

Date: September 20, 2017

Safe Care Act 2017 - Synopsis of Bill M 240:

Bill M 240, the Safe Care Act, 2017 was introduced as a Private Member's Bill to the 6th session of the legislature in March 2017 by MLA Gordon Hogg. It has passed first reading and has yet to be placed on orders of the day for second reading.

This Private Member's Bill would permit the involuntary confinement of children and youth, from the ages of 12 to 19, with severe substance misuse issues, or those being sexually exploited. It would further establish a legal process that would enable a court to authorize the placement of these children and youth in a secure setting for a period of up to 30 days (with the ability to apply for an additional 30 days) in order to stabilize their emotional and physical health while allowing time to assess their needs and develop a 'community plan of care'.

System Responses to Secure Care Legislation:

In October 2016, Mary Ellen Turpel-Lafond, the Representative for Children and Youth, suggested the BC government consider adopting secure care legislation-providing for the involuntary, short term placement of a child or youth in a residential setting-after her review into the death of a Metis youth at a substance abuse treatment centre. While Ms. Turpel-Lafond considered that secure care may provide for "a period of time when a young person and those trying to support the young person can recover from what can be overwhelming dynamics of an immediate crisis", she further stated that appropriate legal safeguards must be in place and also that such legislation would likely raise significant concerns in Indigenous communities in light of the large number of Indigenous youth and children in care.

In response to Ms. Turpel-Lafond's recommendation, the Minister of Children and Family Development, Stephanie Cadieux, stated that the government would not support the adoption of secure care legislation. She added that youth cannot be forced to attend treatment or be confined against their will unless they fall within exceptional circumstances and noted that "it is widely recognized that voluntary services are the most effective means of addressing addiction."

After the introduction of Bill M 240, the new Representative, Bernard Richard, released a statement extending conditional support of the proposed legislation but quantified this support by noting that the absence of a 'well-integrated and robust cross-ministerial network of supports and services for children and youth' must be addressed before implementation. He further recommended that secure care be seen as one component of a comprehensive system of treatment and services founded upon 'best practices and sound research'.

EVA BC's Analysis Of The Secure Care Act:

It is evident from MLA Hogg's introductory statements that Bill M 240 was developed and proposed with the best of intentions. As MLA Hogg stated in his remarks:

There are many children in need of support and assistance to deal with issues of mental health, substance abuse, sexual exploitation or partner violence. Many parents and social workers are frustrated and desperate, as they try to save their children from a destructive and potentially life-threatening lifestyle. I believe that the provision of voluntary services such as detox, residential treatment, recovery programs and mental health services are the most effective ways of dealing with these youth. But sometimes voluntary services are not enough. Sometimes youth face dire circumstances and are at great risk.

Undoubtedly, in British Columbia, many parents, relatives and loved ones (as well as affected children and youth) labour on a daily basis to access the kind of responsive, comprehensive supports and services that are needed by individuals experiencing complex trauma, substance misuse, mental health issues and sexual exploitation. It is certain that the overwhelming majority of concerned parents, care-givers and relatives are desperate for a mechanism to secure the most expert cross-sectoral care for the children and youth they love. We bring to this analysis the greatest of compassion and empathy for everyone struggling with these highly complex issues.

It is our position however that Bill M 240 should not be placed on orders for second reading and that any further efforts to introduce secure care legislation for children and youth should be tabled until the concerns raised by the Representative for Children and Youth and the points explored below are thoroughly addressed.

First, EVA BC agrees with the Representative's statement that until a coordinated, culturally competent network of diverse and voluntary services are available to children and youth across the province, including but not limited to detox, day-tox programs and residential treatment services, trauma-informed mental health services, Indigenous based and led programs, safe housing and life skills, employment and educational services, legislation that coerces individuals into care should be avoided. There are a number of reasons why we support this analysis.

1. It is impossible to evaluate the efficacy of cross-sectoral voluntary programs and services in addressing the most vulnerable and exploited children and youth because such coordinated services do not currently exist. Access to substance misuse services varies greatly by region and may not be available in a timely way when the individual wishes to address their substance misuse. An individual wanting to enter into a residential facility for long-term care may not be able to access a detox or day-tox program which would assist them to get clean in the short term, thus allowing entry into a long-term residential program. A young Indigenous woman for example may not have access to culturally safe, culturally competent programming in her community and may be unwilling to utilize 'mainstream' services that do not address her needs. The paucity of resources is even more substantial when considering the services

available for children and youth at risk for sexual exploitation. Sexual exploitation is a complex issue that requires a range of community and system responses to adequately tackle. Advocates who have been sexually exploited as children and youth have stated that rather than looking to coercive measures, voluntary programs that address girls' safety, equality and healthy social and educational development are sorely needed to mitigate against risks, but are largely not currently available. As one example, EVA BC has long advocated for the expansion of Stopping the Violence Counselling Programs (STV) to service women under the age of 19. Currently, over 100 programs exist across the province, providing support, information, outreach and counselling to women who have experienced violence. Expanding STV Counselling programs to women under 19 would provide those at particular risk of substance misuse and sexual exploitation with a best-practice based, trauma informed intervention that would also serve as a link to related services such as community based victim assistance, income supports, housing and peer based networks.

2. While research into the long-term success of secure care legislation remains scarce, a paper examining the effects of similar types of protective legislation in Alberta and Saskatchewan concluded that it was unclear if “the coercive method even works or that other less intrusive methods may actually be more effective.”ⁱⁱ The author of this research also noted that many of the same youth were apprehended on multiple occasions and raised concerns that children may be being forced into more hidden forms of prostitution so as to evade detection by authorities.

A second author, Maureen Seguin¹, examined in-depth the Alberta *The Protection of Children in Prostitution Act* as part of a Master's Thesis at the University of Saskatchewan. Her field research and literature review concluded that the subjects of secure care legislation spoke of highly mistrustful relationships with the child welfare authorities and instead favoured agencies that were non-judgemental, voluntary and invited input from service users.

Researchers and those affected directly by coercive legislation articulated concerns that youth may avoid seeking help from service providers and systems if there is a danger that they may become subject to involuntary 'protective care'. We share this concern and believe that greater emphasis must be placed upon voluntary, flexible, trauma informed and coordinated service models that encourage children and youth to seek assistance on their own initiative. It is well understood that vulnerable people may engage with service providers on multiple occasions before ultimately deciding to leave abusive relationships, exit the survival sex trade or cease the use of substances. If children and youth are coerced into relationships with service providers for a short-term crisis period, there is

little opportunity to build the long-term trusting and trauma informed relationships that are critically important to behaviour change.

3. EVA BC shares the concerns raised by the previous Representative for Children and Youth, Mary Ellen Turpel-Lafond, that Indigenous children and youth are likely to be overrepresented as subjects of secure care legislation. A 2017 report from the current Representative found that Indigenous children are 17 times more likely than non-Indigenous children to be taken into government care.ⁱⁱ Mr. Richard states that inadequate funding to delegated agencies, the complex needs of Indigenous children resulting from trauma from colonization, residential schools and poverty and a failure to emphasize prevention and family cohesion has led to “gross over-representation” of Indigenous children in care.

Further, Indigenous women and girls are also vulnerable to high levels of involvement in the survival sex trade due to colonization, poverty, fragmentation of culture, violence, sexism and racism, among other factors.^{iiiiv} It is therefore seriously concerning that Indigenous children and youth are at highest risk for containment under secure care legislation. The over-utilization of coercive interventions in relation to Indigenous communities - from child welfare practices to incarceration - is a national crisis and any further efforts at addressing the needs of Indigenous persons affected by substance misuse and sexual exploitation must address this reality and focus on strategies that empower and heal, not those that incarcerate.

4. While existing legislation has its deficiencies, currently protective legislation in the form of the *Mental Health Act* is already available to provide for involuntary admission and treatment for children and youth in the most vulnerable of circumstances. The *Mental Health Act* delineates specific directions on the admission process for children and youth and includes clear legal safeguards by providing for regular reviews and access to a Review Panel. Of concern is that children and youth committed under the Act are usually held in detention centres and psychiatric wards. However, rather than creating a new legislative scheme, resources can be directed towards establishing safe, culturally appropriate housing and treatment programming for vulnerable children and youth to move away from an incarceration model.
5. In his comments on Bill M 240, the Representative also raised concerns that the legislation was developed without adequate consultation from relevant stakeholders and he “strongly encourage(d) government to consult widely on this subject, engaging the full participation of stakeholders, including Indigenous leadership and groups”. EVA BC echoes this call for community consultation before any further action is taken on secure care legislation. The Indigenous community must be consulted widely and we further suggest that both women’s groups and youth themselves be provided with ample opportunities to provide their feedback on all aspects of this legislation and associated procedural safeguards. We believe that issues of substance misuse, mental health

and sexual exploitation engage questions of women's equality and remedial interventions should be informed by a feminist analysis.

We also believe that children and youth are rights-holders and must play a role in determining the character of supports and services that will best support them in their most vulnerable circumstances. The United Nation Convention on the Rights of the Child, to which Canada is a signatory, state that children and youth have a right to be heard and to provide input. Cross-sectoral, meaningful consultation can be a highly effective way to discover otherwise overlooked inadequacies (and unintended biases) in legislative reforms and is certainly demanded when questions of basic rights and freedoms are engaged.

6. In conclusion, EVA BC believes that putting additional monies into coercive responses when voluntary, coordinated practices informed by research, best practices and an intersectional analysis examining the impact of colonization, racism, poverty and sexism on substance misuse, mental health and sexual exploitation are still sorely lacking, is counter-productive and unlikely to reduce the very vulnerabilities we know all parties are attempting to address.

ⁱ Linda McKay-Panos. (2009) Using the Coercive Power of the State to Deal With Child Prostitution and Drug Abuse. *LawNow Volume 33 No. 3. pp.5.*

ⁱⁱ Maureen L. Seguin. (2008) *The Protection of Children Involved in Prostitution Act: Case Study and Field Analysis.* (Master's Thesis, University of Saskatchewan, Saskatoon, Canada) Retrieved from <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.510.4214&rep=rep1&type=pdf>

ⁱⁱⁱ Tracy Sherlock. (2017 March 30) *The Vancouver Sun*, Retrieved from <http://vancouversun.com/news/local-news/more-support-needed-for-aboriginal-child-welfare-agencies-b-c-s-child-representative-says>

^{iv} C. Kingsley and M. Mark. (2000) *Sacred Lives: Canadian Aboriginal Children and Youth Speak Out about Sexual Exploitation.* National Aboriginal Consultation Project.