

the province in which the young person is held in custody shall cause the young person to be brought before the youth court and the youth court may, after affording both parties and the parents of the young person an opportunity to be heard and if it is satisfied that there are reasonable grounds to believe that the young person should be transferred to a place of detention for adults, order that the young person be transferred from the place of detention for young persons and to a place of detention for adults.

(3) For the purposes of determining an application under subsection (1), the youth court shall consider without limiting the generality of the foregoing,

(a) the young person's difficulties in controlling violent impulses to the point of endangering the safety of any other person in the place of detention where the young person is being kept;

(b) whether the young person is a psychological threat to other young persons in the place of detention where the young person is being kept; and

(c) whether it is in the best interests of the young person to keep the young person in a place of detention for young persons.

(4) Six months before a young person in respect of whom an order has been made under subsection (1) attains the age of eighteen years, a youth court may on application of the young person, the young person's counsel, the Attorney General or the Attorney General's agent, after affording both parties and the parents of the young person an opportunity to be heard, order that the young person's detention in a place of detention for young persons, be extended until the young person reaches the age of twenty years, provided the court is satisfied that it would be in the interest of the young person for the court to do so."

Mr. Rob Nicholson (Parliamentary Secretary to Minister of Justice and Attorney General of Canada): Mr. Speaker, first of all, just as a point of clarification for the House, it would seem to me that if motion No. 4A were passed that motion No. 7 would not be necessary inasmuch as I believe they deal with the same thing.

This clause arises out of a number of areas and certainly not the least of which are concerns raised by members of the legislative committee that looked at C-12 or its predecessor C-58 in the last session of Parliament. That concerns the placement and detention of young people both prior to trial and post-conviction of individuals who have been the subject of a transfer provision, the one that was spoken of in the last motion. If a young person has been transferred to ordinary court, the question arises as to where and how that individual would be detained.

Government Orders

In motion No. 4A, the government motion, we break it down into two parts, the pre-trial detention and the post-conviction. Within the pre-trial detention we make a distinction. We say that if the individual is under the age of 18 there is a presumption that he would be kept separate and apart from adult offenders. At the same time, if the young person who has been transferred has now reached the age of 18 or older, there is a presumption that he would be held in the ordinary courts with other adults.

One of the things I should say is that both these presumptions are rebuttable. They are reviewable. The motion indicates to whom and how an application might be made to change that and the notice that should be given.

The crux of what we are talking about here in the pre-trial phase is young people should be treated differently and it is a good idea for the long-term rehabilitation of an individual for his or her well-being as a young person that he or she should be kept separate and apart. As I say, that is not an iron-clad rule. Circumstances may make that impossible. Circumstances may make that undesirable but prior to the trial those are the two presumptions that we are suggesting in motion No. 4A.

On the other hand, for an individual who has been transferred to ordinary court and has been convicted, the second part of the government motion deals with that. It gives a judge basically three choices. One of them is that the young person could be kept separate and apart from an adult. Second, that individual may be placed in a provincial correctional institute or, in cases where the sentence is two or more years, a penitentiary.

One of the important things to remember in asking the House to pass this clause is that there are a number of considerations that go into a judge's decision as to where the most appropriate place is that this individual will be confined.

The motion and the proposed amendment, as you see, take into consideration a number of considerations we believe the judge should take into consideration, among them the safety of the young person and the safety of the public, which I already spoke of in the previous motion.