PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

POLICE, CRIME, SENTENCING AND COURTS BILL

Fourteenth Sitting

Tuesday 15 June 2021

(Afternoon)

CONTENTS

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 19 June 2021

The Committee consisted of the following Members:

Chair: Sir Charles Walker

† Anderson, Lee *(Ashfield)* (Con)
† Atkins, Victoria *(Parliamentary Under-Secretary of State for the Home Department)*
† Baillie, Siobhan *(Stroud)* (Con)
† Champion, Sarah *(Rotherham)* (Lab)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
Dorans, Allan *(Ayr, Carrick and Cumnock)* (SNP)
Eagle, Maria *(Garston and Halewood)* (Lab)
† Goodwill, Mr Robert *(Scarborough and Whitby)* (Con)
Higginbotham, Antony *(Burnley)* (Con)
† Jones, Sarah *(Croydon Central)* (Lab)
† Levy, Ian *(Blyth Valley)* (Con)
† Philp, Chris *(Parliamentary Under-Secretary of State for the Home Department)*
† Pursglove, Tom *(Corby)* (Con)
Wheeler, Mrs Heather *(South Derbyshire)* (Con)
† Williams, Hywel *(Arfon)* (PC)

Huw Yardley, Sarah Thatcher, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 15 June 2021

(Afternoon)

[Sir Charles Walker *in the Chair*]

Police, Crime, Sentencing and Courts Bill

Clause 124

Supervision by responsible officer

2 pm

Question (this day) again proposed, That the clause stand part of the Bill.

The Chair: I remind the Committee that with this it will be convenient to discuss the following:

Clauses 125 to 127 stand part.

That schedule 12 be the Twelfth schedule to the Bill.

Clause 128 stand part.

That schedule 13 be the Thirteenth schedule to the Bill.

Clause 129 stand part.

That schedule 14 be the Fourteenth schedule to the Bill.

Before we adjourned, the Opposition spokesman, the hon. Member for Stockton North, gave a lengthy speech, which we were all grateful to hear. We paused to allow the Minister to prepare himself. I believe he is now prepared, so I call the Minister.

The Parliamentary Under-Secretary of State for the Home Department (Chris Philp): Thank you, Sir Charles. I trust everyone has had a refreshing and congenial break for lunch. Prior to the break, the shadow Minister raised a number of questions relating to clauses 124 to 128 and to schedules 12 to 14. I will endeavour to answer as many of those questions as I can. He asked what procedure offenders could use to challenge orders made under clauses 124 and 125, particularly to ensure that they were not unduly penalised if they then breached the conditions that had been imposed. If a breach does occur and some serious consequence follows, it is always open to the offender to make a representation when attending their hearing at court to either make the case that the breach was technical or minor in nature, or that the condition itself was not varied in a reasonable way. A significant penalty can never be imposed without the intervention of the court.

Questions were asked about circumstances beyond the control of the offender. We heard about the possibility of a device malfunctioning and about particular circumstances relating to disability that might disadvantage certain people. We envisage the power laid out in section 124 being used only in rare circumstances, certainly not routinely.

I confirm that it is the intention to provide clear advice to probation staff, setting out the rare circumstances in which additional supervision may be warranted, to ensure, for example, that disabled offenders are not unfairly or unduly disadvantaged, and to avoid the purpose of these supervision appointments going beyond the very specific purposes that the order has been imposed by the sentencing court.

The same applies to people with learning difficulties. Courts sentence on a case-by-case basis and, where electronic monitoring has been imposed as one element of that sentence, the officer supervising the offender is already able to review notifications of apparent violations and take a reasonable view, on a case-by-case basis. If someone has been genuinely unable to understand how to operate the equipment or had a genuine technical problem, we would expect probation officers to exercise reasonable discretion.

As I said at the very beginning, if a breach did follow and the court was invited to impose some penalty, it would be open to the offender to make a representation at that point to explain the mitigating circumstances. My expectation is that it would never get that far, because I would expect the supervising officer to be reasonable in the meantime.

Alex Cunningham (Stockton North) (Lab): I recognise what the Minister is saying. I raised the point that people should be able to make representations after their hearings, but some of the people we are talking about have particular challenges in life and special needs. How will the Minister ensure that their problem—their malfunctioning equipment or otherwise—is properly communicated to a court to ensure that they are not penalised?

Chris Philp: Clearly, in the first instance we would expect the responsible officer to exercise these powers in a reasonable way and to exercise discretion. Hopefully, as I said a few minutes ago, these cases would not get as far as court because the probation officer would act in a reasonable and proportionate way in the first place. The guidance will reflect that. If someone does get to court, there is the possibility of their being represented in proceedings. However, I also would expect the judge to ask a reasonable question of the person appearing before the court, such as whether there were any mitigating circumstances or technical problems or whether they had failed to understand how to operate the equipment. If there is a vulnerability, the pre-sentence report written prior to the original sentencing would be expected to pick up those issues.

The shadow Minister asked whether the powers in clause 126 were too wide and gave the responsible officer excessive latitude and leeway to vary curfew requirements that a court had previously imposed—to dispense summary justice without proper reference to the courts. To be clear, clause 126 is very limited in the powers that it provides probation officers, and they will be able to amend the requirement in only two limited ways, and only if those changes do not undermine the weight or purpose of the requirement imposed by the court. The power in clause 126 is restricted to two areas: a shift in the start and/or end times of the curfew periods—but no change to the total number of hours imposed—and a change to the offender's curfew address, where the address was not part of the order in the first place. So they are very limited powers to vary, which I hope provides the reassurance asked for.

The hon. Member for Garston and Halewood, who unfortunately is not in her place, referred to the problem-solving courts in Liverpool. I understand that the results from that have been a little mixed, but we are committed on both sides of the House to the principle of problem-solving courts, and I noted the shadow Minister's recitation

of the history of these going back as far as 1999. Both sides recognise the important role that problem-solving courts can play. Other jurisdictions have used them, with the United States being an obvious example. We are starting on a pilot basis rather than a big-bang roll-out because the details of how the model operates is important. The details make a big difference, and the design of the way it works—when the reviews takes place, what they are reviewing and what actions are taken—make a difference to whether the thing is successful or not.

While across the House we are committed to the principle of problem-solving courts to tackle the underlying causes of offending, we have to make sure that they work in practice and the details are right before rolling them out. To answer another of the shadow Minister's questions, I am sure we will be coming back to Parliament and reporting on the progress of these problem-solving courts. My hope is that we find a way quickly to make these work in practice and can then roll them out. I am committed to community sentence treatment requirements, which are a form of disposal that provides for mental health, alcohol and drug addiction treatment. Quite a lot of money has gone into that recently—£80 million for drug addiction earlier this year. Problem-solving courts are a critical way of supporting the delivery of treatment under community sentence treatment requirements. It is something I want to push, and I am glad that there is agreement across the House on that.

The final question that the shadow Minister asked was whether a guilty plea was needed to qualify for an appearance before a problem-solving court. Problem-solving courts do not require a guilty plea, and this Bill does not stipulate that as a prerequisite, but a willingness to engage with the court and comply with the community interventions will be an important factor. The problem-solving courts working group in 2016 considered making a guilty plea a key factor in creating the engagement necessary, but we recognised the number of complexities across the cohorts targeted, and did not think it was necessarily required. People who plead not guilty, and are then convicted, would be eligible for the problem-solving court, and I hope they can be helped as much as anyone else. On that basis, I commend these provisions to the Committee.

Question put and agreed to.

Clause 124 accordingly ordered to stand part of the Bill.

Clauses 125 to 127 ordered to stand part of the Bill.

Schedule 12 agreed to.

Clause 128 ordered to stand part of the Bill.

Schedule 13 agreed to.

Clause 129 ordered to stand part of the Bill.

Schedule 14 agreed to.

Clause 130

DUTY TO CONSULT ON UNPAID WORK REQUIREMENTS

Question proposed, That the clause stand part of the Bill.

The Chair: Would you like to say a few words on this, Minister?

Chris Philp: I will follow your direction, Sir Charles, by saying just a few words on this clause, which is relatively straightforward and, I think, pretty inoffensive.

Clause 130 simply creates a requirement for probation officials to consult key local and regional stakeholders on the delivery of unpaid work. Unpaid work—or community payback, as it is sometimes known—combines the sentencing purposes of punishment with reparation to communities. We believe that, where possible, unpaid work requirements should benefit the local communities in which they are carried out. Nominated local projects are already popular with sentencers and the public, but there is currently no requirement for probation officials to consult stakeholders on the design or delivery of unpaid work, so members of communities and organisations within particular local areas that are best placed to understand the impact of crime and what might be useful in the local area do not necessarily have their say.

Clause 130 simply seeks to address the gap by ensuring that key local stakeholders are consulted, so that they can suggest to the probation service what kind of unpaid work might be useful in their local area. We hope that local community groups and stakeholders come up with some good ideas that the probation service can then respond to. That seems to be a pretty sensible idea. The probation service in some areas may do it already. This clause simply creates a proper duty, or a requirement, for the probation service to do it. Of course, if we understand the needs of local communities and their thoughts, we can improve the way unpaid work placements operate to support rehabilitation and also help the local community. If the local community can visibly see offenders doing unpaid work in their local area, whether it is cleaning off graffiti, cleaning the place up or whatever else it may be, that will, we hope, demonstrate that the programme is giving back to and improving the local community, but delivering a punitive element as well.

Sarah Champion (Rotherham) (Lab): Will the Minister give way?

Chris Philp: I was about to conclude, but of course I will take the intervention.

Sarah Champion: When I used to run a children's hospice, we had offenders under probation supervision come in. They were meant to be doing gardening at the children's hospice, but instead they sat around smoking cigarettes. We kept on raising that with the probation worker, because we had invited the offenders there to give them a second chance, to help with their rehabilitation, to enable them to contribute to the community and so on. But the probation officer said, "What do you want me to do? I can't beat them; I can't make them work, but they have to come on these schemes." Could the Minister give some examples of how the probation service will have the resources and the influence to ensure that people who are out in their local community are actually—

The Chair: Order. This is meant to be an intervention, not a speech. The hon. Lady is entitled to make a speech and could have made a speech, but can we treat this as an intervention?

Sarah Champion: I apologise, Sir Charles.

Chris Philp: The hon. Lady makes a very good point. First, I am extremely disappointed and somewhat shocked to hear that people who were supposed to be doing work at a hospice in Rotherham in fact sat around

[Chris Philp]

smoking cigarettes. That is obviously shocking and not what the orders are supposed to be about. The hon. Lady says that the probation officer shrugged their shoulders and said, "Well, what can I do about it?" Of course, if the person, the offender, was not doing the work that they were supposed to be doing, that would amount to a breach of the unpaid work requirement, and they could be taken back to court to account for their breach, so I am extremely disappointed by the attitude of the probation officer that the hon. Lady just described.

The hon. Lady asked about resources. Extra resources are going into the probation service for it to supervise exactly these kinds of activities, and I would expect them to be supervised and policed properly. I will certainly pass on her concern to the relevant Minister. I have already made contact about fixing a meeting for the hon. Lady and the Prisons Minister that we talked about in this morning's session, in relation to victims being consulted about probable decisions. The same Minister, my hon. Friend the Under-Secretary of State for Justice, is responsible for the probation service as well—I am just adding to his workload. I will raise it with him, but I would certainly urge the hon. Member for Rotherham to raise this issue in the same meeting, because I know that the account she just gave will concern my hon. Friend as much as it concerns me.

2.15 pm

Mr Robert Goodwill (Scarborough and Whitby) (Con): I echo the points made by the hon. Member for Rotherham in that there is a variation in the enthusiasm that some of those who conduct this work display, on both sides. I was told, for example, that a lad who came from a farming family had thrown his back into it very strongly and was encouraging others to join him. I would add that we do consult with the local community, and many of the jobs that are done in my constituency are at the behest of either a local authority or other local groups.

Chris Philp: Wonderful. We would like to see the kind of consultation that already takes place in Scarborough and Whitby take place across the country as a whole, and that is precisely the intention behind clause 130. Where Scarborough has led, the rest of the nation, thanks to this clause, will follow.

Question put and agreed to.

Clause 130 accordingly ordered to stand part of the Bill.

Clause 131

Youth Remand

Alex Cunningham: I beg to move amendment 128, in clause 131, page 122, line 12, at end insert—

"(ba) after subsection (5) insert—

(5A) For the purposes of subsections (5) and (6) "recent" is defined as having occurred in the previous six weeks.""

The Chair: With this it will be convenient to discuss the following:

Amendment 129, in clause 131, page 122, line 16, at end insert—

"(ca) in subsection (7)(b) insert "serious" before "imprisonable offences";"

Amendment 130, in clause 131, page 123, line 3, at end insert—

"(aa) after subsection (4)(b) insert—

"(c) state in open court the age, gender and ethnicity of the child.""

Alex Cunningham: I am pleased to speak to amendments 128, 129 and 130 in the name of my hon. Friend the Member for Rotherham and myself. However, before I do that, if the Minister could give me a list of where he has influence, perhaps he could fix a few meetings with Ministers for me as well.

Chris Philp: Any time.

Alex Cunningham: I thank the Minister very much for that—it will, of course, be on the record, which I am very pleased to note. Before I get into my speech, I would like to thank Transform Justice and the Alliance for Youth Justice for the extremely helpful work they have done on this part of the Bill. I also thank my hon. Friend the Member for Hove (Peter Kyle), the former shadow Justice Minister, who worked extremely hard on these particular issues. I am grateful to him.

Clause 131 amends the legislative threshold for remanding a child to custody. It will mean that remand to youth detention accommodation can be imposed only in the most serious cases, where a custodial sentence is the only option and the risk posed by the child cannot be safely managed within the community. It will introduce a statutory duty which states that courts must consider the interests and welfare of the child before deciding whether to remand them to youth detention. It also imposes a statutory requirement for the courts to record the reasons for the decision.

First, let me say that we are pleased with the direction of travel that this clause indicates, and we are keen for the Government's work in this area to succeed. We are in complete agreement with the Government that custodial remand should be used only as a last resort for children. However, we do think that there is scope for these proposals to go further in tightening the threshold for remanding a child into custody. I will speak more on that when we discuss our amendments.

The current youth remand provisions were introduced in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and I well remember the Public Bill Committee, where I had the privilege of serving as Parliamentary Private Secretary to Sadiq Khan, now our excellent Mayor of London, and also my good friend. By 2019, the independent inquiry into child sexual abuse noted a significant increase in the use of custodial remand for children. The Opposition warmly welcomes measures which aim to reduce the number of children remanded into custody, especially in light of the fact that in 2018/19 only a third of children remanded to custody or local authority accommodation later received a custodial sentence.

Our concerns about the use of custodial remands for children are compounded by the extreme racial disproportionality on remand, and the record proportion of children in custody who have not yet been tried in court.

Against the backdrop of the record court backlog and the waiting times for trial, there could not be a more opportune moment to address these issues. We particularly

welcome the introduction of the statutory duty to consider the welfare and best interests of the child. We believe that, while these proposals can go further—I know that the Minister will listen carefully to our proposals shortly—these changes will help to reduce the number of children who are unnecessarily remanded to custody, so we are pleased to support them.

However, there are a couple of points on which I would welcome the Minister's thoughts. Has he any further information to share with the Committee on his Department's considerations of the impact that police remand has on custodial remand? Are there any plans to address that? Research by Transform Justice shows that police remand, where the child is detained by the police until court either in a police cell or in a local authority PACE bed—under the Police and Criminal Evidence Act 1984—is a driver of custodial remand. Transform Justice explains that point:

"This is because any child remanded by the police has to be presented in court within 24 hours, meaning Youth Offending Team staff often don't have enough time to develop a bail package that will satisfy the court. Children who appear from police custody also usually appear in the secure dock, which can bias courts to view the child as more 'dangerous' and therefore more suitable for custodial remand."

The criteria for police remand are spelled out in section 38 of the Police and Criminal Evidence Act and are very different from those used by the court for remand. In fact, the criteria for police remand of children are almost identical to those for adults, unlike the child-first approach taken in so many other areas of the justice system.

We know that the police remand more children than the courts. Of the 4,500 children who appeared in court from police custody in 2019, only 12% went on to be remanded by the court. Some 31% of those remanded by the police went on to be discharged, dismissed or have their case withdrawn, while 37% went on to get a fine or community sentence. The figures illustrate that police use of remand is seriously out of synch with the courts already. This clause may further widen that gap.

Is the Minister not concerned that the police may continue to overuse post-charge detention, undermining the positive efforts of the clause to reduce unnecessary custodial remand for children? Will the Government consider updating the police remand criteria, so they are in line with the new court remand criteria, to ensure consistent decision making across the whole criminal justice system?

I am greatly supportive of the provision in the clause that requires courts to record their reasons for remanding a child, not least because it will provide valuable data on the use of remand, which will enable us to continue to make improvements in this area. For that to be most effective in informing future policy decisions, we would need to have some sort of centralised monitoring system. Will we have such a system? It would mean that the need to record reasons would not only focus the mind of the court in a specific case; it would also benefit the system as a whole, as each case can inform our ongoing learning process about the use of remand and its effectiveness. Has the Minister considered the possibility of such a centralised monitoring system?

It has been suggested that the obligation on the court to record reasons would be most effective if courts had to specify why non-custodial alternatives were deemed unsuitable and how each of the custodial remand conditions has been met. Is that the kind of detail that the Minister envisages the obligation should entail? I am sure we all agree that it would be helpful for that level of information to be provided, so I am interested to hear the Minister's thoughts.

Turning to the amendments, as I said earlier, the reforms to the threshold for remanding a child in custody are welcome, but there are a couple of areas where we believe they should go further. The Opposition amendments, if adopted, would get us closer to the goal of custodial remand being used only as a truly last resort.

Amendment 128 seeks to tighten the history test by defining a recent history of breaching bail or offending while on bail as having been committed within the last six weeks. The clause currently makes provision to amend the history condition so that the previous instances of breach or offending while on bail must be "significant", "relevant" and "recent". In order to reduce the number of children held unnecessarily on remand, it would be helpful to amend the clause so that there is a clear definition of "recent".

In defining recent, we have to be mindful of what that means to a child. As the Alliance for Youth Justice notes:

"If we are to take a child-centred approach, we must consider how children experience time, and recognise the well-established principle that children change and develop in a shorter time than adults."

The Youth Justice Board for England and Wales has recommended that "recent" be no longer than within a six-week period. I hope that the Minister will agree that clarity on that point would be of great assistance to the courts. I would be interested to hear from him what discussions his Ministry of Justice colleagues have had regarding defining a time limit for this condition.

Amendment 129 is a straightforward amendment to the necessity condition that would again help achieve the aim of using custodial remand for children only as a last resort. Although we welcome the strengthened wording of the necessity condition included in the Bill, which would require remand to be used only when the risk posed by a child cannot be safely managed in the community, we share the concerns of the sector that the benefits arising from this change may be undermined by its drafting. The amendment would therefore tighten and strengthen the wording. Transform Justice says that these benefits of the current proposed change to the necessity condition

"will be undermined by the loose wording of one of the other necessity conditions: that remand to YDA is necessary to prevent further imprisonable offences. This condition is highly subjective and casts a wide net, which may be widened further by youth sentencing provisions elsewhere in the bill."

We share the concern expressed by the Alliance for Youth Justice that

"the latter part of the condition (to prevent the commission of an imprisonable offence) sets such a low threshold for meeting the Condition as to render the first threshold (to protect the public from death or serious personal injury) somewhat redundant."

The amendment would tighten the latter part of the condition by ensuring that it applies only to serious imprisonable offences, which we think better reflects the intention of the clause.

Finally, amendment 130 would compel the court to record the age, gender and ethnicity of a child remanded in custody in order to provide better data on remand, particularly on disproportionality. We believe that this

[Alex Cunningham]

could be a helpful tool in addressing the deeply concerning and increasing levels of disproportionality at this point in our justice system. The numbers beggar belief. Nine out of 10 London children who are remanded are from black, Asian and minority ethnic communities. A deeply comprehensive report that was published by the Youth Justice Board in January shows that race alone is a factor in remand outcomes for children. The researchers gathered data on thousands of English and Welsh cases, and information provided in practitioner assessments. Even when other related factors were controlled for mixed ethnicity black children, they were, as the Youth Justice Board notes,

"still more likely to be remanded in custody and, if not remanded, more likely to be subject to restrictions on bail."

This is a serious injustice in our system that needs to be urgently addressed. More needs to be done than this amendment makes provision for, but it would be a helpful tool in breaking down the disproportionate outcomes that we are seeing. The amendment would at the very least provide accurate data to help understand this disparity, in line with the "explain or reform" principle outlined in the Lammy review, which I think is an eminently sensible step in the right direction. I hope that the Minister agrees and look forward to hearing his thoughts. I would also be grateful if he could share with the Committee any other initiatives his Department is working on to address this flagrant disproportionality in youth remand.

Sarah Champion: I fully support the arguments made by my hon. Friend the Member for Stockton North on the amendments. I have a fundamental concern about remanding children. It impacts on them disproportionately in terms of their future outlook, opportunities and potential. We see within the remand youth justice system some of the highest levels of disproportionality in the criminal justice system. Although Labour Members welcome the measures in the Bill to tighten the tests that the courts must satisfy to decide whether to remand a child in custody, we still have concerns about this section of the Bill.

We agree with the policy to encourage the courts to impose a custodial remand only when absolutely necessary while ensuring the public remain safe, but as my hon. Friend stated, there are real concerns about the overrepresentation of black, Asian and minority ethnic people, who make up only 12% of the UK population but half the youth prison population. I would be much more comfortable if we were using the Bill to look at the reasons for that disproportionate make-up, rather than at further punitive measures. We have to take steps to ensure that all people, particularly all children, can reach their potential. I am very mindful of the fact that the literacy rate of the prison population is so much lower than that of the rest of the population. Why are we not investing more to address those underlying issues?

2.30 pm

I am frustrated that the Government agreed to my amendment to a previous Bill to introduce relationship and sex education that should have become mandatory in September 2020 but it has not yet been enacted, while we see ever younger children engaged in completely inappropriate actions of a sexual nature. There are preventive measures that we could put in place but we must also consider, and address accordingly, what it is that some children that I am thinking about, such as children in gangs, are being subjected to that makes them feel that they need to go along with the norm of the gang rather than the norm of society. I am not talking about giving any group special treatment; I am talking about taking steps to fix the justice system so that it operates in a fair and proportionate way for everybody.

We have to be aware that, under successive Tory Governments, youth services budgets have been cut by 73%, which is nearly a £1 billion since 2010, and we have to consider the impact that is having, particularly in my area of Rotherham, where the early interventions that could put children on the right path to a successful future are just not there any more. Now, rather than preventing the crime, we are looking at heavy-handed ways to punish it. I urge the Minister to speak to us and consider what his Government are doing to address those early intervention gaps to make sure that the measures in this legislation apply only in exceptional circumstances.

Chris Philp: As the shadow Minister said, clause 131 aims to ensure that children are remanded into youth detention accommodation only where absolutely necessary and as a last resort. As the hon. Member for Rotherham and the shadow Minister said, that is something that we can all agree on. We do not want to remand children into custody prior to conviction unless it is absolutely necessary.

The hon. Member for Rotherham said that prevention was important, and of course we agree, although it is outside the scope of these clauses. Money is being invested, significantly, in serious violence reduction units that aim to prevent, but also to divert young people who might otherwise get into serious crime on to a better path.

We are mindful that over a third of children in custody are on remand and that, of those, only around a third go on to receive a custodial sentence. While custodial remand is perfectly justified in some cases, the threshold for confining an unconvicted child to a secure environment must, rightly, be set very high indeed. It sounds like we broadly agree on these principles, and that is why we are amending the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which sets out the test that the courts must satisfy when deciding whether to remand a child into custody. I think everyone agrees with the aim of the clause, which is to make sure that remand custody for a child is an absolute last resort. The shadow Minister welcomed this direction of travel and the steps that are being taken.

The clause introduces a statutory duty for the court to consider the welfare and best interests of the child when making remand decisions and a statutory requirement for the court to record its reasons for imposing custodial remand to ensure that the welfare of the child is at the forefront of the court's mind and promote a child-first approach to decision making. We are also strengthening the sentencing condition to ensure that the mere possibility of a custodial sentence would not on its own necessarily warrant custodial remand. Similarly, a relatively minor or fairly recent breach should not, on its own, justify remand. We are reinforcing the history condition so

that only a recent, significant and relevant history of breaching while on bail should be taken into account to justify custodial remand. The current tests already require the court to satisfy itself that a child can be remanded to custody only where it is necessary to protect the public from death or serious harm. We are reinforcing that necessity condition by making it clear that it means when the risk posed by the child cannot be managed safely in the community. These measures, taken together, significantly elevate and strengthen the test for child remand to custody.

Alex Cunningham: Will the Minister confirm whether there is likely to be some form of time limit relating to the recent history of the child?

Chris Philp: The shadow Minister leads me to his amendment 128, to which I was going to speak in a moment, but I shall address it now as he has raised it. There will not be a hard or specific time limit in the way that his amendment specifies six weeks. We think that a hard-edged limit of six weeks specified so precisely would unduly fetter judicial discretion. The judge should be able to make a judgment in the round, taking into account all the considerations. A hard cut-off of six weeks is too binary. It is made clear that the judge needs only to look at circumstances where there is a history of breach or offending while on bail that is recent, significant and relevant. That is quite a high test, but we do not propose to go as far as amendment 128 does in specifying six weeks. We do not support the amendment for that reason, although, in spirit, our clause as drafted is pushing in a very similar direction. We just think that six weeks is too precise and that the judge should have some residual discretion.

Before moving to amendments 129 and 130, I would like to touch on a question that the shadow Minister raised about whether police remand almost inevitably and inappropriately leads to custodial remand. He said that could be because there is not enough time to consider bail arrangements and that it could create a sense of bias because, if the judge sees the person in the dock, it may lead them to believe that they are a more serious offender. I do not accept either argument. The statistics that he himself gave a minute or two later support that. He said that only 12% of children going into police remand end up in custodial remand. That demonstrates that 88% of children on police remand do not go into custodial remand, which suggests that there is not a strong linkage in the way that he feared there might be.

Alex Cunningham: We need some clarity around the 12% and the 88%. My point is that the police are remanding into custody a very high proportion of children who do not then go on to receive a custodial sentence. That is the problem, not the other way round.

Chris Philp: I think that the shadow Minister also pointed out to the Committee that there is a 24-hour time limit on police remand for children, so it is an extremely short period of time. For that very short window before the court appearance, it ensures that the police do not lose control of the person in their care. Clearly, if that was going on for days or weeks, it would be a matter of concern, but it is a very short time window, as he said.

The shadow Minister's amendment 129, on the necessity condition, proposes the insertion of the single word "serious". I contend that any imprisonable offence is in itself serious but, more broadly, we are again relying on judicial discretion. We do not want to unduly fetter the judge's discretion. The provisions in clause 131 as drafted will send a fairly clear signal to the judiciary that this is something that should be taken very seriously in making these decisions and that Parliament does not want children remanded to custody lightly or inappropriately. The clause as drafted makes that pretty clear. It also makes it clear that not only do the conditions that we have talked about have to be met but, in the opinion of the court, the risk posed cannot be managed safely in the community. Clause 131 as drafted sends a very clear message that custodial remand should indeed be a last resort.

Amendment 130, proposed by the shadow Minister, would require the court to state in open court the age, sex and ethnicity of a child remanded to custody. In all honesty, we believe that the amendment is unnecessary because the data is already collected and published, so the information is there already. The important point about the new record being created is that the reasons for custodial remand have to be spelt out expressly to ensure that the court is properly considering those things. We can then be absolutely assured that the court has to consider those matters and record them so that they are there to look at subsequently and be reviewed, not forgotten in the rush of a court appearance. The substance is captured already by the requirements in clause 131. It seems that both sides of the Committee broadly agree on this, so I do not think that amendments 128 to 130 are particularly necessary, although I do understand the spirit in which they are moved.

Alex Cunningham: I am grateful to the Minister for his response. I am prepared to withdraw amendment 128, given his explanation, but I ask that he look seriously at time limits, whether in some form of guidance from the Department or otherwise.

On police remand, I am still very concerned that the police are far, far more likely to remand a child in custody than a court is. I ask that the Minister think again and review the advice given to police officers to try to reduce the number of children who are automatically remanded to custody. I am content with the Minister's explanation on amendment 129 and I will not press it.

When it comes to data, as the Minister will know because I assume that he signs them all off, I get lots of answers to written parliamentary questions saying that the information cannot be provided because it is not available or it can be provided only at disproportionate cost. If we do not gather the data, I will get more of those answers from the Minister, so I intend to press amendment 130. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 130, in clause 131, page 123, line 3, at end insert—

"(aa) after subsection (4)(b) insert—

"(c) state in open court the age, gender and ethnicity of the child.""—*[Alex Cunningham.]*

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 22]

AYES

Champion, Sarah	Jones, Sarah
Charalambous, Bambos	
Cunningham, Alex	Williams, Hywel

NOES

Anderson, Lee	Goodwill, rh Mr Robert
Atkins, Victoria	Levy, Ian
Baillie, Siobhan	Philp, Chris
Clarkson, Chris	Pursglove, Tom

Question accordingly negatived.

The Chair: I have a suspicion, but I could be wrong, that we had quite a broad canter round the principles of clause 131. Does anybody want to debate it again, or are we happy to dispose of it? Excellent.

Clause 131 ordered to stand part of the Bill.

Clause 132

DISCRETION AS TO LENGTH OF TERM

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Clause 133 stand part.

Clause 134 stand part.

That schedule 15 be the Fifteenth schedule to the Bill.

2.45 pm

Chris Philp: We want a youth justice system that recognises the unique needs of children, tackles the underlying reasons why children offend and intervenes early to provide support and divert them where possible. There is a distinct and separate sentencing framework for children aged 10 to 17, which recognises that children have their own specific needs that require a different and tailored approach.

The clauses and schedule amend existing legislation to enable us to make the necessary changes to the most common youth custodial sentence, the detention and training order, or DTO. The changes are to make the DTO more flexible, fairer and more in line with other youth custodial sentences.

In that spirit, clause 132 amends the sentencing code to remove the fixed lengths of the DTO, meaning that any length of DTO between four months and 12 months can be given. The court can pass the right sentence instead of being constrained to give only sentences of DTOs of four, six, eight, 10, 12, 18 or 24 months. Removing those very fixed lengths does not change the maximum or minimum sentence but just means that any length of sentence can be given between the limits of four and 24 months. Removing the fixed lengths also means that the reductions made for time spent on remand that we have just been talking about, or bail, which is subject to a qualifying curfew condition and an electronic monitoring condition, and for a guilty plea, will be more accurate. At the moment, there is not always a DTO length that directly fits once remand, bail or guilty pleas have been considered, and the court must instead refer the sentence to one of the fixed lengths of four, six, eight, 10, 12, 18 or 24 months. With the proposed changes, the court may go between those sentence lengths, if it needs to, to fit in with the reductions for time spent on remand and so on. It is a fairly straightforward change, which makes a great deal of sense.

Clause 133 amends the sentencing code and the Criminal Justice Act 2003 to fix a current inconsistency in relation to early release. That inconsistency means that different lengths of early release are available for offenders sentenced consecutively to a DTO and another sentence, depending on the order in which they receive those sentences. The change means that where an offender is serving a DTO and another sentence consecutively, the offender may benefit from the same amount of early release, regardless of the order in which sentences are given. I think that is a fairly innocuous and sensible technical change to the 2003 Act.

Clause 134 introduces schedule 15, and that schedule amends the 2003 Act and the sentencing code, so that time spent on remand and bail, where that bail is subject to a qualifying curfew condition and an electronic monitoring condition—a tag—is counted as time served and credited accurately against the custodial part of the DTO. That is a change to the current approach, where time on remand or bail is taken into account when determining the length of the DTO, rather than being credited as time served. The schedule also makes further amendments where an offender is given two or more sentences, of which one is a DTO. Those sentences are treated as being a single term for the purposes of crediting the days spent on remand or bail. The schedule also makes changes to the Armed Forces Act 2006 to make sure that there is consistency.

Those are relatively technical and, I hope, relatively straightforward changes.

Alex Cunningham: We all recognise that DTOs are the most common custodial sentence for children. Between 2010 and 2019, 20,000 offenders under the age of 18 were sentenced to a DTO. It is important that we get this right. We are tentatively supportive of the proposals in the clauses, and I look forward to the Minister's response, which will I hope will be able to allay some of our concerns.

As the Minister has outlined, DTOs currently have to be of a fixed length. I have some sympathy with the Government's view that having such fixed periods restricts the courts in deciding the most appropriate length of sentences. Clause 132 will address that by removing the fixed length and providing that a DTO must be for at least four months and no longer than 24 months. We agree with the Government that is important that the minimum period for a DTO is retained to ensure that extremely short, unhelpful and, indeed, counterproductive custodial terms are not given out.

I do wonder, however, whether four months is still too short, and I question the real benefits of such a short sentence. Clause 133 provides that where an offender is given two or more sentences, one of which is a DTO,

those sentences are to be treated as a single term for the purposes of crediting days spent in custody, or in qualifying for bail. The explanatory notes state that this clause is intended to

"fix an existing discrepancy in relation to early release which meant that different lengths of early release were available for offenders sentenced to a DTO and another sentence consecutively, depending on the order in which they received those sentences."

The clause aims to ensure that

"where an offender is serving a DTO and another sentence consecutively, the offender is able to benefit from the same amount of early release regardless of the order in which the sentences are given."

Clause 134 and schedule 15 provide that time spent on remand or bail subject to a qualifying curfew condition and an electronic monitoring condition is counted as time served and credited against the custodial part of the DTO.

Taken together, the clauses increase the flexibility in the system for sentencers and should mean that the sentence length can accurately account for remand episodes already served, electronically monitored bail or a guilty plea, rather than nearest permissible length based on the fixed tariffs that currently exist.

I note that the Youth Justice Board for England and Wales broadly welcomes these proposals as well. It notes that the changes may help to solve the issue whereby the fixed lengths of the DTO sentences held the potential to create a barrier to resettlement—for example, where a fixed sentence length would mean that a child would be released just after September and therefore miss out on the intake of a new school or college year. In this instance, the fixed terms would push children out of education for longer than necessary. The more flexible approach proposed here by the Government can help to address such issues.

On the face of it, these reforms seem sensible, and like something we would support. However, the impact assessment contains some concerning projections, on which I would welcome the Minister's thoughts. The impact assessment notes an unfortunate adverse impact of removing the fixed-term nature of DTOs, in that individuals who receive early guilty plea discounts under the current system may receive longer sentences than they currently do. While there will be no additional children sentenced to DTOs under this option, the Youth Justice Board has said that it anticipates that the increase in average sentence length may lead to a steady-state increase in the youth custody population of around 30 to 50 places, costing around £5.3 million to £8.5 million per year. It has said that there would also be an equivalent uplift in the number of children supervised in the community at any one time at a cost of around £0.4 million to £0.6 million a year.

The Government's impact assessment predicts that the proposals will increase the steady-state number of children in custody by up to 50 children by 2023-24, costing the youth custody service between £38.6 million and £61.4 million. That is of very serious concern to the Opposition. We share the Government's stated vision of reducing the number of children in custody, and there has been great progress in that area over the past decade. The number of children in custody has decreased by about 75%, for which the Government ought to be applauded. It would be a terrible shame if we were to roll back any of the progress that has been made in this area, especially as I know how proud the Justice Secretary is of the work that has been done.

I would be grateful for the Minister's thoughts on how these proposals can be introduced without increasing the number of children in custody. Let us remember that it is the Youth Justice Board that is saying this will happen. Does the Department intend to introduce any safeguards in this area? The Opposition would like safeguards to be put in place to help to avoid the possibility of children spending longer than necessary in custody, which could also mean an increase in the number of children in a secure establishment at any one time.

I would also welcome a reassurance from the Minister on a further point raised by the Youth Justice Board in its briefing. It notes that the impact assessment states:

"Time spent on remand will be taken away from time to serve in custody as opposed to from the overall sentence length. There will be some individuals that spend longer on supervision in the community under this option, which would incur additional YOT costs. It has not proved possible to quantify these additional costs."

We recognise that it might be beneficial for children to spend longer with the support of the youth offending team as opposed to being in custody, but there is of course an attendant impact on youth offending team budgets, which are already stretched. The Youth Justice Board says:

"Some children may spend longer on the community part of the order which gives youth offending teams more time to work with them but there is no evidence to support this as a benefit."

The Youth Justice Board also notes that a cost-benefit analysis of these proposals, in terms of the additional spend for youth offending teams, would be helpful. Will the Minister provide such a cost-benefit analysis? Will he also confirm whether youth offending teams will be provided with appropriate further resource to handle any increased workload as a result of these proposals?

Chris Philp: I am glad that the shadow Minister welcomes the broad thrust of these changes. That is very welcome indeed. In response to his questions about the impact assessment, it is important to say that it makes it clear on the second page that

"there will be no additional children sentenced to DTOs".

The question therefore arises: why, then, will there be this very slight increase in the population, of between 30 and 50 places? The reason, as far as I can see, is that where the DTO sentence length falls between the two fixed points, at the moment it gets rounded down to the lower of the two, whereas under these proposals it can be calculated precisely. No additional people will be subject to a DTO; however, we will no longer have this rounding-down effect. In a sense, when we account for the time served and so on, and particularly the early plea discount, at the moment there is an inappropriate rounding down, because of the fixed points, which will now be eliminated. The time served will therefore better reflect the law and the court's intention, and that will lead to a very slight increase in the number of people subject to these orders at any given point. However, the total number receiving the order will not change.

Alex Cunningham: I accept that the total number receiving the orders will not change, but does the Minister not accept, and regret, that these proposals will lead to some children—it might only be a handful—being subjected

[Alex Cunningham]

to more time in custody than they would be under the current system? If he does accept that, what will he do to try to change it?

Chris Philp: It is more that, owing to an anomaly in the current system that is a consequence of the fixed points, people are being let out slightly early. This change really means, among other things, that the law as written can be fully implemented, rather than this little rounding anomaly occurring. However, I stress that the effect is very slight.

Alex Cunningham: One child is too many.

Chris Philp: By the way, I should take this opportunity to thank the shadow Minister for his earlier commendation of the Government's record on reducing unnecessary child imprisonment.

In answer to the shadow Minister's last question, which was about youth offending teams and longer time potentially being spent under their care, clearly it is our hope and expectation that youth offending teams will be effective—indeed, they are effective—in helping to divert young people on to a better path in life. We are generally increasing resources in this area, and I hope that that will have precisely that effect.

Question put and agreed to.

Clause 132 accordingly ordered to stand part of the Bill.

Clauses 133 and 134 ordered to stand part of the Bill.

Schedule 15 agreed to.

Clause 135

YOUTH REHABILITATION ORDERS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Amendment 122, in schedule 16, page 255, line 26, at end insert—

"(2A)After sub-paragraph 4(1) (Duty to give warning or lay information relating to breach of order), insert—

"4 (1A) For the purposes of this paragraph, a reasonable excuse for breach of an electronic compliance monitoring requirement shall include design faults in any necessary electronic apparatus, including (but not limited to) poor battery life; but shall not include intentional failure by the offender to charge necessary electronic apparatus.""

This amendment would introduce a safeguard to prevent children from being criminalised due to design faults, including poor battery life, on electronic monitoring devices.

Amendment 120, in schedule 16, page 258, line 34, at end insert—

"24(1) Paragraph 35 of Schedule 1 (Further provisions about youth rehabilitation orders) of the Criminal Justice and Immigration Act 2008 is amended as follows.

(2) In sub-paragraph (1), for "The Secretary of State may by order" substitute "The Secretary of State must by order".

(3) In sub-sub-paragraph (1)(a), omit "enable or"."

This amendment would make panel reviews of youth rehabilitation orders routine by amending Paragraph 35, Schedule 1 of the Criminal Justice and Immigration Act 2008.

Amendment 121, in schedule 16, page 258, line 34, at end insert—

"24(1) Paragraph 3 of Schedule 1 (Further provisions about youth rehabilitation orders) of the Criminal Justice and Immigration Act 2008 is amended as follows.

(2) At end insert—

"(6) The Secretary of State shall take steps to ensure that there are sufficient resources in place to allow for a court to make a youth rehabilitation order with intensive supervision and surveillance in all appropriate cases.""

This amendment would require the Secretary of State to ensure that intensive supervision and surveillance is available in all youth offending areas.

That schedule 16 be the Sixteenth schedule to the Bill.

I call the Minister.

Alex Cunningham: Are there amendments, Sir Charles?

The Chair: There are amendments, so if you wish to start, Mr Cunningham, by all means fire away.

Alex Cunningham: It is good to have such a relaxed atmosphere.

The Chair: It is very relaxed.

Alex Cunningham: I am sure you will be sending out for ice creams within the next half hour.

Hon. Members: Hear, hear.

The Chair: And a sorbet.

3 pm

Alex Cunningham: I rise to speak to amendments 120, 121 and 122, standing in my name. Youth rehabilitation orders currently permit courts to impose a choice of 18 requirements from which a sentence can be designed. This also provides for two high-intensity requirements, intensive supervision and surveillance, or ISS, or intensive fostering, as alternatives to custody. The proposals in the Bill would make several changes to youth rehabilitation orders which I will consider in turn.

3 pm

Currently, a curfew of up to 16 hours each day can be included as a requirement in any YRO and can last for up to 12 months. The Bill proposes increasing the maximum daily curfew to 20 hours while retaining a weekly maximum of 112 hours. As with the changes to detention and training orders, we are supportive of the principle behind the change, which is increased flexibility of approach. While we support more flexibility in the use of curfews, I worry that imposing curfews of 20 hours a day is overly punitive.

The Government's rationale is that increasing the maximum number of hours per day that a curfew can impose with a youth rehabilitation order will increase the flexibility of the curfew system because it will allow for longer curfews on certain days, such as weekends, when individuals may be more prone to breaches. I understand

that the Youth Justice Board has made its concerns about the proposal known to the Government, citing the risk that this will pose regarding potential increased exposure to interfamilial—a difficult word to say—violence. It says:

"We can draw parallels between this proposal to the increased instances of domestic interfamilial violence seen during the COVID-19 lockdown, during which time children were required to spend more time within the family home. This concern has been echoed by other across the sector. We believe that the 16 hours maximum curfew is more than enough, especially if used creatively. We would propose that the maximum daily curfew time should remain at 16 hours per day."

Can the Minister confirm that increased exposure to interfamilial violence has been considered in forming this proposal? There are risks both inside and outside the home, and getting the curfew time correct is a delicate balancing act. It would help alleviate our concerns if we knew that the Government had planned for such situations.

The Bill would introduce location monitoring as a stand-alone requirement that can be imposed in YROs. That is to be piloted. Currently, GPS tagging is used to monitor compliance with other YRO conditions. Stand-alone location monitoring is already available for adults and children as part of the supervision period of a detention and training order. According to the sentencing White Paper, the rationale for the proposal is that it would reduce the likelihood of breach, provide information to support services and provide an additional protective factor.

I note that the Youth Justice Board's briefing indicates that there is evidence to support this rationale and that demonstrates that electronic monitoring can often have a positive impact on the safety of the child. However, it goes on to point out that electronic monitoring is quite an intrusive measure and can be seen to be at odds with the child-first approach if applied punitively. Have the Government assessed the number of cases in which they anticipate that the measure would be used, both within the pilot and beyond? I ask because the benefit of a stand-alone monitoring requirement is that the sector tells us that, generally, in cases where children's behaviour may be seen to warrant such restriction, the child is also likely to need support through supervision. Without adequate support, there may be an increased risk of electronic monitoring violations through children failing to charge their tag. We have talked about some of these issues before. We would not want children to be further punished for something as simple as failing to charge their tag on time or correctly. I would be grateful if the Minister said more about the safeguards that his Department has considered.

We are supportive of the change that makes youth offending teams or probation staff the responsible officers in cases where electronic monitoring requirements are imposed. Currently, the electronic monitoring provider are the responsible officers in cases where electronic monitoring is imposed. We are therefore pleased to see the Government make this sensible change, which will provide wider discretion to youth offending teams, which have a fuller understanding of the child and so are better placed to encourage the child to engage with the curfew.

The next proposal is to increase to 12 months the maximum length of the extended activity requirement of a YRO with intensive supervision and surveillance, and to add a location monitoring requirement as a mandatory element of the ISS. I understand that these measures will also be piloted. The proposal will enable children to benefit from increased contact time and support from the youth offending team. We think the change has the potential to be a positive one, especially as we know that short interventions tend to be much less effective. Although this is, in a sense, a toughening up of a community sentence, we would be supportive of it if it encouraged courts to use ISS in place of longer custodial sentences and thus divert more children from custody.

However, the sector has raised the concern that children are less likely to be able to engage with such stringent requirements if they are subject to them for longer periods of time, and there may be a consequential increased likelihood of non-compliance and resulting breach action. That would mean that lengthier sentences of this kind simply delayed a child's entry into custody, rather than diverting them from it. I would like to hear the Minister's thoughts on that, and whether the proposal will be assessed in the pilot with a view to amending it if it inadvertently means that more children end up in custody.

I am also aware of concerns from the sector about the resource implications of the proposal, because delivery of high-quality ISS provision is expensive. I have already mentioned how overstretched youth offending teams are, and I would be grateful for reassurances from the Minister that appropriate funding will be made available so that the introduction of costly measures such as this one does not come at the expense of other important interventions by youth offending teams.

Finally on this clause, I want to discuss the proposal to raise the age limit of the education requirement to match the age of compulsory participation in education and training, rather than compulsory school age. We agree with the Youth Justice Board that it makes sense to bring the YRO education requirements into line with those in the Education and Skills Act 2008.

It is important to note, however, that education requirements are rarely used as part of a YRO. In the most recent year for which information is available, only 1% of YROs included an education requirement. We therefore wonder whether there is a risk that this proposal, which will increase the number of children to whom an education requirement can be applied, will also increase the number of children we end up criminalising for breaching their education requirement, when there are other routes available for ensuring education attendance. Again, it would be helpful to hear from the Minister how the Department intends to monitor that to ensure that these positive proposals do not inadvertently end up criminalising the children we are trying to help.

We are concerned that the reforms to community sentences—expanding electronic monitoring, and extending intensive supervision and surveillance provisions—focus on increasing surveillance and restrictions, rather than on better responding to children's needs and addressing the root causes of offending behaviour. However, as I said earlier, if we can keep more children out of custody by toughening up community sentences, we are very supportive of that.

I would like to make one final point about the expansion of electronic monitoring before I move on to discussing our amendments. The Alliance for Youth Justice says

that its members have reported a number of concerns about electronic monitoring, including: children's difficulties with managing their tag; the fact that for children involved in organised crime, the fear of their exploiter exceeds their fear of breaching tag requirements; and the danger that tags may effectively trap children in unsafe areas—for example, where their exploiter is. As set out by AYJ member the Association of Youth Offending Team Managers, the assertion in the White Paper

"that electronic monitoring of any sort may reduce the impact of child exploitation on a child is misguided and is not reflected in our experiences of child exploitation."

The AYJ states:

"The presence of a tag does not deter an exploiter as only the child is impacted by a breach."

It goes on to say:

"Discretion in responding to breaches is key to ensuring the increased use of Electronic Monitoring does not increasingly criminalise children who may struggle for multiple reasons to keep their tag in working order and fulfil requirements, and awareness of the full circumstances of a child is crucial before imposing unrealistic and potentially dangerous requirements on them."

That was a very long quote, but one that was necessary. The AYJ believes that statutory guidance should be introduced to that effect, and I think that that could be helpful in addressing some of the issues with electronic monitoring and child exploitation. Does the Minister agree?

I now turn specifically to our amendments. Amendment 120 would make panel reviews of youth rehabilitation orders routine by amending paragraph 35 to schedule 1 of the Criminal Justice and Immigration Act 2008. Currently the law allows for the Secretary of State to establish panels to review youth rehabilitation orders, but this is the exception rather than the rule. The amendment would allow magistrates to establish their own review panels, unless there is good reason not to, thus reversing the current system and hopefully making it the rule rather than the exception. That was recommended by the 2014 Carlile report and has the backing of the Magistrates Association after successful trials in Northampton.

In 2015, a preliminary evaluation of Northamptonshire's model for reviews by Dr Jenni Ward of Middlesex University concluded that the youth order review panels are

"a positive intervention that could be more widely implemented across youth justice services".

Northamptonshire Youth Offending Service said:

"Our experience in Northamptonshire suggests significant benefits in terms of securing children's continued engagement with interventions well beyond the initial period of dynamic work that we know follows sentencing. We have also seen children's attitudes towards criminal justice institutions changed by their encounters with magistrates who, often to the children's surprise, demonstrate empathy, interest and concern in their lives and progress. Magistrates also benefit from gaining a deeper understanding of the developmental, social and practical issues faced by the children they sentence."

We believe that this could be a very positive addition to the youth offending system that ensures that the child-first approach is maintained throughout the time for which the youth rehabilitation order is in effect. Can the Minister share whether his Department has considered the benefits of these reviews and whether it has any plans in motion to expand them? I am sure that he will recognise the benefit in them, and I hope he can support our amendment.

Amendment 121 would require the Secretary of State to ensure that intensive supervision and surveillance is available in all youth offending areas. A lack of funding from central Government means that, in some areas, youth offending teams request courts not to award YROs with ISSs due to lack of availability. That reduces the amount of non-custodial options open to the court, meaning that some children get custodial sentences when they should not. I understand that this is a particular issue in places where there are fewer children to whom the order would apply, such as Sunderland. As I have said many times in our discussions on this part of the Bill, we are singing from the same hymn sheet as the Government with regard to reducing the number of children in custody. So I am sure that the Government agree with us that whether a child gets a custodial sentence should not be a matter for a postcode lottery. This simple change would place a duty on the Ministry of Justice to ensure ISS schemes are available across all youth offending areas, and so bring in a consistency of provision across the country.

Amendment 122 relates to electronic monitoring tags and would provide a safeguard to prevent children from being criminalised due to design faults, including poor battery life on electronic monitoring devices. This will simply protect children against being wrongly criminalised due to faults in the technology. We know that happened in 2017 when the then Justice Minister admitted that people may have been wrongly sent to prison due to faulty electronic tags being used to monitor offenders. I am sure everyone in this room will want to ensure that that does not happen—I was going to say particularly in cases involving child offenders, but it should apply to all offenders. We know that even a short time in custody can have extremely adverse consequences for a child and the likelihood of reoffending. I hope that the Government can commit to providing this simple safeguard.

I look forward to the Minister's response.

Chris Philp: As we have said previously, and as I think the Opposition would agree, we believe that, wherever possible, children who offend should be managed in the community, as it is better for their rehabilitation and therefore wider society, as it is less likely that they will reoffend. In that spirit, clause 135 introduces and refers to schedule 16, which makes amendments to YRO provisions set out in the Criminal Justice and Immigration Act 2008 and in the sentencing code, which we believe will give the courts and the public confidence in YROs as an alternative to custody. The amendments are listed in schedule 16 and include the introduction of a new electronic whereabouts monitoring requirement and changes to the YRO with intensive supervision and surveillance, ISS, a high-intensity alternative to custody, with mandatory extended activities, supervision and curfew requirements.

3.15 pm

The clause sets out the functionality for piloting the new electronic whereabouts monitoring requirement and the changes to YROs with ISS to ensure that they are robust and effective before being rolled out nationally. The clause also enables us to restrict the use of the

requirements, for example, by age or offender profile, in the light of evidence uncovered in the trial and in practice.

Schedule 16 sets out the amendments that have been made to YROs by clause 35, which will provide the courts with the tools that they need to deliver stronger community sentences, for example, by increasing the flexibility of the curfew requirement by raising the daily maximum hours from 16 to 20, if in some cases it may be appropriate, but retaining the weekly maximum of 112 hours.

As the shadow Minister said already, a stand-alone location monitoring requirement will be added to the list of available requirements to help provide an additional protective factor for the child and improve confidence in robust community sentences. Youth offending teams will be made the responsible officers for YROs with electronic monitoring requirements, as they are aware of the child's individual circumstances and can make informed decisions in the case of a breach. I think that is a welcome improvement.

The upper age limit of the education requirement will be raised, as the shadow Minister said, so that children who are past the compulsory school age but still in compulsory education or training will still be eligible for education requirements. Schedule 16 also makes changes to the YRO with ISS, doubling the maximum length of the extended daily requirement from six to 12 months, and adding a mandatory location monitoring requirement, which we believe will give courts extra confidence that children can be supervised in the community and use ISS in place of short custodial sentences. I know that we all agree with that objective.

The changes will be piloted to make sure that they are robust and effective before being rolled out nationally. I hope that that explains the intent behind clause 135 and its associated schedule, schedule 16.

As the shadow Minister has said, the Criminal Justice and Immigration Act 2008 confers a power on the Secretary of State for Justice by order to enable or require a court to review and amend an YRO. Amendment 120 would require that the Secretary of State must make such an order. It would also remove the Secretary of State's discretion on whether to enable or require a court to make such a review, limiting them to use the order to require a review. Effectively, it would compel the Secretary of State, and through the Secretary of State compel courts always to undertake those reviews. We understand the rationale behind widening the use of reviews and YROs, essentially for reasons to do with promoting problem-solving court approaches that we discussed earlier. We generally support such approaches, which is why we are introducing the problem-solving court trials that we discussed earlier. Of course, we are also aware of innovative local approaches, where magistrates and others are voluntarily using progress reviews for some children in relation to their YROs. We are aware of the example of Northamptonshire, which the shadow Minister mentioned. Of course, those local examples do not necessarily provide evidence of wider impact, but there are indications that such arrangements can be effective. We are interested in further exploring how we can learn those lessons and expand them. We have already discussed how we intend to pilot problem-solving courts, and we think that a process of piloting and trialling as laid out is the right way to go, rather than a blanket compulsion, which the amendment proposes. We should also be mindful, I think, of the capacity of Her Majesty's Courts and Tribunals Service, which is obviously in the middle of recovering from covid. If we were to require and compel in every circumstance, as the amendment would do, it may have an impact on the capacity of HMCTS to discharge its duties more widely. We think that the right approach is for the Secretary of State to retain the power so to act, but without compelling the Secretary of State. I would like to assure the shadow Minister, however, that the direction of travel is in that of using those review processes more, and as he knows from the measures we have debated already, we intend to pilot problem-solving courts more widely, because we believe that the international evidence and other evidence suggests that they can be effective.

In relation to amendment 121, we acknowledge the value of work done by multi-agency services in supporting children who reoffend and by the youth offending teams that deliver YROs with ISSs. In terms of resourcing, we are already providing funding to YOTs to meet these obligations. In this financial year, an extra £7 million is being provided, so YOTs are now getting a total of £82 million this year, a 9% increase on last year, well above inflation.

Of course, YOTs operate at a local level. Having allocated the money, we do not tell them exactly how to spend it. We leave it to them to decide themselves. Hypothecating and compelling YOTs to spend money in a certain way would fetter their discretion, so we would like to leave it with the YOTs to decide how they spend that money. We have given them more resources and it is our expectation that ISSs will be made available in order to avoid short custodial sentences in general but for young people in particular.

On amendment 122, there is already a robust system in place to consider violations of the tagging regime to ensure that no child or adult is unnecessarily penalised for a fault in their equipment. Each case is dealt with on a case-by-case basis, as we have discussed in considering previous clauses, allowing the key professional to make an informed decision. If there is a breach and it ends up before a court, ultimately a judge will decide on any consequences that flow from it. The equipment is subject to all the proper testing and the children are informed about the charging requirements. Where the tags are low on battery, the children concerned will be contacted with a reminder to charge them up. But as I say, individual discretion is exercisable. Ultimately, the court can exercise discretion in terms of the consequences flowing from a breach. The current regime is not unduly punitive or inflexible and does not end up disadvantaging people through no fault of their own. I commend clause 135 and schedule 16 and suggest that while the amendments are reasonable in spirit, for the reasons laid out, they are not strictly necessary.

Alex Cunningham: I understand the Minister's explanation on amendment 120 but feel that there should be an opportunity for far more reviews in this space. I hope that the system out there will look at that far more closely.

In relation to the intensive supervision and surveillance provisions, it is nonsense that a child in London may be subject to a completely different set of penalties from those facing a child in Sunderland. There should be

[Alex Cunningham]

consistency in the availability of orders. For me, that means that the Government should be directing the development of these orders across the country.

While the £7 million increase is very welcome, I am sure that it will have to do many, many things in the system. We keep getting referred to the same sums of money but more tasks have to be covered within that particular budget. I intend to test the Committee on amendments 121 and 122 because the Government have a long way to go to sort out faulty monitoring systems. We want to be on the side of the child. We do not want them criminalised through no fault of their own.

Question put and agreed to.

Clause 135 accordingly ordered to stand part of the Bill.

Amendment proposed: 122, page 255, line 26, in schedule 16, at end insert—

"(2A) After sub-paragraph 4(1) (Duty to give warning or lay information relating to breach of order), insert—

'4 (1A) For the purposes of this paragraph, a reasonable excuse for breach of an electronic compliance monitoring requirement shall include design faults in any necessary electronic apparatus, including (but not limited to) poor battery life; but shall not include intentional failure by the offender to charge necessary electronic apparatus.'"—*(Alex Cunningham.)*

This amendment would introduce a safeguard to prevent children from being criminalised due to design faults, including poor battery life, on electronic monitoring devices.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 23]

AYES

Champion, Sarah	Jones, Sarah
Charalambous, Bambos	
Cunningham, Alex	Williams, Hywel

NOES

Anderson, Lee	Goodwill, rh Mr Robert
Atkins, Victoria	Levy, Ian
Baillie, Siobhan	Philp, Chris
Clarkson, Chris	Pursglove, Tom

Question accordingly negatived.

Amendment proposed: 121, page 258, line 34, in schedule 16, at end insert—

"24 (1) Paragraph 3 of Schedule 1 (Further provisions about youth rehabilitation orders) of the Criminal Justice and Immigration Act 2008 is amended as follows.

(2) At end insert—

'(6) The Secretary of State shall take steps to ensure that there are sufficient resources in place to allow for a court to make a youth rehabilitation order with intensive supervision and surveillance in all appropriate cases.'"
—*(Alex Cunningham.)*

This amendment would require the Secretary of State to ensure that intensive supervision and surveillance is available in all youth offending areas.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 24]

AYES

Champion, Sarah	Jones, Sarah
Charalambous, Bambos	
Cunningham, Alex	Williams, Hywel

NOES

Anderson, Lee	Goodwill, rh Mr Robert
Atkins, Victoria	Levy, Ian
Baillie, Siobhan	Philp, Chris
Clarkson, Chris	Pursglove, Tom

Question accordingly negatived.

Schedule 16 agreed to.

The Chair: Before we move on, it has come to my attention, courtesy of the Whips, that there will be a vote in the House at 4.30 pm. I am sure that none of you want to come back afterwards. It is up to you if you do, but I thought I would bring the Whips' discussion to a wider audience, so we know what their ambition is for the Committee.

Clause 136

ABOLITION OF REPARATION ORDERS

Question proposed, That the clause stand part of the Bill.

Chris Philp: Given your suggestion, Sir Charles, I will place a premium on brevity. Clause 136 is straightforward. We believe that restorative justice is an important part of the justice system. However, the reparation order itself has been made redundant, having been overtaken by the evolution of the wider youth justice sentencing framework. Instead, referral orders and youth rehabilitation orders now provide a wider range of interventions, including elements of restorative justice, and are more flexible than a reparation order. They have essentially replaced reparation orders.

Also, reparation orders cannot be given in conjunction with a referral order or a youth rehabilitation order, which significantly reduces the circumstances in which they can be used. As a consequence, reparation orders have dropped out of usage—they dropped by 98% over the last decade because the other disposals have taken up the slack. Only 51 have been handed down in the year to March 2020. It is by far the least-used non-custodial disposal. Therefore, in the interests of clarity and simplicity, the clause abolishes the reparation order to enable those other forms of disposal to be used, as they are used anyway.

Alex Cunningham: As the Minister explained, the clause would abolish reparation orders, which require the child to make practical amends to the victim or other affected party. The Government White Paper noted that the orders are little used, probably as they have been replaced by some of the more widely used sentencing options, and so have become redundant.

Reparation orders are the least used orders in the children's sentencing regime, too. Between 2010 and 2019, around 5,000 offenders under the age of 18 were sentenced to reparation orders. The number of reparation orders handed down fell in each year during that period.

In 2019, 66 of those sentences were passed, compared with 2,400 in 2010. In the year ending March 2020, there were just under 16,900 occasions where children were sentenced at court; only 51 of these were reparation orders.

While it is not clear why the use of the order has fallen so sharply, it has been suggested that it is as a result of changes in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which removed restrictions on the use of cautions and conditional cautions, which means that children who may have proceeded to court are possibly now receiving out-of-court disposals, which is a good thing. Do the Government plan to do any research to confirm this suggestion? I think it could be helpful if they did so, since this is quite a significant change in sentencing patterns, and it would be helpful to better understand how restorative justice processes are now manifesting themselves, given that usage is low and that reparation can also be included in other sentences, such as the referral order and youth rehabilitation order.

We support the removal of reparation orders and support the clause.

Question put and agreed to.

Clause 136 ordered to stand part of the Bill.

Clause 137

TEMPORARY RELEASE FROM SECURE CHILDREN'S HOMES

Question proposed, That the clause stand part of the Bill.

3.30 pm

The Chair: With this it will be convenient to consider:

Amendment 123, in clause 138, page 126, line 40, at end insert—

'(8) A secure 16 to 19 Academy will be subject to annual inspection by Her Majesty's Chief Inspector of Prisons."

This amendment would make secure 16 to 19 academies subject to annual inspection by Her Majesty's Chief Inspector of Prisons.

Amendment 133, in page 126, line 40, at end insert—

'(8) A secure 16 to 19 Academy will be subject to annual inspection by Ofsted."

This amendment would make secure 16 to 19 academies subject to annual inspection by Ofsted.

Amendment 146, in page 126, line 40, at end insert—

'(8) A local authority may establish and maintain a secure 16 to 19 Academy.

(9) A body corporate (including any of its subsidiaries) that is carried on for profit may not be a party to an arrangement to establish and maintain a secure 16 to 19 Academy."

This amendment would enable local authorities to run Secure 16 to 19 Academies, either alone or in consortia, and to prevent these establishments being run for profit.

Clause 138 stand part.

Alex Cunningham: Secure children's homes accommodate boys and girls aged 10 to 17 assessed as particularly vulnerable. As well as children held on justice grounds, secure children's homes accommodate children detained on welfare grounds for their protection or the protection of others. The explanatory notes state that they

"currently rely on inherent powers to make arrangements for the 'mobility' of children detained in such accommodation to help address their offending behaviour and to support the integration of children back into the community at the end of their sentence. Clause 137 would provide a statutory power for the temporary release of children detained in SCHs. The Secretary of State or the registered manager of the home would be able to temporarily release a child to whom the clause applies. Temporary release under this clause could be granted under conditions. The Secretary of State and registered managers would have concurrent powers to recall children temporarily released…If the period for which the child is temporarily released expires or if the child has been recalled, the child would be deemed to be unlawfully at large."

Overall, we are supportive of the Government's proposals in this area and recognise that a good balance has to be struck between allowing temporary release of children from secure children's homes to support their reintegration into society, and close monitoring of children on temporary release for risk management purposes.

The Opposition understand that temporary release is an important part of the rehabilitation process for children sentenced to custody, and that some child sentence plan objectives will require them to attend meetings or participate in activities outside the secure establishment. As the Youth Justice Board notes in its briefing,

"Allowing children to be released temporarily supports their constructive resettlement into their community both in maintaining family ties and allowing children to start or maintain education placements."

While the clause is effectively just putting into statute practice that is already in place, we are pleased to see the Government conferring authority for these decisions and processes to the secure school provider, as they will be best placed to support the child in question.

Research published by the Department for Education comparing children on justice placements and those on welfare placements in secure children's homes concluded that children on justice and welfare placements are fundamentally the same children. The research found that the level of risk posed by individual children was not related to whether they were on a justice or welfare pathway. The report examined whether there was a need to separate children on justice and welfare placements, but concluded that, rather than separating them, if anything the children would benefit from greater integration. While secure children's homes managers already have powers under section 25 of the Children Act 1989 to consider and approve temporary release for children on welfare placements, we are pleased that the new provisions will put those managers in the same position for sentenced children on justice placements.

We note the concerns of the Howard League, however, that the clause applies only to children who have been sentenced and therefore excludes children who are held in secure children's homes on remand from being able to access temporary release. The Howard League points out that this change will therefore create a disparity between children who are in secure children's homes and children who are in secure training centres. Rule 5 of the Secure Training Centre Rules allows children who are on remand to be temporarily released. It explains that unless temporary release also applies to children on remand in secure children's homes and schools,

"there is a risk that this will undermine the 'seamless service' between custody and the community which the Government envisions for secure schools"

We agree with the Howard League that all children remanded to custody should have access to temporary release where appropriate, as they do in secure training centres.

[Alex Cunningham]

The Bill's fact sheet on this provision says temporary release is "not a relevant factor" for children on remand. I find this surprising given that we know that, as a result of court delays, children are sometimes subject to quite lengthy custodial remands. The Alliance for Youth Justice further points out:

"introducing new legislation which restricts temporary release in Secure Children's Homes to sentenced children would be detrimental, particularly to the development of Secure Schools, which we know have ambitious plans for transitions into the community."

I would be interested to hear the Minister's thoughts on this and wonder why this distinction has been maintained. Will he consider including children on remand in these provisions? It would be helpful to be reassured on that point, but on the whole we are pleased with the proposal and will offer it our support.

As we have heard, clause 138 would amend the Academies Act 2010 so that 16-to-19 academies can provide secure accommodation for the purpose of restricting liberty but only if approved to do so by the Secretary of State. On the whole, the Opposition support the principle of secure academies and we do not strongly object to these academies being run by charitable entities. But, as ever, there are some areas in which I seek the Minister's reassurances, especially with this clause, as comprehensive information is not available from the Government.

The Alliance for Youth Justice briefing on this clause says:

"We are aware of concerns that have been prompted by this section of the Bill around the lack of clarity on the status of Secure Schools, in particular what legislation, regulation and guidance will govern and oversee their activities. It has been confirmed to the AYJ by the Youth Custody Service and Oasis Charitable Trust, that Oasis Restore, the first Secure School pilot, will be registered as a Secure Children's Home and regulated by Ofsted. It has also been confirmed that 12-to-18-year-olds may be placed in Oasis Restore."

There is clear discomfort in the sector about the limited information available on the plans for Oasis Restore and how the model will operate in practice. Can the Minister confirm that his Department will publish more information on this? Can he provide a timeframe for publication?

Another issue raised by the sector is that it is unclear how the introduction of secure schools fits into the long-term strategy for the youth secure estate. I understand that it is the Government's stated intention for secure schools to replace young offender institutions and secure training centres, but we have not yet seen any proposed timeline for such changes. Can the Minister provide more information on his Department's intended timeline for the changeover to secure schools for the Committee today?

The first secure school is being established in Medway, but I understand that children from across the UK can be sent there. Hazel Williamson put it very well in our evidence session when she said:

"As an association of YOT managers, we believe that children in custody…should be placed in small, secure units close to their homes. We do not advocate large custodial establishments where children are placed far away from their home; we would advocate small custodial units."—[*Official Report, Police, Crime, Sentencing and Courts Public Bill Committee,* 20 May 2021; c. 133, Q212.]

Can the Minister confirm that the Government's timetable for delivering secure schools will not entail children being detained hundreds of miles from their homes while still only a small number of these establishments are available?

The Youth Justice Board has shared its concerns about the links to children entering the youth justice system from practices such as off-rolling children. Indeed, there is a high prevalence of expelled children in the children's secure estate. For instance, in 2018 in HMYOI Feltham, 89% of children had been excluded from school.

Can the Minister confirm that any academy trusts selected through the tendering process to open or run a secure school have got, as the Youth Justice Board put it

"the necessary skills, expertise, structures and ethos to support children in a secure setting"?

I know that the Howard League wrote to the Secretary of State on this issue last year, and its briefing says:

"This clause provides a legal basis for the 'secure school' model of youth custody: it allows academies to provide secure accommodation for their pupils if they have been approved to do so and establishes that running a secure academy is to be treated as fulfilling the charitable purpose of 'advancement of education' under s3(1) of the Charities Act 2011. In April 2020, the Charity Commission noted that 'the proposed purposes of secure schools, as we understand them, do not wholly fall within the descriptions of purpose in s3(1) of the Charities Act 2011' and that 'we do not think the operation of a secure school can be exclusively charitable'. In November 2020, the Howard League wrote to the Secretary of State outlining the concerns that locking children up does not fall within charitable objectives. The proposal compounds this issue."

It would be helpful if the Minister could share with the Committee his discussions with the Charity Commission, so that we all better understand the position that has been reached on this knotty issue.

Amendments 123 and 133 both relate to the inspection regime for secure 16-to-19 academies. Amendment 123 would make secure 16-to-19 academies subject to annual inspection by Her Majesty's chief inspector of prisons, and amendment 133 would make them subject to annual inspection by Ofsted. I understand that the current inspection framework will come from Ofsted. However, I am sure the Government would agree that a secure school is a very different entity from a standard school. We therefore believe that such schools would benefit from a different inspection regime, to ensure that no aspects of their running are overlooked. Although it is true that it is not a prison, a secure school is still part of the secure estate, so there is expertise that Her Majesty's Inspectorate of Prisons can provide. Indeed, when Ofsted does inspections on the secure estate, HMIP is part of the broader inspection team. We think the inclusion of HMIP is important and should be put on a statutory footing. I hope the Government agree that it would add value to the monitoring and running of the secure school system as it is rolled out, so I hope they will be able to support our amendment 123.

As I outlined in my earlier speech, there is still much that is unknown and has yet to be decided in relation to secure schools. For that reason, we think it would be important for there to be regular inspections, especially in the early years of operation. That is why our amendment 133 provides for annual inspection by Ofsted, to ensure that nothing slips through the cracks. Furthermore, we are entrusting such schools with the care of some of our most vulnerable children at a point in their lives when positive and engaged care can have

the most impact, so it is only right that the schools are subject to the most rigorous monitoring while they do so. I hope that the Government agree and can support amendment 133.

Amendment 146, which was tabled by my hon. Friend the Member for Rotherham, allows for local authorities to establish and maintain a secure 16-to-19 academy, and to exclude profit-making bodies from doing likewise. I am sure she will address her amendment in detail, but she has our support.

Sarah Champion: My amendment 146 is designed to ensure that local authorities are able to run secure 16-to-19 academies, either alone or in consortia, and to prevent such establishments from being run for profit. I will go into the detail of why, but, fundamentally, I do not think profit should be made from keeping our children safe. We are seeing some pretty gross examples of that at the moment.

In December 2016, the Government committed to phase out child prisons—by that, I mean juvenile young offenders institutions and secure training centres—and to replace them with a network of secure schools and children's homes. I hope that this is not just the Government playing semantics and that they really are going to get rid of these institutions, because it is very clear, and the Youth Justice Board concedes, that secure training centres are not fit for purpose.

The Government must speed up the phasing out of secure training centres. When introducing secure schools and academies, they must ensure that they will meet high standards of care. We must ensure that secure children's homes take an approach that fulfils all of a child's needs and that they are not seen as cash cows for the private firms who run them to make huge profits.

3.45 pm

The amendment seeks to achieve two changes to the Bill, both of which have the potential to improve significantly the capacity of our child welfare system to meet the needs of the most vulnerable children and to keep them safe. First, it seeks to reverse the exclusion of local authorities from running secure schools, which are defined in clause 138(4) of the Bill as secure children's homes.

There is considerable experience in the local authority sector in caring for children with very high levels of need in a locked environment. It makes no sense to exclude this knowledge and learning from the provisions in the Bill. The failure of the last experiment in child detention—secure training centres—should be reason enough for the Government to avoid contracting with organisations that have little or no experience of managing children's residential care needs.

The Government's 2016 commitment to phase out secure training centres came in response to a review of the youth justice system undertaken by Charlie Taylor before he became chair of the Youth Justice Board. The February 2016 report proposed that a network of secure schools should replace child prisons. He described secure schools in the report as

"a larger number of small, education-led establishments"

that would be

"set up in a similar way to alternative provision free schools in England".

Charlie Taylor commended the "dedication, determination and courage" of those working in children's prisons, but concluded that many staff did not have the skills and experience to properly look after, protect and educate children in custody.

Charlie Taylor's final report described in more detail the safeguarding challenges in children's prisons and the imperative for change. He said:

"While I believe that many staff working in the current youth custodial estate are not equipped to carry out their difficult roles, I also believe that the staffing model adopted in these establishments exacerbates the problems of engaging and safeguarding children…I believe that having a distinct group of staff performing this role actually raises the risk of violence, and they can fall back on coercion or physical restraint when confronted by a resistant child…specialist residential schools do not have such a group of staff because everyone working there has…expertise in working with children, preventing and managing conflict, and ensuring compliance with the rules through support and persistence."

The review was launched a few months ahead of the damning undercover "Panorama" exposé of serious child abuse in the Medway Secure Training Centre, which was then managed by G4S.

G4S and Serco were contracted to run the four centres, holding children between the ages of 12 and 17. Twenty years later, the very strong warnings from the children's and penal reform sectors about STCs prove that these places were not the centres of excellence of care and education that we were promised. In the BBC "Panorama" documentary, staff were filmed verbally and physically assaulting children. One manager boasted of stabbing a child's leg and arm with a fork. Another recounted deliberately winding up a child so that he could physically assault him. A third was caught on camera forcing a crying child to repeatedly denounce his favourite football team.

In January 2012, the High Court found systematic unlawful restraint had been used from when the centres opened. Two boys, Gareth Myatt and Adam Rickwood, died following restraint in a secure training centre in 2004. Only two secure training centres remain: Rainsbrook, run by MTCnovo and Oakhill, run by G4S. Both continue to attract strong criticism on child safeguarding. It is vital we introduce the amendment now, to prevent damaging effects that may occur months or years after this Bill has passed, if the private sector is allowed to run these homes.

Secondly, the amendment seeks to confirm in primary legislation that secure schools will not be run for profit. We must ensure that public funds directed at supporting our children and families stay where they can help people in need, and do not line the pockets of shareholders and private equity firms.

As a society, when we get to the stage of sending a child to custody it nearly always exposes a catalogue of chronic failures as the child was growing up. Those failures can include lack of physical or emotional support for families, the unavailability of mental health services for the child and/or the parents, marginalisation in and exclusion from the education system or a care system that has not adequately cared for or protected them. More than half of the children in custody today have been in care at some time.

Our aim must be to keep children out of custody. That obligation is enshrined in the Children Act 1989 and article 37(b) of the United Nations convention on

the rights of the child. We have also seen the damaging effects of the private sector running accommodation in children's social care. Reports from the former Children's Commissioner for England, Anne Longfield, show that children were treated horrendously in poor-quality accommodation while the providers of it made huge profits. Last year, the Children's Commissioner reported that there had been a 69% increase in the use of unregulated accommodation for children in care since 2012-13. Anne Longfield's team found that one in every eight children in care in England in 2018-19 had experienced living in unregulated accommodation. That is more than 12,000 children.

The report highlighted a 21% increase in teenagers entering care in the past five years, noting that that cohort of children was 12 times more likely than younger children to be involved in trafficking, six times more likely to have suffered child sexual exploitation, seven times more likely to go missing from home and five times more likely to be involved in gangs. The report stated that

"all of these children need specialist help and care which is therapeutic and rehabilitative",

yet currently there is not sufficient provision for them.

Unaccompanied asylum-seeking children are significantly over-represented in unregulated accommodation. In recent years, family court judges have taken the unusual step of writing to Ministers to urge them to act after those judges have been forced to make orders placing children in inappropriate, sometimes wholly inappropriate settings.

An article in *The Guardian* just last week explained that in the children's residential care home market in England, 75% of homes are run by private firms. And that is my concern; rather than just private care homes, the Bill facilitates that shift to private in our justice system as well. Prices in those homes have risen by 40% since 2013, with the average placement costing £4,000 a week, or about £200,000 a year. How much will a place be in one of the secure schools?

Meanwhile local authorities are facing huge cuts to their budgets. The Local Government Association has reported that councils have been forced to spend an extra £832 million on children's services over what they were allocated in 2019-20. The devastating impact of austerity on early intervention and family support means that far too many children have gone without timely help in their earlier lives. That is not in the best interests of any child, either children in social care who have had their liberties removed or in custody. Those children are in our care, and we can and must do better. No one should be making profits from a vulnerable child's living situation. It must be said that the involvement of the private sector in the children's secure estate has done little to improve provision for vulnerable children. I ask the Minister to please adopt the amendment and put the safety of children before profits. The amendment is supported by Article 39 and the National Association for Youth Justice.

Charlie Taylor's case for change is compelling and urgent, but that was made four years ago. In February 2012, the Justice Committee called on the Government to publish a timetable for meeting their 2016 commitment. While we wait for that, today we can ensure that our legislation allows people who have the experience of running this specialist type of provision to play an important and positive role in our children's lives. We can also ensure that no profits are made from children's lives being so out of control and so difficult that they have to spend time in a secure setting.

The Chair: The vote might come at quarter past 4, although the Whips will be better informed of that than me, and the Whip cannot move the adjournment while someone is speaking, I just remind him of that.

Chris Philp: With that thought in mind, I will try to deal with the important points raised as quickly as I can.

We recognise that young people in detained accommodation or in custodial settings need a lot of support. Secure schools are being developed to do precisely this.

To support this, we think it is important that secure schools are provided by people who have a certain level of autonomy. Many charities have the necessary skills to do this. That is why, starting with clause 138, we are ensuring that providing a secure 16-to-19 academy can be counted as a charitable activity, enabling charitable secure school providers to improve outcomes in youth custody.

We always take changes to charities law seriously. We have to ensure that charities are properly regulated. The Ministry of Justice has worked closely with the Charity Commission and the Department for Digital, Culture, Media and Sport to make sure that is done in a way that preserves the integrity of charity law.

Clause 137 ensures that there is a clear statutory power to enable providers to allow for temporary release where someone is sentenced to custody, which applies to secure schools as well. It is important that these children can be released into the community as part of the rehabilitation that we want to do with them. This clause puts that release provision on a statutory footing. We think that temporary release provisions are an essential tool in the rehabilitation journey, and this makes sure that can happen.

The Youth Custody Service and secure children's homes that make temporary release decisions always do so subject to proper risk assessments. The YCS will develop formal guidance for SCH managers, outlining the necessary steps to be taken when making a balanced temporary release decision. Both these measures are helpful in ensuring that charities are able to come into this space to provide these services and that temporary release can be facilitated as part of the rehabilitation package, all of which is important.

Amendments 123 and 133 speak to the inspection regime. Like other academies and children's homes, secure schools will be jointly inspected by Ofsted and the Care Quality Commission. They will also be inspected monthly, not annually, by independent visitors. As co-commissioners for secure schools, the Youth Custody Service and NHS England will be responsible for ensuring high standards of performance. The minimum frequency of inspection is also set out in the regulations.

As secure 16-to-19 academies will fall under the definition of a children's home in the Care Standards Act 2000, they will be inspected on an annual basis in any case. The definition of children's home in the Children's Home (England) Regulations 2015 makes it clear that they will fall under the frequency of inspections regulations, so they will be annually inspected in any case, making amendment 123 unnecessary.

We have consulted HMCIP on the question of inviting it into the inspection regime, and it agrees with the Government's position. Although secure schools are a secure environment, they are essentially schools and children's homes, and so should be inspected by Ofsted and the CQC. Involving the prisons inspectorate in these institutions would run counter to the ethos we are trying to develop.

In speaking to amendment 146, the hon. Member for Rotherham made a compelling contribution on some of the failings that have occurred in the past, which we all agree we want to avoid. We are clearly talking about the new secure 16-to-19 academies. I want to speak to the concern about the profit motive, which amendment 146 addresses. As part of the existing academies legislation, an academy trust is, by definition, a not-for-profit charitable company, so I can confirm to the hon. Member and other members of the Committee that because academy trusts have to be not-for-profit by their nature, this new provision does not open up the possibility of introducing the profit motive into the provision of these secure schools.

I hope that my remarks achieve the twin objectives of giving commitment and assurance on these clauses, as well as avoiding a clashing with a vote that may be imminent.

4 pm

The Chair: The hon. Member for Rotherham looks happy. I will ask her if she is happy in relation to her amendment, but I will first go to the shadow Minister.

Alex Cunningham: I think we have to be very clear that we are talking about the incarceration of some of the most vulnerable young people in our society. I believe that we owe them a duty of care. When I was a local councillor and a lead member for children, I was a corporate parent for looked-after children, and I was responsible for them. We as MPs should be responsible for children in our society, particularly when we are dealing with such issues. I cannot understand for one minute why the Government would not want the most rigorous inspection regime possible.

What the Government are proposing is actually a testbed on how we look after those vulnerable children in future. It is a testbed; it has not been sorted, nothing has happened, and there here have been no pilots—nothing. Yet the Government are quite content to rely on independent visitors and inspections by different organisations. The most robust possible inspection of those establishments would certainly by conducted by HMIs and Ofsted.

History shows us—my hon. Friend the Member for Rotherham gave some examples—that if we do not get this right, in future, the responsibility for that child who dies, or that child who gets abused, will lie at our door and with nobody else, because we may not have made sure that they had the most rigorous inspection regime possible. For that reason, even though Her Majesty's inspectors do not wish to get involved in this, I think their expertise should be put to good use, and I intend to press both amendments to a vote.

The Chair: Does the hon. Member for Rotherham wish to press her amendment to a vote?

Sarah Champion: I do not wish to divide the Committee. I am content with what the Minister said about profit, but I would be grateful if he could write to me about why local authorities cannot apply.

The Chair: Minister, are you willing to do that?

Chris Philp: Yes.

The Chair: Excellent.

Question put and agreed to.

Clause 137 accordingly ordered to stand part of the Bill.

Amendment proposed: 123, in clause 138, page 126, line 40, at end insert—

"(8) A secure 16 to 19 Academy will be subject to annual inspection by Her Majesty's Chief Inspector of Prisons."—*(Alex Cunningham.)*

This amendment would make secure 16 to 19 academies subject to annual inspection by Her Majesty's Chief Inspector of Prisons.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 25]

AYES

Champion, Sarah	Jones, Sarah
Charalambous, Bambos	
Cunningham, Alex	Williams, Hywel

NOES

Anderson, Lee	Goodwill, rh Mr Robert
Atkins, Victoria	Levy, Ian
Baillie, Siobhan	Philp, Chris
Clarkson, Chris	Pursglove, Tom

Question accordingly negatived.

Amendment proposed: 133, in clause 138, page 126, line 40, at end insert—

"(8) A secure 16 to 19 Academy will be subject to annual inspection by Ofsted."—*(Alex Cunningham.)*

This amendment would make secure 16 to 19 academies subject to annual inspection by Ofsted.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 26]

AYES

Champion, Sarah	Jones, Sarah
Charalambous, Bambos	
Cunningham, Alex	Williams, Hywel

NOES

Anderson, Lee	Goodwill, rh Mr Robert
Atkins, Victoria	Levy, Ian
Baillie, Siobhan	Philp, Chris
Clarkson, Chris	Pursglove, Tom

Question accordingly negatived.

Clause 138 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Tom Pursglove.)*

4.5 pm

Adjourned till Thursday 17 June at half-past Eleven o'clock.

Written evidence reported to the House

PCSCB37 Ellie Cumbo, Head of Public Law, The Law Society (supplementary submission)

PCSCB38 The Bar Council