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Tuesday 4 June 2002

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Mardi 4 juin 2002

Standing committee on justice and social policy

Rescuing Children from Sexual Exploitation Act, 2002

Comité permanent de la justice et des affaires sociales

Loi de 2002
sur la délivrance des enfants
de l'exploitation sexuelle

Chair: Toby Barrett
Clerk: Tom Prins

Président : Toby Barrett
Greffier : Tom Prins

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE AND SOCIAL POLICY

Tuesday 4 June 2002

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE ET DES AFFAIRES SOCIALES

Mardi 4 juin 2002

The committee met at 1610 in room 151.

The Chair (Mr Toby Barrett): Good afternoon, everyone. Welcome to this regular meeting of the standing committee on justice and social policy for Tuesday, June 4. We're meeting in room 151. On our agenda we have three orders of business. Just to review that, they are (1) election of a Vice-Chair, (2) establishment of a subcommittee on committee business, and (3) clause-by-clause consideration of Bill 86.

ELECTION OF VICE-CHAIR

The Chair: We'll consider the first order of business, election of the Vice-Chair.

Honourable members, it is my duty to call upon you to elect a Vice-Chair. Are there any nominations?

Mr Frank Klees (Oak Ridges): Chair, I would like to nominate Al McDonald as Vice-Chair.

The Chair: Any further nominations for Vice-Chair?

Mr David Christopherson (Hamilton West): Has he got a platform?

The Chair: We may come to that. There being no further nominations, I declare the nominations closed and Mr Al McDonald is elected Vice-Chair. Congratulations.

I declare that order of business closed.

APPOINTMENT OF SUBCOMMITTEE

The Chair: The second order of business is the establishment of the subcommittee on committee business. Is there a mover for the motion to appoint a business subcommittee?

Mr Klees: I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee; that the presence of all members of the subcommittee is necessary to constitute a meeting; and that the subcommittee be composed of the following members: the Chair as Chair, Mr Hardeman, Mr Bryant and Mr Kormos; and that substitution be permitted on the subcommittee.

The Chair: Is there any discussion on this motion? Seeing no discussion, are the members ready to vote?

All those in favour? I see none opposed and I declare that motion passed.

I declare that order of business closed.

RESCUING CHILDREN FROM SEXUAL EXPLOITATION ACT, 2002

LOI DE 2002 SUR LA DÉLIVRANCE DES ENFANTS DE L'EXPLOITATION SEXUELLE

Consideration of Bill 86, An Act to rescue children trapped in the misery of prostitution and other forms of sexual exploitation and to amend the Highway Traffic Act / Projet de loi 86, Loi visant à délivrer les enfants prisonniers de la prostitution et d'autres formes d'exploitation sexuelle et modifiant le Code de la route.

The Chair: The next order of business is Bill 86, An Act to rescue children trapped in the misery of prostitution and other forms of sexual exploitation and to amend the Highway Traffic Act. We will now consider Bill 86 clause by clause.

I will indicate from the orders of the day, "That the standing committee on justice and social policy shall be authorized to meet in Toronto for up to two days of clause-by-clause consideration of" Bill 86.

I would remind the committee we are now in our second day of hearings pursuant to the order of the House on October 1 of last year. We did commence one day of clause-by-clause consideration of this bill in December of last year. Ever bearing in mind that we did commence clause-by-clause, as I understand it—and the clerk could clarify any of this—as of last December 10, we had arrived at page 4 of the package before you with respect to clause-by-clause debate. At that time, Mr Bartolucci had already moved the motion on page 4. I would now ask the committee, is there any further debate on this motion?

Mrs Lyn McLeod (Thunder Bay-Atikokan): Mr Chair, I apologize. I was hoping my colleague would be here to address the bill that he has obviously been working on. I just need to get one small bit of clarification as a starting point. Are we on page 4 of the motions? Is that the page 4 we're addressing?

The Chair: I'm sorry, we're on page 4 of the package of motions that we have before us. Just to clarify, it is a Liberal motion with respect to Bill 86.

Mrs McLeod: I do have it before me. Could I also just ask, as a point of clarification, whether the committee adopted or defeated the previous three motions that would have been moved prior to today? I do apologize for not being up to speed on this.

The Chair: I have a good memory, but mine is very short and I don't recall the details of December 10. I might ask the clerk to give us a thumbnail sketch or a summary of the previous motions and the results of the votes.

Clerk of the Committee (Mr Tom Prins): Of the first three pages, the Liberal motion on page 1, moved by Mr Bartolucci, was lost; the motion on page 2, moved by Mr Tilson, was carried; the Liberal motion on page 3 was withdrawn; and the subsequent page 4 that we're dealing with now was moved in its stead.

Mr Ernie Hardeman (Oxford): As I look at the motion, moving that section 6 of the bill be amended by striking out "six months" and substituting "12 months," I'd like to know where in the bill we are, where that fits in.

The Chair: I will entertain discussion from the three parties.

Mr Frank Mazzilli (London-Fanshawe): Certainly we would not have a problem with that amendment. Members of this committee are welcome to support that amendment if they wish.

The Chair: Any further discussion?

Mr Hardeman: I was going to say, Mr Chairman, I support that. I think anything that increases the penalty for this type of activity is good news, so I will be supporting the motion.

The Chair: Any further discussion? Are the members ready to vote? We are voting on the Liberal motion on page 4.

All those in favour? Opposed? Seeing none opposed, I declare this motion carried. That completes the amendment to section 6. I would now ask the question, shall section 6, with this amendment, carry? I declare section 6 carried.

We now go to section 7. On page 5 in the package we have a government motion. I would ask a member of the government to read that motion.

1620

Mr Hardeman: I move that subsection 7(3) of the bill be struck out and the following substituted:

"Confinement pending hearing

"(3) An individual apprehended under this part shall be confined in a safe facility pending the show cause hearing required under section 9.

"Exception

"(4) Despite subsection (3), the administrator of the safe facility in which an individual is confined shall authorize the release of the individual and notify the society of the release if the administrator is satisfied that the individual was at least 18 years of age at the time of the apprehension."

The Chair: Any discussion on this motion? Are the members ready to vote on this motion?

All those in favour? Those opposed? I declare this motion carried.

Shall section 7, with this amendment, carry? Carried.

Section 8: I see no amendment to section 8 of this bill. Shall section 8 carry? Carried.

If we could turn to section 9, again I see no amendment to section 9. Shall section 9 carry? Carried.

If we could turn to section 10, on page 6 in your package I see a government motion to section 10.

Mr Hardeman: I move that subsection 10(3) of the bill be amended by striking out "take reasonable steps to".

The Chair: Discussion with respect to this government motion?

Mr Michael Bryant (St Paul's): I think I know why, but I'd like to hear from the government what the purpose of the amendment is, why it is being done.

Mr Mazzilli: We have William Bromm from the legal department of the Attorney General who is sitting with us. I would ask if he could come forward and explain that to this committee.

The Chair: Certainly. Could I ask you to identify yourself, sir.

Mr William Bromm: I'm William Bromm, counsel with the policy branch of the Ministry of the Attorney General.

The amendment that has been proposed to section 10 is really to correct an inconsistency between the existing sections 9 and 10 of the bill as it currently stands. In subsection 9(2) of the bill, it says, "The society shall ensure that the child is informed ... of ... the reasons," and then in section 10 it says, "The society shall take reasonable steps" to notify the child. We wanted to correct that inconsistency, remove the "reasonable steps" requirement in section 10 and simply say that they shall notify the child, to make it clear that in both sections the child gets notice of the hearing that's taking place.

Mrs McLeod: Based on that explanation, I would just have two questions, and I take as a given that there's a requirement to notify the child. Assuming that that child is capable of receiving notice, if the child should be in a state where they're not capable of receiving the notice, is it still considered that the notice has been given, so that the child can be taken into custody? I assume there may be situations where there may be somebody with a significant problem.

Mr Bromm: That's correct. There may be instances in which the child is not able to either at the time comprehend the notice requirement or to attend the hearing because of, for example, health reasons. We know many of these children have drug and alcohol problems when they're picked up. That's why in section 9, for example, when we talk about the 24-hour period for a hearing, it says, "or as soon afterwards as practicable." So if a child is unable to comprehend the notice or unable to actually receive notice at the time, then the notice would be given at a subsequent time, when it can be understood and provided.

Mrs McLeod: That wouldn't prevent taking the child into safe custody.

Mr Bromm: No. It would simply allow—

Mrs McLeod: Is that clear in law?

Mr Bromm: Yes. That's why we have the words "as soon afterwards as practicable." It's also inherent in the

court's ability to simply confirm that what took place was appropriate in the circumstances.

Mrs McLeod: Given that the other requirement is to notify such "person or persons as may be required under rules prescribed by the regulations"—I assume the regulations would state, for example, parents or legal guardians. I think almost invariably it might be difficult to serve immediate notice on, or even to notify at all, parents or legal guardians. Again, can I ask you how the law ensures that child can be protected in the event that notice can't be given?

Mr Bromm: There is a provision in the section that says failure to provide the notice does not invalidate any of the procedures taken under the legislation. In the circumstances you describe, which will be common if a parent can't be notified within the 24-hour or even the five-day period, the hearing can continue and treatment can proceed.

Mrs McLeod: So essentially it's still "reasonable steps" even though you're taking that specific wording out?

Mr Bromm: Yes.

The Chair: Further discussion? Seeing no further discussion on this amendment, are members ready to vote?

We're voting on the government motion on page 6 in the package. All those in favour? Those opposed? I declare this motion carried.

Shall section 10, including this amendment, carry? Carried.

If we turn to section 11, page 7 in our package, I find a government motion.

Mr Hardeman: I move that that section 11 of the bill be amended by adding the following subsection:

"Temporary absences

"(1.1) Despite an order described in clause (1)(a) requiring the confinement of a child in a safe facility, the court, a children's aid society worker or the administrator of the safe facility in which the child is confined may authorize the child to be temporarily absent from the facility during the period of confinement and may set such conditions and impose such restrictions in connect with the temporary absence as he or she considers to be in the child's best interests."

Mr Bryant: Just a question again: could we maybe get some background as to the purpose of this amendment? Obviously the provision is written in a way that this could fly in the face of a court order, to the contrary. In essence, I guess the children's aid society worker would get the discretion in this matter and not the court, but that's obviously, I would hope, for a good reason. I ask the government, what's the purpose of the amendment?

Mr Mazzilli: Mr Chair, I will gladly refer that question to legal counsel so that Mr Bryant can secure an answer.

Mr Bromm: I'll apologize in advance if my explanation is a little bit legal in nature because this is really a technical amendment to the legislation.

Subsection 11(2), if you look at that section, already speaks about temporary absences from a safe facility. Basically what it says is the total period during which a child can be held for treatment is 30 days, including any period during which the child is temporarily absent for medical treatment, counselling or to appear in court. The act already provides for temporary absences.

After the legislation was passed and when we consulted with children's aid societies and service providers, they raised a concern that while the act actually spoke of temporary absences, there was no provision in the legislation that actually authorized them to provide for those temporary absences. They like to have specific provisions for every step they take when they're dealing with a child in need of protection. Because of that, even though the government was confident the reference to temporary absences in subsection (2) already provided for that temporary absence, we have made this technical amendment to make it very clear that they are authorized to make provision for a temporary absence for things like medical treatment. We're not introducing a new concept in the legislation. It's just to clarify that there can be temporary absences and it's up to the safe facility or the administrator of a service to authorize the temporary absence without having to go back to court to have them amend the court order to say, "You can be gone for two hours on Tuesday for medical treatment or counselling."

Mrs McLeod: A very small point: just in the interests of good drafting, is the phrase "in connect with" a legal term or is that a typo and it should be "in connection with"?

Mr Bromm: Probably "in connection with," but I'll defer to legislative counsel.

Ms Catherine Macnaughton: It's a typo.

Mrs McLeod: Can it just be corrected as a typo, Mr Chair?

The Chair: Yes, that will be changed.

Interjection.

Mrs McLeod: I think it could just be done on a friendly basis.

The Chair: That's been duly noted. Any further discussion on this amendment? We have before us a government motion that's found on page 7. Are members ready to vote? All those in favour? Those opposed? I declare this motion carried.

We have a second amendment to section 11, a Liberal motion that's found on page 8 in the package. I would ask for a mover.

Mr Bryant: I move that section 11 of the bill be amended by adding the following subsection:

"(1.1) If the court orders that the child be returned to the custody of his or her parent or that the child be released, the court may further order that the child take part in an appropriate community support program designed to help the child end his or her sexual exploitation or to lessen the risk that the child will be sexually exploited."

I should say that the purpose of the predecessor bill to Bill 86, which was a private member's bill introduced by

Sudbury MPP Rick Bartolucci, was very much about rescuing victims of sexual exploitation, literally rescuing them and helping them to lead a healthier life where they are not subject to the misery of prostitution. Along those lines, I know that Mr Bartolucci was particularly keen and in his bills ensured through legislation that in fact there be direction so that it not just be about the matters we've been discussing to date during these committee hearings, but also to ensure there is the appropriate community support. Of course, I know the government will tell us they're committed to community support. What we want to do is entrench it in legislation.

Mr Mazzilli: I certainly will not be supporting this amendment. Courts can make different orders under different acts when it comes to children. I understand the intent here of the member, but the courts already have systems in place under many different acts to protect children. I don't think we need to make this legislation any more complicated than it already is.

Mr Klees: I was essentially going to say the same thing. I think it's redundant and unnecessary. The court will certainly make any order it feels appropriate under the circumstances.

Mrs McLeod: I'm a little bit surprised, because this doesn't mandate a requirement on government to set up the program; it simply says that the court may require there be some follow-through. The reaction of government members forces me to respond and to think a little bit about what we're doing with this bill, and what Mr Bartolucci intended with his bill, which was to take some young people who have been exploited and abused and give them a safe haven long enough to get them out of the abusive situation. If that's all we do, we have really served no purpose. Simply taking somebody out of a situation briefly is a rescue attempt, but without follow-through in terms of counselling to deal with the circumstances that put that child in the position of being sexually exploited in the first place, without counselling that allows the child to get some sense of self restored—if you've done any work at all with children, or with adults, for that matter, who have been sexually abused, you know there is an incredible trauma to the sense of the person that takes a long time to heal and it takes professional counselling to heal.

I would really be concerned if we were hesitant to at least acknowledge that simply putting somebody temporarily into a safe place and then putting them back out in the situation where, unless they get the counselling and support that's needed, they'll go back to being sexually exploited. I think we would be doing them a huge disservice not to at least acknowledge that there is the need for follow-through.

Mr Mazzilli: Mr Chair, if I again can refer this question to legal counsel from the ministry to explain the intent of this motion and the difficulties with it.

Mr Bromm: The way section 11 is currently structured speaks only to the broad placement powers of the court, and that is in terms of setting the confinement period that a child may be subject to. That does mean the court does not have other authority with respect to setting conditions as part of its order.

The concern that might arise with respect to this particular amendment is that it speaks to a particular power of the court in terms of providing for post-treatment programs or services. The concern is that when you start listing specific powers of the court, that may be interpreted to mean that the court is not meant to have other powers that are not specifically listed in the legislation. The government would not want to limit the court's power in that manner or have any risk that there be any interpretation that the court is only meant to have the certain enumerated provisions within the statute. So it was preferable to simply have a broad placement power and leave it to the court's inherent jurisdiction to decide what other conditions may be appropriate as part of the orders.

Mr Bryant: If that be the reason, I accept; I wouldn't want to limit the court either in terms of the particular order. If that is the concern, and that's the concern that has been articulated by legal counsel, then we can quite easily address that by putting in language in this section that ensures that we're in no way limiting the court from going much further. So if that's the concern, then I'm very open, just as we made a friendly amendment to the typo, to making a friendly amendment to this motion to address that particular concern so that we are in no way limiting the court order. Is the government open to that?

Mr Mazzilli: Certainly from what I heard, I would not be open to that. Obviously the courts have a wide range of options with the section as it is stated right now. I don't believe we need to make any changes or amendments to this motion.

Mr Bryant: Could I just say to that, then it sounds a lot like the government just doesn't want to support a Liberal motion and that it's got nothing to do with the reasons just articulated by legal counsel. That seems to defy the non-partisan approach to this particular issue and I have no doubt that the people who do support this bill will be quite disappointed.

Mrs McLeod: I'm a legislator, not a lawyer; I'm struggling with the explanation that's been given. As I read subsection 11(1), it says, "The court may order that"—sorry, we're in section 12 and I wanted to relate back—and then there are clauses (a), (b) and (c). It looks to me as though section 11 has limited the court in terms of what the court may do with the child who has been taken into a safe house, that they can confine that child in a facility as long as it's felt that continued confinement helps, but you can't confine the child indefinitely.

The only other alternatives the court has are to return the child to the custody of the parents—and in this bill we have no way of knowing whether or not the parental situation is one of the things that has been conducive to the child becoming vulnerable to exploitation—or the child may be released. That defeats the whole purpose of having taken the child into safe confinement to begin with.

In what way does the court have any broader powers to provide for that child than is provided in section 11

under this bill? So when you say to me that we can't add anything that would limit the court's powers, I think the bill is already much too limited in terms of what the court can do. The bill prescribes three things the court can do with the child, and none of them have to do with requiring the provision of follow-up treatment for that child.

1640

The Chair: Do you have a question, then, Mrs McLeod?

Mrs McLeod: My question is, in what way is the court not already limited by the bill?

Mr Bromm: The bill limits the court in terms of its placement powers, and you're correct: there are the three broad placement provisions in terms of setting treatment for up to 30 days, releasing the child to a parent or releasing the child on his or her own. But the court also has a broader jurisdiction over a child; parens patriae jurisdiction is the Latin phrase, and it's just an inherent jurisdiction the court has with respect to protecting a child. As part of that jurisdiction, the court would be able to impose any condition that it thinks is appropriate in making part of its order beyond just confinement. So the provision isn't structured to limit the power of the court in any respect; it's simply to set out the three ways the court can provide for placement of the child but not necessarily for treatment of the child.

Mrs McLeod: So even in the case of release, as opposed to release into parental custody, the court is still not limited from requiring the community placement?

Mr Bromm: Exactly. The court can say, "The child is released, but I would require that the child do something," or "The child is released to the parent, but I would require that the parent and the child obtain counselling" or whatever. So it doesn't limit the court's ability to impose other conditions on the order.

Mrs McLeod: So is there language you could suggest that would address the concern about the suggestion of the child taking part in appropriate community support programs, that that could be worded in such a way that it in no way limits what the court can do under the terms you've just set out?

Mr Bromm: That wouldn't be appropriate for me to do. I can comment on suggested wording, but it's not my role to actually assist with drafting. I can comment on it, but I don't know if legislative counsel may be able to assist in the drafting of a motion of that nature.

Mrs McLeod: In any event, Mr Chair, that would be dependent upon the government members being prepared to acknowledge the fact that there is a necessity of doing more than simply confining a child temporarily if we're actually serious about preventing future sexual exploitation.

Mr Hardeman: First of all, in the debate on the motion, I have concern as we're talking about what is there to protect children, and the line that is being added here is in fact just something the courts may or may not do. The question is to the legal representation here: am I correct in assuming, in your opinion, that what is suggested here could be attached, or is already available, to the courts in any one of the three scenarios of what the courts can do in this legislation as far as confinement or dealing with the whereabouts of the child?

Mr Bromm: Yes. The court would be able to order this, whether or not it's stated in the bill. Our concern was, if you state this in the bill, it implies that the court is not meant to have other powers. There may be circumstances in which the court decides that there is a specific treatment that the court thinks the child should undergo or a specific thing a parent should do. If we list this but not those other specific things, there is a risk that someone will argue that the court no longer has jurisdiction to do that because this is a complete codification of the court's powers.

Mr Hardeman: Not going quite as far as other things they may not do, is it reasonable for me to assume—and, like Mrs McLeod, I'm not a lawyer. I'm practising to be one, so I thought this would be a good place to get some of my training. If we included this motion to amend that section, is it reasonable to assume, then, that we're saying that if a child is released—not to the parents; just released—the courts could not, would assume that they could not, apply this to that child? Then, because we told them where they can apply it or where they may, is it a natural assumption that they may not do it somewhere else?

Mr Bromm: If it only appears in one section related to release with a parent and it doesn't appear somewhere else, then there is a risk. Some would argue, if the government meant for that power to apply to that section, that they would have added it there.

Mr Hardeman: I guess that would make it solid enough for me that I wouldn't support the section.

Mr Klees: It's very clear to me that the intent, as expressed by Mrs McLeod earlier, is that we would want children to not only be confined to deal with a problem, but also then to receive appropriate support in the community. It's very clear to me that that is available without any prescriptive amendment as is being proposed here. It's for that reason that I wouldn't support the amendment.

I also want to say that I find Mr Bryant's earlier comments very offensive, suggesting members of the government are not supporting this amendment because we don't want to support a Liberal amendment. I remind him we already have passed a Liberal amendment. That's not the approach we're taking. To suggest that because we don't support this particular amendment we're approaching this on a partisan basis is also uncalled for. I trust we'll proceed with this in a much different spirit.

Mr Bryant: Mr Klees, my experience is based not just on what's happening today, but I suppose it's based, in my short parliamentary career, on my experience before this justice committee over the last couple of years. This justice committee has operated along partisan lines. Not all committees have, but this one has.

Mr Klees: And you of course never have.

Mr Bryant: We've supported government amendments—

Mrs McLeod: We're supporting the bill.

Mr Bryant: —and we support this bill. In any event, I take Mr Klees's point. If he's saying it's a new day and this committee in fact is now going to behave in a non-partisan manner, then I look forward to, if not on this particular amendment, getting the member's support on future Liberal amendments on this bill and others.

Mr Klees: I just want to remind Mr Bryant that we are in fact in this committee discussing a bill that was proposed by one of his colleagues, a Liberal member—

Mr Bryant: Yes, and this was his amendment.

Mr Klees: —and this bill is here because government members supported it to be here. It would not be here if it was not for government members voting for it to be here.

I'm not suggesting it's a brand new day. I am suggesting that we're here discussing a bill that quite frankly should be dealt with in a non-partisan way. I agree with you, but that doesn't mean members of government are not entitled to their opinions, to express and vote accordingly and will continue to do that. We don't need your partisan sneers in this room, which is precisely what you're doing. It's uncalled for.

Mr Bryant: Mr Chair, I'm not going to be lectured by Mr Klees on how I ought to be conducting myself here—

Mr Klees: And neither will we.

Mr Bryant: —when in fact the government has not come up with a single good reason for not supporting this amendment. I offered to make an amendment to address the concerns and the government said it wouldn't stand for it. I'm not making this up. You're not coming up with a good, rational reason and you refuse to address it through an amendment. There can be only one alternative and that would be that you're playing politics with this. But it wouldn't be the first time and it won't be the last.

The Chair: I'll go to Mrs McLeod and then Mr Christopherson.

Mrs McLeod: I appreciate legal counsel's advice on this particular amendment. I want to put on the record that our colleague Mr Bartolucci, who did, as Mr Klees has indicated, bring forward the original bill on the protection of children from sexual exploitation, would be absolutely heartsick if the bill did not in some manner, in some form, in some place, address the fact that it is absolutely essential to provide counselling support for any child you take into custody from a situation of sexual exploitation. With that in mind, I would suggest that we vote on this particular amendment and I trust the government will see the next amendment as being one which addresses Mr Bartolucci's concern and our concern without running into the problems legal counsel has identified on this particular amendment.

Mr Christopherson: I'm not a member of this committee, I'm just subbing in for the afternoon, but I've got to tell you it's a joke to suggest that there's no partisanship in any of these things. Of course there is, and this whole back and forth for the last few minutes is nothing but partisan bantering.

1650

If you take a look at this specific issue in terms of the needs of the child and you listen to the expert testimony we've been given, I don't know how anybody can conclude anything other than what is desired in this Liberal motion can be accommodated by virtue of what's in the draft bill. In fact, following and passing this particular amendment might indeed prohibit the very support that the Liberals want the child to receive in the community.

So it seems to me that if we're really serious about being non-partisan, which I haven't seen any evidence of so far, it's not in the best interests of the children concerned to pass this motion. It's that straight up.

Mr Mazzilli: I thank Mr Christopherson for those comments. Certainly, if Mr Bartolucci did draft this amendment—as Mrs McLeod said, we are legislators; we're obviously not lawyers with expertise in case law and other laws that relate to this one and the powers that are out there.

In a non-partisan way, rather than getting into bantering back and forth, I called before this committee counsel to give open and free answers. If Mr Bartolucci had heard the intent of his motion, and that that's already in law and the courts may have other powers, he would have withdrawn this motion very quickly. Instead, what we got from Mr Bryant is some very partisan blathering, and we've been here for half an hour on a motion that actually restricts the courts.

I will just leave that with this committee and I thank Mr Christopherson for the support on that.

The Chair: I would ask the committee members if they are ready to vote.

Mr Bryant: Recorded vote.

The Chair: We have a recorded vote on the Liberal motion found on page 8 of the package.

Ayes

Bryant, McLeod.

Nays

Christopherson, Hardeman, Klees, Mazzilli, McDonald.

The Chair: I declare that motion lost.

Shall section 11, as amended, carry? Carried.

Section 12: we see a Liberal motion that's found on page 9. Who would entertain that motion?

Mrs McLeod: I move that section 12 of the bill be amended by adding the following subsection:

"(2) At the time of the release under paragraph 2 of subsection (1) of a child who is at least 16 years of age, the safe facility and the society shall ensure that the child is put into contact with appropriate community support services that help children who have been sexually exploited."

I believe that this in no way limits the court since it does not deal with the issue of court orders. It seems to me self-evident that if we are serious about having the follow-up to the taking of the child into confinement, this is a minimum requirement in the legislation, that the

custodians of the safe facility will ensure that child is put into contact with community support agencies.

I do believe that goes a long way to addressing the concerns Mr Bartolucci would have had and to reassuring me on the defeat of the last amendment that, if we can at least make sure, when that child is ultimately released after having been in a safe facility, they are put into contact with community support services, that we will know there will be some follow-through.

Mr Mazzilli: Again, Mr Chair, I will refer to legal counsel to make an explanation on that motion.

Mr Bromm: The only explanation I would make by way of the motion is that it's correct. It wouldn't in any way limit the jurisdiction of the court, but the amendment would really just be stating legislatively what the mandate of the children's aid society and the safe facility would be in any event. So in many respects, it's really not necessary to specify it in the legislation because it is something they do by nature of their existence.

Mr Mazzilli: I have a question on that. That's through the Child and Family Services Act; under what other acts does the court have these type of powers?

Mr Bromm: This particular amendment isn't related to a power of the court per se. It's related to what the obligation of a children's aid society or a safe facility would be upon the release of a child. The mandate of the society and the safe facilities is really set out in greater detail in the Child and Family Services Act. This act wasn't intended to repeat those mandates but really to provide for the placement of a particular category of children.

Mr Mazzilli: If I can understand this, sir—often legislation duplicates itself—the Child and Family Services Act will have some powers and then another piece of legislation will have another piece of power. It may be the same and, in some cases, different. It causes confusion, not clarification. What you're saying is that this already exists and it should not be in this act. Am I correct in understanding that?

Mr Bromm: Yes. It basically states what is already the legislative mandate of the children's aid society and also the operative mandate of any safe facility they would choose. So it simply would be a legally redundant provision because they have that mandate in any event.

Mr Mazzilli: I'm certainly happy with the explanation that that authority exists.

Mrs McLeod: The authority exists. There is nothing that specifically directs a children's aid society or a safe facility—until this bill is passed we don't have safe facilities that deal with this particular kind of problem. There is nothing I'm aware of in law that directs that there shall be contact made with the community support services. Granted, they have the authority to do that, but they are not mandated specifically to do that.

I could get into a much longer speech about what's happening with children's aid societies right now and the fact that they are overworked, that there are too many referrals, that there are too many situations they're dealing with where there is not the appropriate follow-up and where there aren't community support services to do the appropriate follow-up. I won't. That's a debate for a different day.

I will turn the floor over to Mr Bartolucci, whose concern for these young people brought this bill forward to begin with, but I would plead with you that we are dealing with a very exceptional situation here. If you have ever dealt with one individual, one human being, who has been raped, once, you will know the extent of the trauma that that individual experiences. It is inconceivable to me that we think we can take somebody who has been sexually exploited, whether once or repeatedly, take them into a safe facility for a maximum period of time, as set out in this law, and then release them without community supports. This is not something that should be left within the authority and discretion of any agency. This is something which should be mandated as a requirement.

The amendment that's been proposed here doesn't say what facility; it doesn't say that the child must attend. The only legal requirement that is set out here is that the safe facility has a responsibility to put that child in contact with appropriate counselling services. How can that do anything other than take a step to ensure that there will be some follow-up? Without this amendment, I submit to you, we are doing things that are dangerous with this bill.

Mr Klees: I have to say that my inclination is to support this amendment. The reason for that is that, as I read it—unless there is some advice to the contrary—this simply is directing and ensuring that the child is put into contact with an appropriate support service in the community. I just think that's responsible. I have enough concerns about some of the agencies in our communities, for whatever reason—sometimes it's perhaps simply the pressure they're under and priorities they have, the resources they have or perhaps, in some cases, incompetence—that I don't really want to leave it to the discretion of these agencies to do the right thing because I think there's too much evidence to the contrary. So my inclination is to support this. I think it will ensure an appropriate follow-up with these young people.

1700

Mr Rick Bartolucci (Sudbury): There isn't one of us around this table who doesn't believe we have to ensure that there are some safeguards put into place after. The purpose of the amendment is not to mandate a particular agency to do something. Simply, all we want to ensure is that there are the safeguards in place to ensure that the child is not sexually exploited or abused again. We don't want to allocate any money; we don't want to allocate any particular ministry or agency to do it; we just want to ensure that there are safeguards built in so that these children will be protected.

I think it's crucial when you say "who is at least 16 years of age," because the member from London-Fanshawe spoke about agencies and acts, but they do not apply to this particular group. So I would suggest that it's allowing latitude on the part of the minister to ensure that

by regulation those safeguards are there, but it is imperative that they be there.

There are a few of us who were on committee. We heard testimony from children who were sexually exploited and abused. As Mr Klees so eloquently said, the biggest concern they had was that there weren't appropriate agencies where they could seek help, get that security necessary to ensure that they weren't sexually exploited or abused in the future.

Mr Hardeman: A couple of questions in relation to how this section works: if you look at the sections that are there, and I guess this is to, again, the legal staff, if you add this subsection, if the child is being released under the Child and Family Services Act, is it appropriate, then, to also attach other conditions that they must notify others of this release? And how does that deal with the individual rights of the child?

Putting him in contact with someone also spreads the information further. Is that at the best wishes, or is that an obligation that we should put in the act that says that's going to happen, that their problem is sent further than what they wanted? Should that be done with their consent, or would it be appropriate to put it in the way it is, from a legal point of view?

Mr Bromm: As I think has been previously mentioned, it's not requiring that the child do any particular thing that they may not consent to do; it would simply be a requirement on the safe facility to say, when a child is released, "These are the names of some agencies," or to help the child make contact with an agency. I certainly would not want to, in my response, have diminished the importance of that sort of activity or to have in any way diminished the importance of after-care programs for the youth. I was simply indicating that this is something the society would be doing through its general mandate and it would be something the ministry would be ensuring was part of its request-for-proposal process when a safe facility came forward to say they would like to actually be one of the facilities that provides these services. So in that regard it was not a legislatively necessary provision. I'm certainly not commenting on the merits of the principle behind the provision.

Mr Hardeman: Is it your position, then, that to "put into contact" by definition you would have met that requirement by just giving him the phone number? To me, "putting in contact" is that both parties have been notified of the situation. I guess my concern is the giving of information, that maybe the individual who is at least 16 years old—that you're giving information they don't want given to someone else. I think I'm going on Mrs McLeod's comment about the traumatization of an event like that; it's not something that everyone wants to share even with other counsellors or other associations. So I'm just concerned.

Other than that, I too will support the motion. But I'm concerned about the privacy and the individual's rights about putting in contact and how one interprets "putting in contact."

Mr Bromm: I think it's probably an intentionally and necessarily broad phrase. The way I read it, the information lies in the hands of the child as opposed to in the hands of the agency that the child perhaps may contact. So the facility would not be facing a situation where it's releasing confidential information related to the child. The agency would be more giving the information to the child that they may proceed with. There may be circumstances where the child says, "Can you help me make that contact?" in which case the agency may intervene further. There may be circumstances in which the child says, "Thanks very much, and I'll think about it," and then it will be up to the child to do it. So I don't think there are any privacy concerns in the way that it's currently drafted.

Mr Mazzilli: A child in need of protection under the Child and Family Services Act obviously has a much broader definition than sexual exploitation. If a child is in need of protection, what kinds of safeguards, what kinds of services or what kind of mandate would the children's aid have in relation to a child in need of protection?

Mr Bromm: They have a broad range of powers with respect to a child in need of protection under the Child and Family Services Act. But one thing I would point out is that this particular provision relates to a child who is at least 16 years of age, and the Child and Family Services Act defines a child as someone under the age of 16. So this provision is actually designed to address that group of children who are not covered by the Child and Family Services Act unless they were subject to an order under that act before they were 16 years of age. So in that case, this provision speaks to that different class. But in the same respect, the mandate of the facility would still extend to this group of children, and this is something they would be able to do in any event.

Mr Klees: Just for further clarification, I'd like it if perhaps Mr Bartolucci could clarify this. I'm assuming that it was Mr Bartolucci who drafted this amendment. There may be those concerned that the implication of this is that where there are not specified "agencies"—that word is being used, I think, by everyone in this discussion—somehow there's an obligation on the part of government to establish an agency to provide this kind of counselling. That wasn't my reading of it. My interpretation of this is that as long as there is a referral to a support service within the community that can in fact provide support—that may be the local church, a community support agency or entity, a very informal facility or counsellor in that community. So for the record, I'd like Mr Bartolucci to either confirm my interpretation here or to provide further clarification.

Mr Bartolucci: Mr Klees is absolutely right. Listen, if we wanted to put an amendment that mandated those children who are at least 16 years of age to go to a particular agency, or set up an agency, we would have drafted it that way. The important thing here to understand is, these children in many instances do not have the support services in place, do not have strong parenting in place, do not have a knowledge-based pool to know enough to go to a particular area. Simply what this is saying is, "Listen, we provide you with the guidance; we

provide you with the opportunity. You're 16 years old; you have to decide." Basically that's all we're saying with this amendment. But it is crucial from testimony that they have that information. Really, that's what we're providing in this instance.

1710

Mr Mazzilli: Certainly, from what I've heard from counsel, this is being done in practice from agencies. I would be supportive of putting it in legislation. It's already being done in practice.

The Chair: Are members ready to vote? We're voting on the Liberal motion on page 9. Those in favour? Those opposed? I declare the motion carried.

Shall section 12, including this amendment, carry? Carried.

Looking at the bill, with the permission of the committee, we could collapse sections 13 through and inclusive of section 21 for voting. Shall those sections carry? Carried.

Section 22: We have before us a government motion on page 10 in our package.

Mr Hardeman: I move that subsection 22(1) of the bill be amended by striking out "subsection 212(2.1) and substituting "subsection 212(2) or (2.1)".

Mr Klees: Could we just get an explanation?

Mr Bromm: This is again a technical amendment to the legislation. The Criminal Code actually contains two specific subsections that relate to youth prostitution. We had inadvertently referred to only one of those subsections in the original draft of the bill. We certainly would not want to omit one of those sections from the legislation and so the amendment ensures that we cover both.

The Chair: Are members ready to vote with respect to the government motion on page 10? All those in favour? Those opposed? I declare this motion carried.

Shall section 22, as amended, carry? Carried.

I now see the possibility of collapsing sections 23 through to and inclusive of section 31. Do I have permission of the committee to do that? Shall sections 23 through to and including section 31 carry? Carried.

Section 32: If we turn to page 11 in our package, we see a Liberal motion. I would ask for a mover.

Mrs McLeod: I move that subsection 198.5(2) of the Highway Traffic Act, as set out in section 32 of the bill, be amended by striking out "or" at the end of clause (a), striking out clause (b) and substituting the following:

"(b) three years if in the five years before the date of the conviction the person was convicted of an offence under section 211, 212 or 213 of the Criminal Code (Canada) that would have resulted in a suspension of his or her driver's licence under this section; or

"(c) an indefinite period of time if, in the five years before the date of the conviction, the person has been convicted of two or more offences under any of sections 211, 212 or 213 of the Criminal Code (Canada) that would have resulted in a suspension of his or her driver's licence under this section."

Mr Bartolucci: Obviously, everyone in this room knows my views about johns and pimps. I believe this is simply a tougher provision for tougher penalties. I honestly believe if you ruin a child's life, there should be a punishment in place that reflects the serious nature of the crime you've committed against children who are sexually exploited or abused.

Mr Mazzilli: Driver's licence suspensions are used in impaired driving situations and so on, and extended into the Highway Traffic Act. I see some problems trying to extend this to all kinds of criminal offences and I'll ask our legal representative from the Attorney General to explain perhaps some of those difficulties.

Mr Bromm: The act currently does have a provision that has been proposed for amendment that allows for driver's licence suspension and it has a one- and three-year suspension period. What this amendment would do is increase that to three and then five years. I won't comment on the merits of the amendment, but something for the committee's consideration that they may consider appropriate to think about is that the current one- and three-year periods that are in this current statute mirror the periods that are set out for the other offences, some of which have already been listed, such as impaired driving, homicide with a motor vehicle and dangerous driving offences.

What this amendment would do is to provide a longer suspension period for activities involving youth prostitution than are currently provided for other serious offences, such as impaired driving and vehicular homicide. The committee may just want to consider whether or not it would be appropriate to have longer suspension provisions for one offence than for another class of offences.

Mr Klees: I concur with Mr Bartolucci that we should be able to send the strongest of all messages to society that anyone who stoops to destroy a young person's life will have to pay some consequences for that. I have a problem, though, with setting this up juxtaposed to what we're doing for impaired driving, for example, and some of the other offences. I would much rather we deal with all of these offences perhaps at a separate time and place, because I think we're far too lenient on all of these other matters as well.

My concern is, by making this adjustment now, we're sending the wrong signal to the community that this is more important or that these other offences are less offensive. I think that's a problem. It's a problem for me. For that reason, I will not support this amendment, but I certainly concur that there should be a longer sentence; the consequence should be stronger. I'll go on record as saying that the consequences should be stronger with regard to these other offences as well and that, as a Legislature, we should deal with that at some point.

Mr Bartolucci: I respect Mr Bromm's opinion and certainly Mr Klees's opinion on this. At some point in time we have to take a stand and we have to say, yes, in fact the punishments are too lenient. You know what? We lost a great police officer in Terry Ryan, and that punishment, if in fact that individual is found guilty of

impaired driving, is far too lenient. He has altered the life of an individual, that individual's family and his community not for one year, two years or three years, but for those people, for all of time.

Similarly, we all understand the serious effects sexual exploitation has on children. In fact, the government in a budget two years ago, I believe, committed $15 million to this bill if it had passed back then because they understood there is maintenance that has to take place with regard to these children and trying to rebuild their future. Honestly, the severity of the punishment must fit how those children's lives are going to be altered and how it's going to affect society. I agree that punishments are far too lax, in my estimation. At some point in time we have to take a stand and start the ball rolling so that when this happens, you understand we have to revisit a number of other infractions that are punishable by this.

1720

Mr Mazzilli: I understand what Mr Bartolucci is intending to do here. I will say that this legislation does cover a period of suspension when you use a motor vehicle for these criminal offences, as do other pieces of legislation. It's important from a provincial perspective to be consistent, that if you're using a motor vehicle to commit an offence, these are the ranges within which we will suspend your driving privileges.

The one thing I want to refocus on again here is that these are pretty serious offences—sections 211, 212 and 213 of the Criminal Code. If I can ask counsel, what are the penalties for those types of offences in the Criminal Code?

Mr Bromm: I apologize, I don't have the Criminal Code in front of me and I certainly wouldn't want to provide you with inaccurate information.

Mr Mazzilli: But would they be in the range of five to 10 years?

Mr Bromm: Yes. It would depend on each subsection and obviously the circumstances of the case. There is another counsel here who may be able to assist us. I don't know if you're familiar with—

Mr Mazzilli: If I understand this properly—because I do understand this stuff a little bit—the court already has the authority on a charge under sections 211, 212 and 213—forget the suspension—to put the person in jail for five to 10 years. It already has that authority. I understand what Mr Bartolucci is trying to do here, but if that's not being dealt with seriously enough in the courts—and Mr Klees has addressed this, Mr Bartolucci—that's a matter for a different level of government. I support suspending driving privileges. As a province we have the authority to do that, and I think we should be consistent, as we are with other pieces of legislation. That would be my submission, Mr Chair.

Mr Hardeman: I share the comments made from either side of me. I support the need for appropriate punishment for the crime. I think not only do we have to be giving the appropriate penalty but we have to be fair to everyone. If you're talking about vehicular homicide and you say, "The penalty for that should be less than the penalty for this," I have a real problem with that, in fairness to all citizens, when it comes to committing crimes. Obviously if the person gets sentenced to five years in jail, whether they have a three-year suspension or a five-year suspension, I suppose it shouldn't make much difference because they shouldn't be driving for the full five years. I think that part is more important, that we make sure the penalties are administered or divvied out appropriately, but we should be consistent in the different levels of offences committed. If a drunk driver is going to get a year's suspension for killing somebody, then I think this one should have the same year's suspension. If more needs to be done to penalize the individual for the crime committed, the courts have the ability to do that in different ways other than the suspension of the licence.

Mr Christopherson: I think Mr Bartolucci has given a rationale for his amendment, at least to the extent that Mr Klees seemed to give his support for the concept. The difficulty seemed to be whether we would allow there to be an inconsistency within the application of the law.

The problem I have with the position put forward by Mr Klees is that it feels a little over-bureaucratic to the extent that you've acknowledged you think it should be higher, and both of you acknowledged that some of these other offences that would be "less than" actually should be elevated. But I don't know how we do justice to this issue by going to the lowest common denominator. If we think it should be the three years as set out in the proposed amendment, then we should pass that. We have the authority and the power to do that here and recommend on to the full Legislature. Then if you, as government members, want to go back to one or both of the justice ministers and say these other things should be elevated, fine, but to have this lesser than we think it should be in this instant case and rely on some review that may or may not happen down the road to put it where we think it ought to be, because we don't like the idea of an inconsistency, to me is not serving the purpose of the bill.

I'm with the amendment on this and with Mr Bartolucci.

The Chair: Any further discussion?

Mr Mazzilli: I cannot support the amendment. We have to be consistent. We heard a government member say we are too lenient. I think he was talking overall in these matters. As we've heard with impaired driving—or sexual offences—in relation to a motor vehicle, the courts have the ability to imprison people for five to 10 years. As Mr Hardeman said, it's a non-issue if those penalties are given out. What we are talking about is really irrelevant if those penalties are given out. If they're not, it's for a different level of government to deal with. I won't go there and I know Mr Bartolucci won't go there.

We need to be consistent as a province. We have the authority to suspend driving privileges. All we're asking is that it be consistent across the board when it relates to Criminal Code offences. So I will not be supporting that amendment.

Mrs McLeod: With the exception of Mr McDonald, we've all been around here long enough to know that the proposed changes to a number of acts in order to have consistency at a different standard in terms of the severity of the penalty are not going to happen. It would be a complex undertaking to open up all those acts. Given the amount of time we have and the amount of time it takes to deliberate something like this, I would be very surprised to see that come forward, unless in fact we have set a new standard in this bill and it's one which, because we're so concerned about consistency, there is some motivation to bring about changes in other acts to ensure there is consistency. As long as there is already consistency at the lower standard that Mr Christopherson talked about, there is no impetus to bring forward changes to the other legislation along with this. I think we set the standard with this bill, and if we're concerned about consistency, there will be motivation to amend the other bills.

The Chair: Are members ready to vote? We have before us a Liberal motion on page 11.

Mr Bryant: A recorded vote, please.

Ayes

Bryant, Christopherson, McLeod.

Nays

Hardeman, Klees, Mazzilli, McDonald.

The Chair: I declare this motion lost.

We have a second motion to section 32, a government motion that's found on page 12 in our package.

Mr Hardeman: I move that that clause 198.5(3)(b) of the Highway Traffic Act, as set out in section 32 of the bill, be struck out and the following substituted:

"(b) an order under the Criminal Code (Canada) or a disposition under the Young Offenders Act (Canada) directs that the person be discharged."

The Chair: Any discussion on this government motion?

Mr Mazzilli: I'll ask legal counsel to explain that motion for members of this committee.

Mr Bromm: This is another technical amendment. It's simply to correct an inaccurate Criminal Code reference. The statutes in Ontario and probably in all the other provinces aren't always updated as quickly as the Criminal Code is renumbered. Section 736 is an old number from the Criminal Code and we just needed to change it to have the up-to-date reference to the Criminal Code discharge.

The Chair: Is there any further discussion? Are members ready to vote on the government motion on page 12? All those in favour? Those opposed? I declare this motion carried.

Shall section 32, as amended, carry? Carried.

Shall section 33 carry? Carried.

Shall section 34, the short title, carry? Carried.

Shall the long title of the bill carry? Carried.

Shall Bill 86, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? I will do so.

I declare this business closed and adjourned.

The committee adjourned at 1730.

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Substitutions / Membres remplaçants
Mr David Christopherson (Hamilton West / -Ouest ND)
Mr Frank Klees (Oak Ridges PC)
Mr Frank Mazzilli (London-Fanshawe PC)

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Mr William Bromm, Ministry of the Attorney General
Mr Rick Bartolucci (Sudbury L)

Clerk / Greffier
Mr Tom Prins

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Ms Catherine Macnaughton, legislative counsel