

the Howard League for Penal Reform

Secure colleges and the Criminal Justice and Courts Bill (Part 2 and Schedules 5 & 6) House of Lords Committee Stage briefing For debate on Monday 21st July 2014

Introduction

The Criminal Justice and Courts Bill (the Bill) legislates for the introduction of secure colleges as a form of youth detention. Plans for secure colleges were set out in the government's response to the Transforming Youth Custody (TYC) consultation, published in January 2014.

The Government's stated aim in introducing secure colleges is to save costs, put "education at the heart of youth custody" and reduce reoffending. Construction of a 320-bed, £85million "pathfinder" secure college will begin next year in Leicestershire. It is due to open in 2017 and may hold girls and boys between 12 and 17 years of age.

The Bill and the TYC consultation response contain very little detail about how secure colleges will operate or the minimum standards required. The Government has said that detail will be provided in contracts with providers – over which Parliament has no control – and some will be contained in secondary legislation (the Secure College Rules) – which as yet are unpublished and will only be subject to negative resolution.¹

One of the few operational details contained in the Bill is that secure college staff will be permitted to use force to maintain good order and discipline, if authorised to do so by secondary legislation. The government has said that the proposed content of the Secure College Rules (but not the draft Rules themselves) will be published ahead of Report Stage.

Though we welcome the ambition to improve education in custody, the Children's Right Alliance or England (CRAE), the Howard League for Penal Reform and Standing Committee for Youth Justice (SCYJ) oppose secure colleges. We believe that large institutions, far from a child's home, potentially holding a very diverse population are unsafe, unsuitable environments which will not help to reduce reoffending or improve education. We believe that a new building is unnecessary and that the £85million could be far better spent elsewhere in the youth justice system.

The child custody population has fallen significantly in recent years, which is very welcome. The average population in 2011/12 was 1963², it is currently 1091³. 905 custody places were decommissioned in 2013/14⁴ but the occupancy rate across the estate is only 81%⁵. Plans for secure colleges were developed in very different circumstances, there is no need to build a new institution at present.

We urge Peers to oppose the question that Clauses 29 & 30 and Schedules 5 & 6 stand part of the Bill.

¹ Lord Faulks, House of Lords Hansard, 30 June 2014, column 1627.

² Youth Justice Statistics 2011/12, England and Wales, Youth Justice Board / Ministry of Justice Statistics bulletin.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279905/yjb-stats-2011-12.pdf

³ Youth custody report: May 2014 <https://www.gov.uk/government/publications/youth-custody-data>

⁴ Youth Justice Board for England and Wales, Annual Report and Accounts, 2013/14

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329158/yjb-annual-report-accounts-2013-14.pdf

⁵ Youth custody report: May 2014 <https://www.gov.uk/government/publications/youth-custody-data>

However, if secure colleges are to go ahead, safeguards are needed in the primary legislation to ensure that, as far as possible, these institutions meet the rights and needs of detained children, provide a decent education and promote rehabilitation, and that Parliament has the opportunity to fully scrutinise the plans.

Our chief concerns about the plans for secure colleges which should be addressed in the primary legislation are:

1. Size

- The secure college would be the largest custodial institution in the country for children. The 'pathfinder' will hold 320 children. This is to "achieve economies of scale" and so save costs.⁶
- Large custodial institutions are violent and intimidating.
- Of the 16 deaths of children in custody since 2000, all occurred in young offender institutions (YOIs) and secure training centres (STCs) – the largest types of institution in the secure estate for children. None occurred in Secure Children's Homes (SCHs).
- Small secure units, with high staff to child ratios, such as SCHs, are safer, can best meet the complex needs of children in custody and have better outcomes for detained children.⁷
- Large institutions inevitably result in children being detained further from their homes. This has a negative effect on rehabilitation and makes maintaining family contact difficult.
- The UN Rules for the Protection of Juveniles Deprived of their Liberty say that secure institutions for children should be "small-scale" and "the number of juveniles detained in closed facilities should be small enough to enable individual treatment." (Rule 30).
- In its recent report on the Bill the Joint Committee on Human Rights (JCHR) said: "We emphasise the importance of existing international human rights standards to [secure college] provisions: for example, that the State should set up small open facilities where children can be tended to on an individual basis and so avoid the additional negative effects of deprivation of liberty; and that institutions should be decentralised to allow for children to continue having access to their families and their communities."⁸
- HM Chief Inspector of Prisons, Nick Hardwick, wrote in a recent article: "...in my view the government needs to proceed very cautiously with its plans to reform custody arrangements for children and young people. Put simply, no young person is going to take advantage of better education and resettlement opportunities if they are frightened and looking over their shoulder all the time. All the evidence suggests that concentrating young people in large establishments a long way from home compromises both safety and resettlement."⁹
- Currently, young and vulnerable children are detained in SCHs. However, 28 SCH beds have recently been cut. The government is clear that secure colleges will accommodate some of the children currently detained in SCHs but has said that some SCH places will be retained for the most vulnerable. This is of the utmost importance and this commitment should be on the face of the Bill.

The size of secure colleges should be limited and there must continue to be sufficient places in Secure Children's Homes. We welcome amendments tabled to address to address these concerns, including:

- 42E, 42K: which strengthen the Secretary of State's responsibility to provide secure children's home places
- 43A: which requires a small pilot of a secure college detaining no more than 50 children to be undertaken.

⁶ Impact Assessment: Transforming Youth Custody

⁷ 'They helped me, they supported me': achieving outcomes and value for money in Secure Children's Homes', 2014, Secure Accommodation Network.

⁸ Joint Committee on Human Rights, 2014, "Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill Fourteenth Report of Session 2013-14." Page 4. <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/189/189.pdf>

⁹ Hardwick, N., 2014: "Feltham: time for a new start", Criminal Justice Matters, Volume 95, Issue 1, 2014 DOI: 10.1080/09627251.2014.902203, Pages 22-23.

- 43C: which requires the Secretary of State, in providing any secure college, to have a view to the aim of ensuring: “ young offenders are detained at an institution that is sufficiently small to make each offender feel safe and secure” ; that they are detained a reasonable distance from home; and that they are provided with continuity if supervision during detention and upon release.

2. Girls and younger children

- Secure colleges may hold children as young as 12 and a mixture of girls and boys.
- YOIs only hold boys who are 15 or over.
- There are a very small number of girls and younger children in custody: in 2012/13, 95% of children in custody were male, 96% were 15-17 years old. At present there are only 49 girls in custody **in total** and only 52 under-15s.¹⁰
- This means each secure college will hold a very small number of young boys aged between 12 and 14, and an even smaller number of girls, with a large number of older boys.
- This creates serious, unprecedented, safeguarding risks and it is likely that the regime will be designed around the majority’s needs.
- The Government does not seem to have assessed the impact of secure colleges on girls and younger children. The JCHR said: “ *We note that the Government does not appear to have carried out any equality impact assessments of the proposed secure colleges policy, and we recommend that such assessments should be carried out and made available to Parliament at the earliest opportunity, assessing in particular the impact on girls and younger children of detaining them in large mixed institutions holding up to 320 young people including older children up to the age of 18.*”¹¹
- The Government acknowledges there are “ risks” in holding girls and younger children together but says it is “ *confident that those risks can be managed*”¹². It has not set out how, other than to say that there will be separate living units. However, this does not explain how, practically, these children will be kept separate the rest of the time – for example during association and whilst moving between lessons. This will be a complex task.
- The youth secure estate has moved away from “ split-sites” (where different groups are held separately on the same site), which have been discredited: they are difficult to run, and require children to be locked up for longer periods, in order to prevent different groups from coming into contact with each other; children held in split-sites consistently reported poorer experiences than those in dedicated sites.¹³
- Girls and boys, and a mixture of age ranges, are held together in Secure Children’s Homes. However, the ratios are far closer¹⁴ and the institutions are smaller.

Holding younger children and girls as a small minority in a secure college should not be a possibility. We welcome amendments to this affect. Particularly:

- 42F which prevent younger children being detained in secure colleges.
- 42G and 43C which prevent girls being detained in a secure college.
- 43C which prevents girls from being detained with boys in secure colleges.

3. Education, support, staffing: lack of detail in the Bill and the need for Parliamentary scrutiny

- Improving education in custody is a welcome ambition but building a new prison is not necessary to achieve it.
- A number of initiatives have sought to improve education in child custody in recent decades – from improving education in YOIs to the introduction of STCs (which may now be closed).
- The Government has acknowledged that, currently, the more expensive custodial institutions provide the greatest number of hours of education.¹⁵ We question how secure colleges will

¹⁰ Youth custody report: May 2014 <https://www.gov.uk/government/publications/youth-custody-data>

¹¹ Joint Committee on Human Rights, 2014, “*Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill Fourteenth Report of Session 2013-14.*” Page 20. <http://www.publications.parliament.uk/pa/lt201314/jtselect/jtrights/189/189.pdf>

¹² Jeremy Wright. House of Commons Hansard, 12 May 2014 : Column 537

¹³ See, for example, HM Inspectorate of Prisons Annual Report (2010/11)

¹⁴ See HC Deb, 30 June 2014, c402W

¹⁵ SCHs provide 30 hours of education per week, STCs provide 25 hours a week, in YOIs the average is only 12 hours a week.

provide the “*significantly greater emphasis on education*” the Government envisages if the overriding imperative is to cut costs and to withdraw from the more expensive provision.

- There is almost no detail about the education or support to be provided in secure colleges¹⁶ – either in the Bill or in the *Transforming Youth Custody* consultation response.
- For instance, there is no detail of how the education or support on offer will be developed, how secure colleges will manage and educate a large, complex population¹⁷, or staff to children ratios. Nor is there any detail about the qualifications secure college staff will need, or the support and training they will receive.
- Health and support services are crucial in helping to address a child’s needs and in ensuring they are able to benefit from education – a child will not be able to benefit from improved education unless their other needs are met.
- We have seen no evidence that the Government has developed minimum requirements for secure colleges or the criteria against which providers’ proposals will be assessed.
- The Government has said that it does not want to hamper provider innovation and that, in secure colleges, “*as with free schools it will be for education providers to determine how best the educational engagement and attainment of young people in a secure college can be raised*”.¹⁸ However, free school providers cannot make a profit, unlike justice system providers, and they are far greater in number; only a small number of providers will be able to run a secure college. Even free schools have very basic requirements on the curriculum they must provide.
- The Government has said that more detail on secure colleges will be contained in provider contracts. However, Parliament will not have the opportunity to influence the contracts. It may not even be able to see them until they have been signed.
- The Government may include more detail on the operation of secure colleges in secondary legislation (the secure college rules). The content of the rules (but not the draft rules themselves) will be put out to consultation ahead of House of Lords Report Stage. However, it is not known how long the consultation will last and it is unlikely that the results will be published before the Bill completes its passage through Parliament. The Rules themselves will be subject to negative resolution,¹⁹ denying Parliament significant scrutiny over the proposals.

If Parliament is to approve plans for secure colleges it must set out the minimum requirements for education, support and staffing. If these requirements are to be set out in secondary legislation, this must be subject to affirmative procedure. We welcome amendments tabled to address to address these concerns, including

- 42H: which requires individual learning plans to be developed for children in custody
- 42J: which requires provision to cater for children’s health and wellbeing needs
- 43: which requires that any rules made about the regulation and management of secure colleges be subject to affirmative resolution
- 43C: which sets out details of the aims the Secretary of State must pursue when providing a secure college, including: improving education; providing courses and facilities that meet children’s needs; developing skills, motivation and confidence; ensuring the availability of staff who are appropriately trained; ensuring suitable services to protect children’s health and wellbeing; providing appropriate facilities for children with special educational needs, problems relating to physical health, mental health and drug and alcohol abuse.
- 43D: which sets out that Section 29 and 30 of the Bill (which create secure colleges) will not come into force until Parliament has been provided with, and approved, details about secure colleges, particularly on: the education to be provided; compliance with health and wellbeing needs of young people; staff qualifications; and the minimum staff to child ratio.
- 44A: which requires the Secretary of State to lay a “draft detailed educational scheme for secure colleges” before Parliament, which Parliament must approve.

¹⁶ TYC (e.g. para 11) says that detainees will receive holistic support. It is not clear what this would mean in practice.

¹⁷ Delivering education in an SC will be very different to delivering learning in an outside school or college due to young people entering and leaving custody at different times and having a wide variety of other needs.

¹⁸ Jeremy Wright, Minister of State for Justice, Criminal Justice and Courts Bill, House of Commons Committee Stage. House of Commons Hansard, 20th March 2014, Column 291.

¹⁹ Lord Faulks, House of Lords Hansard, 30 June 2014, column 1627.

- 44B: which makes provision to help to ensure secure colleges meet the special educational needs of detained children.
- 44C: which sets out the qualifications certain secure college staff must hold.
- 45: which requires the Secretary of State to set out the staff to child ratio in a secure colleges in secondary legislation, which must be subject to affirmative procedure.
- 47: which requires the Secretary of State to set-out the education to be provided in a secure college in secondary legislation, which must be subject to affirmative procedure.
- 48: which requires regulation setting out training requirements for secure college staff must be subject to affirmative procedures

4. Use of force

- The Bill sets out that a secure college custody officer may “ *use reasonable force*” “ to “ *ensure good order and discipline*” (GOAD) “ *if authorised to do so by secure college rules*” (Schedule 6, (8(c)) and (10)).
- Using force to maintain GOAD has proved dangerous in the past and led to force being used against children illegally. “Use of force” includes use of restraint.
- Children’s prisons can be run without using force for GOAD. SCHs have never used force for GOAD.
- In 2008 the Court of Appeal ruled that using force to maintain GOAD in Secure Training Centres was incompatible with the European Convention on Human Rights.²⁰ This was because it amounted to “inhuman or degrading treatment” and the Government had not shown that use of force to maintain GOAD was necessary.
- There has been no significant change in circumstances which is likely to make the use of force “necessary” for GOAD now, when it was not necessary in 2008. Therefore, we consider that the use of force for GOAD to be unlawful.
- Use of force for GOAD has been linked to deaths in custody – for instance, Adam Rickwood committed suicide after being illegally restrained in Hassockfield STC. The Howard League is currently representing a boy who had his arm broken whilst being restrained.
- Because it is potentially so dangerous, the use of force should be limited to situations in which it is necessary in order to keep children or staff safe.
- Permitting force “to maintain GOAD” is so broad it will allow force to be used in almost any situation.
- Primary legislation needs to be clear and definitive on limiting the circumstances in which force can be used; it should set-out exactly when force should be used, not use subjective wording that is open to broad interpretation.
- The JCHR recently found that: “ *it is incompatible with Articles 3 and 8 ECHR for any law, whether primary or secondary legislation, to authorise the use of force on children and young people for the purposes of good order and discipline... we recommend that the relevant provision in Schedule 4 of the Bill should be deleted, and the Bill should be amended to make explicit that secure college rules can only authorise the use of reasonable force on children as a last resort; only for the purposes of preventing harm to the child or others; and that only the minimum force necessary should be used*” .²¹
- The Government has said that the Bill itself doesn’t allow force to be used for GOAD. It leaves this possibility open for the secure college rules. However, if the government has no intention of allowing force for GOAD in the secure college Rules it should remove the possibility.
- Allowing force for GOAD in secondary legislation would still be contrary to the ECHR, as the JCHR has made clear.
- The courts have found that differing messages between primary and secondary legislation on when force can be used led to confusion and the illegal use of restraint in secure training

²⁰ *R (on the application of C) (a minor) v Secretary of State for Justice* [2008] EWCA Civ 882

²¹ Joint Committee on Human Rights, 2014, “*Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill Fourteenth Report of Session 2013-14.*” Page 36. <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/189/189.pdf>

centres.²² The same could happen in secure colleges if the primary and secondary legislation do not appear to be consistent.

- The secure college rules will only be subjective to negative procedure so Parliament will not have a chance to influence them.²³ A report by the Delegated and Regulatory Reform Committee Powers published in July 2014 said “*we consider that any rules that are made to authorise the use of force merit a high level of Parliamentary scrutiny. We therefore recommend that, unless the Bill can be amended to preclude the authorisation (in rules made under section 47 of the Prison Act 1952 as they apply to secure colleges) of the use of force for the purpose of ensuring good order and discipline on the part of those detained, the rules should, to the extent that they authorise the use of force, require the affirmative procedure.*”

Use of force to maintain good order should be prohibited in the primary legislation, which should set out clearly the circumstances in which force can be used. If further details were to be contained in secondary legislation this must be subject to Parliamentary scrutiny. We welcome amendments designed to put in place robust criteria to limit the use of force in primary legislation and protect parliamentary scrutiny, such as:

- 42M: which requires any secondary legislation containing provisions on the use of force in secure colleges to be subject to affirmative resolution.
- 46A & 42N: which sets out specific circumstances in which use of force can be used in secure colleges.
- 46: Which removes the clause allowing force to be used for GOAD.

However, we are clear that any such provisions which appear in the final version of this legislation must be carefully drafted to reflect the requirements of human rights standards and to be focused on the prevention of serious harm.

5. Rights and welfare

- Article 3 of the UN Convention of the Rights of the Child (UNCRC) sets out that, “*in all actions concerning children... the best interests of the child shall be a primary consideration.*”
- This provision is reflected in legislation regulating the treatment of children in various contexts.
- In 2010 the government made a commitment to have regard to children’s rights when developing law and policy affecting children.
- It is not clear if the government has fully considered the impact of the UNCRC on the Bill – no impact assessment or memorandum on the children’s rights issues raised has been published. The JCHR said “*there is no evidence to suggest that the relevant international standards, including even the relevant rights in the UNCRC itself, were considered by the Ministry of Justice prior to the publication of the Bill and its accompanying explanatory material, notwithstanding the commitment given by the Government in December 2010*”.
- As the Bill proposes the imprisonment of children (including those who are very young and others who are vulnerable) in a large institution, the government must rigorously assess its plan against the standards in the UNCRC and other international standards on juvenile justice²⁴ and explain how it will ensure children’s rights are safeguarded in the secure college.
- Schedule 6 (8) of the Bill sets out that a secure college custody officer must “attend” to children’s wellbeing. In contrast, secure college custody officers’ other duties are far stronger – they must “ensure” good order and discipline.
- We would like a stronger duty to assess and pursue each child’s best interests included in the Bill – to reflect similar provisions in other legislation affecting children.

²² *R (on the application of C) (a minor) v Secretary of State for Justice* [2008] EWCA Civ 882 - The courts found that the confusion between the primary and secondary legislation relating to the use of force in secure training centres (between the Criminal Justice and Public Order Act 1994 and the Secure Training Centre Rules) resulted in the widespread illegal restraint of children for GOAD in the STCs

²³ Lord Faulks, House of Lords Hansard, 30 June 2014, column 1627.

²⁴ In particular Articles 37, 39 and 40 of the UNCRC and the Committee on the Rights of the Child’s General Comment 10 on Children’s rights in juvenile justice, the UN Standard Minimum Rules for the Administration of Juvenile Justice and the UN Rules for the Protection of Juveniles Deprived of their Liberty.

We welcome amendments tabled to address these issues, including

- 43A: a sunrise clause, which requires a report to be put before, and approved by, Parliament before requiring custody officers to assess and promote a child's best interests.
- 43C: which requires the Secretary of State to have the welfare of person detained as a primary consideration when providing any secure college.
- 45A: which places a duty on secure college staff to assess and promote the best interests of detained children.

6. Sentencing

- Although we have very serious concerns about secure colleges, it is possible that they would be attractive to sentencers because they have been described as a "college" and there is a suggestion that secure colleges will help educate children; we are concerned that sentencers will think that sending a child to a secure college would help the child. This could lead to children being given custodial sentences where this is disproportionate to the offence, or longer custodial sentences than they would otherwise have received.
- This would be unjust, involve the inappropriate detention of children and lead to a rise in the custody population. In reality, we know that no matter how a prison is described, children do not benefit from custody. On the contrary, it is highly disruptive and can undermine children's prospects and break down important relationships with family and local service providers. Research in relation to Secure Training Centres found that experts "[questioned] *their ability to provide education and training, and suggest they may even perpetuate the offender's exclusion rather than reducing it, thus making rehabilitation more difficult*".²⁵
- Past experience would suggest our concerns are well-founded. Following the introduction of Detention and Training Orders (DTOs) and Secure Training Centres (STCs) children were more likely to be sentenced to a disproportionate custodial sentence, leading to a rise in the custody population.
- If secure colleges are introduced a child should only be sent there when custody is proportionate to the offence.

We welcome amendment 43B which requires sentence guidelines to specify that a child should not receive a custodial sentence, or a longer custodial sentence than they would otherwise have received simply because a place in a secure college is available.

For further information contact: Paola Uccellari on puccellari@crae.org.uk;
Jen Chambers on jenny.chambers@howardleague.org;
or Anna Boehm on a.boehm@scyj.org.uk

The contents of this document do not necessarily reflect the views of all member organisations of the SCYJ.

²⁵ Solanki A and Utting D (2009) Fine Art or Science Sentencers? Deciding between community penalties and custody London: Youth Justice Board