

# **Submission on Bill C-10**

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

**Submitted by**

**Defence for Children International-Canada**

**February 14, 2012**



**Defence for Children  
International-Canada**

[www.dci-canada.org](http://www.dci-canada.org)

**a worldwide movement for children's rights**

**Defence for Children International-Canada is pleased to present this brief in response to Bill C-10.**

**Background:**

**Defence for Children International-Canada (DCI-Canada) is the Canadian section of a world-wide organization committed to providing information on the United Nations Convention on the Rights of the Child and working towards its full implementation both nationally and internationally. DCI-Canada was federally incorporated in 1989 and is a registered charity. Several of our Board members have extensive experience with youth involved in the justice system and three members of our board are previous provincial child advocates of Ontario. We have also had standing at a number of inquests involving young people who died in the care of the state.**

**Although DCI-Canada has many concerns about Bill C-10, consistent with our mandate the focus of our submission is the effect of the Bill on youth. There have been a number of presentations both to the House of Commons Standing Committee on Justice and Human Rights and to this Committee that outline in some detail concerns with the proposed changes to the Youth Criminal Justice Act (YCJA) contained in Bill C-10. Those presentations include evidence that the rate of crime is declining and that harsher sentences do not deter young people from committing offences. There has also been evidence presented that the long term protection of society is not achieved by locking up more young people. This information has been more than adequately presented by many who have expertise in these areas. DCI-Canada also provided a submission to the Commons Committee on Justice and Human Rights on Bill 4 (dated May 27, 2010) which addresses many of the same issues dealt with in Bill C-10.**

**In this submission, we would like to address two issues: the first is our obligations under the UN Convention on the Rights of the Child and the second is information about what really happens to young people in custody. In conclusion we will make two recommendations.**

**Obligations under the U.N. Convention on the Rights of the Child:**

**In 1989 the United Nations adopted the UN Convention on the Rights of the Child and in 1991 Canada ratified the Convention. We all celebrated and congratulated each other but even during the celebrations there were questions about how this Convention would be implemented. Twenty years later the answer to those questions ranges between “not at all” to “poorly”. The most extensive description of our failure to honour the promises of the Convention is documented in the Senate’s own report called *Children: the Silenced Citizens* (April, 2007). It shines a light on the gap between our rhetoric and the reality of children’s lives in Canada and the failure to incorporate the principles and promises of the Convention into our**

domestic legislation. In response to the Senate report, the government confirmed its practice of “ensuring that policies and programs were considered through the lens of the best interest of the child principle and the United Nations *Convention on the Rights of the Child* “. In reviewing Bill C-10, we do not understand how it is possible that the government proposed the current amendments to the Youth Criminal Justice Act using the principle of “best interests of the child”.

When Canada ratified the Convention on behalf of all Canadians we made commitments about the way we would treat our children. Article 3 of the Convention indicates *“in all actions concerning children.....the best interests of the child shall be a primary consideration”*. Article 37 promises that *“No child shall be subjected to.....cruel, inhuman or degrading treatment or punishment”* and goes on to say *“The arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time”*. Article 40 indicates that States Parties recognize the right of every child in the youth justice system *“to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth”*. This Article goes on to state *“Every child alleged as or accused of having infringed the penal law has at least the following guarantees....including the right “To have his or her privacy fully respected at all stages of the proceedings”*. These are just short excerpts of the promises we made to young people involved in the youth justice system.

We believe that the sections of Bill C-10 that deal with changes to the Youth Criminal Justice Act are in direct violation of the principles and Articles of the U.N. Convention on the Rights of the Child.

There is also evidence that the provinces and territories responsible for the implementation of youth justice see no need to change the legislation. In 2008, the Minister of Justice hosted consultations on the Youth Criminal Justice Act in all provinces and territories. The initial section of the report that followed the consultations was titled “Consistent Messages from All Provinces and Territories”. In it there was a sub-section titled “Little support for changes to the YCJA at this time”. Here is an excerpt from that section.

*“Legislation cannot prevent crime, reduce crime or protect the public. Changing legislation will not change behaviour. The YCJA should not be changed just for the sake of change. There was an overwhelming consensus that the perceived flaws are not in the legislation; the flaws are in the system. The development of the YCJA was described as a long and thoughtful process that came from evidence-based research. A sensible and defensible Act based on intelligent principles. Any changes should be evidenced-based and made following the same thoughtful process”*

### **Young People in Custody:**

There are many who believe that youth custody facilities are a little like well run private schools with an emphasis on education, mental health treatment and preparation for a return to the community as law-abiding citizens. It is often

difficult for the average person to find out what goes on in youth facilities because access is limited in the name of security, but to get a glimpse of that reality it is informative to look at inquests of children who have died in custody. It may be said that this is choosing extreme cases and in some ways it is but we can assure you that for every child who dies in custody there are many others who are subjected to similar circumstances and abuse. They just happen to survive.

Two cases from the Ontario Coroner's office have been chosen as examples because DCI-Canada observed or had standing in these inquests.

The first is an inquest of J., a 16 year old boy who was beaten to death in custody. His father died before he was born, his mother had two other children and a new baby, was in financial difficulties and suffered from severe depression. By age three, J. was neglected and abused to the point where he was exhibiting negative behaviour and significant development delays. When he was finally referred for mental health treatment he disclosed that his mother had stuffed his mouth with cotton balls and covered his mouth with duct tape. No one ever reported this abuse to child welfare authorities.

J. was involved in a number of offences and was sent to secure custody. At age 15 his file was closed by the child welfare authorities because he was in custody. His family had no contact with him and he had no one who supported or advocated for him. In a nine-month period he was transferred 13 times. He was a small kid who was an easy target for others and who was described as not relating well to peers. While in custody he was placed in an isolation cell with another young offender who had a history of violence. On the night before he died he slept on a mattress soaked with water from the toilet while his cellmate took the bunk and blanket. The next day the pair were transferred to a cell called 'the hole' with no bed and a hole in the floor for a toilet. It was 6x7 feet and it was in this small space about the size of an elevator that J. was beaten for hours while he screamed for help, asked to call the Child Advocate and pleaded to be moved to another cell. His pleas were ignored by the guards and by the nurse who walked by the cell several times. The explanation was that they thought the boys were joking. He was finally removed when he was unconscious and bleeding from his nose and mouth. He died in hospital from severe head injuries.

The jury in this case made 119 recommendations including that all youth in Ontario must have the right to benefit from the fundamental human rights outlined in the U.N. Convention on the Rights of the Child.

Then there was D. who was tormented and bullied until he took his own life at age 16. This was not a child born into poverty or neglected. He had seizures and showed some psychiatric problems in his early years but received treatment and was supported by his family. As he became a teenager he stole money from the family and began to smoke marijuana. He was charged and was held in custody overnight and released on condition he attend a military school. While at the school he became

depressed and made a tentative suicide attempt. The school refused to take him back because he was “suicidal” and he also refused to return. What followed were quarrels with his parents and theft of money from a family friend. D. was charged and sent to the Toronto Youth Assessment Centre (TYAC). His family took a “tough love” approach refusing to provide bail or provide him with a lawyer. They also refused to go to court where he appeared several times with a Legal Aid lawyer and each time was remanded back to TYAC. Evidence at the inquest revealed that at the institution youths were forced by bullies to fight other youths, kids were forced to give up their food to others and sometimes youths were forced by their peers to blow bubbles with their heads submerged in the toilet. D. contacted his family for help but after a phone call with his mother went to his room and hanged himself. His parents sat through the inquest horrified at what had happened to their son in an environment they thought was safe.

The jury was a cross section of people from different backgrounds. They made 40 recommendations with the first being “immediate closure of TYAC to ensure that no other youths are exposed to the environment and culture that currently exist within that facility”.

The facility was closed and youth housed elsewhere. I can tell you that some of the youth who were transferred to the Hamilton Detention Centre gave evidence of having their food stolen and being beaten up if they tried to ask for help from the guards. Different place; same problems. The Provincial Government has now opened another large facility that is showing signs of the same violent environment as outlined in reports published by the Provincial Child Advocate in Ontario.

Many of the inquests of young people who have died or been killed in custody demonstrate that they required mental health intervention rather than a correctional setting. Recommendations from inquest juries speak to the need for more inpatient and community-based care for youth involved in the justice system. The lowest estimate we have seen of the number of young people in custody settings who require mental health care is 30 percent and most estimates are much higher. The current changes under Bill C-10 do little to address this situation and will in fact result in more young people locked up in situations that will only increase their illness.

### **Conclusion:**

To accept an appointment as a Senator in Canada is a serious responsibility and we believe it includes an obligation to consider the rights and needs of all Canadians, particularly our youth. We ask how can you support legislation that will expose more young people to environments so brutal that ordinary men and women on inquest juries were horrified and called for radical change or closure? Are you willing to condemn young people, some who have not been convicted of an offence, to the brutality and violence of locked institutions? We know that there are better

options to deal with negative behaviour of young people and at the same time provide our best chance at long-term protection of our communities.

**Recommendations:**

That all changes to the Youth Criminal Justice Act be removed from Bill C-10 until the proposed changes are reviewed to determine whether they are in compliance with the U.N. Convention on the Rights of the Child and whether they meet the test of long term protection of society. The Minister's own consultation process has demonstrated that there is no urgent need to change the Act.

That rather than change legislation, the Governments of Canada , the Provinces and Territories conduct a joint review of the implementation of the current YCJA across Canada to highlight best practices and to remedy situations where young people are at serious risk. Any necessary changes to the YCJA could then be put forward on the basis of evidence about methods that are effective with youth involved in the justice system and that support the long term safety of our communities.

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