

MCDOWELL'S CRIMINAL JUSTICE BILL:

Michael McDowell wants to introduce sweeping new powers for the Garda. He has introduced a new Criminal Justice Bill that he wants to make law in the next year.

This law if passed will extend even further the powers of the state and the Gardai.

This law will increase detention periods without charge from 12 to 24 hours. This does not include time spent sleeping while in custody so it actually means two full days.

The law will also allow a chief superintendent to sign a search warrant - at the moment it has to be signed by a judge for a specific offence. The new law allows a single warrant be used for a number of offences and for a detained person to continue to be held for offences other than that on the warrant.

The law introduces provision for 'fixed penalties' for 'lesser public order offences'. This gives new powers to the Gardai that include the power of arrest and summary conviction of a fine of £1,500 and 6 months imprisonment.

McDowell wants to give courts the power to use statements that have been retracted by witnesses or who refuse to testify. You only have to think of the Birmingham Six or the Guildford Four to see where this can lead.

The police will also have the power to take DNA samples through saliva and gum swabs. This information can be kept for 12 months.

These new powers are being given to the same Gardaí that have been up to their necks in lying, corruption and planting evidence in Donegal and elsewhere.

Already this year the state has paid out over 500,000 in compensation to victims of Garda assaults or wrongful arrests. One victim had urine poured over her from an upstairs window of a police station.

This is also the force that killed John



Carty in Abbeylara and then engaged in a cover-up and spin as to how it happened.

The fact that McDowell, a notorious republican basher, read the Bill into the record in Irish should make us even more suspicious. And indeed we should be - he plans to introduce numerous amendments including one to introduce electronic tagging and on Anti Social Behaviour Orders (ASBOs).

As previously with the Public Order Act, McDowell is claiming to be targeting drunken behaviour. However the POA was first used against striking workers and to

arrest demonstrators on anti-war and anti-capitalist protests like the Mayday Reclaim the Streets in 2002.

Most were later acquitted but if this new law was in place the police could have imposed an immediate fine of £1500 and 6 months in prison. The penalty for not complying with an anti-social behaviour order in Britain can be up to 5 years in prison.

McDowell says all this is necessary because the pendulum has swung "too far in favour of the accused". In reality the last ten years have seen a crackdown on civil liberties. The PDs pushed for the restriction on bail rights and for the Public Order Act that gave draconian powers to the Garda.

Mary Harney was clear from the start on why the police needed new powers. She said the police needed powers to deal with major social confrontations like the Poll Tax in Britain.

The Public Order Act and this new Criminal Justice Bill is about increasing the control of the state over everyone, and especially over rebellious young people.

McDowell and the government fear people power and want draconian laws in place to try to crush any resistance to them.

***Criminalising
and
Controlling
young people***

What does the Criminal Justice Bill change?



Head 4- Crime scene preservation

This section gives Gardai completely new powers of imprisonment and fines without having to go to court.

(12) A person who obstructs or attempts to obstruct a member of the Garda Síochána in the exercise of his or her powers under this section or who fails to comply with a direction or order under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a period not exceeding 6 months or to both.

"Crime scene" means any place where a member of the Garda Síochána reasonably believes there is, or may be, evidence

Head 5 - Search warrants in relation to serious offences

This subsection allows a Garda superintendent to issue a search warrant. Previously only a judge of the District Court following an application by a Garda Inspector could issue a warrant.

1) The Criminal Justice (Miscellaneous Provisions) Act, 1997 is hereby amended by the substitution of the following section for section 10:

(2) A member of the Garda Síochána not below the rank of superintendent may, subject to subsection (3), if he or she is satisfied that there are reasonable grounds for suspecting that evidence of or relating to the commission of an arrestable offence or suspected arrestable offence is to be found in any place, issue a warrant for the search of that place and any persons found at that place.

Head 7 - Power to arrest

This section extends the number of arrestable offences that carry a minimum 5 year prison term.

Section 2 of the Criminal Law Act, 1997 provides, in part, that an "arrestable offence" is an offence for which a person of full capacity and not previously convicted may, under or by virtue of any enactment, be punished by imprisonment for a term of five years or a more severe penalty. This definition does not include offences punishable under common law with a term

of imprisonment of five years or more, where there is no statutory penalty provided for. It is considered that there is no reason why such common law offences should not be included in the definition of arrestable offence and this Head proposes to amend the definition in section 2 of the 1997 Act so as to achieve this.

Head 8 -Detention after Arrest

The Criminal Justice Act, 1984 allows for a total of 12 hours detention. This section extends this to 24 hours and can be authorized by a Chief Superintendent. It does not include periods of rest, e.g. between 12 midnight and 8:00 a.m. may be excluded from the 24 hours.

(b) In subsection (3) insert the following new paragraph after paragraph (b)

"(bb) An officer of the Garda Síochána not below the rank of Chief Superintendent may direct that a person detained pursuant to subsection (2) be detained for a further period not exceeding 12 hours if he has reasonable grounds for believing that such further detention is necessary for the proper investigation of the offence."

Head 12- Amendment of Criminal Justice (Forensic Evidence) Act, 1990

This section allows the Garda to take DNA samples as well as fingerprints, handprints and photos. These DNA samples can be kept for 12 months and include:

- (i) Saliva
- (ii) Gum tissue by mouth swab
- (iii) Hair sample, can be plucked to include the root
- (iv) it increases the penalty where a person obstructs a Garda in seeking to obtain a non-intimate sample from £1000 to £1500 and from 6 months to 12 months

Head 19 Amendment of Section 25(1) of the Petty Sessions (Ireland) Act 1851.

This allows the execution of warrants by any member of the Garda Síochána even if he or she does not have the warrant in his or her possession but the warrant must be shown to the arrested person as soon as practicable. Previously you had the right to be served with a warrant and to examine it before it was executed.

Anti Social Behaviour Orders (ASBOs)



Michael McDowell, the minister for fun, wants to criminalise the behaviour of young people, by introducing Anti-Social Behaviour Orders (ASBOs).

The reason he cites is anti-social behaviour and the problem of drinking and drunkenness on the streets. But McDowell nor the Dept of Justice can provide statistics to show that anti-social behaviour is on the rise.

In fact latest gardai figures show a drop in crime figures of 7% (April 2005). McDowell didn't even talk to probation offices to get a clear picture of the current situation. Also local authorities in Ireland

recently got new powers, not only to fine people for drinking in public places but also to ban public gatherings that aren't licensed - so why do we need ASBOs?

But we've been here before when McDowell and Mary Harney introduced the Public Order Act (POA).

Under the same pretext they brought in this draconian piece of legislation to tackle 'drunken yobs'. Instead the POA was first used against striking TEAM Aer Lingus workers in Dublin Airport and anti-war and anti-capitalist protesters. Just like the Public Order Act, McDowell is following the lead of Britain and introducing ASBOs here.

He wants to create a US-style criminal justice system, a "zero-tolerance/three-strikes and you're out" policy that targets the poor. In the US the prison population has ballooned and is overwhelmingly poor, working class and black. There are now over 2 million people in US prisons.

An ASBO directs an offender to desist from specific anti-social acts or entering defined areas, and is effective for a minimum of two years. Breach of an order is considered a crime.

Anti-social behaviour is defined as that "likely to cause harassment, alarm or distress". This definition is so vague it can extend to virtually any act. That is why there have been many examples of ASBOs banning behaviour that is not in itself criminal, such as playing football or being sarcastic.

Securing an ASBO is easy, ASBOs can be applied for by local authorities, police forces or registered social landlords, against any youth over the age of 10 allegedly involved in anti-social behaviour.

The young person is brought before the courts on a civil basis and an ASBO is made against them. Hearsay evidence is admissible in civil court - that means that the burden of proof is on the balance of probabilities and not 'beyond reasonable doubt'.

So basically you can be convicted using gossip. Fewer than one in 70 applications are turned down in Britain. If the order is breached the matter becomes a criminal matter, and the young person can be arrested. The penalty for breach of an ASBO is

steep: up to five years in jail for doing something that is not an offence in law.

McDowell's ASBOs will draw young people into the criminal justice system. The experience in Britain has meant more young people being sent to prison. The result has meant more people drawn into crime and drugs as they get a bad name, can't get a job or finish education and have little option left than crime. The ASBO scheme will also divert yet more of the limited funds away from the implementation of the Children's Act 2001. That means more money wasted in courts and on lawyers that could be spent on communities and social programmes.

In Northern Ireland the Armagh Community Safety Partnership has claimed that the cost of multiple orders will be too much for any public body to bear. In covering this story the Belfast Telegraph referred to a case in Manchester that was appealed both at the High Court and the Court of Appeal and cost the council £187,700.

This vast sum of money could surely be better spent addressing the root causes of "anti-social behaviour".

ASBOs also undermine the children's act that states custodial sentences should be a last resort.

There is no doubt local authorities will be anxious to also use ASBOs against anti-bin charge campaigners and anyone else who tries to rock the boat. In recent weeks there is also talk of introducing 9pm curfews for under 16 year olds.

ASBOs in Britain - criminalising young people

ASBOs were introduced in Britain in 1998 by the Labour Party. The last two years has seen a rapid increase in their use - some 2,600 ASBOs were served in 2003. Around 50 children a month are being incarcerated (British Youth Justice Board).

Even the Economist pointed out the hype around anti-social behaviour (January 2005): *The increase in ASBOs in Britain had matched a rise in newspaper column inches devoted to "anti-social behaviour" but a decline in vandalism, "the closest proxy for it in the statistics"*.

One man was sentenced to four months in prison for howling like a werewolf.

In practice, courts grant 97 percent of ASBOs applied for.

Some 50 percent of ASBOs are served against young people, who can be given ASBOs lasting up to two years. Magistrates' guide-

lines recommend a custodial sentence as the starting point for a first time offender. Many of those in custody are there for offences that either are not criminal or were not imprisonable before the introduction of ASBOs, such as begging.

McDowell and other right-wing politicians are looking at other measures, including curfews, electronic tagging and dispersal orders as well.

CASES:

Joseph Newcombe - A four-year-old boy was threatened with an order after he threw his toy at the car of a council worker.

His mother claims that two days later the official returned and announced she wanted to give the child an ASBO. (March 2005)

Mitch Hawkin - Has been threatened with an ASBO for publishing a joke about the Pope's death on his website (April 2005)

Caroline Shepherd - A 27-year-old woman served an order after her neighbours claimed she was goading them by walking around her home in her underwear.

If she is seen "wearing only her undergarments" at her window, her front door or in her garden the mother-of-two faces jail (March 2005) Update: On 30 March she pled not guilty to two charges of breaching the order (March 2005)

Daniel Richardson - A 37-year-old drug addict, who turned to begging to fund his habit, was jailed for three months under the terms of his order for "courteously" asking a motorcyclist for money (March 2005)

DSEI Protesters - Two protesters and a baby were prevented from holding a banner and handing out leaflets outside Reed Exhibitions, the organiser of DSEI (Defence Systems and Equipment International); the world's largest arms fair. Police used an ASBO to order their dispersal and banned them from Richmond for 24 hours (August 2004)

Palestine Solidarity Campaign - Whilst demonstrating outside Caterpillar's financial offices in Solihull, on 25th June, at the bulldozer manufacturer's continued sale of machinery to the Israeli military, nine people were arrested under the Anti Social Behaviour Act for failing to provide their names and addresses.

They were held for 18 hours in a police cell and not allowed to have a private phone conversation with a lawyer.

The British government hopes to set a precedent for the use of anti-social behaviour legislation in this field (June 2004)

People on the frontline:

Liz Lovell

Children's Society charity

"ASBOs are criminalising children and young people without giving them the support they need to help them change their behaviour. We are particularly concerned about the "naming and shaming" of young people on ASBOs"

Joyce Moseley

chief executive of young people's charity Rainer

"We need continued investment in community-based approaches to prevent crime, such as youth inclusion programmes that focus on changing attitudes and behaviour. We should be aiming to keep young people out of custody, not sending them there when they haven't committed a criminal offence"

Peter McVerry SJ

"The success of Anti-Social Behaviour Orders depends on our willingness to imprison children at a cost of 250,000 a year."

Yet the Children's Act 2001 remains unimplemented because we are told the resources are not available"

For the best answers to McDowell - read Socialist Worker every fortnight



McDowell's hypocrisy

McDowell ignores the real anti-social behaviour going on in Ireland - the wholesale vandalism of public services by the government.

We have a chronic situation with our health service, a refusal by the government to tackle the housing crisis, many of our children are being taught in delapidated schools and there is zero investment in youth clubs or facilities for young people.

Instead of harassing and criminalising young people, there are plenty of real criminals in Ireland that McDowell should be going after, here are a few to start him off:

The Banks:

NIB overcharged customers by 12.5m
AIB overcharged customers by 34m
DIRT tax evasion 782 million
NIB scam for tax evasion 53 million
Ansbacher gang evaded 44 million
How many bankers in jail? 0.

The US Military:

Over 300,000 trained killers have passed through Shannon Airport, a civilian airport in the last three years.

They were on their way to an illegal war that our government conspired to justify. Not just that but the government has paid for it - over 2 million in landing fees.

Even worse there is clear evidence to prove the CIA has used Shannon Airport to transport prisoners to torture centres such as Guantanamo.

Corrupt politicians:

The extent of corruption and bribery in Irish politics throughout the 80s and 90s is hard to believe.

So far the tribunals have cost tax-payers millions but only two politicians have been sent to jail - both for minimum sentences.

The vast majority of the top bankers, businessmen and politicians have got off scot free.

The robbery of elderly people on medical cards:

Since the 1970s old age pensioners living on basic welfare were robbed of their pensions because the government refused to put money into the healthcare system. At a time when the rich were involved in unprecedented fraud and corruption. Yet nobody has gone to jail.

We want rights and facilities

ASBOs are a political trick. It lets the government look like its doing something when its doing absolutely nothing about the real underlying problems - the lack of social spending on youth facilities like leisure centres, swimming pools, skateboard parks and other programmes and facilities for young people.

There are only a tiny number of public swimming pools in Ireland. Communities in Dundrum have to mobilise to stop the government closing the public swimming pool and selling it off.

In Dun Loughaire people have been campaigning for five years to re-open the seafront baths leisure facility for young people.

The government complains about anti-social behaviour but the only leisure centres around are private and cost 200+ to join.

If McDowell wants to do something useful he should make leisure centres free for everyone under 20.

Young people also have a right to hang out with their friends. If McDowell doesn't want people hanging around street corners he should provide Social Centres for young people, run by young people themselves in every area.

Instead of excluding and criminalising young people we should be given a say in how the country is run. Lower the voting age to sixteen.

A Global attack on civil liberties

McDowell's new law and the consistent attacks by the PDs on our rights has to be seen in the context of a global attack on civil liberties.

Today torture is once again acceptable, from Abu Ghraib in Iraq to Guantanamo Bay. US and British courts now accept evidence extracted from defendants by torture.

John Negraponte, the man who organised the 'Death Squads' in Central America, is the new head of US intelligence and torture.

In Britain Charles Clarke wants new powers of indefinite house arrest based on secret information from the 'intelligence community' - the same guys that told us about WMD in Iraq.

Our government has played its part, it allowed the CIA's 'torture plane' that ships kidnapped victims to torture sites to stop in Shannon airport on numerous occasions.

McDowell's new law would go down a treat with all of them. It's another attempt to criminalise dissent. In response to the eruption of the global justice and anti-capitalist movement

onto the streets in Seattle in 1999 governments have had an undeclared war against civil liberties.

This attack on our rights intensified after the attacks of September 11 2001. Under the guise of the 'war on terror' Bush and his allies have sought to roll back all the gains and rights won in the 1960s.

Under the slogan of 'you are with us or you are with the terrorists' governments have excluded looking at the root causes of terrorism and crime.

All governments have sought to re-organise their police forces to increase repression and to restrict people's rights.

McDowell wants to do the same here. Instead of putting money into local community schemes and facilities for young people he wants to put money into building more new prisons and more police.

He wants to create a law and order bandwagon to blame the poorest and most vulnerable for the ills of society. He is only interested in control not in solving the problems of society.

More info...

This factsheet was produced by the Socialist Workers Party. For more information on the policies & activities of the Socialist Workers Party please fill in the form below

Name:

Address:

E-mail: Tel:

Return to: *Socialist Worker*, PO Box 1648, Dublin 8. www.swp.ie Tel: (01) 8722682

Title: McDowell's Criminal Justice Bill
Organisation: Socialist Workers' Party
Date: 2006

Downloaded from the Irish Left Archive.
Visit www.leftarchive.ie

The Irish Left Archive is provided as a non-commercial historical resource, open to all, and has reproduced this document as an accessible digital reference. Copyright remains with its original authors. If used on other sites, we would appreciate a link back and reference to us, in addition to the original creators. For re-publication, commercial, or other uses, please contact the original owners. If documents provided to The Irish Left Archive have been created for or added to other online archives, please inform us so sources can be credited.