

**OPPORTUNITY YOUTH RESPONSE TO
COMMITTEE FOR JUSTICE CALL FOR
EVIDENCE ON THE CRIMINAL JUSTICE BILL**

AUGUST 2012



opportunity youth

INTRODUCTION

Opportunity Youth is Northern Ireland's leading provider of support services to young people, adult offenders and families in the community. It is our mission to help those we work with make the most of life's opportunities and be the best they can be. Our services include drugs and alcohol treatment programmes, mental and sexual health advice, training and employment opportunities for those young people classed as 'not in education, employment and training' and youth justice provision including work in Hydebank YOC, HMP Magilligan, HMP Maghaberry, probation work and youth conferencing. In addition, to the three prison sites, Opportunity Youth has offices in Belfast, Derry, Omagh, Augher, Lurgan and Armagh.

Opportunity Youth welcome the invitation from the Northern Ireland Assembly's Committee for Justice to respond to the consultation exercise on the Criminal Justice Bill. This paper will outline our position in relation to the Bill and our assessment of their benefit or otherwise for the young people and adults that we work with and represent.

CONTEXT

Opportunity Youth was founded in 1993 with a view to providing a comprehensive range of personal development and therapeutic services, dedicated to meeting the ever-changing needs of young people in Northern Ireland. As an award-winning regional organisation, we hold true to our core vision to make a positive impact on the lives of those we work with.

We continually seek to work with anyone who can benefit from our services. As a result of working together with young people, vulnerable adults and other organisations, Opportunity Youth constantly strive towards a better, brighter future for all ages in our society.

On an annual basis Opportunity Youth work with close to 17,000 young people and vulnerable adults both in the community and within Northern Ireland's prison population. Many of those who come into contact with Opportunity Youth are considered vulnerable and disadvantaged and will have come into contact with the criminal justice system or have the potential to do so.

Our response to this consultation reflects the needs and concerns of those young people and vulnerable adults who have experience or the potential to experience the criminal justice system

CRIMINAL JUSTICE BILL – SEX OFFENDER NOTIFICATION

Opportunity Youth is broadly supportive of the Criminal Justice Bill's policy objectives in relation to Sex Offender Notification. Opportunity Youth recognises the significant public protection issues this extremely emotive and difficult issue raises. However, we believe it is only fair and correct as per the ruling of the UK Supreme Court that a review mechanism is introduced for indefinite notification as a possible aid to successful rehabilitation.

In addition, on the grounds of equality Opportunity Youth is in favour of the attempts to end notification for acts which are no longer offences especially in the case of abolished homosexual acts.

Furthermore, Opportunity Youth fully back measures that make offenders who come to Northern Ireland with convictions from other EEA jurisdictions subject to the notification requirements in place for domestic offenders.

CRIMINAL JUSTICE BILL – HUMAN TRAFFICKING OFFENCE

Opportunity Youth support the new offences created by this legislation. It is extremely important that Northern Ireland has a robust legal mechanism for dealing with such offences as very often the victims in these cases are young people, the vulnerable and the disadvantaged. Opportunity Youth note the planned introduction of a private members bill from DUP MLA Lord Morrow and would expect department officials to look closely at these plans to ensure consistency and co-ordination.

CRIMINAL JUSTICE BILL – RETENTION OF FINGERPRINTS & DNA

Opportunity Youth is extremely concerned about the wide-reaching and potentially damaging consequences of some of the provisions contained within this bill in relation to the retention of fingerprints and DNA samples. Opportunity Youth believe that some of the proposals will have a disproportional negative effect on young people and could lead to increased stigmatisation, discrimination and disadvantage.

According to the Department of Justice, the PSNI currently maintains a fingerprint database of more than 450,000 prints from 240,000 individuals. Forensic Science Northern Ireland stores DNA profiles from 91,000 subjects and 18,000 crime scenes. The Committee and the Northern Ireland Assembly has already heard concerns from members regarding the size of this database. Raymond McCartney MLA has stated on the record that pro rata, the database here is 10 times bigger than in the United States and five times bigger than the European average. He added that it is estimated that perhaps one in five people whose profile is on the database have not been convicted. Given these figures, Opportunity Youth share these concerns given it would appear collection has been indiscriminate to date and firmly believe this practice seriously undermines the principle of presumption of innocence.

Opportunity Youth believe any disproportionate level of collection and retention of DNA and fingerprints of children and young people has the potential to contravene human rights legislation and cause future problems as organisations such as ourselves strive to help them break down barriers to employment and life achievement.

Furthermore, this bill contains provisions around legal processes for children and young people in isolation from other consultations and debates such as those on the Criminal Record Regime and ongoing discussions on the age of criminal responsibility and review of youth justice.

In relation to children and young people the draft bill provides that:

- Children who are arrested for or charged with serious offences, but who are not subsequently convicted, will have their fingerprints or DNA retained indefinitely where they have more than one previous conviction for a minor offence. A minor offence effectively means any offence that is punishable by imprisonment;
- If a child or young person has no previous convictions and is charged with a serious offence, but not convicted, their fingerprints or DNA will be retained for a period of 3- 5 years;
- Where the child or young person has no previous convictions and is only arrested in relation to a serious offence, it will still be possible under certain circumstances (
- for their DNA or fingerprints to be retained for a period of 3 - 5 years;
- The Bill also allows for the indefinite retention of DNA or fingerprints where a child or young person is arrested for or charged with a minor offence and is not convicted, if they have more than one previous conviction for a minor offence.

If a child or young person is convicted of a minor offence following the taking of fingerprints or DNA and has a previous conviction for a minor offence, their fingerprints or DNA profile will be retained indefinitely. Opportunity Youth disagree with this approach and feel the retention of DNA should bear some relation to the seriousness of the offence, be subject to strict periods of storage and continually reviewed.

In relation to adults, the draft bill allows for:

- The indefinite retention of fingerprints or DNA where arrested for or charged with a serious offence and not subsequently convicted, where the adult has more than one previous conviction for a minor offence, or has only one previous conviction for a minor offence which was committed when the adult was aged over 18;
- Where an adult has no previous convictions, there will be a 3-5 year retention of fingerprints and DNA for people arrested for, but not charged with, a serious offence in certain circumstances

- Where an adult has no previous convictions, there will be a 3-5 year retention of fingerprints and DNA profiles for people charged with, but not convicted of, a serious offence;
- Where an adult has been arrested for or charged with a minor offence, but not convicted, their fingerprints or DNA may be retained indefinitely if they have more than one previous conviction for a minor offence, or one previous conviction for a minor offence which was committed when the adult was aged over 18, and;
- Indefinite retention of fingerprints and DNA profiles for people convicted of minor offences – which effectively means any offence that is punishable by imprisonment.

The inclusion of minor offences or any offence punishable by imprisonment is so wide-reaching it has the potential to encompass a large section of society and people whose crimes are very much on the lower end of the scale such as fine defaulters. The principle of retaining such information indefinitely is contrary to much of the legislation governing the rehabilitation of offenders, which enables certain offences to be considered spent and removed from a person's criminal record. A tighter definition may be to have included all qualified recordable offences rather than a catch-all approach.

Opportunity Youth believe these proposals also undermine the presumption of innocence and due process for those who will have their fingerprints and DNA retained, despite not being subsequently convicted of an offence. In relation to children and young people specifically, Article 40 of the UNCRC affords all children the right to be presumed innocent until proven guilty according to law. The retention of the DNA and fingerprints of children, young people and adults, who have not been convicted of an offence, or may not even have been charged with an offence, entirely undermines their right to be presumed innocent until proven guilty.

It is particularly concerning that the Bill includes cautions for offences within the definition of persons convicted of an offence. This clearly suggests that a child or young person who has more than one caution as part of their criminal record will have their fingerprints or DNA retained indefinitely if arrested or charged with serious or even minor offences, or will have the material retained indefinitely if it is taken in relation to a second minor offence for which they are given a caution, having already received a caution previously. We believe this to be an entirely disproportionate, running contrary to the purpose of a caution, which is to divert children away from the criminal justice system.

For adults who have one caution for a minor offence as part of their criminal record, and who received that caution for an offence that was committed when they were over 18, their fingerprints or DNA will be retained indefinitely when arrested for or charged with serious or minor offences even though they are not subsequently convicted. An adult who has their fingerprints or DNA taken in connection with a minor offence and receives a

caution for that offence will have their fingerprints or DNA retained indefinitely. This again appears to be ill-measured and over the top.

Opportunity Youth also seek further clarity around the appeals process. There would appear to be inherent right to appeal retention. An appeal seems only available in the instances where a Chief Constable seeks leave to extend three-year retention by a further two years. Appeals should be available in all cases.

Opportunity Youth fundamentally disagree with the need for the introduction of a biometric commissioner. It is our view that the courts should be the ultimate arbiter if what should or should not be retained.

In conclusion, Opportunity Youth believe the committee should seek oral evidence before proceeding further.

ENDS

FURTHER INFORMATION

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