Domestic Violence, Crime and Victims (Amendment) Bill – Committee Stage Report

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Author: Pat Strickland

Section Home Affairs Section

This Bill is a Private Members' Bill introduced by Sir Paul Beresford. It has received Government support.

The Bill would amend section 5 of the *Domestic Violence Crime and Victims Act 2004* which created the new offence of causing or allowing the death of a child or vulnerable adult. The Bill would extend this to cover situations where children or vulnerable adults had been seriously harmed.

The offence had been created following work by the National Society for the Prevention of Cruelty to Children and the Law Commission. Although both these organisations had recommended that the legislation cover situations where children were seriously harmed rather than killed, the Labour Government had decided to restrict the new offence to cases where a death had occurred. However, ministers at the time indicated that it might be appropriate to return to this issue at a later date.

This Bill was introduced into the Commons on 30 June 2010, and received its second reading without debate on 18 March 2011. The Government tabled a series of amendments for the Bill's committee stage, which were welcomed by Sir Paul. These amendments were all added to the Bill without division. The main changes would replace the term "serious harm" with "serious physical harm" and would introduce a separate maximum penalty in cases where harm rather than death had been caused. The Bill is due to have its report stage on Friday 21 October 2011.

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1 Introduction

The *Domestic Violence Crime and Victims (Amendment) Bill* (Bill 208 of 2010-12) is a Private Members' Bill introduced by Sir Paul Beresford. It has received Government support. The Bill seeks to amend section 5 of the *Domestic Violence Crime and Victims Act 2004* which created an offence of "causing or allowing" the death of a child or vulnerable adult. The Bill would extend the offence so that it would cover situations where children or vulnerable adults were seriously harmed, as well as where they had been unlawfully killed.

The Bill was introduced into the Commons on 30 June 2010,[1] and received its second reading without debate on 18 March 2011.[2]

2 The aim of the Bill

Section 5 of the 2004 Act was designed to deal with the problem which arose when a child had died at the hands of one or other parents (or other members of household) and neither would admit to it. It creates an offence of "causing or allowing" the death of a child or vulnerable adult, and applies to household members who had frequent contact with the victim. To be guilty of the offence, the household member must have either caused the death or failed to take reasonable steps to protect the victim.

3 Why was section 5 of the 2004 Act introduced?

There had been a number of high profile cases, notably that of *R v Lane and Lane*, where a 22 month old child was killed and the suspects were the child's mother and stepfather. Both denied responsibility, and their convictions for manslaughter were quashed by the Court of Appeal.[3]

The National Society for the Prevention of Cruelty to Children campaigned on this issue, setting up a working group in 2002 which led to a report in 2003.[4] The Law Commission

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1 As Bill 22 of 2010-11

2 HC Deb 18 March 2011 c667

3 *R v Lane and Lane* (1985) 82 Cr App R 5

4 NSPCC, *Which of you did it?: problems of achieving criminal convictions when a child dies or is seriously injured by parents and carers*, December 2003

worked on the issue, producing a final report with a draft bill in 2003.[5] Full details are in Library Research Paper 04/44.[6]

4 Why did the 2004 Act not cover serious harm?

4.1 The Law Commission draft bill

The 2002 NSPCC report recommended that "new legislation should be drafted to require those who had responsibility for the care of a child who suffers injury to account for the period when the injury was sustained. Adverse inferences could be drawn where the care fails to give an account".[7]

The Law Commission consulted on a proposal to make it an offence for a person with responsibility for a child "to fail, so far as is reasonably practicable for him or her to do so, to prevent the child suffering serious harm deriving from ill treatment." The offence would only have been committed if the child had been the victim of one or more specified offences (murder; manslaughter; assault, rape or indecent assault). The Law Commission's report noted that these proposals had met with "widespread approval".[8] The Law Commission Draft Bill contained a new offence of "failure to protect a child" which would be committed if:

- the responsible person was aware (or ought to have been aware) that there was a real risk that specified offences might be committed against the child;
- the responsible person failed to take reasonable steps to prevent this; and
- the offence was committed in circumstances of the kind

The specified offences were murder, manslaughter, GBH, ABH, administering poison, rape, and indecent assault. In other words, the offence encompassed failing to protect a child from certain kinds of serious physical harm as well as from death.

4.2 Debate on "serious harm" in the *Domestic Violence Crime and Victims Bill*

However, when the *Domestic Violence Crime and Victims Bill* was introduced in the Lords, the offence was "causing or allowing the death of a child or vulnerable adult". When the Bill was in Grand Committee, Liberal Democrat peer Baroness Walmsley pointed out that both the Law Commission and the NSPCC had also been concerned about cases where children had been seriously harmed. Arguably, a child who was left with severe brain damage had suffered as great an injustice as one which had been killed. She suggested that it was unacceptable to leave no remedy for those cases. Baroness Scotland responded that offences involving the death of a victim had always been viewed in our legal system as particularly serious and meriting unique treatment. This offence was breaking new ground. Extension to serious harm cases might be considered in the future, when it had been seen how the new offence worked in practice. She also pointed out that "serious harm" would require careful definition. Moreover, where the victim was still alive, the victim might be able to give evidence, and others would have more incentive to give evidence, to ensure future protection of the victim.[9]

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5 Law Commission, *Children: Their Non-accidental Death or Serious Injury (Criminal trials) A Consultative Report*, Law Com No 279, April 2003

6 Library Research Paper 04/44, *The Domestic Violence Crime and Victims Bill Domestic Violence Provisions*, pages 46-63

7 NSPCC, *Which of you did it?: problems of achieving criminal convictions when a child dies or is seriously injured by parents and carers*, December 2003

8 Law Commission, *Children: Their Non-accidental Death or Serious Injury (Criminal trials) A Consultative Report*, Law Com No 279, April 2003, p47

9 HL Deb 21 January 2004 c340GC

In the Commons, amendments to return the term "serious harm" to the Bill were moved by David Heath, who was then the Liberal Democrat Home Affairs Spokesman.[10] Paul Goggins, (then a Home Office minister) explained the Government's reasons for not extending the offence to cover events leading to serious injury as well as death:

> There are four reasons for the Government's conclusion, after careful consideration of the matter, that the offence should cover events leading to death but not serious injury. The first is that there are other ways of capturing criminal behaviour of that kind. We have all experienced the frustration that arises when it is not possible to convict people despite its being known that the actions of one or more of them have contributed to a death. However, there are other forms of legal redress. When a child is hurt the offence of child neglect can be pursued. The offence of grievous bodily harm, which the hon. Member for Somerton and Frome referred to, is also available. It is not as if there is no redress.
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> Secondly, there are clear differences—specifically in relation to determining which one of the accused committed the offence—between a situation in which someone has died and one in which the victim survives. That is not least because the surviving victim may be able to give evidence in any prosecution case that is brought; clearly that is not possible where the victim is deceased.
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> Ms Munn: I apologise for interrupting my hon. Friend in mid-point. Does he agree that in cases involving small children and vulnerable adults who may have communication difficulties the ability to give evidence is a matter of concern? In their cases his argument does not hold sway, and that is why the organisations concerned suggest that we should consider the amendments.
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> Paul Goggins: We are doing more, and need to do yet more, to ensure that vulnerable witnesses and very young children in court are helped in every way possible so that the experience is as palatable and productive as possible. I assure my hon. Friend that that will continue. I have explained two of my reasons for not wanting to accept the amendments, and will come to the others; none of them would be sufficient alone, but the four of them together give the argument the weight that has led us to our conclusion. However, I shall think carefully about my hon. Friend's point.
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> The third point concerns definition. The hon. Member for Somerton and Frome raised that himself. If it were the only issue that arose, we could perhaps debate it further to ascertain whether there was sufficient common ground between us, but as I have said, it is one of four. We would be faced with a debate about what injuries constitute serious harm. At present, a broken nose can be dealt with as grievous bodily harm, but would probably not be treated as serious harm. We would have to debate further, as we would be in the problem area that we talked about this morning—that when we define something, we automatically create a loophole. There are real difficulties with definition.
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> Fourthly, as the hon. Member for Beaconsfield (Mr. Grieve) said, the new offence is, in some respects, novel and carries a severe penalty. Confining the offence to cases in which someone has died fits with the special status of death in the law. It is that special status that helps to justify the new offence and some of the associated procedural measures, which we will discuss later.
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> The new offence bestows on household members who are aware of the risk a responsibility to take such steps as are reasonable and necessary to prevent someone from coming to harm. Again, related provisions will ensure that murder or

[10] SC "E" Deb 22 June 2004 cc56ff

> manslaughter charges are not dismissed at the end of the prosecution case because it is not possible to be sure who committed the offence. Those novel changes are, to some extent, groundbreaking, and can be justified only where there has been a death.
>
> There is also the issue of the penalty for this offence, which is a maximum of 14 years' imprisonment. That is a serious penalty, which we may need to revise if we were to extend the offence to include serious harm, but we want to keep that stiff and tough penalty for incidents in which someone's life has been lost.[11]

Mr Heath withdrew the amendment with the intention of reintroducing it at a later stage. Accordingly he raised the issue again at report stage.[12] Mr Goggins said that he "did not rule out extending the offence at some time in the future."

> It is important, first, to put in place the new offence. Let us get that right first and see how the provision operates. If appropriate, we may return to the problem at a later date. [13]

5 The present Bill - debate in committee

The Government tabled a series of amendments to the Bill, and Sir Paul welcomed these:

> I thank the Minister and his officials, who, as the Committee will see, will enable the original Bill to be translated from my amateur attempt at drafting into a measure that covers all appropriate bases, thus enabling it to become fit for purpose, to use a well-known phrase.[14]

He went on to explain why he felt it was so important to extend the offence to cover serious harm:

> The current section 5 applies to the death of a child or vulnerable adult. It is best demonstrated by the Baby Peter case that so shocked the nation. Essentially, when the mother was accused, she said, "It was not me; it was him," and her partner said, "It was not me; it was her." Section 5 allowed for the prosecution of both and, as we all know, they were found guilty of causing or allowing the death of Baby Peter and sentenced to the maximum of 14 years. A key to the success of the prosecution case was that the pathologist was able, finally, to point to a cause of death.
>
> That brings me to one reason for my desire for the extension to cover serious physical harm. I understand that sometimes in such cases—this is not too infrequent—an actual cause of death cannot be specified, and section 5 cannot therefore be utilised. Additionally, if Baby Peter had been seriously physically harmed but had survived, even in a vegetative state, section 5 would not have applied.[15]

The Shadow Justice Minister, Andy Slaughter, commented on the Bill's all-party support, and then went on to refer to the comments of Paul Goggins during the 2004 Bill's report stage:

> Without wishing to quote him in his presence unduly, my right hon. Friend the Member for Wythenshawe and Sale East—the then Minister in the Commons—and Baroness Scotland considered the matter carefully. There were amendments to include serious harm. On balance, it was decided not to include them because it was quite a significant

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11 Ibid cc 61-2
12 see amendments 12, 13, 14 and 15 at HC Deb 27 October 2004 c1458 which Mr Heath spoke to at c1469
13 Ibid c1473
14 PBC Deb 22 June 2011 c6
15 Ibid

> change in the law for the reasons that I have given. It was a difficult matter on which to legislate, and therefore one needed to proceed with caution. It was also felt that, where victims had not suffered death but serious injury, they might be available to give evidence, or that one of the accused—one of the possible perpetrators—having seen the level of injury, would be more prepared to come clean and to give evidence.
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> Those points may have been valid at the time, but the key reservation was that this was a legislative leap, and therefore it was right to see whether the law worked. We have seen that it does work, and the Government were simply proceeding with caution at that stage. I will not speak for him, but I suspect that that is now the view of my right hon. Friend: time has passed and we have seen that happen. He concluded his rejection of the amendment at that stage by saying that the "examples are compelling, which is why I do not rule out extending the offence at some time in the future. It is important, first, to put in place the new offence. Let us get that right first and see how the provision operates. If appropriate, we may return to the problem at a later date."—[Official Report, 27 October 2004; Vol. 425, c. 1473.]
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> That later date is now. The case has been well made that serious harm—grievous bodily harm—is in many cases as serious an issue in terms of the injustices done and in the effect particularly on a young child, who may be brain damaged or incapacitated for life. It is right that the provisions in the original Act are extended to cover such cases, and therefore I lend my support to the Bill.[16]

Mr Goggins also made it clear that he supported the Bill:

> I was slightly concerned when I arrived in Committee this morning to find that both the hon. Member for Mole Valley and my hon. Friend the Member for Hammersmith had quotes from what I said seven years ago. Fortunately, they are quotes that I am happy to stand by, and I will support the hon. Gentleman's measure. He and others will remember the case that most concentrated our minds back in those days—that of Lane and Lane. It involved a 22-month-old baby who had a fractured skull and died. Clearly, one of two people was responsible. They would not point the finger at one another. They were convicted but they won on appeal, because the law could not sustain their conviction.
>
> The Law Commission did some tremendous work. We grappled with all that, because it was a new departure. Thank goodness we had the courage to see it through. It was sensible to do it in a staged way, and it worked. The conviction of those responsible for killing Baby Peter is evidence of that. The case is now made to extend that measure to include serious harm. I wish the hon. Member for Mole Valley well, and I will continue to support the Bill until it is enacted, I hope with active support from the Government.[17]

The Justice Minister, Crispin Blunt, expressed the Government's support for the Bill, and explained the reasons for the Government amendments. In brief, these would

- replace the term "serious harm" with "serious physical harm" because the Government fears that the risk of psychiatric harm would be much more difficult to identify and to have this on the statute "could deter people from caring for vulnerable adults"[18]
- introduce a separate maximum penalty for the offence of 10 years (the Bill as originally drafted would have applied the same penalty as exists for causing or

[16] Ibid cc8-9
[17] Ibid c9
[18] Ibid c12

allowing death – 14 years) because the Government felt this "would strike the right balance"[19]

- apply similar procedural and evidential provisions to the new offence.

All the Government's amendments were added to the Bill without any divisions.

[19] Ibid