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Law Amendments Committee
Red Chamber
2nd Floor, Province House
1726 Hollis Street
Halifax, N.S.

Dear Committee Members:

Re: Secure Treatment – Ss. 55-60 of *Children and Family Services Act*

Proposed amended secure treatment provisions:

> **Secure-treatment certificate**
> 55 (1) Upon the request of an agency, the Minister may issue a secure-treatment certificate for a period of not more than five days in respect of a child in care, if the Minister has reasonable and probable grounds to believe that
>
> (a) the child is suffering from a mental disorder;
>
> (b) it is necessary to confine the child in order to remedy or alleviate the disorder;
>
> (c) within the twelve months immediately preceding the application, the child has caused, or attempted to cause, by words or conduct, a substantial risk of serious bodily harm to himself, herself, or another person;
>
> (d) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person; and

(e) no less restrictive method of providing treatment is appropriate to remedy or alleviate the child's mental disorder in the circumstances.

(2) A secure-treatment certificate shall be in the form prescribed by the regulations and shall include

(a) the reason for the confinement;

(b) the duration of the certificate;

(c) the date, place and time of the hearing pursuant to subsection (4); and

(d) a statement that the child may be represented by counsel at any hearing, including the address and telephone number of the nearest legal-aid office.

(3) A secure-treatment certificate shall be served upon the child who is the subject of the certificate and upon the nearest legal-aid office not more than one day after it is issued.

(4) Where a secure-treatment certificate has been issued pursuant to this Section, the Minister or the agency shall appear before the court before the certificate expires, to satisfy the court that this Section has been complied with and, if an application is made pursuant to Section 56, for the application to be heard pursuant to that Section.

Secure-treatment order

56 (1) The Minister or an agency with the consent of the Minister may make an application to the court for a secure-treatment order in respect of a child in care.

(2) The Minister shall serve the application upon the child and upon the nearest legal-aid office.

(2A) Where the child who is the subject of an application is not a child in permanent care and custody, the Minister shall notify the child's parent or guardian of the proceeding.

(2B) Where the child who is the subject of an application is not a child in permanent care and custody, the court may, upon application by the parent or guardian of the child, add the parent or guardian as a party to the proceeding

(3) After a hearing, the court may make a secure-treatment order in respect of the child for a period of not more than forty-five days if the court is satisfied that

(a) the child is suffering from a mental disorder;

(b) it is necessary to confine the child in order to remedy or alleviate the disorder;

(c) within the twelve months immediately preceding the application, the child has caused, or attempted to cause, by words or conduct, a substantial risk of serious bodily harm to himself, herself, or another person;

(d) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person; and

(e) no less restrictive method of providing treatment is appropriate to remedy or alleviate the child's mental disorder in the circumstances.

(4) Upon the application of the Minister or the agency and after a hearing, considering clauses (a) to (e) of subsection (3) of section 56, before the expiry of a secure-treatment order, a secure-treatment order may be renewed in respect of the child, for a period of not more than ninety days in the case of a first or subsequent renewal.

Review of secure-treatment order

57 (1) An application for review of a secure-treatment order may be made by the Minister, the agency, the child who is the subject of the order or a parent or guardian of a child, if the parent or guardian was a party to the application for the order.

(1A) Every party to an application for a secure-treatment order is a party to an application for review.

(1B) Where the child who is the subject of an application for review is not a child in permanent care and custody, the applicant shall notify the child's parent or guardian of the proceeding if the parent or guardian is not already a party to the application for review.

(1C) Where the child who is the subject of an application for review is not a child in permanent care and custody, the court may, upon application by a parent or guardian of the child, add the parent or guardian as a party to the proceeding.

(2) An application for review may be made at any time by the Minister or the agency but, except with leave of the court, an application for review may otherwise be made only once during the period of any secure-treatment order or during the period of any renewal of a secure-treatment order.

(2A) An application for review must be filed and served no fewer than four working days before the hearing

(3) After hearing an application for review and after considering clauses (a) to (e) of subsection (3) of Section 56, the court may make an order confirming, varying or terminating the secure-treatment order, but in no case shall the period of the secure-treatment order be extended.

The following is a summary of the amendments I propose to the secure treatments provisions of the *Children and Family Services Act* in order to bring these provisions in accordance with section 7 of the *Charter*:

Section	*Notes*
55(1)(a) and 56(3)(a)	Replace "emotional or behavioural disorder" with "mental disorder". The inclusion of "behavioural disorder" makes the section overbroad and, as a result, young people whose behaviour is considered undesirable, rebellious, troublesome or worrisome are captured. These behaviours frequently do not reach the threshold of criminality, and include, but are not limited to, sexual exploitation and being gone without permission (a.k.a. running).

Section	*Notes*
55(1) and 56(3)	Add subsection (c) "within the twelve months immediately preceding the application, the child has caused, or attempted to cause, by words or conduct, a substantial risk of serious bodily harm to himself, herself, or another person." Infringing a *Charter* right is only justifiable when a young person poses an immediate and substantial risk of causing significant harm to themselves or others.
55(1) and 56(3)	Add subsection (d) "the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person." To prevent young persons from being subject to repeated re-confinement, despite earlier treatment being ineffective, the burden must rest to prove that treatment will be effective in remedying or alleviating the mental disorder.
55(1) and 56(3)	Add subsection (e) "no less restrictive method of providing treatment is appropriate to remedy or alleviate the child's mental disorder in the circumstances." Infringing a *Charter* right is only justifiable if there is no other less restrictive method of remedying or alleviating the disorder. The onus must rest with the Minister to provide an exhaustive list of service providers, alternative placements, and the harm-reduction measures explored to provide safe and effective treatment in a less restrictive manner than confinement.
56(4)	Remove "if the court is satisfied that" and replace subsections (a) to (d) with reference to criteria in section 56(3).

The changes outlined above are necessary to provide legislative protections to ensure the child's behaviour warrants an infringement of a guaranteed *Charter* right.

All the best,

Morgan Manzer
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