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INTRODUCTION

UNICEF Canada is supportive of the intent of the resolutions identified in Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts* to recognize the rights of children and youth. The government's commitment to modernize the treatment of children and youth in conflict with the law is welcome, and changes to the *Criminal Code* are progressive.

As a UN agency, UNICEF is active in 190 countries and we have saved more children's lives than any other humanitarian organization. UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the United Nations Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children. UNICEF Canada is a Canadian non-governmental organization (NGO) established 60 years ago and is the representative of UNICEF in Canada.

SUMMARY OF UNICEF CANADA RECOMMENDATIONS

Recommendation #1: Conduct a Child Rights Impact Assessment to ensure the proposed amendments best achieve the interdependent rights in the United Nations Convention on the Rights of the Child.

Recommendation #2: Provide effective information for children and youth about the changes, especially with regard to the *Youth Criminal Justice Act* (YCJA).

Recommendation #3: Require monitoring of the impacts of changes to the YCJA and a review of the legislation within five years of its enactment, focusing on the effectiveness to divert youth from criminal sanction and to ensure that sanctions are the last resort and least restrictive means, consistent with the Convention on the Rights of the Child.

DISCUSSION

Recommendation #1: Conduct a Child Rights Impact Assessment to ensure the proposed amendments best achieve the interdependent rights in the United Nations Convention on the Rights of the Child.

The Convention places duties on governments at all levels, public authorities and those delivering public services to promote, protect and respect the rights of children. The Convention, ratified by Canada in 1991, must, according to international treaty law and the precedence articulated by the Supreme Court of Canada, be explicitly considered by federal, provincial and territorial governments in the development, interpretation and application of legislation^[1]. Children's right to non-discrimination on the basis of age is also set out in section 15 of the *Canadian Charter of Rights and Freedoms*. Child Rights Impact Assessment is an approach to ensuring that due consideration is given to the potential impacts on children of government decisions. In Canada's last review of the Convention on the Rights of the Child, it was

recommended that children's rights and interests be considered in policy, program, service and other decisions.

Giving explicit consideration to children leads to better decisions. Children are a large population whose interests are often overlooked because they lack influence and because it is often assumed that they won't be affected – but there is no child-neutral public policy. Children have the right to due consideration in part because they are the most vulnerable group affected by public decisions. Children are vulnerable because of their developmental stage, dependency, and/or lack of status. With one chance at a childhood, they can be disproportionately affected by adverse conditions.

Overall, UNICEF Canada supports the proposed changes in Bill C-75. We regret that the Bill does not include repeal of s. 43 of the Criminal Code to better protect children from violence. A Child Rights Impact Assessment would identify this omission. The removal of section 43 of the Criminal Code would better protect children from a significant source of violence. The removal of section 43 was recommended in the 2012 review of Canada by the UN Committee on the Rights of the Child:

E. Violence against children ((arts 19, 37 (a), 34 and 39 of the Convention)

Corporal punishment

44. The Committee is gravely concerned that corporal punishment is condoned by law in the State party under Section 43 of the Criminal Code. Furthermore, the Committee notes with regret that the 2004 Supreme Court decision *Canadian Foundation for Children, Youth and the Law v. Canada*, while stipulating that corporal punishment is only justified in cases of “minor corrective force of a transitory and trifling nature,” upheld the law. Furthermore, the Committee is concerned that the legalization of corporal punishment can lead to other forms of violence.

45. The Committee urges the State party to repeal Section 43 of the Criminal Code to remove existing authorization of the use of “reasonable force” in disciplining children and explicitly prohibit all forms of violence against all age groups of children, however light, within the family, in schools and in other institutions where children may be placed. Additionally, the Committee recommends that the State party: CRC/C/CAN/CO/3-4 10

(a) Strengthen and expand awareness-raising for parents, the public, children, and professionals on alternative forms of discipline and promote respect for children's rights, with the involvement of children, while raising awareness about the adverse consequences of corporal punishment;

(b) Ensure the training of all professionals working with children, including judges, law enforcement, health, social and child welfare

As well, we believe the YCJA should provide clear guidance to eliminate the use of administrative segregation of youth. This would put Canada in compliance with The United Nations Standard Minimum Rules for the Treatment of Prisoners; the “Mandela Rules”. It would complement efforts underway to reduce this practice among adults.

Recommendation #2: Provide effective information for children and youth about the changes, especially with regard to the *Youth Criminal Justice Act* (YCJA).

Young people and their advocates should understand the changes to the law affecting them. This can be achieved by ensuring that the Canadian Bar Association Children's Law Committee members are informed and have the capacity to educate the profession about the changes and their implications for children and youth.

Recommendation #3: Require monitoring of the impacts of changes to the YCJA and a review of the legislation within five years of its enactment, focusing on the effectiveness to divert youth from criminal sanction and to ensure that sanctions are the last resort and least restrictive means, consistent with the Convention on the Rights of the Child.

Articles that are directly impacted by this legislation include but are not limited to 37 (imprisonment only as a last resort) and 40 (increased priority for rehabilitation and reintegration of a young person in conflict with the law). A CRIA analysis will meaningfully analyze the potential impacts on children and youth to identify and avoid any potential negative unintended impacts.

For instance, the intent to create efficiency must uphold due process. The elimination of preliminary hearings for all but the most serious cases should lead to more diversion of youth rather than proceedings to trial.

In conclusion, UNICEF Canada welcomes the measures proposed in Bill C-75 and encourages continuing reform to promote the protection of young people, who are disproportionately victims of crime. For the few who come in contact with the justice system, we appreciate the improvements to support rehabilitation – the surest route to public safety.