



HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Thursday, 6 October 1994

CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES AMENDMENT BILL

Proposed Amendments

TREVOR MALLARD, in Committee, to move the following amendments:

New clauses 38A and 38B: To insert, after clause 38, the following new clauses:

38A. Supervision with residence order—(1) Section 311 of the principal Act is hereby amended by inserting, after subsection (1), the following subsections:

“(1A) Notwithstanding anything in subsection (1) of this section, but subject to subsection (1c) of this section, where—

“(a) A Youth Court is empowered to make an order under subsection (1) of this section in respect of a young person; and

“(b) The Youth Court is satisfied that—

“(i) No order under subsection (1) of this section has previously been made in respect of that young person for any offence; and

“(ii) The offence proved is punishable by imprisonment for a term of 14 years or more,—

the Youth Court may make an order under subsection (1) of this section placing the young person in the custody of the Director-General for such period (being a period exceeding 3 months but not exceeding 12 months) as is specified in the order.

“(1B) Notwithstanding anything in subsection (1) of this section, but subject to subsection (1c) of this section, where—

“(a) A Youth Court is empowered to make an order under subsection (1) of this section in respect of a young person; and

“(b) The Youth Court is satisfied that—

“(i) An order under subsection (1) of this section has previously been made in respect of that young person for another offence; or

“(ii) A full-time custodial sentence (as that term is defined in section 2 (1) of the Criminal Justice Act 1985) has previously been imposed on that young person for another offence; and

“(c) The Youth Court is satisfied that the offence proved is punishable by imprisonment for a term of 10 years or more,—

the Youth Court may make an order under subsection (1) of this section placing the young person in the custody of the Director-General for such period (being a period exceeding 3 months but not exceeding 12 months) as is specified in the order.

“(1c) Nothing in subsection (1A) or subsection (1B) of this section empowers a Youth Court to order a young person to be detained in the custody of the Director-General for a period that exceeds the period of imprisonment that would have been imposed on the young person for the offence if—

“(a) The young person were an adult; and

“(b) The young person had been convicted of the offence in a Court other than a Youth Court; and

“(c) The nature or circumstances of the offence are such that a full-time custodial sentence (as that term is defined in section 2(1) of the Criminal Justice Act 1985) would have been imposed on the young person for the offence.”

(2) Nothing in subsection (1A) or subsection (1B) of section 311 of the principal Act (as inserted by subsection (1) of this section) shall apply in respect of any charge to which subsection (1) of the said section 311 applies, if the offence that is the subject of the charge was committed before the commencement of this section.

38B. Director-General may release young person from custody before expiry of supervision with residence order—Section 314 of the principal Act is hereby amended by omitting the words “of 2 months”, and substituting the words “equal to two-thirds of the period specified in the order”.

EXPLANATORY NOTE

This Supplementary Order Paper supersedes Supplementary Order Paper No. 39.

Police figures show that serious offending by children and young people is steadily increasing. In 1991 there were 620 serious offences committed by children and young people, in 1992, 778 and last year 1,022. There were also 39,000 less serious offences committed by this age group in 1993.

Detention merely for the purpose of punishment is pointless for this age group. The residential centres are often no better than training centres for young criminals. Some young people want to go to them because of the meals, new clothing and the fact that they get to play a lot of games.

Residential centres cost about \$85,000 per detainee per year.

Many of those currently in the residential centres should really be in a family home situation.

Rehabilitation in the centres is generally non-existent. It is certainly not successful.

There is however a gap in the law as it relates to young people who commit serious offences.

Currently, except for a limited group of very serious indictable offences that go to the High Court, three months in a residential centre (followed by six months supervision) is the maximum sentence for 14 year olds.

In the past year 14 year olds have been sentenced to three months (automatically reduced to two months if they do not abscond) for crimes such as aggravated robbery, arson, threatening to kill, aggravated wounding, rape and sexual violation.

There is also anecdotal evidence from the Police that 14 year olds are being used as drug couriers and retailers by gangs because of their relative safety from serious sentencing.

The purpose of the amendment is to increase the possible period of detention in a residential centre from three months to twelve months for very serious and

recidivist offenders who are 14 years old. It has more limited effects for fifteen and sixteen year olds.

The current Act has no provision for the Youth Court to impose longer sentences for repeat offences. It is therefore possible for 14 year olds to commit three serious offences, serve the maximum term of detention immediately after each and to be released to offend again.

For the purpose of this amendment a serious offence is defined as one for which an adult offender would be liable for a sentence of at least 14 years. For recidivist offenders, that is those who have already served a term in a residential institution following a conviction in the Youth Court, committing an offence for which an adult would be liable for a ten year sentence would mean that they could face a twelve month term imposed in the Youth Court.

The amendment also allows some additional flexibility in the sentencing of 15 and 16 year olds who currently are sometimes referred to the District Court for sentence. This amendment would give the Youth Court discretion up to twelve months instead of the current three. Again this would only apply to serious and recidivist offenders.

Clause 38A: Extends the period for which a young person can be placed in the custody of the Director-General of Social Welfare from three to 12 months provided that the Youth Court finds the young person has committed an offence punishable by imprisonment for a term of 14 years or more or has previously had a custodial sentence imposed and the Court finds that the young person has committed an offence punishable by imprisonment for a term of 10 years or more.

Subclause (2) makes it clear that the increased penalty contemplated by the proposed new subsections (1A) and (1B) of section 311 is not to operate retrospectively.

Clause 38B: Provides for young persons to be released after two-thirds of their sentence unless they have committed a further offence or absconded.