

NI ASSEMBLY COMMITTEE FOR JUSTICE

CRIMINAL JUSTICE BILL

(Retention of fingerprints and DNA Profiles)

Oral Evidence

4 October 2012

(NB. Please check against delivery)

GOOD AFTERNOON

Can I begin by thanking the Committee, for the opportunity today to present evidence concerning the Criminal Justice Bill, relating specifically to the Retention of Fingerprints and DNA profiles.

I would like to introduce Colette McIlvanna, who is the Senior Casework Officer at NICCY.

I will give a brief presentation and then we can take any questions, which members may have in response.

As you may be aware, under the legislation which created my Office, I have a mandate to keep under review, the adequacy

and effectiveness of law, practice and services, relating to the rights and best interests of children and young people by relevant authorities. In determining how to carry out the functions of my Office, my paramount consideration is the rights of the child, and the work of my Office is based on the United Nations Convention on the Rights of the Child (UNCRC).

The retention and destruction of fingerprints and DNA of children and young people is an issue which I have been monitoring over some time. In 2007, I highlighted concerns regarding DNA retention, and particularly the indefinite retention of DNA. I asked the PSNI and Policing Board to reconsider this position, as I believed it potentially contravened Articles 16 and 40 of the UNCRC, which relate to children and young people's right to privacy and freedom and to be presumed innocent until proven guilty. In 2008, my Office submitted joint evidence, with the Children's Commissioners in England, Scotland and Wales, to the UN Committee on the Rights of the Child, arguing that the indefinite retention of children's DNA contravened children's privacy rights under Article 16 of the UNCRC.

The UN Committee shared this view and in its Concluding Observations in November 2008, recorded its concerns that 'data regarding children is kept in the national DNA database, irrespective of whether the child is ultimately charged or found guilty'. The Committee then called on the Government to introduce stronger regulations for data protection in relation to both legislation and practice, where this potentially impacted on children and young people's right to privacy.

In June 2011, my Office responded to the Department of Justice's consultation on 'Proposals for the Retention and Destruction of Fingerprints and DNA in Northern Ireland'. This response was forwarded along with our written evidence to the Committee, as many of the concerns identified in the response, arose again in our analysis of the draft Bill. Indeed it would appear that few of the issues we raised were addressed in the draft Bill.

In reviewing the Bill's proposals, I believe that insufficient consideration has been given to the potentially negative implications of retaining DNA profiles and fingerprints, particularly where these impact on a child or young person's

privacy and safety, or when it leads to them coming into contact with the criminal justice system.

In its evidence to the Committee for Justice on 28 June 2011, the Department of Justice confirmed that under Police And Criminal Evidence legislation, 'DNA and fingerprints are held for juveniles between the ages of 10 and 18.' This means that children as young as 10 may be asked to give DNA samples and fingerprints and, according to the draft Bill, to give their consent to have samples taken. I am concerned that such young children will be required to provide DNA samples and also, that it is unclear as to how their consent will be sought.

The Department of Justice's consultation on the retention of DNA data and fingerprints stated that 'the proposals will differentiate between adults and juveniles, to ensure that particular attention is paid to the protection of minors'. However, the only difference in the draft Bill appears to relate to a first conviction for a minor offence. Where a young person has no previous convictions, and they receive a custodial sentence of less than 5 years, it is proposed that material may be retained for the length of

sentence plus 5 years. Where the sentence exceeds 5 years, it is suggested the material may be retained indefinitely. (For all adults convicted of a recordable offence, their fingerprints and DNA profiles will be retained indefinitely). Furthermore, where a young person has a previous conviction for a minor offence, and they are charged with, or arrested for a minor offence, the draft Bill allows for the indefinite retention of their DNA or fingerprints. The retention of a child or young person's DNA or fingerprints for this period of time, for conviction of a minor offence does not constitute a proportionate response. Children and young people should be afforded maximum protection under the law. However, five years (without adding on the period of the custodial sentence), is a considerable period of time for a child or young person's personal details to be retained by the Government. Therefore I would suggest that the Committee consider recommending a reduction in the period of retention of DNA and fingerprint material for young people who are convicted for a first minor offence.

It is also a significant concern that the draft Bill includes a 'caution' within the definition of an offence for which a person is convicted. This means that in certain circumstances, if a child or young person has received a caution for a previous offence, their DNA or fingerprints could be retained indefinitely. Given that the purpose of a caution is to divert young people away from the criminal justice system, to include cautions under the definition of offences, seems inappropriate and disproportionate.

Where a child or young person is charged but not convicted of a serious offence, and they have no previous convictions, the draft Bill provides that their DNA or fingerprints may be retained for a period of between 3 and 5 years. If a young person has been arrested but not charged, their DNA or fingerprints may only be retained if 'prescribed circumstances apply'. It will be important to ascertain what these circumstances might be and again, I would question whether this period of retention is proportionate.

If a child or young person has not been convicted for or even charged with an offence, their DNA and fingerprints should not be retained. To do so is to seriously undermine their right to a presumption of innocence until proven guilty, thereby contravening Article 40 of the UNCRC.

Research suggests that a disproportionate number of young people come into contact with the police and that this may be due to the fact that some are more likely to offend in their teenage years. Children and young people's lack of maturity should be taken into account and they should not be stigmatised by actions undertaken before they reach adulthood. In my Office's response to the Department of Justice's consultation, I suggested that consideration should be given to reviewing the retention of young people's DNA data and fingerprints once they reach 18, so that they might be given an opportunity to enter adulthood with a 'clean slate'. This decision, would, of course, be dependent on the seriousness of the crimes committed and the number of offences for which they have been convicted.

However, I would recommend that particular consideration be given to this proposal, where children or young people have been arrested for, or charged with minor offences or have been convicted of first minor offences.

The proposal to grant an extension to the retention period for DNA and fingerprints will require very careful monitoring and regulation. If a court grants an extension for the retention of DNA of a child or young person who has been charged, but not convicted, this creates the impression that doubt and suspicion remain regarding their innocence, further stigmatising them. It also contravenes Article 40 of the UNCRC which affords children the right to be presumed innocent until proven guilty, according to the law.

The draft Bill indicates that 'the person from whom the material was taken' may appeal against an order to extend the retention period. Careful consideration should be given, as to how a child or young person will be supported to undertake such an appeal and appropriate and effective mechanisms should be put in place to enable them to pursue this.

The proposals in the draft Bill mean that many young people will enter the criminal justice system and be given a criminal record. I strongly believe that wherever possible, the Government should actively seek to divert young people away from the criminal justice system. Contact with the criminal justice system clearly has an adverse impact on young people's lives, potentially impacting on their physical, mental, emotional and social development and creating significant challenges for them in re-integrating into society.

In conclusion, I believe it's crucial that key human rights principles of proportionality, necessity and presumption of innocence, strongly underpin the draft Bill's provisions regarding the retention and destruction of DNA profiles and fingerprints. Whilst recognising the potential value of this material as intelligence and evidence tools, this has to be balanced against the extremely personal nature of the data.

Consideration must be given to the potentially negative implications of retaining this information, particularly when it impacts on a child or young person's privacy and safety, and leads to them coming into contact with the criminal justice system. The special status of children and young people should be taken into account and their protection identified as a key priority.