

BRIEF TO THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

C-464

An Act to amend the Criminal Code (justification for detention in custody)

March 16, 2010



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The Canadian Resource Centre for Victims of Crime (CRCVC) is a national, non-profit advocacy group for victims and survivors of serious, violent crime. We provide direct assistance and support to victims across the country, as well as advocating for public safety and improved services and rights for crime victims. The CRCVC is pleased to appear today before the Standing Committee on Justice and Human Rights to take part in the debate over Bill C-464, *An Act to amend the Criminal Code (justification for detention in custody)*.

Before we begin, we would like to acknowledge David and Kate Bagby, who have traveled a very long distance today to share their story with us. Their story is truly tragic, and you will soon learn the horrific details of the loss of their son and grandson. We are here, along with the Bagbys, to make sure that another family does not have to endure the same suffering.

The decision to grant bail is inherently difficult. A judge is asked to balance the rights of an accused, who is presumed innocent until proven guilty, against the protection public safety. It is our position that the protection of the public MUST take precedence over an accused's right to be released from custody pending trial. The *Criminal Code* has provisions that govern when detention should be ordered, and Bill C-464 seeks to amend these provisions and correct what is, in the CRCVC's opinion, a gross oversight. C-464 modifies section 515(10)(b) to provide that the detention of an accused in custody may be justified where it is necessary for the protection or safety of the accused's minor children. It is hoped that this modification might save the lives of children. Children, like Zachary Turner, whose life would not have been lost had the judges who twice granted Shirley Turner bail not done so. There are a number of examples where Zachary Turner was failed by the systems put

in place to protect him, but ultimately, the fact that he was not considered in the evaluation of Shirley Turner's risk led directly to his death.

We are fortunate in Canada in that cases of homicide where the victim is a child are rare. It is however, alarming how many of these young victims are killed by their parents. Statistics Canada reports show that, in 2006, there were 60 homicides committed against children and youth under the age of eighteen. This represents ten percent of all murders committed during that year. Thirty-six of these young victims, or 65% were murdered by family members. In 2003, thirty-three children under the age of twelve were murdered. Twenty-seven of these cases were solved, and of those, eighty-five per cent were found to be murdered by a parent. Over the past three decades (1977 to 2006), 90% of family-related homicide victims under the age of 18 were killed by a parent, the definition of which includes step- and adoptive parents. These statistics tell us that a significant number of murdered children lose their lives at the hands of their parents, and that the younger they are, the more likely it is that their parents take their lives.

Unfortunately, Statistics Canada does not record statistics on the number of cases that involved a parent who was released on judicial interim release when they murdered their child. We must therefore rely on individual cases reported in the media to capture these crimes. The media shows us that Zachary's was not a unique case.

- Peter Lee of Victoria, attempted to murder his wife in 2007. He was charged, but granted judicial interim release, despite a recommendation by police that he NOT be released by the courts. Conditions were imposed that required that he not have contact with his wife, yet in September of 2007 he murdered his six year old son as well

as his wife and her parents.

- In Cumberland, Ontario in April of 2006 Frank Maily murdered his two sons, ages six and nine, his daughter, aged twelve, and their mother. He then burned down their home, with their bodies in it, killing himself in the process. He was not to have contact with Francine, but he had visitation rights to the children, and committed these murders at the conclusion of one of their visits. Maily had a long history of domestic violence, and was on bail at the time that he murdered his family.
- In 2002, Lawrence Mends was released on bail in St. Catharines following an attempt to take the life of the mother of his child. When he returned to her home to attack her again, he wounded her and murdered their two year old son Robert, stabbing him in excess of twenty times with a knife.

These are just a few examples where risk to the children was not properly assessed.

In addition to these cases where children lost their lives, there are numerous cases where children were left orphaned when one parent murdered another, frequently in the presence of the children, or when their mother was trying to protect the children from harm. These children often survive solely because of the actions of their murdered parent, and will likely be irreparably harmed by these offences.

It was argued in the Turner case that Shirley Turner need not be detained, as she had allegedly sought to harm, and ultimately murdered the only person that she would have wanted to harm. Our experience working with victims of domestic violence tells us that this logic was flawed, that this is generally not the case. Abusers, especially those who prey on a spouse or significant other generally

don't differentiate between their spouse and their children, they seek to harm those who are vulnerable and dependent on them. The children, quite frequently are harmed to inflict pain on the spouse, or in response to the relationship shared by the spouse and children.

Our experience and media reporting tell us that the public is concerned about crimes committed by those who are on bail awaiting trial for other offences. This is especially true in cases involving serious or violent offences, the cases that this amendment was drafted to address. As written, it will enable a judge who is considering a bail application to take into account the risk that the accused is likely to commit serious crime if he or she is given bail, and include the accused's minor children in the determination of that risk.

The proposal does not suggest that all accused be denied bail, or that the conditions under which a person will be granted bail be made so onerous that no accused will be granted bail. It asks that meaningful consideration be given to the minor children of the accused when determining risk - children who are quite often at the greatest risk of harm at the hands of the accused. It does not dictate that bail will be refused in any given case, or make having children unfairly predispose an accused to remand.

On a daily basis, we assist Canadians whose lives, like the Bagby's, have been impacted by serious, violent crime. These victims and survivors want more than anything to ensure that the justice system has tools in place to prevent what happened to them or to their loved one from happening to anyone else. The legislative change proposed in Bill C-464 will compel the judiciary to consider the minor children of the accused when they are making a decision on judicial interim release. Had such

consideration been given to Zachary Turner, Christian Lee, Jessica, Brandon, and Kevin Mailly, and Robert Mends, and many others, they would likely be alive today.