NIACRO'S RESPONSE TO THE JUSTICE COMMITTEE CONSULTATION ON THE CRIMINAL JUSTICE BILL

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Ms. Christine Darrah
Committee Clerk
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BT4 3XX

31st August 2012

Dear Christine

I enclose NIACRO's response to the Justice Committee consultation on the Criminal Justice Bill.

NIACRO, the Northern Ireland Association for the Care and Resettlement of Offenders, is a voluntary organisation, working for over 40 years to reduce crime and its impact on people and communities. NIACRO provides services for and works with children and young people; with adults in the community and with people in prison and their families, whilst working to influence others and apply all of our resources effectively.

NIACRO receives funding from, and works in partnership with, a range of statutory departments and agencies in Northern Ireland, including criminal justice, health, social services, housing and others.

We welcome the opportunity to respond to this consultation and are keen to engage further if that would be helpful.

If you require any further information, please do not hesitate to contact us.

We look forward to receiving the final policy document.

Yours faithfully

Pat Conway

Director of Services

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NIACRO Response to the Criminal Justice Bill Consultation

NIACRO, the Northern Ireland Association for the Care and Resettlement of Offenders, is a voluntary organisation working for over 40 years to reduce crime and its impact on people and communities. We work with children and young people; adults in the community; and people in prison and their families. We welcome the opportunity to respond to this consultation, particularly as it raises important issues with regard to civil liberties.

Having discussed the content of the draft Bill with colleagues across the voluntary and community sector, we are aware that there is considerable strength of feeling over some particular aspects of this Bill. Whilst we outline our concerns below, we would be keen to meet with the Justice Committee to explain our concerns in greater detail.

Turning to the content of the Bill, we consider each element in turn as follows.

Sex offender notification

NIACRO welcomes the proposals contained within the Bill, which ensure that the notification arrangements for people convicted of sexual or violent offences are in line with Article 8 of the European Convention on Human Rights. This will allow resources to be targeted towards those who present a greater risk to public safety, and reduce unnecessary monitoring of those who no longer present such risks.

Human Trafficking provisions

NIACRO welcomes the introduction of specific legislation to tackle human trafficking, but would wish for further clarity on the following points:

i. How do these provisions link to those within the draft Human Trafficking and Exploitation Bill, recently introduced by Lord Morrow;
ii. What disposals will be available to the courts for those found guilty of offences under this new legislation; and
iii. Has consideration been given to the impact of the creation of these new offences on the Public Protection Arrangements, if any?

The retention of fingerprints, samples, etc

NIACRO has serious concerns about the provisions contained within this section of the Bill.

Our comments on the key proposals, as outlined in the Explanatory and Financial Memorandum to the Bill, are as follows:

Non-convicted persons

Immediate destruction of fingerprints and DNA profile from persons –

- arrested for or charged with, but not convicted of, a minor offence; or
- arrested for, but not charged with, a serious offence (unless prescribed circumstances apply).

Retention of fingerprints and DNA profile from persons –

- arrested for, but not charged with, a serious offence (if prescribed circumstances apply); or
- charged with, but not convicted of, a serious offence,

for a period of three years, with an extension of two years available on application to the courts.

The notion of retaining information from anyone who falls under the category of "non-convicted persons" is clearly offensive to the notion of innocence unless and until guilt is proven. The entire justice system is based on the principle that every person, whether questioned, charged or otherwise suspected of an offence, is innocent, unless their guilt is proven within a court. The suggestion of retaining fingerprints from someone who is "charged with but not convicted" of any offence is quite blatantly disregarding the court's judgement in such a case. Furthermore, no description is provided of the "prescribed circumstances" under which someone who is only arrested, and not even charged with, an offence should have their DNA or fingerprints retained. Whilst we support the retention of relevant biometric material for the duration of any investigation, or consequent appeal, once such inquiries have been concluded, and a person's innocence retained, there does not appear to be any good reason for retaining their DNA or fingerprints alongside information about offences of which they were never convicted.

Convicted persons

Indefinite retention of fingerprints and DNA profiles for all adults convicted of a recordable offence.

This clause is particularly surprising, given that the judge in the S and Marper v UK case, which is stated as the case law to which these amendments seek to adhere, noted that "in particular, the Court was struck by the 'blanket and indiscriminate' nature of the power to retain material irrespective of the nature or gravity of the offence with which the offender was originally suspected". Such a blanket retention policy would not appear to be consistent with the judge's comments, nor with the

spirit of reforming such a system. To illustrate this further, it might be helpful to consider what constitutes a "recordable" offence. The legislation, as currently drafted, defines a "recordable offence" as "one punishable by imprisonment or otherwise listed in regulation 2 of the Northern Ireland Criminal Records (Recordable Offences) Regulations 1989 (S.R. 1989 No. 442)." It is clear that the judge's concern was to ensure that those convicted of serious offences, who present a risk to public safety, would have their profiles retained to assist in future criminal investigations. But using this definition will be the equivalent of employing a sledgehammer to crack a peanut. For not only does it include people convicted of minor offences who are never actually sent to prison, but could have been, it also includes people who are unable to pay a range of fines, or apparently those who commit a series of antiquated offences, including:

> "Every person who in any street, to the obstruction, annoyance, or danger of the residents or passengers, commits any of the following offences, shall be liable to a penalty not exceeding [level 3 on the standard scale] for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding fourteen days, . . .
>
> - Every person who flies any kite, or who makes or uses any slide upon ice or snow:
> - Every person who beats or shakes any carpet, rug, or mat (except door mats, beaten or shaken before the hour of eight in the morning):
> - Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down:…"
>
> (The Town Police Clauses Act 1847 – listed as "recordable offences" under the Northern Ireland Criminal Records (Recordable Offences) Regulations 1989)

It is clearly irrelevant whether a person is actually ever sentenced to custody for such an offence, as the definition of "punishable by imprisonment" increases the potential number of people who will be considered to have committed a relevant offence under these regulations quite considerably, to include those who **could** have been sent to prison for a whole range of offences. Should such a person have their fingerprints or DNA sampled in the course of an investigation, they can expect that information retained indefinitely. In our view, that represents, at best, a considerable waste of police resources and, at worst, a gross offence to civil liberties.

A further issue arises with the maintenance of "indefinite" retention of biometric materials. The underlying principle of the legislation governing criminal records is that after various periods, in specific circumstances, certain convictions become "spent" and no longer have to be declared. Whilst we have long called for

amendments to both the Rehabilitation of Offenders (Northern Ireland) Order 1978 and the Rehabilitation of Offenders (Exceptions) Order 1979, we believe the proposals in the Criminal Justice Bill should at least be consistent with the approaches they set out. The Bill should, therefore, differentiate between varying lengths of imprisonment and the nature of different offences, with the basic principle that biometric data should never be retained for longer than the relevant rehabilitation period.

On the issue of consistency, given that the Department of Justice is currently considering undertaking review of the scope of "recordable" offences, we recommend that this legislation is not commenced until after the outcome of that review to ensure any new definition is automatically incorporated.

Convicted under-18s

On first conviction for a minor offence, retention of fingerprints and DNA profiles for –

- five years, if the sentence is non-custodial; or
- five years plus length of sentence (if given a custodial sentence of less than five years).

Indefinite retention of fingerprints and DNA profiles –

- where a custodial sentence of five years of more is imposed;
- on conviction for a serious offence; or
- on a second conviction.

Once again, this approach is entirely inconsistent with the spirit of the Youth Justice Review, who recommended that criminal records be "wiped" when a young person turns 18. Are we to assume from this proposal that the Department of Justice have decided not to pursue this approach? The idea of retaining a young person's biometric data for five years after even a caution is clearly disproportionate, and sits in opposition to any attempt to divert young people from the justice system. If the system is committed to de-criminalising young people, it should not be seeking to build or retain any such profiles, for five years or any longer period.

Considering some of the real situations which could lead to someone's DNA being indefinitely retained highlights just how disproportionate such an approach would be. Take the example of a young person in care, who we know is statistically much more likely to come into contact with the justice system, who receives two cautions or youth conference orders: their DNA and fingerprints will be retained indefinitely. We believe that "the system" is sending out two contradictory messages: on the one hand, they are warning young people about their unacceptable behaviour and

encouraging them to change, whilst at the same time retaining information about them that implies they don't believe such change is possible.

In summary, we have serious concerns around the proposals contained within the Criminal Justice Bill, relating not only to the treatment of biometric data from adults and young people who have never been convicted of any offence, but also from those who have been. We are grateful for the opportunity to submit this evidence and hope that the Committee finds our comments helpful in examining the contents of the Bill. We would welcome the opportunity to provide oral evidence to the Committee on the contents of the Bill, and are happy to further discuss or clarify anything within this written evidence in advance of this.