



**CWLC Brief to the Senate Standing Committee on Legal and  
Constitutional Affairs**

**Bill C-10: Safe Streets and Communities Act**

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The Child Welfare League of Canada (CWLC) is a membership based national organization dedicated to promoting the well-being and protection of all children, especially vulnerable children and youth (0-18 years). CWLC plays a significant role in promoting best practices among those in the fields of child welfare, children's mental health and youth justice. Our membership includes more than 140 members in all provinces and territories and constitutes a wide variety of community groups, provincial/territorial governments, associations, universities and children's advocates.

On September 20th, 2011, the *Safe Streets and Communities Act* was tabled by Justice Minister, Robert Nicholson. This act amalgamates nine bills which were previously introduced, but failed to pass in previous sessions of Parliament. The impact of the *Safe Streets and Communities Act* is far reaching and will affect children, youth, families and our already over-burdened child welfare system, not to mention the financial implications for provinces and territories. It is uncertain how much the entire legislation will cost.

### **Positive Developments**

Some of the positive aspects associated with the *Act* are the inclusion of former Bill C-54, *Better Protecting Children and Youth from Sexual Predators*. It establishes new mandatory minimum penalties for existing offences and increases the mandatory minimum penalties for existing offences. The two new offences introduced in this Bill include:

- Prohibiting anyone from providing sexually explicit material to a child for the purpose of facilitating the commission of a sexual offence against that child<sup>1</sup>
- Prohibit anyone from using any means of telecommunications, including the Internet, to agree or make arrangements with another person for the purpose of committing a sexual offence against a child<sup>2</sup>

Judges will also be required to consider restricting a suspected or convicted child sex offender from having unsupervised contact with children under the age of 16 or unsupervised use of the internet<sup>3</sup>.

Another positive development in the *Safe Streets and Communities Act* is the increased penalties of selling drugs to or around minors and using youth to sell drugs under the *Increasing Penalties for Serious Drug Crime* (former Bill S-10).

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<sup>1</sup> Department of Justice Canada (2011), *Background: Safe Streets & Communities Act*, accessed online: [http://www.justice.gc.ca/eng/news-nouv/nr-cp/2011/doc\\_32637.html](http://www.justice.gc.ca/eng/news-nouv/nr-cp/2011/doc_32637.html)

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

## Concerning Developments

Included in the Act is former Bill C-4 entitled *Protecting Society from Violent and Repeat Young Offenders*. A positive aspect of this part of the bill is the assurance that all youth under the age of 18 who are given a custodial sentence would serve it in a youth facility which is in compliance with the United Nations Convention on the Rights of the Child.

During my forty years of working with vulnerable children in Canada, I have worked with children under the Juvenile Delinquents Act (JDA) and its successors. It is my experience that many of the provisions of the JDA failed to meet the needs of vulnerable children, and our societal objectives of rehabilitation and reintegration, as the measures were arbitrary, punitive despite being well intentioned, in particular, I can vividly recall the harsh and punitive sentences being given to children under the particularly odious Section 8 of the JDA for “incurability”. These children whose behaviour was deemed dangerous and unacceptable to society were sentenced to lengthy incarceration. The results were predictably bad in creating angry and dysfunctional adults and too often career criminals, who present a lifelong threat to public safety.

The Youth Criminal Justice Act (YCJA) was one of the first pieces of Canadian legislation that was written to conform to the United Nations Convention on the Rights of the Child which was signed and ratified in 1991. The Convention recognizes that all children under the age of 18 have specific and immutable rights, which take into account their vulnerability due to age, their relative position in society and their evolving capacities. The proposed amendments unfortunately violates some of these rights, notably Article 3 which states that the best interests of children should be the primary concern in making decisions that may affect them<sup>i</sup>.

It is my judgment and experience that the amendments proposed will reverse the substantial progress that we have made in Canada, since the abolition of the JDA. It is the youth justice system that is failing our children, not the legislation.

CWLC’s position related to the proposed amendments contained in former Bill C-4 are as follows:

1. The provisions in the current YCJA have proven satisfactory in addressing the needs and issues raised by violent and repeat offenders.
2. The proposed amendments have implications that go well beyond the application to a small group of violent and repeat offenders that will result in more children becoming trapped in the criminal justice system. This is particularly concerning as it impacts on Aboriginal and visible minority children who are already over represented within the criminal justice system.

3. The proposed amendments ignore the recommendations that have been made to the government to improve the implementation of the YCJA.

CWLC's concerns related to the proposed amendments contained in former Bill C-4 are as follows:

1. Make protection of society a primary goal of the Act
  - This change will fundamentally alter the purpose of the YCJA, so that “public safety” will supersede any other purpose of the Act and violates Article 3 of the UNCRC
  - This significantly shifts the focus from the rehabilitation and reintegration of the child.
  - The focus on the child and not on “public safety” was intentional and purposeful in creating the existing YCJA.
2. Simplify pre-detention rules
  - According to Stats Canada, the number of youth in remand outnumbers those in sentence custody (52% of all children held in custody were in remand 2008/09)<sup>4</sup>.
  - Article 37(b) of the UNCRC states that the arrest, detention or imprisonment of a child should only be used as a measure of last resort and for the shortest appropriate amount of time<sup>5</sup>.
  - Rather than increasing incarceration for children, the youth court should be given greater supports to ensure that an appropriate safety plan is in place when releasing children into the community.
  - Pre trial detention should only be used in circumstances of violent offences, and exclude property offences or offences that could endanger the public.
3. Specific deterrence and denunciation
  - There is no evidence to demonstrate that the applications of these principles to sentencing are effective or appropriate.

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<sup>4</sup> Statistics Canada (2009), “Adult and youth correctional services: Key indicators”, *The Daily* December 8, 2009 <http://www.statcan.gc.ca/daily-quotidien/091208/dq091208a-eng.htm> (accessed May 11, 2010)

<sup>5</sup> United Nations (1989). *Convention on the Rights of the Child*. General Assembly resolution 44/25 of 20 November 1989; entry into force 2 September 1990

- The application of these principles specifically undermines the principle of proportionality.
  - These sentencing principles reverse the foundation of the YCJA and take us back to S.8 of the JDA.
4. Add to the definition of “violent offence” behaviour that endangers the life and safety of others.
- The current provisions of the YCJA already address these matters.
  - See comments related to an appropriate plan of safety (item 2).
5. Allow custody to be imposed on youth who have a pattern of findings of guilt or extrajudicial sanctions.
- Article 40(2(b)(i)) of the UNCRC expressly states that any child in conflict with the law should be presumed innocent until proven guilty<sup>6</sup>.
  - Rather than increasing incarceration for children the youth court should be given greater supports to ensure that a safety plan is in place when releasing children into the community.
  - Research shows that criminal behaviors decrease with age. This approach could cause a negative intervention thereby raising the potential for further criminal activity.
6. Ensure adult sentences are considered for youth 14 and older who commit serious violent offences (murder, attempted murder, manslaughter and aggravated sexual assault)
- The current provisions of the YCJA should be reviewed to create a more appropriate mechanism to review the sentences of any child convicted of a serious violent offence, and its application beyond the age of 18 years.
  - The application of mandatory adult sentences should not be required. This undermines the fundamental purpose of a separate youth justice system.

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<sup>6</sup> United Nations (1989). *Convention on the Rights of the Child*. General Assembly resolution 44/25 of 20 November 1989; entry into force 2 September 1990

- Many youth who come into contact with the law have also been victims of family violence, abandonment, mental health and addictions issues and poverty. Youth are considered in need of protection.
7. Lifting of the publication ban on the names of young offenders convicted of “violent offences”, when youth sentences are given.
- The application of publication bans is fundamental to achieving the primary objectives of the Act – rehabilitation and reintegration of the child offender. Being publically labelled decreases the chances that the youth will be able to form meaningful connections with people. This would hinder desistence behaviours.
  - The evidence does not demonstrate any increase in public safety by releasing the name of the child offender. In fact it violates Article 16 and 40((2) (b) (vii)) of the UNCRC which protects children’s rights to privacy<sup>7</sup>.
  - The sentencing provisions should be supported by a plan of safety where releasing a child convicted of a violent offence into the community.

### **What’s Missing**

The YCJA was introduced in 2003 and at that time, it was planned that a national review would occur after five years. While the review occurred, the consultations were limited and no evaluation report was made public.

More broadly, CWLC recommends the following changes concerning the implementation of the YCJA:

1. That a comprehensive review of the implementation of the YCJA be conducted by Justice Canada in partnership with provinces/territories and key stakeholders
2. That provisions regarding deterrence and denunciation not be included in any new youth justice legislative proposal
3. That Justice Canada assume leadership in working with provincial/territorial counterparts in justice, mental health, addiction, child and family services, violence prevention and education to address the requirements of vulnerable young people who are committing offending behaviours

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<sup>7</sup> United Nations (1989). *Convention on the Rights of the Child*. General Assembly resolution 44/25 of 20 November 1989; entry into force 2 September 1990

4. That the federal government develop a national strategy to Stop Violence against Children and youth, as recommended in the UN Study on Violence against Children (2006)

We know that if the federal government enacted these four recommendations that Canada would be in a much better position to prevent and address the needs of vulnerable children, and create a safer, healthier and more productive society. Despite the *Safe Streets and Communities Act* including some positive, opportune changes, the backlash of much of this legislation could be devastating to youth, families and communities. The last century has brought about advancements in methods of promoting societal well-being and reduction in criminal acts. Some of these advancements are within the justice system. The restorative justice movement has developed alternate resolution, offender treatment, victim support and various aboriginal methods such as traditional healing circles. The focus on punishment proposed in this bill hinders and undermines such advancements in ways that may be difficult to recapture. It is the youth justice system that is failing our children, not the legislation. We are living in the safest era in history. Now is not the time to step backwards.

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<sup>i</sup> United Nations (1989), *United Nations Convention on the Rights of the Child*. Office of the United Nations High Commissioner for Human Rights, Geneva.