About the Criminal Justice Alliance

The Criminal Justice Alliance (CJA) is a coalition of 72 organisations - including campaigning charities, voluntary sector service providers, research institutions, staff associations and trade unions - involved in policy and practice across the criminal justice system.¹ The CJA works to establish a fairer and more effective criminal justice system.

The Criminal Justice Alliance has prepared numerous briefings for the different stages of the Offender Rehabilitation Bill and the Anti-Social Behaviour, Crime and Policing Bill. During this we have been made aware of a number of issues we felt could have the potential to raise significant human rights questions.

We are primarily concerned about the threat both Bills present to proportionality and the very real prospect of individuals receiving unjust punishment. There appears to be a serious risk that individuals could receive severe sanctions, including imprisonment and loss of dwelling, which may not accurately reflect what could be very minor illicit behaviour. We will address both of the Bills in turn.

Offender Rehabilitation Bill

1. The Offender Rehabilitation Bill threatens to lead to a disproportionate use of custody for minor offences and will undermine the right that juvenile offenders should not be treated as adults.

Disproportionate custody

2. Many short sentenced prisoners experience homelessness, drug and alcohol dependency, mental illness and unemployment and those who are prolific low level offenders often experience a range of these complex needs simultaneously. This Bill will for the first time focus rehabilitation support for this group and set out some positive support provisions. However, individuals could be breached for failing to engage fully with this positive support and ultimately be returned to prison for such failure. We would question whether this adequate justification to terminate an individual’s right to liberty.

Rights of the child

3. Clauses 4 and 6 of the Bill will mean young people who turn 18 while in custody will receive the same minimum length of support and supervision on release as those who are sentenced as adults. This is a potential human rights issue as it undermines

¹ Although the CJA works closely with its members, this briefing should not be seen to represent the views or policy positions of each individual member organisation. For a full list of the CJA’s members, please see http://www.criminaljusticealliance.org/organisations.htm
the principle that young people who commit offences as juveniles should not be treated the same as adults. The proposal ignores the strong and growing evidence base on developing maturity of young adults.2

Equality

4. The proposals within the Bill do little to distinguish women specific needs. It has been shown that women involved in the criminal justice system more chaotic lives than their male counterparts. As a result the possibility of being recalled to custody could impact disproportionately on vulnerable women when compared to me, many of whom we know breach their community order not because of reoffending or wilful disengagement but simply though chaotic lifestyles and very high range of complex needs.

Anti-Social Behaviour, Crime and Policing Bill

5. The CJA has serious concerns about the human rights implications associated with the Anti-Social Behaviour, Crime and Policing Bill.

6. Fundamentally, the CJA believes that the optimum way to minimise proposals within legislation attempting to address anti-social behaviour having a negative impact human rights of legislation surrounding anti-social behaviour (ASB) is by tackling the complex, deeply-rooted problems that lie at the heart of ASB through ensuring the availability of support services in local communities, including youth services, family support and health services, as well as through projects that offer intensive support.

Definition of Anti-Social Behaviour

7. The definition of ASB under the Bill as it applies to injunctions is “conduct capable of causing nuisance or annoyance”. Additionally, the burden of proof for proving such has been set at the civil standard, the balance of probabilities. An individual receiving an injunction will be required to adhere to positive requirements, prohibitions, or both, the sanctions as a consequence of breach including imprisonment.

8. Clearly, the list of potential activities that could fall within this definition is limitless. The use of this wide definition will sweep up innocent, non-harmful behaviour into the criminal justice system. The implications of receiving an injunction, as outlined above, could have serious implications for an individual’s life. There is therefore a substantial risk that the injunction as it is set out under the Bill allows disproportionate responses to very minor behaviour.

9. This is further exemplified by recent ASBO statistics. Of the ASBOs issued 1 June 2000 to 31 December 2011 30% of individuals receiving an ASBO ended up with a custodial sentence. We are concerned we could see similar numbers for those

See work of the Transition to Adulthood Alliance: www.t2a.org.uk
receiving an injunction based on the civil balance of probabilities\(^3\). This would be grossly disproportionate and a serious infringement to the human rights of those involved.

10. The safeguards in place intended to prevent this are inadequate. The legislation only provides that a court must consider it “just and convenient” to grant the injunction rather than needing to demonstrate necessity or proportionality.

**Indefinite length of time**

11. As the Bill stands, there is no maximum time period for an Injunction to Prevent Nuisance and Annoyance for adults. The minimum term of a Criminal Behaviour Order, in Clause 24, is two years and the maximum period indefinite. Both can contain numerous positive requirements and restraints which can substantially impact on an individual’s life. The possibility of indefinite injunctions has the potential of creating wholly disproportionate sentences potentially in conflict with the right to justice.

**Dispersal powers**

12. We are concerned that the proposals in Clauses 32 and 33, relating to dispersal powers, have the potential to overly restrict individuals without adequate justification and with a much lower threshold than at present. Individuals could be forced to refrain from a particular area with extremely limited justification required; an inspector simply has to think that it may be necessary to reduce the likelihood of the public being harassed, alarmed or distressed. This could have the potential to substantially impact on human rights, extending far beyond the right to protest.

13. The sanctions in Clause 37 for failure to comply with dispersal notices include a possible penalty of £2,500 and/or three months imprisonment. We believe that there should be no recourse to imprisonment for breach. It seriously runs the risk of allowing disproportionate responses to extremely minor behaviour, especially as there need only be a reasonable suspicion that an individual is likely to cause harm or distress.

14. We believe breach of this dispersal power should be dealt with under the civil law, and not as a criminal offence which could have a long lasting impact on individuals’ lives and negative consequences for their human rights.

**Recovery of possession of dwelling-houses: anti-social behaviour grounds**

15. As we understand it, under Clause 86 of the Bill the court will now be **required** to grant possession if one of any five conditions is met. These 5 possible conditions include breach of an injunction in the locality of the dwelling house. Therefore an individual who threatens nuisance or annoyance behavior and receives an

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injunction must be evicted for breach of such if a landlord seeks such and complies with procedures. This could have huge impact on the human rights of individual offenders, and equally as important on their children and families.

16. This clause does not even allow for safeguard of proportionality. The potential and risk of disproportionate sanctions for exceptionally minor behavior is extremely high given this and the fact that the majority of individuals receiving ASBOs breached their orders. They would almost all be liable to eviction under this Bill.

Criminal Justice Alliance
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