

Submission on Bill 103

**Child and Family Services Statute Law
Amendment Act, 2008**

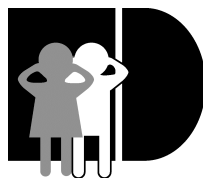
Submission to

Standing Committee on Social Policy
Legislative Assembly of Ontario

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Submitted by

Matthew Geigen-Miller, Vice-President
Defence for Children International-Canada
matthew@dcj-canada.org



**Defence for Children
International-Canada**

www.dci-canada.org

a worldwide movement for children's rights

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SUMMARY OF RECOMMENDATIONS

Recommendation #1 – Privacy of Written Communications of Children and Youth in Care

Amend bill 103 by deleting clause 8 and replacing it with the following:

Subsection 103(3) of the *Child and Family Services Act* is amended by adding the following paragraph:

(e) Subject to paragraph (c), mail to and from a young person who is detained in a place of temporary detention or held in a place of secure custody or of open custody may be examined or read by the service provider or a member of the service provider's staff in the presence of the young person and may be withheld from the recipient in whole or in part where the service provider or the member of their staff believes on reasonable grounds that the contents of the written communications contain communications that are prohibited under the federal act or by court order;

Recommendation #2 – New Power to Restrict Visits

Amend bill 103 by deleting clause 9.

Recommendation #3 – Standards for Secure Isolation

Amend Bill 103 by deleting clause 15, and by deleting the following passage from clause 12:

(9) A service provider is not required to comply with subsections (5) and (8) with respect to a young person who is aged 16 years or older and who is held in a place of secure custody or of secure temporary detention, but a service provider shall comply with the prescribed standards and procedures in respect of such young persons who are held in such places.

Recommendation #4 – Determination of a Young Person's Level of Detention

Amend Bill 103 by deleting clause 5(1).

Recommendation #5 – Inspections

Amend Bill 103 to include the following provisions in clause 6:

1. An inspector may undertake unannounced inspections on his or her own initiative.
2. An inspector shall have unrestricted access to all persons employed by or working in every youth justice facility, to all young people and to all records of such facilities.
3. An inspector shall submit a report on the findings, including an evaluation of the compliance of the youth justice facilities with the laws of Ontario, any licensing requirements, and relevant international human rights standards, and recommendations regarding any steps considered necessary to ensure compliance with them.
4. Any employee of the Ministry or a service provider who obstructs an inspection may be dismissed for cause.
5. Every person who obstructs an inspection commits an offence and is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

Recommendation #6 – Advocate’s Access to Records

Amend Bill 103 by adding the following clause:

The *Provincial Advocate for Children and Youth Act, 2007* is amended by adding the following section:

The Advocate may, from time to time, require any officer, employee or member of any police service, governmental organization, or service provider, who in his or her opinion is able to give any information relating to any matter that is the subject of a review or systemic review, by him or her, complaint to him or her, or advocacy by him or her, to furnish to him or her any such information, and to produce any documents or things which in the Advocate's opinion relate to any such matter and which may be in the possession or under the control of that person.

ABOUT DEFENCE FOR CHILDREN INTERNATIONAL-CANADA

Defence for Children International (DCI) is an independent, grassroots organization, founded in Geneva, Switzerland in 1979. Its mission is to promote and protect the rights of the child through international action. DCI has national sections in 45 countries and an international secretariat in Geneva. DCI has consultative status with the Economic and Social Council of the United Nations, the ILO, UNICEF, UNESCO and the Council of Europe.

Defence for Children International-Canada (DCI-Canada) was recognized as part of the Defence for Children International movement in June 1989 and incorporated in Canada as a non-profit organization in 1990. DCI-Canada monitors governments' compliance with the United Nations *Convention on the Rights of the Child*, both in Canada and around the world. We also promote the full implementation of the Convention through research, education, policy advice, development and youth participation projects.

Defence for Children International-Canada

20 Spadina Road
Toronto, Ontario M5R 2S7

<http://www.dci-canada.org>
E-mail: contact@dci-canada.org

INTRODUCTION

DCI-Canada welcomes the opportunity for discussion that was created by the introduction of Bill 103, Child and Family Services Statute Law Amendment Act, 2008. This bill has great *potential* to become one of the government's most significant steps toward the unification of youth justice services in Ontario.

We emphasize that Bill 103 is *not* a "housekeeping" bill. This bill makes substantive changes to the rights and protections afforded to young people in detention and custody in Ontario. As such, it merits a high level of scrutiny in this committee, and indeed in the whole Legislative Assembly.

Since 1985, Ontario has had two youth justice systems: One created to meet the needs of young people, and one based on adult correctional standards and practices. The unification of these two systems is a worthwhile project only if it serves to bring the corrections-based system up to the standards of the more effective youth focused system.

As presently drafted, Bill 103 is bad legislation and should not pass. The overall thrust of this bill is to unite Ontario's youth justice system by bringing the entire youth justice system down to the lower standards of the adult correctional system. Phase two young offenders will see no improvement in the youth justice system, and phase one young offenders will see a marked deterioration in the youth justice system.

HISTORICAL AND POLICY CONTEXT

Ontario's Historical Split Jurisdiction Over Youth Justice Services

The division between “phase one” and “phase two” young offender services in Ontario began when the *Young Offenders Act* (YOA)¹ replaced the *Juvenile Delinquents Act* (JDA)² in 1984. Under the JDA, the minimum age for criminal responsibility was 7 years old. Each province had the power to set the maximum age for the juvenile system within a specified range. In Ontario and five other provinces, the age range for the juvenile justice system was 7 to 15 years old. Persons aged 16 and older were dealt with as adults in the ordinary court system. The move to an age range of 12 to 17 years for the youth justice system was described by the federal government as “the most fundamental change” created by YOA.³ This change was also described by expert commentators as “the most controversial.”⁴ In particular, Ontario and the other five provinces that treated persons aged 16 years and older as adults resisted the new maximum age provision. Although the YOA came into force on April 2, 1984, the federal government delayed proclamation of the maximum age provision of the YOA until April 1, 1985 to permit all provinces to prepare for implementation.

While the Ontario government was obligated under the YOA to deal with 16 and 17-year-old offenders within the youth justice system, the province resisted implementation of the new maximum age provision under the YOA. Indeed, Ontario's approach can be described as a policy of deliberate minimum implementation. This was the driving force behind the Ontario government's decision to effectively create two separate youth justice systems in Ontario, named “phase one” and “phase two.” Young persons who committed a crime (or were alleged to have committed a crime) while aged 12 to 15 were dealt with in the “phase one” system, and young persons who committed a crime (or were alleged to have committed a crime) while aged 16 or 17 were dealt with in the “phase two” system. These two systems were operated by different departments of the government, and under the authority of separate statutes. The “phase one” system was operated by the Ministry of Community and Social Services under the authority of the *Child and Family Services Act* (CFSA)⁵, while the “phase two” system was operated by the adult corrections ministry under the authority of the *Ministry of Correctional Services Act*. The effect of this arrangement was that “phase one” young offenders were dealt with in an entirely separate youth justice system, while “phase two” young offenders were dealt with under the same

¹ *Young Offenders Act*, R.S.C. 1985 c. Y-1 [repealed].

² *Juvenile Delinquents Act*, S.C. 1908, c.40 [repealed].

³ Solicitor General of Canada, *The Young Offenders Act, 1982; Highlights* (Ottawa: Minister of Supply and Services Canada, 1982, foreword).

⁴ A.W. Leschied, P.G. Jaffe and W. Willis, eds., *The Young Offenders Act: A Revolution in Canadian Juvenile Justice* (Toronto: University of Toronto Press, 1991), at p. 73.

⁵ *Child and Family Services Act*, R.S.O. 1990, c. C.11.

ministry, the same policies, the same staff (probation officers, correctional officers, etc.) and often in the same institutions as adult offenders.

An important—and perhaps the most egregious—feature of the “phase two” system was the *co-located* detention facility. Both the YOA and, later, the *Youth Criminal Justice Act* (YCJA)⁶ require that young persons be held “separate and apart” from adults.⁷ The Ontario government was able to satisfy this requirement by designating portions of adult jails, detention centres and correctional centres as “young offender units.” Although the young persons held in these units were separated from adult prisoners, they were subject to the same living conditions, discipline regimes, policies, staffing and institutional culture as adults. Between 1985 and the early 2000’s, the vast majority of all young persons in “phase two” secure detention were held in co-located detention facilities.

Four co-located detention facilities remain in use today: Hamilton-Wentworth Detention Centre, Thunder Bay Correctional Centre, Ottawa-Carleton Detention Centre, and the Kenora Jail. On September 29, 2008, the Ministry of Children and Youth Services announced its intention to eliminate the use of the remaining co-located facilities by April 1, 2009.⁸

At the heart of Ontario’s split jurisdiction over youth justice services was the belief in 1985 that 16 and 17-year-old offenders did not belong in the youth system. However, the views of experts, governments and the public have developed to a considerable degree since then. Within Canada, there is now agreement among provincial governments that accused persons and offenders under the age of 18 belong in the youth justice system. The same consensus has been achieved at the international level. In 1989, the United Nations General Assembly adopted the *Convention on the Rights of the Child* (CRC).⁹ The CRC has since been ratified by 193 countries, making it the world’s most widely ratified human rights treaty—it represents a global consensus on children’s rights. Canada ratified the CRC in 1991. The CRC defines “child” as a person under 18 years old, and requires that a separate juvenile justice system be established to deal with offenders and accused offenders who are children. The notion that persons under the age of 18 should be dealt with in a separate juvenile justice system is no longer a point of particular controversy within Canada; furthermore, it is now the mainstream view around the world.

⁶ *Youth Criminal Justice Act*, R.S. 2002, c. 1.

⁷ YOA, s. 13; YCJA, s. 84.

⁸ Ministry of Children and Youth Services, News Release, “Dedicated youth justice system: McGuinty government committed to making communities safer” (Toronto: Ministry of Children and Youth Services, September 29, 2008).

⁹ *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3.

Deaths of Young People in Custody: Lessons From Coroner's Inquests

A series of tragic deaths, and the resulting Coroner's Inquests, have taught Ontario many important lessons about how we deal with young people in conflict with the law, and in particular young people in custody.

(a) James Lonnee

On September 7, 1996, James Lonnee was brutally beaten to death at the age of 16 while being held in a secure isolation cell at the Wellington Detention Centre, Young Offender Unit, a co-located "phase two" youth detention facility in Guelph. An inquest was called to investigate his death. The inquest jury issued 119 recommendations.

It is a reflection of the jury's assessment of the "phase two" system, its "co-located" facilities and adult correctional standards that the first 2 recommendations out of 119 called for the creation of a single youth justice system, and indeed a single ministry responsible for child and youth services:

Youth Services and the Rights of the Child

1. The Government of Ontario should establish a single ministry for all youth services which would include responsibility for child welfare, child mental health issues, and youth correctional services.

A single Ministry for Youth Services would:

- A) Ensure an integrated approach to services of young people under the age of 18 years
- B) Provide quicker identification of high risk youth while ensuring continuity of care and/or identification of services needed
- C) Reduce duplication of corporate structure of services leading to the best service available for the funding provided
- D) Facilitate easier access and exchange of information between service providers under the one youth service ministry.

2. The single Ministry for Youth Services which we recommend would be responsible for ensuring that all the youth in Ontario must have the right to benefit from the fundamental human rights outlined in:

- A) the United Nations Convention on the Rights of the Child
- B) United Nations Standard rules for the Administration of Juvenile Justice
- C) The United Nation rules for the Protection of Juveniles Deprived of their Liberty
- D) Standard Minimum rules for the Treatment of Prisoners

(b) David Meffe

On October 8, 2003, David Meffe committed suicide by hanging at the age of 16 while being held in the Toronto Youth Assessment Centre, a “phase two” youth detention facility co-located with the Mimico Correctional Centre in Toronto.

The inquest heard evidence that David Meffe likely should never have been placed in a secure detention facility, and that the Ontario law requiring open detention to be used as the default level of detention was routinely ignored by correctional officials. In its recommendations, the inquest jury called on the Ontario government to comply with its own laws by increasing the number of open detention beds available, and by ensuring that all young people were actually assessed for level of detention, rather than simply being placed in secure detention by default.

RECOMMENDATION # 7.

Immediate Assessment of Level of Detention

All youth being detained from this time forward should be assessed for their level of detention within 24 hours of their arrival at the facility and NOT have to await a bail hearing.

Rationale:

This recommendation is to ensure that the Ministry responsible for Youth in Custody and Detention complies with their own stated mandate and compliance with the “United Nations Convention on the Rights of the Child”. This is a positive first step in creating a Plan of Care for youth in custody or detention.

RECOMMENDATION # 8.

Increase Number of Open Detention Beds

Immediately increase the number of Open Detention beds and facilities available as per the philosophy of the Youth Justice Criminal Act.

The following should be implemented in conjunction with the increase in beds;

- All youth currently in detention throughout the province should be reassessed for level of detention, with Open Detention being the default, to ensure that they are currently appropriately placed.

Rationale:

The availability of sufficient Open Detention beds is a CRITICAL component in ensuring that Open Detention is the FIRST option considered for youth in custody or detention. Witnesses have testified that there were only 6 beds available in the GTA in 2002 with a recent increase to 12. This represents less than 9% of the number of secure detention beds (at TYAC) and is counter to the philosophy of the YCJA, which would predicate the reverse ratio.

(c) Harvey Barkman

On December 30, 2004, Harvey Barkman committed suicide by hanging while being held in the Sudbury District Jail. Harvey had been serving a youth sentence in a youth justice facility. Harvey had a significant history of mental illness. He had a history of threatening staff and making threatening gestures, but had never assaulted anyone during several months in custody. Harvey was arrested and after being charged with an “assault” (in which no one touched anyone) and uttering threats. Because he had recently turned 18, Harvey was placed in the Sudbury District Jail.

The inquest heard evidence of the over-use of secure isolation in the “phase two” youth justice system. Harvey was frequently placed in secure isolation for infractions such as poor personal hygiene and refusal to complete chores. Harvey was placed in secure isolation on several occasions, including a continuous three week period at the Thunder Bay Correctional Centre (Young Offender Unit), and a continuous 12-day period at the Cecil Facer Youth centre.

The inquest jury’s recommendations recognized the challenge that young people with mental illnesses present to the youth justice system. The inquest jury suggested mandatory training to help young people with mental illness, and placing firm limits on the use of secure isolation to ensure that secure isolation is not the routine response to young people who have mental illnesses.

11. Secure Isolation

a) Secure isolation should only be used for crisis management in cases where an individual is at imminent risk to cause themselves or another person serious bodily harm, or imminent risk to cause serious property damage.

b) Youth custody facilities should, within 6 months of today’s date, develop a guide that provides a range of behaviour management techniques and de-escalation strategies to be use before resorting to Secure Isolation.

c) A maximum time period for a youth’s stay in Secure Isolation should be set based on the seriousness of the incident.

12. Due to the significant increase of residents suffering from serious mental illness, within 6 months of today’s date the Ministry of Children and Youth Services shall provide additional funding to the Youth Correctional Facilities for the intense mandatory training for Management and Youth Officers relating to the care and treatment of Young Offenders with mental health illness.

COMMENTS ON BILL 103 AND RELATED MATTERS

Unification of Youth Justice Services Under the Child and Family Services Act

DCI-Canada strongly supports the move to unify youth justice services in Ontario. Bringing an end to the split jurisdiction over youth justice services means bringing an end to an ill-conceived notion of youth justice that served neither youth in conflict with the law nor community safety. Unification of Ontario's youth justice services under the *Child and Family Services Act* accords with Canada's commitments to children's rights contained in the *Convention on the Rights of the Child*.

However, the unification of these two systems is a worthwhile project only if it serves to bring the corrections-based system up to the standards of the more effective youth focused system. The overall thrust of this bill is to unite Ontario's youth justice system by bringing the entire youth justice system down to the lower standards of the adult correctional system. Phase two young offenders will see no improvement in the youth justice system, and phase one young offenders will see a marked deterioration in the youth justice system.

Privacy of Written Communications of Children and Youth in Care

Clause 8 amends section 103 of the CFSA, making **significant** changes to the privacy rights of children in care. Some of these changes will only apply to young people in detention and custody, while others will apply to all "children in care," including those in youth justice custody facilities, secure treatment facilities, foster homes, group homes, and other forms of child welfare residential care.

At present, section 103 of the CFSA states:

Rights of communication, etc.

103. (1) A child in care has a right,

(a) to speak in private with, visit and receive visits from members of his or her family regularly, subject to subsection (2);

(b) to speak in private with and receive visits from,

(i) the child's solicitor,

(ii) another person representing the child, including the Provincial Advocate for

Children and Youth,

(iii) the Ombudsman appointed under the Ombudsman Act and members of the Ombudsman's staff, and

(iv) a member of the Legislative Assembly of Ontario or of the Parliament of Canada; and

(c) to send and receive mail that is not read, examined or censored by another person, subject to subsection (3). R.S.O. 1990, c. C.11, s. 103 (1); 2007, c. 9, s. 25 (2).

When child a Crown ward

(2) A child in care who is a Crown ward is not entitled as of right to speak with, visit or receive visits from a member of his or her family, except under an order for access made under Part III or an openness order or openness agreement made under Part VII. 2006, c. 5, s. 32.

Opening, etc., of mail to child

(3) Mail to a child in care,

(a) may be opened by the service provider or a member of the service provider's staff in the child's presence and may be inspected for articles prohibited by the service provider;

(b) where the service provider believes on reasonable grounds that the contents of the mail may cause the child physical or emotional harm, may be examined or read by the service provider or a member of the service provider's staff in the child's presence, subject to clause (c);

(c) shall not be examined or read by the service provider or a member of the service provider's staff if it is to or from the child's solicitor; and

(d) shall not be censored or withheld from the child, except that articles prohibited by the service provider may be removed from the mail and withheld from the child. R.S.O. 1990, c. C.11, s. 103 (3).

Clause 8 changes both the scope of communications included within these rights and powers, and changes the rights and powers themselves.

(a) Changes to the Scope of Privacy Provisions

Clause 8 expands the scope of the privacy rights and powers from "mail" to "written communications." Clause 8 contains a definition of "written communications":

“written communications” includes mail and electronic communication in any form.

“Electronic communication in any form” is a vast and open-ended term that includes electronic mail, “chat” format internet communication, cell phone text messages, pagers, etc.

(b) Impact on All Children In Care

Clause 8 expands the current power of caregivers to open, examine and read mail to include electronic communication in any form. In practical terms, foster parents, group home staff, and other residential care staff will be given a statutory power to routinely seize and examine computers, cell phones, and other electronic communication devices. This power is completely unnecessary, and amounts to a wholesale destruction of the privacy rights of children in care.

(c) Impact on Young People in Detention and Custody

Clause 8 also creates a new set of provisions that will only apply to young people in custody and detention. These new provisions will permit a custody or detention facility to:

- Examine and read written communications, without any requirement that it be done in the presence of the young person who is the sender or recipient
- Withhold the communication from the recipient in whole or part if the staff believes it to be prejudicial to the best interests of the young person, the public safety or the safety or security of the place of detention or custody.
- Withhold the communication in whole or part if the staff believes it contain communications that are prohibited under the federal act or by court order
- Examine and read a written communication from a young person’s lawyer, if the staff believes on reasonable and probable grounds that the communication contains materials that are not privileged

These provisions import into the CFSA the standards of privacy for the adult correctional system under the *Ministry of Correctional Services Act*. This completely undermines the effort to unify the youth justice service system in Ontario. We agree that public safety and the administration of justice may in some cases require that letters be intercepted where they are in violation of the YCJA or a court order. The remaining provisions are unnecessary and have no place in the youth justice system.

(d) Attack on Solicitor-Client Privilege

Especially disturbing is the attack on solicitor-client privilege. It is absurd to expect that youth workers or youth officers in a youth justice facility are in any position to determine “on reasonable and probable grounds” that communication from a lawyer contains material that is not subject to solicitor-client privilege. It is not realistic that front line staff will understand either the *reasonable and probable grounds* test, or the scope of solicitor-client privilege.

We regard this provision as an unnecessary and unjustifiable attack on solicitor-client privilege, in regard to youth in conflict with the law. It is very likely that this provision could be challenged and struck down on the ground that it infringes the right to full answer and defence under section 7 of the *Canadian Charter of Rights and Freedoms*.

Recommendation #1—Amend bill 103 by deleting clause 8 and replacing it with the following:

8. Subsection 103(3) of the *Child and Family Services Act* is amended by adding the following paragraph:

(e) Subject to paragraph (c), mail to and from a young person who is detained in a place of temporary detention or held in a place of secure custody or of open custody may be examined or read by the service provider or a member of the service provider’s staff in the presence of the young person and may be withheld from the recipient in whole or in part where the service provider or the member of their staff believes on reasonable grounds that the contents of the written communications contain communications that are prohibited under the federal act or by court order;

New Power to Restrict Visits

Clause 9 add a new section 103.1 to the CFSA, creating a new power permitting youth justice facilities to place restrictions on visits. This new power allows a youth justice facility to:

- Place conditions and limitations on those who visit young persons in youth justice facilities
- If there is are “emergency circumstances,” suspend visits until there are reasonable grounds to believe the emergency has been resolved and there is no longer a risk to staff or young persons in the facility.

This is a new power that did not previously exist, either in the CFSA or the *Ministry of Correctional Services Act*. There is no need for this power. Custody facilities have been managing visits appropriately for as long as there has been a youth justice system, without this heavy-handed power.

Furthermore, this power is too broad and conflicts with the current powers of the Provincial Advocate for Children and Youth, the Ombudsman, and Members of Provincial Parliament to enter youth justice facilities.

It is especially important to ensure that youth justice facilities have no ability to bar the Advocate from entering during “emergency circumstances.” Very often, incidents that could be described as emergencies will create an increased need for the Advocate to enter a facility and meet with the young people living there to ensure their safety and wellbeing, and to address any complaints and concerns.

Recommendation #2—Amend Bill 103 by deleting clause 9.

Standards for Secure Isolation

At present, section 127 of the CFSA places strict conditions on the use of secure isolation in youth justice (and other) facilities, including:

- A child cannot be placed in secure isolation for more than one hour; if a child is placed in secure isolation for more than one hour, the person in charge of the facility must give approval in writing and reasons.
- The service provider must ensure that a child in secure isolation is continuously observed by a responsible person.
- If a child is kept in secure isolation for more than one hour, the person in charge of the facility must review the child’s isolation at regular intervals.
- A child who is placed in a secure isolation room shall be released as soon as the person in charge is satisfied that the child is not likely to cause serious property damage or serious bodily harm in the immediate future.
- A service provider may not keep a child in secure isolation for one or more periods that exceed 8 hours in a 24-hour period, or for more than 24 hours in a 7-day period.

These are appropriate conditions that address the unique needs of young people and the inherent limits in secure isolation as a behaviour management tool. Indeed, the CFSA approach does not treat secure isolation as a tool for routine behaviour management at all, but rather as a tool for crisis intervention. This is the right approach for Ontario’s youth justice system.

Clause 12 amends section 127 of the CFSA by exempting all young people aged 16 and over from the above conditions on the use of secure isolation in secure detention and custody facilities. Clause 12 also permits the creation of a different

set of standards for youth people over 16 through regulations. This provision substantially undermines the unification of the youth justice system. It will permit the continuation of an inappropriate, adult correctional approach that has been proved ineffective with young people over 16. It maintains a two-tiered system in which young people under 16 are treated like young people, and young people over 16 are treated like adults.

We urge the Committee to remove this inappropriate and unnecessary exemption that will continue to deal with young people using an inappropriate and harmful adult correctional approach.

Recommendation #3—Amend Bill 103 by deleting clause 15 and deleting the following passage from clause 12:

(9) A service provider is not required to comply with subsections (5) and (8) with respect to a young person who is aged 16 years or older and who is held in a place of secure custody or of secure temporary detention, but a service provider shall comply with the prescribed standards and procedures in respect of such young persons who are held in such places.

Determination of a Young Person’s Level of Detention

Under section 93(1) of the CFSA, a young person who is being held in pre-trial detention shall be held in Open Detention by default. However, under section 93(2) of the CFSA, the Provincial Director may place a young person in Secure Detention if certain criteria are met.

Clause 5(1) of the Bill amends section 93 of the CFSA. The effect of clause 5(1) is to increase the number of young people who can be held in secure detention.

Of greatest concern, clause 5(1) establishes new grounds upon which the Provincial Director may place a young person in secure detention. These are:

The provincial director is satisfied, having regard to all the circumstances, including any substantial likelihood the young person will commit a criminal offence or interfere with the administration of justice if placed in a place of open temporary detention, that it is necessary to detain the young person in a place of secure temporary detention,

- i. to ensure the young person’s attendance at court,
- ii. for the protection and safety of the public, or
- iii. for the safety or security within a place of temporary detention.

Two of the criteria in this provision are easily recognizable as the primary and secondary grounds for detention under section 515(10) of the *Criminal Code*. This provision imports into the level of detention analysis the very same criteria

that may be used to deny an accused person judicial interim release. This is troublesome because virtually all young people who are denied bail will necessarily meet at least one of these criteria. This provision makes placement in secure detention an automatic consequence of being denied bail.

Recommendation #4—Amend Bill 103 by deleting clause 5(1).

Inspections

DCI-Canada welcomes the introduction of language describing a system of inspections in youth justice custody and detention facilities in Ontario under the CFSA.

The language proposed in clause 6 is obviously very limited and must be viewed as a preliminary attempt. We note that standards for inspections of youth justice facilities are set out in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. These rules require, among other things that inspectors:

- be empowered to undertake unannounced inspections on their own initiative
- enjoy full guarantees of independence in the exercise of this function
- have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities
- be required to submit a report on the findings, including an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them

Also, clause 6 provides that any person employed by the Ministry can be dismissed for obstructing an inspection. This provision is completely inadequate. First, because the vast majority of employees working in youth justice facilities are not Ministry employees. Second, unlike the equivalent provision in the *Ministry of Correctional Services Act*, clause 6 does **not** make obstructing an inspection a punishable offence.

DCI-Canada recommends the establishment of a regime of **meaningful inspections**. The requirement of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty should be entrenched in the legislation, it must be possible to dismiss for cause all youth justice facility employees who obstruct inspections, and it must be a punishable offence to obstruct inspections.

Recommendation #5—Amend Bill 103 to include the following provisions in clause 6:

- 1. An inspector may undertake unannounced inspections on his or her own initiative.**
- 2. An inspector shall have unrestricted access to all persons employed by or working in every youth justice facility, to all young people and to all records of such facilities.**
- 3. An inspector shall submit a report on the findings, including an evaluation of the compliance of the youth justice facilities with the laws of Ontario, any licensing requirements, and relevant international human rights standards, and recommendations regarding any steps considered necessary to ensure compliance with them.**
- 4. Any employee of the Ministry or a service provider who obstructs an inspection may be dismissed for cause.**
- 5. Every person who obstructs an inspection commits an offence and is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.**

Advocate's Access to Records

When the *Provincial Advocate for Children and Youth Act, 2007* was before the Legislature, DCI-Canada strongly recommended an amendment granting the Advocate powers to access records and other things in the possession of a Ministry, agency or service provider, for the purpose of fulfilling the Advocate's duties under the Act.

We renew this recommendation. Now that the legislation and the Advocate have been in place for over one year, we have the benefit of experience that supports the need for this power.

The Advocate's fundamental role is to fight for children and youth. To perform this role, the Advocate must be armed with accurate information about the circumstances surrounding the complaint or situation in question. The Advocate must have the power to demand and obtain records from service providers, etc.

Recommendation #6—Amend Bill 103 by adding the following clause:

The *Provincial Advocate for Children and Youth Act, 2007* is amended by adding the following section:

The Advocate may, from time to time, require any officer, employee or member of any police service, governmental organization, or service provider, who in his or her opinion is

able to give any information relating to any matter that is the subject of a review or systemic review, by him or her, complaint to him or her, or advocacy by him or her, to furnish to him or her any such information, and to produce any documents or things which in the Advocate's opinion relate to any such matter and which may be in the possession or under the control of that person.

APPENDIX A

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Adopted and opened for signature, ratification and accession by

General Assembly resolution 44/25
of 20 November 1989

entry into force 2 September 1990, in accordance with article 49

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the

child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

APPENDIX B

UNITED NATIONS RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY

Adopted by General Assembly resolution 45/113 of 14 December 1990

M. Inspection and complaints

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.