



## **Criminal Justice & Courts Bill House of Commons - Report Stage (Day Two) Tuesday 17 June 2014**

### **New clauses NC6 and NC7**

#### **Possessing an offensive weapon or bladed article in public or on school premises: sentencing for second offences for those aged 16 or over (NC6) and 18 or over (NC7)**

These new clauses would impose a mandatory jail sentence for a second conviction of carrying an offensive weapon or having an article with a blade or point in a public place or on school premises. New Clause 6 makes provision for people aged 16 or over. In the case of a person who is aged 16 or 17 on the date the offence was committed but is aged 18 or over when convicted, the new clause would impose a sentence of imprisonment for a term of at least six months. In the case of a person who is aged at least 16 but under 18 when convicted, the new clause would impose a detention and training order (DTO) of at least 4 months. New Clause 7 imposes a sentence of imprisonment for a term of at least six months on people aged 18 or over on the date the offence was committed.

### **Summary**

These new clauses will lead to the inappropriate imprisonment of children and young people. Knife crime is a serious problem in some inner-city communities but the term covers a wide-range of offences from those involving threat or injury to the much less serious offence of possession. The majority of children and young people who carry knives do so out of fear and for protection; not to threaten or injure others.<sup>1</sup> Currently rates of child and adult convictions for knife possession are falling along with levels of youth crime and the numbers of children in custody. Courts already have sufficient powers to deal appropriately with repeat offenders and the existing framework is working to deter children and adults from committing further knife possession offences.

These new clauses are likely to lead to children and young people being exposed to more serious offenders in prison. They are also likely to disproportionately affect black and ethnic minorities who are already overrepresented in the child and adult prison population. The Home Affairs Select Committee is currently conducting an inquiry into gangs and youth crime.<sup>2</sup> Its remit includes "the effectiveness of current law enforcement and legislation, including gang injunctions, knife and gun crime legislation". It would be premature of Parliament to legislate in this area without the opportunity to take into the account the findings and recommendations of the Committee. **We would urge MPs to vote against these amendments.**

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<sup>1</sup> Stephen Roe and Jane Ashe, Young People and Crime: findings from the 2006 Offending, Crime and Justice Survey, Home Office Statistical Bulletin (Home Office, July 2008), p.14

<sup>2</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news/140327-new-inquiry-gangs/>

## Knife possession – key statistics

The latest Ministry of Justice figures show that rates of child and adult convictions for knife possession are falling along with levels of youth crime and the numbers of children in custody.

- In the first quarter of 2014, there were 652 offences committed by children aged 10-17 involving the possession of a knife or offensive weapon resulting in a caution or sentence. For adults the figure was 3,262.<sup>3</sup>
- The number of knife possession offences committed by children (under 18) in the last quarter reduced by 34% compared to the same period three years ago.<sup>4</sup>
- For adults (18 and over), the number of knife possession offences committed in the last quarter reduced by 23% over the same period.<sup>5</sup>

## Repeat offenders

The figures on previous convictions for knife possession offences suggest that the courts already have the powers they need to deal appropriately with repeat offenders and that the existing framework is working to deter children and adults from committing further knife possession offences.

## Children

- Nearly nine out of ten of the total number of children convicted had no previous conviction for knife possession (2,143 out of a total of 2,480).<sup>6</sup>
- Of those that did have previous convictions, a significant proportion received a custodial sentence and the likelihood of this increased the more previous convictions for knife possession a person had (7 % of those with no previous conviction for knife possession went on to receive a custodial sentence; compared to 19% for those with one previous conviction; and 34% for those with two previous convictions).<sup>7</sup>

## Adults

- More than seven out of ten of the total number of adults convicted had no previous conviction for knife possession (9,067 out of 12,596).<sup>8</sup>
- Of those that did have previous convictions, a significant proportion received a custodial sentence and the likelihood of this increased the more previous convictions for knife possession a person had (22% of those with no previous conviction for knife possession went on to receive a custodial sentence; compared to 40% for those with one previous conviction; and 50% for those with two previous convictions).<sup>9</sup>

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<sup>3</sup> Table 2, Knife possession sentencing quarterly brief: January to March 2014. Available at <https://www.gov.uk/government/publications/knife-possession-sentencing-quarterly-brief-january-to-march-2014>

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Table 7a, Ibid.

<sup>7</sup> Ibid

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

## Why do children and young people carry knives?

Evidence suggests that the majority of children and young people who carry knives do so for protection and not to threaten or injure others. A Home Office study found that 85% of young people who report carrying a knife claim to have done so for protection and just 4% have used it to threaten someone, 1% to injure someone.<sup>10</sup> 16-24 year old males are four times more likely to be a victim than the average British adult. This group is also over-represented among those convicted for knife possession offences.

## Does prison act as a deterrent?

Despite claims that mandatory sentences would deter children and young people from carrying knives, there is little evidence to support this. The 2001 Halliday report on sentencing found no evidence to suggest there was a link between differences in sentence severity and deterrence effects. It concluded that “*it is the prospect of getting caught that has deterrence value*” rather than the nature of the sentence.

This point was reiterated by Frances Done, then Chair of the Youth Justice Board, when she gave evidence to the Home Affairs Select Committee inquiry into knife crime in 2009:

*The thing that has most impact on young people in terms of stopping them committing offending is being caught, which is about twice as important as the punishment, and there is a whole list of things like parents’ feelings and so on. So actually being caught is a really important issue.*<sup>11</sup>

The Justice Secretary Chris Grayling has previously emphasized the importance of early intervention over deterrence as an effective response to knife crime. In his evidence to the Home Affairs Select Committee inquiry, as the then newly appointed Shadow Home Secretary, he said:

*I think the thing that I hope to bring to the table and which I would seek to bring to Government, if we win the election, is all around the principle of early intervention. We will no doubt talk quite a lot about the penalties for knife crime which I think are important and I very much support the line I have inherited from within my own party. I think that the way in which we make the biggest difference to knife crime and indeed to other violent crimes, particularly amongst the young, is through more effective early intervention.*

*What I am looking to bring additionally to the table in my new role is a portfolio of ideas to give the police the ability to intervene earlier without criminalising. I do not want to criminalise 12- and 13-year olds because it messes up the opportunities they have ten years later to get the right job, but I do want society to be able to rein them back and say, “No, that’s not on. We will not tolerate that,” particularly when parents do not always do that.*<sup>12</sup>

*Why carry a weapon?*, a 2008 Howard League study of knife crime amongst 15-17 year old boys in London, suggested that a 'general deterrence' concept (that the

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<sup>10</sup> Stephen Roe and Jane Ashe, *Young People and Crime: findings from the 2006 Offending, Crime and Justice Survey*, Home Office Statistical Bulletin (Home Office, July 2008), p.14

<sup>11</sup> <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/112/11208.htm>

<sup>12</sup> *Ibid.*

choice to commit criminal acts can be controlled by the threat of punishment) has, at best, a limited impact on whether children and young people carry knives.<sup>13</sup>

The Centre for Social Justice has argued that, based on evidence from the introduction of mandatory minimum sentences for possession of a firearm, longer sentences are unlikely to impact on knife crime.<sup>14</sup>

Young people who gave evidence to the 2009 Home Affairs Select Committee inquiry argued that prison does not act as a deterrent because young people do not think about the consequences of their actions. One young person said:

*When you are in that experience, when my friend got stabbed when I was with him on the bus, the other gang came on the bus, we had a ruck, he got stabbed, we did not realise and then afterwards because he had been stabbed everyone was like, "We have got to get them." It does not go through your mind at all about prison or whatever; it does not exist.<sup>15</sup>*

The Committee concluded:

*While it [imprisonment] may be an appropriate punishment for knife-carriers, evidence suggests that the prospect of a custodial sentence may not deter young people from carrying knives. Many young people do not think about the consequences of their actions, and for a small minority who feel at risk of violence, the prospect of jail seems preferable to the dangers of being caught without a weapon for protection. Evidence suggests that the fear of getting caught acts as a stronger deterrent for young people. This strengthens our support for strong police action against knives, including the use of stop and search.<sup>16</sup>*

### **The impact of imprisonment**

Custodial sentences have the worst outcomes of all the sentencing options available with nearly 70% of children and 58% of young people (18-20) reconvicted within a year of release. Mandatory prison sentences for knife possession could drive up the numbers of children and young people in custody following a welcome period of decline both in youth imprisonment and youth crime. Prison can be particularly damaging for children and young people who are still growing and maturing and need supervision and support to grow out of trouble.

The Centre for Social Justice has said:

*"An increase in the number of people imprisoned for knife possession does not warrant celebration, particularly when we know that the majority of young people carry knives out of fear and ... custody exposes young people to more hardened criminals."<sup>17</sup>*

Recent HM Prisons Inspectorate reports into young offender institutions (YOIs) for children and young adults have highlighted concerns about the effectiveness of these

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<sup>13</sup> Marfleet, N (2008) Why carry a weapon? London: The Howard League for Penal Reform

<sup>14</sup> Centre for Social Justice (2009) Dying to belong, London: CSJ

<sup>15</sup> Home Affairs Committee (2009) Seventh Report: Knife Crime. Available at <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/112/11208.htm>

<sup>16</sup> Ibid.

<sup>17</sup> Centre for Social Justice (2009) Dying to belong, London: CSJ

establishments and their ability to meet the needs of a vulnerable population characterised by high levels of violence and self-harm. For instance, the Chief Inspector Nick Hardwick, in his April 2014 report on HMPYOI Brinsford, said: “These are the worst overall findings my inspectorate has identified in a single prison during my tenure as Chief Inspector.”<sup>18</sup>

The report found that

*“... levels of violence were comparable to similar establishments but, in our view, remained too high. There was also evidence of significant under-reporting of incidents. Structures to promote violence reduction and tackle bullying lacked rigour and significantly more prisoners questioned their personal safety than at comparable prisons. Arrangements to manage and support vulnerable prisoners were incoherent and it was clear that many had been moved to facilities such as the first night centre, drugs unit or health care centre to effect sanctuary.*

*“The number of prisoners who had been monitored because of potential self-harm was high, although a relatively small number of prisoners accounted for about 40% of incidents. A significant number of prisoners were identified as potential self-harmers because they had been threatened or bullied. Support for, and the case management of, those in crisis was poor.”*

### **Impact on black and ethnic minority children and young people**

The Standing Committee on Youth Justice, of which the Prison Reform Trust is a member, has highlighted the disproportionate impact of the amendments on black and ethnic minorities.<sup>19</sup> A significant proportion of knife possession offences are likely to be detected through stop and search. Black people are up to seven times more likely to be stopped and searched than white people.<sup>20</sup> Knife possession therefore has more chance of being detected. As a result, if these amendments pass, the number of black children in custody could rise disproportionately. Black children are already over-represented in custody. In 2012/13, 21% of young people in custody were from a black ethnic background but made up just eight per cent of the overall Youth Offending Team caseload.<sup>21</sup>

### **Current sentencing provision**

Sentencers already have the power to imprison children and young people for possessing a knife. The maximum penalty for an adult carrying a knife is four years in prison and a fine of £5,000. For under 18s, the Violent Crime Reduction Act 2006 doubled the maximum prison sentence (from original offences created by the Criminal Justice Act 1998) available for knife possession in a public place from two to four years (mirroring the offence of possession in a school), gave new powers to

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<sup>18</sup> HMIP (2014) Unannounced inspection of HMYOI Brinsford (4-15 November 2013). Available at <http://www.justiceinspectorates.gov.uk/hmprisons/inspections/hmyoi-brinsford/#.U5mArVldURB>

<sup>19</sup> SCYJ briefing: knife crime amendment, Criminal Justice and Courts Bill

<sup>20</sup> Home Secretary Theresa May gave a statement to Parliament on police stop and search powers.” <https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers>

<sup>21</sup> Ministry of Justice and Youth Justice Board, 2014: “Youth Justice Statistics, 2012/13, England and Wales”. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278549/youth-justice-stats-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278549/youth-justice-stats-2013.pdf)

school staff to search children they believe may be in possession of offensive weapon, and prohibited the sale of knives to under-18s.

### **Importance of judicial discretion**

Mandatory sentences remove judicial discretion which is vital to ensure an appropriate and effective response to offending by children and young people. Judicial discretion is an important safeguard which enables sentencers to take account of family circumstances, additional support and welfare needs and mitigating factors including a lack of maturity to reduce the risk of reoffending. Its importance is recognized in judicial guidance on sentencing for children and young people. The Sentencing Guidelines *Overarching principles – sentencing youths*, states: “as the principal aim of the youth justice system is the prevention of offending by children and young people, the emphasis should be on approaches that seem most likely to be effective with young people”.

Mandatory prison sentences for non-violent offences committed by children and young people undermine the principle of the custody threshold and the importance of custody as a place of last resort in the justice system. Although the new clauses make some small provision for discretion, they are liable to create confusion and a lack of clarity in sentencing decisions.

Previously, the Magistrates Association has opposed proposals to introduce mandatory sentences for knife offences committed by children. The Legal Aid Sentencing and Punishment of Offenders Act (2012) introduced a mandatory four-month detention and training order for any 16 or 17-year-old caught using a knife in a threatening manner. Commenting, John Bache, the then-chairman of the Magistrates Association youth courts committee, said that while he agreed that removing knives from the streets was of paramount importance, the Magistrates Association was against mandatory sentences.<sup>22</sup> He warned that there will always be “rare or exceptional circumstances” in which they are not appropriate and that, whatever the offence committed, youths lacked “the maturity of thought of adults and must be treated accordingly”.<sup>23</sup>

The former Justice Secretary Ken Clarke also made clear his opposition to the proposals, telling the Home Affairs Committee “the idea that mandatory sentences for certain types of offence, should be extended to young offenders, to children, to juveniles is a bit of a leap for the British judicial system”<sup>24</sup>.

Similarly, in his evidence to the Home Affairs Select Committee inquiry on knife crime, Deputy Assistant Commissioner Hitchcock explained why he felt an element of discretion is desirable:

*I feel there is a difference, for example, between the mandatory sentence for gun crime, where someone has to be within certain criminal networks and has to procure the weapon ... and knife crime where you are talking about a weapon that is easily accessible ... and the circumstances in which a young person might come to have a knife in their possession can be quite varied. For example, you might have a 16 year old who is a recidivist offender, who is going out and committing robberies, who is going out and threatening other people, who is within a gang environment ... but at the other end of the*

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<sup>22</sup> <http://www.theguardian.com/politics/2011/oct/27/kenneth-clarke-two-strikes-life-sentencing>

<sup>23</sup> Ibid.

<sup>24</sup> <http://www.guardian.co.uk/politics/2011/oct/25/ken-clarke-mandatory-sentence-teenagers>



*spectrum you might have a 12/13 year old who has been having a bit of a hard time at school, a bit of bullying and then stupidly puts the knife in their bag on one occasion and gets caught. If you have got a mandatory sentence then that person who is the recidivist, unpleasant, nasty offender is going to get the same sentence as the young person who has done something really stupid and should have a more appropriate sanction.*<sup>25</sup>

In its final report the Committee said it was “*particularly concerned about the potential award of a mandatory custodial sentence to an individual who has been coerced into carrying a weapon for an older person*”.<sup>26</sup>

### **What works to tackle knife possession offences?**

Imposing mandatory prison sentences on children and young people is not an appropriate, proportionate or effective response to the problem of knife possession. The number of children and young people committing possession-related offences is going down, suggesting that the current sentencing framework, coupled with knife crime prevention programmes and interventions, are having the desired effect. Instead of imposing punitive and ineffective mandatory prison sentences, politicians should support approaches which address the reasons why children and young people feel unsafe on the streets, seek to improve relationships with the police, support troubled families and take a public health, rather than criminal justice, approach to tackling violence amongst children and young people.

The Knife Crime Prevention Programme (KCPP) is an intervention which aims to reduce the prevalence of knife carrying and use by young people. Young people are referred to the programme if they are aged between 10 and 17 and have been convicted of an offence where a knife or the threat of a knife is a feature. The programme is based on a national delivery framework, with flexibility for local adaptation. It was rolled out as part of the Home Office ‘Tackling Knives Action Programme’ (TKAP). The programme is based around eight broadly defined modules including attitudes to knife carrying; the law; health; social implications; managing conflict; victim interaction; public space awareness and peer education.

A Youth Justice Board process evaluation of the scheme was published in 2013.<sup>27</sup> While the evaluation did not attempt to provide insight into the impact and effectiveness of KCPP on participant behaviour or in reducing reoffending, the majority of youth offending team (YOT) staff surveyed (40 out of 67) said that they believed KCPP was effective. During the qualitative interviews with YOT staff, the learning outcomes most frequently mentioned were that participants:

- were more informed about the law on knives
- better understood the dangers of knife possession – to themselves and others
- had a better awareness of the dangers of knife crime, and the often serious medical nature of wounds
- recognised the emotional impact on victims and their families, as well as on the perpetrator’s family and friends.

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