' (Inner Temple Hall, 16 June 2009), p25., p19. Emphasis added.

> have not been arrested. The policy choices are said to rest upon an empirical basis. The issues involved raise difficult scientific and technical questions, and the policy choices in this area also have constitutional and civil liberties implications. *The need is for an objective, impartial and balanced assessment in which the public can have confidence*. Bearing these factors in mind, I suggest that the issue is one on which, for most of the twentieth century, advice would have been sought from a Royal Commission made up of the leading experts in all the relevant disciplines or a body such as the Law Commission.

30. In September 2009, the Director of the Jill Dando Institute told the BBC that its research should not have been published on the basis that it was incomplete:[9]

> The Home Office's] policy should be based on proper analysis and evidence and we did our best to try and produce some in a terribly tiny timeframe, using data we were not given direct access to. That was probably a mistake. With hindsight, we should have just said, 'you might as well just stick your finger in the air and think of a number'.

31. As the European Court of Human Rights held in its judgment in *Marper*:[10]

> *Weighty reasons* would have to be put forward by the Government before the Court could regard as justified such a difference in treatment of the applicants' private data compared to that of other unconvicted people.

32. In the run-up to the current Bill, the Home Office has again published research which purports to show the existence of the so-called 'hazard rate' – the idea that people arrested but not convicted are more likely to commit criminal offences than other members of the public. However, rather than follow the recommendation of the British Academy of Forensic Science and obtain the advice of leading experts, the research is set out in a paper entitled 'Crime and Security stakeholder briefing' and the source is given as the Association of Chief Police Officers' Criminal Records Office.

33. Most worrying, it is apparent that the new research is based on the same false premises as the earlier flawed research from the Jill Dando Institute. In particular:

    a. The briefing paper wrongly claims that 'arrest is an indicator of the risk of offending' (p1). This is logically mistaken. Only a criminal conviction is evidence of offending.

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[9] BBC News, 'DNA storage proposal 'incomplete'', 25 September 2009.

[10] Note 2 above, para 123.

The fact of arrest merely reflects the police's suspicion (reasonable or otherwise) that an individual has committed an offence. In itself, it is no evidence of criminality unless and until the individual is charged and convicted;

b. The paper goes on to measure the 'risk of offending' by the 'risk of *re*-arrest' (p1). In other words, rather than focus on evidence that the person in question has actually committed an offence, the government is claiming that the likelihood of a person committing an offence can be determined purely on the number of times they have been arrested. This is, of course, false. Just as one arrest cannot be taken as evidence of criminality, neither can two arrests: the second arrest may have been as mistaken and as ill-founded as the first. Indeed, even the earlier incomplete research from the Jill Dando Institute acknowledged the likelihood of 'confirmation bias by investigating officers': i.e. the fact that once a person is 'known to the police', they are more likely to be considered as a suspect when investigating future offences;

c. Despite the National DNA Database having been in operation since April 1995, the government's briefing paper's analysis of arrest-to-arrest statistics is based on only *three years* of data. The briefing paper speaks of 'limited data' and 'uncertainties'. It admits that 'our evidence is not perfect' and that 'our analysis could be uncertain'. The paper also concedes that the government's analysis requires 'extrapolation' of incomplete data, and speculates that even longer periods of DNA retention might be justified if only the evidence were available. However, even the government's limited data does nothing to show that there is continuing risk of offending posed by people who have been arrested. On the contrary, the only thing that it shows is that once you have been arrested by the police, you are more likely in the future to be arrested by the police;

d. The paper cites the ACPO Criminal Records Office as showing that in 2008/2009, '46 rape cases and 23 murder or manslaughter cases in England and Wales were matched to the DNA database from DNA profiles that belonged to individuals who had been arrested but not convicted of any crime'. No other details concerning these cases are given, other than that '39 cases were found to have a direct and specific value to the investigation'. The briefing paper goes on to claim that, had the Scottish model been used, only 17 of the profiles would have been retained and '22 victims of the most serious crimes and their families could have been denied justice last year'. This is the most concrete statistic given, but it also contains two notable omissions:

    i. The ACPO figures for 2008/2009 claims 69 matches, of which 39 had 'a direct and specific value to the investigation'. This leaves 30 cases in which there appears to have been a DNA match which was not of 'direct and specific

value' to the investigation. The fact that the ACPO statistics do not clarify the nature of the match suggests that they are not counting direct matches (e.g. the DNA profile on the database matches the DNA of the suspect) but results from so-called 'familial' searches (e.g. the DNA profile on the database is similar to the DNA of the suspect – they may be related or from a similar ethnic background);

ii. The 2008/2009 matches do not refer to any criminal convictions, only that the matches had a 'direct and specific value to the investigation'. In the absence of a conviction, however, there is no way of knowing whether the matches between the database and the cases were ultimately innocent matches or whether they were evidence of guilt. In other words, it may be that none of the 69 DNA matches recorded by ACPO in 2008/2009 led to a person being convicted of a criminal offence.

34. In light of the serious flaws in the government's research and analysis, it cannot be said that the government has given 'weighty reasons' to justify retaining the DNA of innocent persons for six years. In JUSTICE's view, the most proportionate model of DNA retention is the Scottish regime, under which the DNA samples and profiles of those not convicted of a criminal offence are destroyed once they have been acquitted or once the decision has been taken not to charge them, whichever comes first. We note that the Home Secretary has criticised the Scottish model on the basis that there has been little research concerning its operation.[11] However, the government has had many years to commission high-quality, independent research on the merits of its own blanket retention policy, but failed to do so. The government's failure to produce independent evidence to support its analysis means that it is in no position to criticise other models for their lack of evidential support.

35. In JUSTICE's view, the proportionality of the Scottish model is self-evident. Innocent people who have not been charged or convicted are treated in the way that innocent people should be. We note that the Scots model also makes allowance for a limited period of 3 year retention for those suspected of sexual or violent offences. We do not think this provision is necessary but we consider that such a narrowly-drawn exception is more likely to be proportionate. In addition, the Scottish model requires judicial authorisation – rather than authorisation by a senior policeman – for the retention of DNA in exceptional cases.

36. Despite our criticisms of the government's DNA retention proposals overall, we do welcome the measure contained in draft clause 64ZA which the requires the destruction of DNA samples (as opposed to profiles) after six months. We are pleased that the government has recognised that

[11] Rt Hon Alan Johnson MP, 'My DNA Dilemma', *The Guardian,* 25 November 2009.

retaining a DNA sample (containing an individual's entire genetic information) is unnecessary if a DNA profile (which contains only relevant identifying markers) will suffice for forensic purposes.

DOMESTIC VIOLENCE

Clause 21: Power to issue a domestic violence protection notice

37. This provision gives a police officer ranked superintendent or above the power to bar a person from his/her home if the officer reasonably believes that the person has committed domestic violence, or threatened domestic violence, and that the notice is necessary to protect another person from such violence or threat of violence, for up to 48 hours.

38. Given that reasonable suspicion that an offence has been/is being/is about to be committed is the test for arrest, we question why this power would be used where there are reasonable grounds for belief that an offence has been/is being/is about to be committed – why should the suspect not be arrested? Bail conditions could then include non-contact with the alleged victim/non-attendance at the relevant address. Where there are only threats but no offence has been/is being/is about to be committed, there may be circumstances in which this power is appropriate. We therefore query whether it should be limited to these, latter, circumstances.

39. We are also concerned that the effect of a DVPN should not be to render a person temporarily homeless: although some recipients may be able to stay with friends or relatives, others may not – enquiries should be made by the police officer of the recipient and if necessary advice and assistance should be provided as to emergency accommodation.

Clause 23: Breach of a domestic violence protection notice#

40. Clause 23 provides that a person arrested for breach of a DVPN *must* be held in custody pending appearance in the magistrates' court. We question the lack of discretion to release a person on bail (with appropriate non-contact, etc, conditions) to attend the magistrates' court in these circumstances, by analogy with arrest for criminal offences. If appropriate, protection could be provided to the alleged victim pending the (rapid) court appearance.

Clause 24: Application for a domestic violence protection order
Clause 25: Conditions for and contents of a domestic violence protection order
Clause 26: Breach of a domestic violence protection order

41. Clause 24 provides that if a DVPN has been issued, a DVPO *must* be applied for. We do not believe the lack of discretion here is sensible. What of, for example, cases where the grounds for reasonable belief in issuing the DVPN have turned out to be clearly unfounded, or where the

recipient of the DVPN has been subsequently arrested for an offence and is remanded in custody?

42. As with DVPNs, we question why DVPOs are appropriate where an offence of domestic violence has been committed. In those circumstances the appropriate course of action is arrest and charge, and if the person is released on bail then appropriate conditions to protect the alleged victim can be put in place. Civil proceedings with a lower standard of proof should not be used as a substitute for the criminal process. Further, such a regime cannot deal effectively with violence since appropriate criminal sentences are not available.

43. We also question why existing powers under the Family Law Act 1996 (in particular, non-molestation orders) are thought insufficient and therefore why DVPOs are needed, particularly since section 60 of the 1996 Act, which would allow a third party to initiate proceedings on behalf of a victim, has not yet been brought into force. In particular, if delay in applications under the 1996 Act is of concern, should rapid access to the court be ensured, if necessary by legislative reform, instead of creating DVPOs?

GANG-RELATED VIOLENCE

Clause 31: Grant of injunction: minimum age

44. While we support the intention to address the issue of serious harm caused by gang-related crime, we believe that 'injunctions against gang-related violence', as created in the Policing and Crime Act 2009 and effectively applied to teenagers under the age of 18 in this Bill, are an inappropriate use of an injunction and appear to be a means to circumvent the protective guarantees of the criminal justice system by using the civil courts.

45. It is an inappropriate use of an injunction to create an individual code of behaviour and such injunctions provide the potential to control the associations, activities and movements of people who have committed no crime. Their scope is wide-ranging and allows extensive interference with fundamental rights. It essentially allows punishment without trial. We believe that this regime is that of a 'criminal charge' under Article 6 ECHR and that therefore the protections of the criminal process should apply.

46. In the case of ASBOs, the House of Lords in *McCann*[12] found that even though they were civil orders, the criminal standard of proof (being sure/beyond reasonable doubt) should be used. Injunctions against gang-related violence however have even more serious effects upon the individual than an ASBO. Firstly, more serious criminality is alleged by the title of the order.

[12] *R v Manchester Crown Court, ex p McCann and others* [2002] UKHL 39.

Secondly, the court possesses the power to impose mandatory requirements under the terms of the injunction in addition to the prohibitions associated with ASBOs – for example, curfews, attendance for supervision, etc. These injunctions may therefore have an equivalent or, indeed, more serious effect on individual liberty than many community sentences following a criminal conviction. This further strengthens the argument in favour of the criminal standard of proof being necessary, instead of the civil standard provided for in the Bill.

47. It is particularly inappropriate to use these powers against children and young people under the age of 18, for whom the procedural protections of the criminal process are particularly important in preventing unfairness. Children and young people accused of offending behaviour should be dealt with in a specialist forum accustomed to adapting its procedures to their needs and understanding, and not in an ordinary adult court. Furthermore, under the UN Convention on the Rights of the Child, in all criminal proceedings concerning children (in which we would include these injunctions), the privacy of the child should be protected.

48. We believe that children who have become involved in gang activities should be dealt with by children's services (and if necessary the family courts) as children in need of protection/at risk of harm, and further that if offences are committed these should be dealt with by the specialist youth justice system. We therefore believe that these provisions should be removed from the Bill.

Clause 36: Powers of court on breach of injunction by respondent under 18

49. Breach of an injunction can result in the imposition of a supervision order or detention order for up to 3 months. Supervision orders may contain an activity element which enables to court to require participation in specified programmes or residential exercise. Again, these are equivalent to a community sentence but for a child/young person who may have committed no criminal offence, and certainly has not been proved to have done so.

50. We are especially alarmed at the proposal that civil detention orders should be imposed upon children and young people. This directly contradicts the government's stated policy, and the UK's obligation under the UN Convention on the Rights of the Child, that custody for children should only be imposed as a last resort. Further, short-term custody for children and young people of 14-17 inclusive normally includes a rehabilitative element – ie it is a detention and training order, not merely a detention order – whereas these orders are purely punitive (detention alone). Custody for children and young people under 18 should only ever be imposed – as a last resort – following criminal conviction and following the careful consideration of both sentencing guidelines and youth offending team reports by sentencers in courts accustomed to dealing with the sentencing of children and young people. Civil proceedings in the county court are an entirely inappropriate forum.

51. We therefore believe that these provisions should be removed from the Bill. We also direct the attention of Members of Parliament in this regard to the briefing for Second Reading of the Standing Committee for Youth Justice (SCYJ), of which JUSTICE is a member.

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