HOUSE OF LORDS
Library Note

Crime and Security Bill (HL Bill 45 of 2009–10)

The Crime and Security Bill is wide-ranging. It contains provisions to reduce the reporting requirements on the police when they stop and search individuals; to set out a statutory framework for the retention and destruction of biometric material, including DNA data; to provide the police with the power to issue "go" notices to alleged perpetrators of domestic violence; to extend injunctions for gang-related violence to 14-17 year-olds; to require courts to make parenting orders when a young person breaches an ASBO; to introduce a licensing scheme for wheel-clamping businesses; to create a new criminal offence of possessing a mobile phone in prison; to create a new offence of failing to take reasonable precautions to prevent a person under 18 from having unauthorised access to an air weapon; to compensate the victims of overseas terrorism; to enable licensing authorities to restrict the sale of alcohol between 3am and 6am; and to give the police new powers to search a person subject to a control order.

The Bill has completed its passage through the House of Commons and is due for a second reading debate in the House of Lords on 29th March 2010.

This House of Lords Library Note focuses on the debates on the retention and destruction of DNA data on the National DNA Database. It also gives brief details of the other parts of the Bill that were discussed at report stage in the Commons.

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1. Introduction

The Crime and Security Bill 2009–10 was introduced in the House of Commons on 19th November 2009.[1] It received its second reading on 18th January 2010 after a division.[2] The Bill was considered in twelve sittings of a Public Bill Committee between 26th January and 23rd February 2010. The Committee took evidence from a variety of organisations during the first four sittings and has published evidence submitted in writing.

The Commons report stage of the Crime and Security Bill took place on 8th March 2010, immediately followed by the third reading debate.[3] The Bill was presented to the House of Lords on 9th March 2010.[4]

As introduced in the House of Lords, the Bill comprises 60 clauses and two schedules. It covers a wide range of crime and security issues, which are summarised in the Explanatory Notes as follows:

> *Police powers of stop and search*
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> The Bill contains provisions to reduce the reporting requirements on the police when they stop and search individuals.
>
> *Fingerprints and samples etc*
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> The Bill contains provisions to give additional powers to the police to take fingerprints and DNA samples from people who have been arrested, charged or convicted in the UK, and from those convicted overseas of serious sexual and violent offences.
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> In response to the European Court of Human Rights judgment in the case of *S and Marper* v *United Kingdom* [2008] ECHR 1581, the Bill also sets out a statutory framework for the retention and destruction of biometric material, including DNA samples, DNA profiles and fingerprints, that has been taken from an individual as part of the investigation of a recordable offence. These powers were consulted upon in the *Keeping the Right People on the DNA Database* paper published in May 2009.
>
> *Domestic violence*
>
> The Bill contains provisions to implement a recommendation from the *Together We Can End Violence Against Women and Girls* consultation published in March 2009. The provisions provide the police with the power to issue an alleged perpetrator of an offence relating to domestic violence with a Domestic Violence Protection Notice, requiring the perpetrator to vacate the premises of the victim and not to contact the victim. The Notice must be heard by a magistrates' court within 48 hours, whereupon a Domestic Violence Protection Order can be made, lasting for up to 28 days.

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[1] HC Bill 3 of 2009–10.
[2] HC *Hansard*, 18th January 2010, cols 24–127.
[3] HC *Hansard*, 8th March 2010, cols 32–114 and 114–21.
[4] HL Bill 45 of 2009–10.

Gang-related violence

The Bill contains provision to amend the powers in Part 4 of the Policing and Crime Act 2009 under which the police or a local authority may apply to a court for an injunction against an individual for the purposes of preventing gang-related violence. In particular, the Bill provides that when a person aged 14 to 17 breaches such an injunction, the court may make a supervision order or a detention order.

Anti-social behaviour orders

The Bill contains provision requiring a family circumstances assessment to be carried out when an application for an anti-social behaviour order (ASBO) is made; and provision about the circumstances in which the court must make a parenting order on breach of an ASBO.

Private security

The Bill amends the Private Security Industry Act 2001 to enable the Security Industry Authority to introduce a licensing regime for private security businesses, in particular vehicle immobilisation businesses. Such businesses will be prevented from operating without a relevant licence, with penalties of up to five years' imprisonment or a fine, or both. The Bill contains a provision to extend the Approved Contractor Scheme in the 2001 Act to enable in-house private security services to apply for approved status.

The Bill also amends the Private Security Industry Act 2001 to provide an independent avenue of appeal for motorists in respect of release fees imposed by businesses carrying out wheel clamping and related activities.

Prison security

The Bill implements a recommendation from the strategy document *Extending Our Reach: A strategy for a new approach to tackling serious organised crime,* which was published in July 2009. It amends the Prison Act 1952 to create a new criminal offence of possessing an unauthorised mobile phone, or component part, in prison. This offence also includes unauthorised possession of devices (other than mobile telephones) which are capable of accessing the internet or are otherwise capable of sending or receiving data.

Air weapons

The Bill amends the Firearms Act 1968 to create a new offence of failing to take reasonable precautions to prevent a person under the age of 18 from having unauthorised access to an air weapon.

Compensation of victims of overseas terrorism

The Bill provides for a compensation scheme for persons injured (including those fatally injured) as the result of a designated terrorist act which took place outside the United Kingdom and occurred on or after 18th January 2010.

Sale and supply of alcohol

The Bill amends the Licensing Act 2003 to enable licensing authorities to make an order restricting the sale and supply of alcohol between the hours of 3am and 6am in either the whole or a part of their area; such an order may be expressed to apply on every day, or only on certain days of the week. The effect of an order is that any premises licence, club premises certificate or temporary event notice does not (unless specific exemptions apply), authorise the sale or supply of alcohol between those times in the early morning.

Searches of controlled persons

The Bill amends the Prevention of Terrorism Act 2005 to insert new powers allowing a constable, for specified purposes, to conduct a search of a person subject to a control order and to seize and retain articles found.[5]

The clauses relating to compensation of victims of overseas terrorism, the sale and supply of alcohol and searches of controlled persons were added by the government at committee stage in the Commons.

The Bill was considered by the Joint Committee on Human Rights in its report, *Legislative Scrutiny: Crime and Security Bill; Personal Care at Home Bill; Children, Schools and Families Bill*.[6] On 8th March 2010, the day that the Bill reached its report stage in the Commons, the Home Affairs Select Committee published a report on *The National DNA Database* which examines issues relating to the Bill's most contentious provisions.[7]

The House of Commons Library has produced a number of publications on this Bill, including *Crime and Security Bill,* which was prepared for the Bill's second reading debate and *Crime and Security Bill: Committee Stage Report*, published prior to the report stage in the House of Commons.[8] Further useful background information is also provided in *Retention of fingerprint and DNA data*.[9]

This Note focuses on the debates on the retention and destruction of DNA data on the National DNA Database as these provisions were the cause of the most significant differences between the government and the opposition parties. Section 3 of this Note gives brief details of the other parts of the Bill that were discussed at report stage and the amendments—mostly government amendments—that were made. There was no substantive discussion of police powers of stop and search, anti-social behaviour orders, prison security, air weapons or compensation of victims of overseas terrorism at report stage.

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[5] Crime and Security Bill 2009–10, *Explanatory Notes* paras 3–15.
[6] Joint Committee on Human Rights, *Legislative Scrutiny: Crime and Security Bill; Personal Care at Home Bill; Children, Schools and Families Bill* (2nd March 2010), session 2009–10, HL paper 167.
[7] House of Commons Home Affairs Committee, *The National DNA Database* (8th March 2010), session 2009–10, HC 222-I.
[8] House of Commons Library, *Crime and Security Bill* (22nd December 2009), RP 09/97 and *Crime and Security Bill: Committee Stage Report* (3rd March 2010), RP 10/22.
[9] House of Commons Library, *Retention of fingerprint and DNA data* (7th December 2009), SN/HA/4049.

2. Retention of DNA Data

2.1 Background

The most significant debate at report stage focused on the length of time that DNA profile data should be retained on the National DNA Database. Under current legislation and guidelines, the police in England and Wales can retain indefinitely DNA data taken from individuals arrested for a recordable offence, regardless of whether the individual is subsequently convicted. However, in December 2008 the European Court of Human Rights held in its judgment on the case of *S and Marper* v *United Kingdom* that the "blanket and indiscriminate nature of the power of retention in England and Wales" was in violation of Article 8 of the European Convention on Human Rights, which guarantees a right to respect for private and family life.

Under the Scottish system, however, the DNA of individuals who have not been convicted of an offence can only be retained if the individual is an adult who has been charged with a violent or sexual offence. The data can only be kept for three years, although this can be extended for a further two years with the consent of a Sheriff. In its judgment on *S and Marper*, the European Court of Human Rights pointed out that the Scottish system "is notably consistent with Committee of Ministers' Recommendation R(92)1, which stresses the need for an approach which discriminates between different kinds of cases and for the application of strictly defined storage periods for data, even in more serious cases".

The provisions of the Crime and Security Bill setting out a statutory framework for the retention and destruction of fingerprints and DNA material were introduced by the government in response to the European Court of Human Rights' judgment. The Bill provides that all DNA samples must be destroyed once they have been profiled and loaded satisfactorily on to the national database, and all samples (whether biological DNA material or other samples such as dental or skin impressions) must be destroyed within six months of being taken. What has proved more controversial is how long the DNA profile derived from an individual's DNA sample should be allowed to remain on the national database. The Bill sets out different categories for the retention of DNA profiles depending on the age of the individual concerned, the seriousness of the offence or alleged offence, whether the individual has been convicted, and if so, whether it is a first conviction. The different categories can be summarised as follows:

- Adults—convicted: indefinite retention of fingerprints, impressions of footwear and DNA profile (see substituted section 64(2));

- Adults—arrested but unconvicted: retention of fingerprints, impressions of footwear and DNA profile for 6 years (see new section 64ZD);

- Under 18 year olds—convicted of serious offence or more than one minor offence: indefinite retention of fingerprints, impressions of footwear and DNA profile (see substituted section 64(2));

- Under 18 year olds—convicted of single minor offence: retention of fingerprints, impressions of footwear and DNA profile for 5 years (see new section 64ZH);

- 16 and 17 year olds—arrested for but unconvicted of serious offence: retention of fingerprints, impressions of footwear and DNA profile for 6 years (see new section 64ZG);

- All other under 18 year olds—arrested but unconvicted: retention of fingerprints, impressions of footwear and DNA profile for 3 years (see new sections 64ZE and 64ZF);

- Persons subject to a control order: retention of fingerprints and DNA profile for 2 years after the control order ceases to have effect (see new section 64ZC).[10]

The Joint Committee on Human Rights considered the Crime and Security Bill prior to report stage in the Commons. With regard to the provisions on the retention of DNA samples, the Committee concluded:

> We welcome the Government's decision to respond swiftly to the judgment in *Marper.* However, we have concerns about the Government's approach which is to "push the boundaries" of the Court's decision. In particular we are concerned that:
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> - The proposal for a six year blanket retention period of the DNA profiles of people who are arrested but not charged or convicted is disproportionate and potentially arbitrary;
>
> - The stigmatising effect of the inclusion of the sample of innocent people on the National DNA Database has been discounted;
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> - The Government's approach to the assessment of proportionality fails to recognise that it must illustrate why the measures proposed are necessary in order to meet the legitimate aim of the prevention of crime and the protection of rights of others;
>
> - The research that backs up the proposal for a blanket six year retention period does not illustrate that the Government's approach is a proportionate one;
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> - The Government has not provided justification for its proposal to take and retain DNA samples from children and has not published an analysis of the compatibility of the proposals with the UN Convention on the Rights of the Child;
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> - The Government has not drawn any distinction between arrest in connection with serious violent and sexual offences and less serious offences;
>
> - The powers to retain DNA profiles and fingerprints for national security purposes, without independent oversight, are unnecessarily broad and should be circumscribed;
>
> - The Bill should be amended to provide a statutory form of appeal;

[10] Crime and Security Bill 2009–10, *Explanatory Notes* para 51.

- The Government should provide a timetable for compliance with the requirements to destroy legacy samples, profiles and fingerprints;

- The new powers to take DNA samples and profiles from individuals previously convicted are entirely open-ended.[11]

On the same day that the report stage debate on the Bill took place, the Home Affairs Select Committee published a report on *The National DNA Database*. Keith Vaz (Labour), Chairman of the Committee, explained during the report stage debate that: "The report was prompted by the concern expressed on second reading—and over the last few years—about the ever-growing DNA database".[12]

The Committee accepted the argument put forward by the police that enough people progressed from committing 'minor' crimes to serious crime that the effectiveness of the database would be seriously undermined if those suspected of minor crimes had their DNA profiles deleted earlier than others. Therefore, the Committee did not recommend that the Bill's provisions relating to adults should make a distinction between adults arrested for major and minor crimes.[13] With regard to the length of time that profiles should be retained, the Committee concluded:

> The current situation of indefinite retention of the DNA profiles of those arrested but not convicted is impossible to defend in light of the judgment of the European Court of Human Rights and unacceptable in principle. However, given the complexity of the issues and the conflicting evidence about what would be an appropriate length of time for retention, we are unable to recommend a specific period other than to say that we would regard three years as the minimum length of time for which such profiles should be retained.[14]

2.2 Report Stage Debate

At report stage in the Commons, James Brokenshire, Conservative Shadow Minister for Crime Reduction, welcomed a number of measures introduced by the government in the Bill with regard to DNA material—the destruction of DNA samples as soon as practicable, the indefinite retention of DNA profiles of convicted offenders, police powers to take samples retrospectively for a longer period after conviction and from those convicted overseas, and improvements to the oversight and reporting of the national DNA database.[15] He highlighted that the major difference between his party and the government lay in the length of time that profiles of those not convicted of an offence should remain on the database.

James Brokenshire disputed the research—both statistical analysis and individual case studies—which the government had used to justify the position that it was necessary to retain DNA profiles for six years. He pointed out that "careful examination of the facts of those cases shows that either they would have been detected and solved by virtue of our proposals... or there were other material factors that would have led to an arrest, DNA

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[11] Joint Committee on Human Rights, *Legislative Scrutiny: Crime and Security Bill; Personal Care at Home Bill; Children, Schools and Families Bill* (2nd March 2010), session 2009–10, HL paper 67, p 3.
[12] HC *Hansard*, 8th March 2010, col 46.
[13] House of Commons Home Affairs Committee, *The National DNA Database* (8th March 2010), session 2009–10, HC 222–I, p 13.
[14] *ibid*, p 16.
[15] HC *Hansard,* 8th March 2010, col 41.

sampling, and the requisite corroborative evidence being obtained to secure a conviction".[16]

James Brokenshire proposed a new clause which would require that DNA profiles should not be destroyed until three years had elapsed from the date of collection of the DNA sample from which the profile was derived.[17] He explained that while the government took the approach of wishing to retain data for as long as possible, the Conservatives approached the issue from the opposite direction, namely that DNA should be retained for the minimum period that it was safe to do so.[18] He explained that the effect of his new clause would be to introduce in England and Wales a system largely similar to the Scottish scheme:

> What is an acceptable period for the retention of DNA records of those arrested for, but not convicted of, any offence?
>
> We believe that an approach similar to that in Scotland should be adopted in the other nations of the United Kingdom, but with one important distinction, namely that the trigger for retention in cases involving violence or sexual offences should be arrest rather than charge.
>
> We believe that that approach takes proper account of the competing interests of the individual against the collective need for protection from crime.[19]

Keith Vaz (Labour), Chairman of the Home Affairs Committee, explained that his Committee had met in "what one might call an emergency session" the previous week to agree its report in time for the report stage debate.[20] He urged that politicians take seriously the views of Sir Alec Jeffreys, the inventor of DNA profiling, who had said during his evidence to the Committee that he had never intended that the DNA of innocent people should be kept on the database.[21] Keith Vaz spoke of the difficulty his Committee had had in reaching consensus: "Some felt strongly that everyone's DNA should be on the database. Some felt that the DNA of innocent people should not be kept on it at all".[22] Nevertheless, Keith Vaz felt that this was an issue on which it was important to reach all-party agreement because it affected so many citizens. He reiterated the conclusions of his Committee's report:

> There were differences among those of us on the Select Committee on how long the period should be, but we came to the conclusion… that a three-year period probably strikes the right balance. We said that the period should not be less than three years—although it could be longer—but that three years was a reasonable length of time. If hon. Members know the personalities of the members of the Home Affairs Committee and their different politics, they will understand that achieving a unanimous report is quite difficult. Consensus is not easy on such issues, but there was a consensus that holding the data for six years was too long.[23]

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[16] *ibid*, col 43.
[17] This approach is broadly similar to the recommendation made by the Home Affairs Committee for a minimum three-year retention period.
[18] HC *Hansard,* 8th March 2010, col 42.
[19] *ibid*, col 45.
[20] *ibid*, col 46.
[21] *ibid*, col 46.
[22] *ibid*, col 47.
[23] *ibid*, col 48.

Chris Huhne, the Liberal Democrat Shadow Home Secretary, explained that his party took a different position to the Conservatives and the government:

> We believe that only the DNA of people who have been convicted of a criminal offence should be on the database. There should be a primacy of the presumption of innocence over guilt. DNA should by all means be taken following an arrest but, if no subsequent conviction is achieved, the data relating to that person should be removed from the database on conclusion of the investigation or criminal proceedings. That should be a simple rule with no caveats, and no ifs or buts: a dividing line between innocence and guilt.[24]

Nevertheless, Chris Huhne recognised that the Conservative amendments represented a "pragmatic compromise"; on that basis, his party would be prepared to support them if pressed to a vote, even though the Scottish model was not their preferred first option. Like James Brokenshire, he disputed the evidence on which the government was proposing a six year retention period. Furthermore, Chris Huhne expressed the view that the government proposals failed to address the concerns outlined in the European Court of Human Rights ruling:

> The Government have come up with no evidence to convince me, and no evidence that should convince this House, that six years is a proportionate or necessary length of time to retain the DNA of an innocent person, nor do I believe for an instant that the European Court of Human Rights will be persuaded. Were this sorry piece of legislation finally to reach the statute book, I believe it would be overturned again.[25]

Andrew Dismore (Labour), the Chairman of the Joint Committee on Human Rights, made a similar point, saying that his Committee was still "concerned that proposals for retention, in respect of people who are arrested, but not charged or convicted, on the basis of a blanket retention period remain disproportionate and potentially arbitrary".[26] Andrew Dismore related how of one of his constituents had killed himself because of the shame of being put on the database after being falsely accused of an offence. In light of this, Andrew Dismore expressed particular concern about the stigma that might be attached to innocent people whose DNA profiles remained on the database. The European Court of Human Rights' judgment had highlighted this issue, but Andrew Dismore felt that the government proposals did not address it. He said that his Committee was disappointed that the government did not draw any distinction between major and minor offences. The Committee was also concerned that the provisions allowing DNA data to be retained beyond the six-year period if a chief constable ruled that there was a national security implication went too far.

Andrew Dismore concluded that:

> Without further concrete evidence to support the Government's arguments for a blanket six-year retention period, there is a real risk that these provisions will lead to further judgments finding the UK in violation of the right to respect for private life. In our view, there are various approaches that could comply with the *Marper* judgment—for example, the Scottish model—but we are very concerned that the proposals before us simply do not meet the requirements of the European Court.[27]

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[24] *ibid*, col 50.
[25] *ibid*, col 53.
[26] *ibid*, col 54.
[27] *ibid*, col 56.

Tony Baldry (Conservative), who was a member of the Public Bill Committee on the Crime and Security Bill, spoke about what he saw as a lack of public consent for the government's DNA retention provisions. He attributed this to the feeling that "having one's record on the DNA database means that a value judgement is being made that one either has committed an offence or has the propensity to commit an offence in the future" and to the difficulty that innocent people had experienced in trying to get their profiles removed from the database.[28] He drew particular attention to the Home Affairs Committee report:

> It would be stupid to ignore the unanimous report of a Select Committee that is tasked with monitoring and scrutinising the work of the Home Office. It is a pity that, through no fault of the Committee's, only on the last day on which the Bill will be debated in this Chamber do we have the opportunity of reflecting on what it has said. If the Government insist on using their majority to drive through a six-year period, I hope that when the Bill gets to the other place, our colleagues there will reflect on what the Home Affairs Committee has said so we can try to get some consensus.[29]

After summarising the arguments put forward by other speakers, David Hanson, the Minister of State for Crime and Policing, began his response by highlighting those areas of the DNA-related provisions that the government had amended in answer to issues raised at earlier stages of the Bill (see section 2.3 below). Turning to the issue of how long the DNA profiles of people not convicted of an offence should be retained on the database, David Hanson strongly defended the government's proposals:

> We believe that we have the evidence and the support, that we meet our legal obligations and that the six-year retention period—regardless of the seriousness of the offence for which a person has been arrested—will lead to the prevention of crime, and ultimately and accordingly to the solving of crimes. That is important, and we have taken that view very strongly.[30]

According to figures he quoted to back up this argument, in 2008–09, 79 rape, murder or manslaughter cases were matched to the DNA database; in 36 of those cases, the match was found to have a specific and direct value to the investigation. David Hanson also observed that Sir Hugh Orde, President of the Association of Chief Police Officers, "has said that he believes that the database is of value in helping to secure criminal convictions, preventing crime, and in ensuring... that innocent people are acquitted of crimes".[31] David Hanson urged the House to reject James Brokenshire's proposed amendment as "it is not in the interests of the prevention of crime".[32]

James Brokenshire pressed his new clause to a vote; it was defeated by 264 votes to 185.

2.3 Government Amendments on DNA Provisions

Several government amendments on DNA-related provisions of the Bill were accepted without debate.[33] Following on from a probing amendment tabled by James Brokenshire at committee stage, the government introduced amendments to clause 3 and clause 9 so

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[28] *ibid*, col 58.
[29] *ibid*, cols 59–60.
[30] *ibid*, col 66.
[31] *ibid*, col 66.
[32] *ibid*, col 67.
[33] *ibid*, cols 98–9.

that new powers allowing the police to take fingerprints and non-intimate samples from any person convicted of a qualifying offence outside England, Wales, and Northern Ireland would apply to everyone, and not just to UK nationals or residents as had been the case in earlier drafts of the Bill.[34]

Government amendments to clause 23 were also accepted without debate. Clause 23 places the Strategy Board of the National DNA Database on a statutory footing. As amended, clause 23 would require the Board to make an annual report to the Secretary of State about the exercise of its functions, which must be published and which the Secretary of State must lay before parliament. Additionally, the Board would be required to publish guidance to chief police officers on the circumstances in which DNA samples and profiles should be removed immediately from the National DNA Database. Chief police officers in England and Wales would be required to act in accordance with the Board's guidance. The introduction of statutory national guidance addresses criticisms about the inconsistency of the current arrangements, whereby data can only be removed from the database in exceptional cases at the discretion of the local chief police officer.

Introducing these amendments, David Hanson said:

> One key issue that has been raised... is ensuring that we do not have postcode lottery implementation of the proposals before the House. In tabling the amendments, the Government decided on a new early deletion procedure, with the National DNA Database Strategy Board being a single point of contact for both members of the public and constituency MPs instead of their having to go to individual police forces. That was a key issue in Committee... once the Board receives a request, the case will be handled by a central team, which will collate the case file, offer advice and consider, based on previous decisions, whether a deletion can be agreed to.
>
> It is crucial that the removal process is consistent, and I hope that the House welcomes that amendment.[35]

3. Report Stage Debate on Other Provisions

3.1 Sale and Supply of Alcohol

A number of amendments to parts of the Bill dealing with matters other than DNA data were debated. On the subject of regulating the sale and supply of alcohol, James Brokenshire proposed a new clause which would repeal those sections of the Violent Crime Reduction Act 2006 that give local authorities the power to establish Alcohol Disorder Zones (ADZs). Since no local authorities have ever used this power, James Brokenshire argued that:

> In the interest of better government, deregulation and the desire to keep the statute book uncluttered, we believe that it is time for the Government to admit

[34] Under the Police and Criminal Evidence Act 1984 s 65(1), a non-intimate sample is a sample of hair other than pubic hair, a sample taken from a nail or from under a nail, a swab taken from any part of a person's body (excluding their genitals or a body orifice other than the mouth), a saliva sample or a skin impression.
[35] HC *Hansard,* 8th March 2010, col 65.

> the policy disaster that ADZs have always been. That is why we would repeal the relevant sections of the Violent Crime Reduction Act 2006.[36]

The proposed new clause was discussed together with a Conservative amendment to clause 55, under which local authorities would have to show that an order to restrict the sale of alcohol between 3am and 6am was merely "desirable" rather than "necessary". James Brokenshire explained that:

> Through the amendment, we are seeking to be helpful by explaining what discretion might be applied by councils in the utilisation of the Bill's powers. We want to ensure that communities have a stronger say when it comes to licensed premises that are opening in the small hours in their areas.[37]

James Brokenshire feared that if a local authority did not have objective proof that an order was necessary, then the order could not be imposed, even if the local community wanted licensing restrictions to be put in place to tackle problem drinking. He argued that his amendment would make it easier for councils to use the Bill's powers, and would stop the measure going the way of the unused powers on ADZs. Chris Huhne gave the Liberal Democrats' support to both of these Conservative amendments.[38]

Alan Campbell, Parliamentary Under-Secretary of State in the Home Office with responsibility for crime reduction, argued that ADZs had always been intended as a measure of last resort and that it would not be correct to remove local authorities' power to set them up simply because no ADZs had yet been created.[39] With regard to orders to restrict the sale of alcohol in the early hours of the morning, he stated:

> The decision ought to be necessary, evidence-based, focused on an identified problem, and therefore targeted. It should not be taken lightly, particularly in an area where there are businesses in which, in many cases, hundreds of thousands of pounds have been invested.
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> Substituting the word "desirable" lowers the threshold. That offends against the principles of better regulation.[40]

The new clause proposed by the Conservatives was defeated by 267 votes to 163.

3.2 Gang-related Violence

James Brokenshire voiced the Conservatives' objection to the provisions of the Bill which would mean that young people subject to injunctions to prevent gang-related violence (dubbed "gangbos" by the press) would be dealt with in civil courts rather than youth courts. He claimed that the government was "seeking to crowbar into civil law various sanctions that might otherwise be available to youth courts when dealing with breaches of ASBOs, for example, and other, more criminal, sanctions. They are creating a hybrid between the criminal law and the civil law".[41]

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[36] *ibid*, col 75.
[37] *ibid*, col 76.
[38] *ibid*, col 81.
[39] *ibid*, cols 83–4.
[40] *ibid*, col 86.
[41] *ibid*, col 92.

Chris Huhne re-stated the Liberal Democrats' opposition to the application of gang-related violence injunctions to children:

> We supported the Government on the Policing and Crime Bill last year on the basis that such injunctions would not be applied to children. However, that commitment has been broken in this Bill and we cannot support their use on children. The penalties for breach of the injunctions are draconian and they blur the line between civil and criminal law for children in a dangerous way.[42]

James Brokenshire withdrew an amendment which would have required hearings for respondents aged between 14 and 17 to take place in a youth court.[43] A number of government amendments providing for the involvement of youth offending teams in the process of applying a gang-related violence injunction to a young person were made.[44] David Hanson said that these would ensure that youth offending teams could make representations to the court about the most appropriate sentence, as James Brokenshire had called for in committee. David Hanson stressed that: "The whole purpose of the injunction is to remove people from criminal activity and to support them so that they do not breach it".[45]

3.3 Domestic Violence Protection Notices

The government agreed to two amendments tabled by Robert Flello (Labour), which would enable the police officer issuing a Domestic Violence Protection Notice to "intervene to protect not only the immediate victim, but the children, and then subsequently, when the notice goes through to the court stage, the courts could take far more notice of the impact on those children than would otherwise be the case".[46] The government rejected amendments proposed by the Conservatives seeking to impose time limits of seven days on a Domestic Violence Protection Notice issued by the police and 56 days on a Domestic Violence Protection Order issued by a court.[47]

3.4 Private Security Licensing

A number of amendments proposed by Douglas Hogg (Conservative) were debated which would have had the effect of reducing the maximum penalties applicable to those in breach of the new private security licensing provisions; of specifying that an occupier of land on which unlicensed wheel-clamping activity was taking place would only be guilty of an offence if he had known that the activity was unlicensed and that it should have been licensed; and of giving power to the appeals body to review whether charges applied by a licensed wheel-clamper were appropriate.[48] Douglas Hogg's amendments were negatived on question.

3.5 Possession of Mobile Telephones in Prison

Two government amendments were made to clause 45 so that the new offence of possessing an unauthorised mobile phone in prison would be extended to apply to any unauthorised device capable of transmitting or receiving images, sounds or information

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[42] *ibid*, col 93.
[43] *ibid*, col 98.
[44] *ibid*, col 108.
[45] *ibid*, col 97.
[46] *ibid*, col 100.
[47] *ibid*, cols 101–8.
[48] *ibid*, cols 109–13.

by electronic communications, a component of such a device and any article designed or adapted for use with such a device.[49]

4. Third Reading

At third reading in the Commons, David Hanson said he was proud of the government's message on tackling crime. He believed that the Bill would "make society safer still and will build on the record of the past year", during which, he said, violence, robbery, domestic violence and wounding had all decreased.[50] Having outlined how the measures contained in the Bill would protect the vulnerable, prevent exploitation and ensure justice for the victims of terrorism overseas, he turned to the issue of DNA which, he said, had been the cause of major difference in Committee and on the floor of the House. He concluded:

> I have considered the matter extremely carefully and I still come to the conclusion that the hon. Members for Hornchurch and for Eastleigh [James Brokenshire and Chris Huhne] are on the wrong side of the argument for giving justice to victims and for ensuring that people who could and should be in jail for serious crimes are in jail. ... I am absolutely amazed that the party which for so many years called itself the party of law and order will not allow the use of DNA for between three and six years to bring to justice people who have committed terrible crimes and indeed to prevent future victims by ensuring that people are in jail earlier than they would have been if we did not have the provision in place.
>
> I accept that we have had to make judgements; that is one of the balances that ministerial life brings. I accept that there will be some people on the DNA database who have not committed a crime, who are innocent, who will remain innocent during the six-year period, and who may never commit a crime, but if I have to balance that against potentially bringing to justice somebody who has committed a serious crime and could commit further serious crimes, and bringing justice to victims, my hon. Friends and I will be on the side of victims and ensuring that justice. We will have to accept the consequences, which are that some individuals may feel aggrieved.
>
> On DNA, we have tried to fulfil—and, I believe, are fulfilling—our legal obligations under human rights legislation both in this House and abroad.[51]

James Brokenshire claimed that "as a result of the speed with which the Bill has been put together, questions remain as to whether a number of the provisions will actually work".[52] He said that in his party's judgement, the Bill needed further careful and close scrutiny.[53] He explained that the Conservatives intended to block the passage of the Bill in the House of Lords unless the government changed its position on the timescales for retaining DNA profiles:

> Despite our misgivings about the effectiveness and enforceability of a number of the provisions contained in the Bill, we would be prepared to let them pass, but the issue of principle on DNA retention remains. As the debate earlier showed,

[49] *ibid*, col 113.
[50] *ibid*, col 114.
[51] *ibid*, cols 115–6.
[52] *ibid*, col 117.
[53] *ibid*, col 118.

there are strong feelings in the House. We believe that the Government's proposals as set out in the Bill fail to strike the right balance between the rights of the individual and the collective right to protection from crime. We believe that the Government remain on the wrong side of the argument.

We have set out our position on a workable solution to deal with that issue which protects the public and respects the concept of innocent until proven guilty. We believe that to be a pretty fundamental concept that should not be discarded lightly. Despite the Government's best efforts to bring forward cases to prove the contrary, they have not succeeded.

The Bill has no chance of being considered fully by the other place and therefore can only become law through the wash-up process. It will therefore require cooperation if it is to have any chance of becoming law. Let me be clear: we will not allow the Bill to proceed in the other place with the Government's proposals in their current form. In our approach to this Bill, we have sought to move things forward and even at this stage the Government have the opportunity to adopt a similar approach on this issue. The Home Affairs Committee's report has produced a number of interesting recommendations on an all-party basis.

We believe that the Government should reflect on that point, as we will too, and in the spirit of wishing other provisions on compensation for the victims of overseas terrorism, on car clamping, on domestic violence and on other matters to succeed, we would be prepared to meet the Government and other Opposition parties to discuss the way forward on an all-party basis after tonight and to see whether agreement can be reached. We will do that on the basis that we expect the Government to move from their rigid, authoritarian, big brother-database stance. In the spirit of reaching such an agreement, and as a mark of good will, we are prepared to let the Bill pass tonight, but they should be in no doubt that if there is no movement from them—if they insist on maintaining the measures on DNA retention—we will not hesitate to prevent the Bill from making further progress.[54]

Speaking for the Liberal Democrats, Chris Huhne set out a very similar position:

Once the legal expertise in the other place gets its teeth into the Bill, the chances of its agreeing the DNA provisions tabled by the Government are risibly small ... I do not know of any serious independent human rights lawyer who believes that the proposals are consistent with the European Convention.

There are many good things in the Bill, however... For that reason, we do not intend to divide the House tonight, but I repeat the point made by the hon. Member for Hornchurch [James Brokenshire]: if the Government are to get a long-lasting reform to the DNA database through both Houses, they will have to compromise. At this stage of the electoral cycle, with the Bill heading inexorably for wash-up, it would make sense to have the all-party discussions that the hon. Gentleman suggested in the hope that we can reach some compromise and solution.

My party's proposal is that there should be a clear dividing line between innocence and guilt for those who are on the DNA database. We will compromise, however, and I hope the Government will do so as well. The Scottish system has the enormous benefit of being tried and tested... I therefore

[54] *ibid*, cols 118–9.

> commend that solution to Ministers when they are considering what they can realistically get through both Houses.[55]

The Bill was given its third reading without a vote.

5. Press Coverage

A report on the *Guardian* website on 16th March suggested that in order to ensure that the Bill's other provisions made it on to the statue book, the government would remove provisions relating to DNA retention periods from the Bill rather than accept the Conservatives' compromise proposal of a three-year limit:

> Ministers intend to reject a Tory compromise that DNA profiles of innocent people be kept for only three years, and instead make it an election issue.
>
> Home Office sources indicate that the government is "in no mind to weaken" its DNA provisions and argue that the Conservative compromise will involve the police having to go repeatedly to the courts if they want to keep a DNA profile beyond three years.
>
> Labour has already produced a campaign video which effectively accuses the Tories of being "the burglar's friend" for voting against the changes to the DNA retention regime.
>
> Johnson calculates that the shadow home secretary, Chris Grayling, has little support from police and victims on the issue, and that it would prove an unpopular position among his own party if it were better known. [56]

The article went on to report that senior police officers and civil liberty campaigners were concerned that this would prolong the lack of clarity about the database. Despite the European Court of Human Rights judgment, the DNA profiles of 900,000 people who have been arrested but never convicted are stored on the database, and this total is growing by 30,000 every month, according to the *Guardian*'s figures. Noting that an earlier government proposal to keep the DNA profiles of people who had not been convicted for up to 12 years was defeated by peers, the report predicted that opposition to the proposed six-year limit was likely in the House of Lords. It explained that the fate of the Bill would be decided during the "wash-up" before parliament is dissolved for the general election:

> Negotiations are under way over which bills are likely to be abandoned.
>
> Ministers are prepared to ditch the DNA provisions to get the rest of the crime and security bill on to the statute book.[57]

An online technology news website reported the following day that a Home Office spokeswoman had denied the *Guardian* story and had said that the DNA proposals were "on track".[58]

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[55] *ibid*, col 120.
[56] Alan Travis, 'Plan to limit DNA storage may be shelved' *Guardian*, 16th March 2010.
[57] *ibid.*
[58] 'Government denies shelving DNA database retention plans', *V3.co.uk*, 17th March 2010.

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