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**SUBMISSIONS RELATING TO 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**

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INTRODUCTION

Justice for Children and Youth is a legal clinic and the operating arm of the Canadian Foundation for Children, Youth and the Law (“The Foundation”). The clinic provides select legal representation to youth aged 17 and under in the areas of child welfare, income maintenance, education, criminal law, family law, mental health law, health law, constitutional law and human rights. The clinic has frequently acted for young people seeking the protection of a Children's Aid Society, young persons who are victims of abuse and homeless youth.

The Foundation prepares policy and law reform positions on issues relating to the legal practice of the clinic, based on the needs and experience of its clients. The clinic also provides public legal education to youth and youth-serving agencies.

Justice for Children and Youth appeared before the task force on homelessness and has attended government consultations on possible amendments to the *Child and Family Services Act* and the Education Act. The clinic has also been granted standing in all of the levels of courts in Ontario and in the Supreme Court of Canada to make submissions on questions of law, especially those relating to the constitutionality of legal provisions affecting the human rights of young persons.

In 1985, a report entitled *Pornography and Prostitution in Canada: Report of the Special Committee on Pornography and Prostitution* was released (the "Fraser Report"), shortly after the Committee on Sexual Offences Against Children produced the *Badgley Report*, which also considered child prostitution. Justice for Children and Youth responded to the *Badgley Report* and a copy of this response is attached. Prostitution issues are discussed at pages 34 to 42.

As the Fraser Committee noted:

...It is important that programs which are developed are voluntary and staffed by people sensitive to the realities of the street scene and who will respond to need, rather than intruding.... The approach must be supportive without being judgmental, avoiding at all costs the view that their major objective is reform or (worse still) repentance. This is a field in which misplaced moral fervour or even unthinking condescension can be extremely counterproductive.¹

As the *Badgley Report* says:

It is clear that no attempt to rehabilitate young prostitutes is likely to succeed unless it focuses attention on the need of these youths to alter their attitudes toward themselves and their way of living. Especially tailored helping programs are required, having services designed to enhance the self-esteem and self-confidence of young prostitutes by imparting to them job or trade-related skills as

¹ At p.529

well as conventional "life skills". Such programs, if successful, would also make it more financially feasible for these youths to get off the street. Programs having these objectives are vital prerequisites for the kind of action that is required to assist juvenile prostitutes to start a new life, one in which they have a perception of themselves as persons capable of living and working in a manner that is personally fulfilling, socially accepted and free of unacceptable risks to their health and safety.²

BILL 86

OVERVIEW

The stated purpose of the *Bill* is to protect children under the age of 18 who are involved in prostitution. Young people who are unable to escape from prostitution because of coercion or pressure of a pimp deserve our protection. No child should be forced to engage in prostitution in order to buy food or obtain shelter. Indeed, Canada is signatory to the *U.N. Convention on the Rights of the Child* and was a driving force behind the ratification of this international obligation. Problems relating to child prostitution can and should be addressed. However, Ontario already has legislation dealing with young people who are in need of protection, *the Child and Family Services Act*. It is important that legislative provisions for the protection of children are consistent, and that a two-tier system of child protection is avoided. Therefore this *Bill* is not necessary if the *Child and Family Services Act* is amended to authorise the protection of children up to the age of eighteen.

It is also important not to disguise punishment as protection.³ The Constitution limits provincial powers to regulate with respect to local conditions of public order and morality, since the power to legislate such issues is an exclusive federal power.⁴ Specifically, provincial attempts to control prostitution have been found to be unconstitutional.⁵ To ensure consistency and to reinforce the protective purpose, it is our submission that the stated goals of this Bill can best be effected by amendments to the *Child and Family Services Act* rather than by the enactment of separate legislation which may well be found to be unconstitutional. The reasons for this position and specific examples are set out in this brief.

Much work and discussion about homeless and runaway youth, including the issue of prostitution, has occurred since the *Fraser* and *Badgley Reports* among the agencies whose mandate is to serve these youth. An Interagency Committee on Homeless and Runaway Youth representing the Children's Aid Society of Metropolitan Toronto, the Catholic Children's Aid Society, Jewish Family

2At p.1047

3 R. v. M.(C.) (1995), 82 O.A.C. 68; see also R. v. Lacroix, Quebec Court of Appeal, J.E. 92-588 and R. v. Roy (1998), 125 C.C.C. (3d) 442 (Que.C.A.)

4 A.-G. Ontario v. Hamilton Street R. Co., [1903] A.C. 524

5 Westendorp v. The Queen, [1983] 1 S.C.R. 43; Goldwax v. City of Montreal, [1984] 2 S.C.R. 525

and Child Services, Native Child and Family Services, Youthlink-Inner City, Evergreen/Yonge Street Mission, Covenant House, the YMCA of Greater Toronto, Street Outreach Services/Anglican Houses and including Judge Lynn King of the Ontario Court (Provincial Division) created a *Protocol* in August 1993 which was followed by the development of a training package and the *Final Report of the Under 16 Street Youth Project* dated September 1996. It would be foolish not to take advantage of this knowledge. Although the *Project* and *Protocol* address youth under the age of 16 because of the current age limitations of the *Child and Family Services Act*, the experience, wisdom and conclusions of this Interagency Committee are also applicable to sixteen- and seventeen-year-olds who seek the protection of child welfare legislation.

It is the position of the Foundation, that *Bill 86* ignores much of what numerous reports on child prostitution have recommended. Unfortunately, the *Bill* seeks a cosmetic and simplistic solution, which only addresses the problem in the most superficial manner. If the *Bill* becomes law, it may remove young streetworkers as well as other street-involved youth from sight, but rather than provide permanent solutions, it will merely drive them underground, into more unsafe environments. It does not provide programs or services especially tailored to their specific needs, as is recommended by the *Badgley Report*, which would help make it more financially feasible for these youths to get off the street. Rather, it proposes to keep the young person locked away for up to 30 days, without any regulations as to what, if any, programs or services will be offered during this period of time, or for the period following their "incarceration".

ANALYSIS

RECOMMENDATION #1:

Bill 86 is fundamentally flawed and should not be passed. Children under the age of 16 involved in prostitution can be found in need of protection under the *Child And Family Services Act*. Children's Aid Societies should be given greater resources to fulfil this mandate. If there are to be legislative supports for young people seeking to leave prostitution, in particular, those supports should be incorporated into the *Child and Family Services Act*.

In the alternative, if the legislature does not support recommendation 1, the following recommendations should be implemented:

Section 1(1): Age of "child"

The *Protection of Children Involved in Prostitution Act, 1998* defines a "child" to whom the provisions of the Bill apply as a person under the age of 18 years. The *Child and Family Services Act* defines a "child" who can be found to be in need of protection as a person who is "actually or apparently" under the age of sixteen. This inconsistency is significant and is likely to have an adverse effect on youth. The *U.N. Convention on the Rights of the Child* defines a child as a person

under the age of 18. Ontario has ratified the *Convention* with respect to matters within provincial jurisdiction. The *Convention* provisions relating to the protection of children from abuse and neglect would seem to require Ontario to extend the protections of the *Child and Family Services Act* to those under 18.

Children's Aid Societies across the province are generally very reluctant to take into care a person who is 15 or even 14 under the current *Child and Family Services Act* regime. Although children of this age group are legally entitled to be found in need of the protection of the state, a scarcity of resources and the difficulty of providing effective services for young people approaching independence whose time with a Children's Aid Society will inevitably be short and whose needs are likely to be more complex contribute to this reluctance. We have frequently represented young people who have exhausted the list of friends with whom they can briefly stay and who wish the protection of a Children's Aid Society. They have been required, in some instances, to bring a third party application to the court, even though in the large majority of cases either the court has found the young person to be in need of protection or the relevant Society has, after the application has been filed, consented to a protection order.

Young persons aged sixteen or seventeen who are abused at home should not be required to fend for themselves financially. Some, dealing with the after-effects of abuse, are not ready to live without adult supervision; others who try to live as adults must either quit school and find an unskilled job or meet new, more stringent social assistance qualifications, which include an absolute requirement relating to school attendance. A child from an abusive home may well have attendance problems that disqualify the child from social assistance but which are, in fact, merely further evidence that the child needs the state's protection. A young person who has been sexually, physically or emotionally abused at home should not have less access to the protection of the state than a young person who survives by being involved in prostitution. The Panel of Experts on Child Protection recommended in March, 1998 that young people aged 16 and 17 should be given access to the child protection system.⁶ Such an extension would, if appropriately funded, greatly assist Children's Aid Societies, schools, and above all, youth who want and need protection.

RECOMMENDATION #2:

That the age at which a young person can no longer be found to be in need of protection under the *Child And Family Services Act* be raised to eighteen, but only on consent of the young person, and that Children's Aid Societies be given appropriately greater resources for this expanded mandate.

Section 1(1): Protective safe house

Young people apprehended under the *Act* would be taken to a "safe facility" as designated by the Minister. Young people apprehended under sections 40-43 of the *Child and Family Services Act*

⁶Protecting Vulnerable Children at p.52

are to be taken to a "place of safety" as designated by the Director. To have two different types of houses designated by two different systems is confusing and would lead to duplicate bureaucracies and red tape. It would make the placement of children who are in need of protection on more than one ground impossible if one of the grounds is involvement in prostitution. What is essential, both for constitutional reasons and to enhance the effectiveness of any legislative initiative, is that the place of safety be a place of protection, not a place of punishment, not a custodial facility, and not a detention centre.

RECOMMENDATION #3:

That young persons apprehended as a result of their participation in prostitution be taken to a place of safety as required under the *Child And Family Services Act*.

Subsection 1(2): Ground for protection

For the purposes of the *Protection of Children Involved in Prostitution Act, 1998*, a young person is in need of protection if the young person is "engaging in prostitution or attempting to engage in prostitution". The *Child and Family Services Act* sets out 12 grounds for finding that a child is in need of protection (see Appendix A):

The *Child and Family Services Act* is a code which provides for legal representation for children at any stage in a proceeding. It is submitted that engaging in prostitution should be added to the *Child and Family Services Act* as an additional ground in section 37(2) in order to ensure equal treatment of young people who are found to be in need of protection because they are engaging in prostitution as compared to young people who are found to be in need of protection on other grounds. Such an addition would encourage consistency and would encourage young people who wish to get out of a life of prostitution to seek out the assistance of Children's Aid Societies.

The *Child and Family Services Act* provides that a person may be found in need of protection because the young person has been harmed or exploited in one of the enumerated ways. The harm or exploitation has occurred or there is a substantial risk that it will occur, because of the acts or omissions of the persons having charge of the young person. While it broadens this concept to legislate that a young person may be in need of protection because of the sexual conduct of an unrelated adult, this broadening may be justified where the young person is exploited. If the sexual relationship is exploitive or harmful, it is equally damaging to the young person whether caused by a parent, a caregiver, or a total stranger. However, the state should not step in to interfere with sexual transactions that are not exploitive or harmful, for example, a sexual relationship between two seventeen-year-olds which includes a gift of a piece of jewellery.

The *Criminal Code* recognises certain age-based presumptions with respect to exploitation and harm. It recognises that sexual experimentation between young people who are within two years of

each other's age will not be presumed to be exploitive. Further, the *Criminal Code* also provides that people 14 and over can consent to sexual activity with people regardless of their age, providing that the person is not in a position of trust or authority⁷. It is submitted that there ought to be a limitation on prostitution as a statutory ground for being in need of protection: the prostitution must involve an adult. This restriction is important since prostitution is not illegal. It is the exploitation of a young person or the harm that is done to the young person that may justify state intervention. Where such exploitation is absent, the state should not deny the human rights of a young person to choose to live in any way that is not illegal.

RECOMMENDATION #4:

That engaging in prostitution with an adult be added to the grounds for protection in section 37(2) of the *Child And Family Services Act*.

Section 4 and 5: Grounds for Apprehension

The *Bill* has a lower threshold for taking youth into custody than similar provisions such as British Columbia's *Secure Care Act*, s. 2, which provides that youth must be at high risk of serious harm and be unwilling and unable to reduce that risk. Under *Bill 86* there need only be reasonable grounds to believe the individual is sexually exploited or at risk of being sexually exploited.

RECOMMENDATION #5

The threshold for taking youth into custody should be higher, such that the youth must be at high risk of serious harm, and unable to reduce that risk through less intrusive means.

Subsection 5 (1): Warrants

Under subsection 5(1), a police officer or a Children's Aid Society worker may apprehend an individual without a warrant and convey him or her to a place of safety, if they have reasonable grounds to believe the child is at risk of sexual exploitation for commercial purposes.

Child protection workers have the right to apprehend children without a warrant under section 40 (6) of the *CFSA* only if they have reasonable and probable grounds that the child is in need of protection and there would be substantial risk to a child's health and safety during the time it would take to go for a warrant. Further, the child protection worker can ask for police assistance.

⁷ *Criminal Code*, R.S.C. 1985, c. C-46, ss. 150.1, 153.1

Child protection workers, unlike police officers, are trained to identify situations in which children are genuinely at risk and need immediate intervention. Furthermore, the threshold for not obtaining a warrant is significantly higher under the *CFSA*, the child must be at immediate risk or a warrant must first be obtained, whereas under *Bill 86*, it need only be impracticable in the circumstances. This wording is far too vague and would allow a police officer to waive a warrant in almost any circumstance.

Recommendation #6

Only trained child protection workers should be able to apprehend without a warrant.

Subsection 4(5): Identification

It is not necessary in an application or warrant to specify a child by name or specify the premises where the child is located.

While it may not be practical or possible in all cases to name the child who may be at risk, or give the exact location, there is no direction as to exactly what kind of identification will be necessary in the warrant. There is a concern that the description may be sufficiently vague such that the police officer or Children's Aid Society worker may not only apprehend children at risk, but may apprehend any child who happens to be in a particular location, such as street youth in parks. There are also concerns that this subsection can be easily abused in order to discourage homeless youth from being visible.

RECOMMENDATION #7:

The child should be identified by either name, or a detailed physical description as in any other warrant.

Section 7: Notification

This section of the *Bill* requires a police officer to notify a child protection worker as to whether a child has been taken to a "safe facility" and should be amended in accordance with Recommendation 4.

RECOMMENDATION #8:

That section 7 be amended in accordance with Recommendation 4.

Subsection 9(1): Natural Justice

While section 9 (1) of the *Act* provides for a show cause hearing before a justice, it states that it must be brought within 24 hours, or as soon after as is practicable. Further, the child need not be given notice of a right to contact a lawyer or the reason for the apprehension at any point before the show cause hearing. Denying both of these is a denial of the right to natural justice, as well as a violation of *Charter* rights.

RECOMMENDATION #9:

The child should have the right to a show cause hearing within 24 hours of apprehension. This right is especially important as the children are being held in locked facilities and further, do not have to be informed of the right to contact a lawyer or the reason for apprehension at the time of apprehension.

RECOMMENDATION #10:

Immediately upon apprehension, the child should be informed of the right to counsel and the reason for the apprehension in accordance with principals of natural justice.

Section 10: Confinement

As has been stated, a young person has the right to live independently at the age of 16. Section 11 (3) authorises the confinement of a young person up to and including the age of 18, (if age attained after apprehension) pending an application being brought before the court. There is no right to appeal this confinement. The *Bill* does not take into account the wishes and development of a young person who has the legal right to live independently. The legal system must take into account the developmental stage of the youth⁸. Therefore, no order should be made without their consent.

RECOMMENDATION #11:

That a child protection worker may not apply to a court for a protection order relating to an apprehended 16 or 17-year-old without the consent of the young person.

⁸Report of the Panel of Experts on Child Protection, Protecting Vulnerable Children, March 1998 at p.11

Subsection 10(5): Continued Confinement

Subsection 10(5) of the *Bill* authorises a child protection worker to confine the child in a safe facility, until the court makes a final order. Without the authority of a court, this provision is a deprivation of liberty without hearing or any procedural protections required by the Rule of Law. It should be amended.

RECOMMENDATION #12:

That subsection 10(5) of the *Bill* be amended to provide that if a protection application is made and where a child protection worker has reasonable and probable grounds to believe that confinement in a place of safety is the least restrictive means of protecting the child, the child protection worker may apply to a court for an order extending the confinement until the application is heard.

Subsection 12 (1): Release of the Child

Under subsection 12(1), at the end of the period of confinement the facility shall return the youth under the age of 16 either to the custody of the parents, or shall notify the society that the child may be in need of protection. Children under the age of 16, who are street involved, often have left their custodial home because of abuse. The determination of whether the custodial home is a safe environment should be left to the children's aid societies who have the expertise to make this determination.

RECOMMENDATION # 13:

That subsection 12(1) be amended such that at the end of confinement the Children's Aid Society shall determine whether the child is in need of protection, or can safely be returned to the custodial home.

Subsection 16 (2): Locked Facilities

Under subsection 16 (2) of the *Bill*, the child who is confined in a safe facility may be confined in a locked facility, or in a locked area of a facility. Under *CFSA* subsections 40 (6) and 44 (10), the child who is apprehended without a warrant or under certain other special circumstances, may be temporarily placed in an open custody facility, and then only if no less restrictive place is feasible. It is clear, that unlike the *CFSA* whose purpose is to protect children, the treatment of children under *Bill 86*, while purporting to be protective, is penal in nature.

RECOMMENDATION # 14

All children apprehended under *Bill 86* should be treated in the same manner as children taken under the *CFSA*. They should be placed in open facilities rather than locked up.

Section 16: Right to Participation

Under section 16, the determination of where the youth should be sent is made by the Society without consent or any input by the young person. Further, the Society may decide to transfer the young person without their consent. Under the *CFSA* section 107, children in care have the right to be consulted and to express their views whenever significant decisions are made; there are no such protections under *Bill 86*.

RECOMMENDATION #15

Young people taken into custody should have the same rights to participate in their care, treatments, and programs as are available under the *CFSA*.

Section 19: Provision of Services

Section 19 of the *Bill* specifically states that no regulations under the *CFSA* applies to any services under the *Bill*. This means that not only do the children apprehended under this *Bill* have none of the benefits which have been worked out over the many years that the *CFSA* has been in effect, but further, the government intends on passing *Bill 86*, without any regulations in place. As the *Bill* now stands, there are no provisions for services which are to be provided to apprehended children. Nor is there any provision in the *Bill*, as it now stands, to ensure that no child can be apprehended until appropriate services are in place.

A study of homeless youth in Toronto⁹, found that sex workers in their sample were, on average, the group who left home at a younger age, and had the lowest educational credentials. The Report concluded that youth involved in the sex trade industry tended to be the most disadvantaged both in terms of their past, and present circumstances. Therefore, they faced the most significant barriers to achieving and maintaining mainstream employment.

Not only does the lack of education and training have a major impact on the ability to find and maintain unemployment, lack of stable housing is a major factor. Having no “call back” address to put on resumes, an inability to present a clean and neat appearance, as well as a general inability to

⁹ *Making Money: The Shout Clinic Report on Homeless Youth and Employment*, 1999.

maintain enough structure in one's life (having to spend time finding places to sleep, not being able to prepare regular meals, keeping track of time) are all problems which are associated with lack of stable housing. According to the Report, stable housing is the key determinant of employability.

Short term services will do little if anything, to improve the lives of children and young involved in the sex trade. Further, without ensuring that they are provided with permanent stable housing, as well as educational and training opportunities, there is nothing to provide them with a permanent alternative to working in the sex trade.

RECOMMENDATION #16

No child should be apprehended under this *Bill* until appropriate regulations are in place to ensure that children held under this legislation are afforded appropriate services which will assist them in leaving situations where they are sexually exploited, and in finding long-term alternative solutions.

CONCLUSION

It is sad that the lives of some of our youth leave them with prostitution as their best option. In order to offer protection and greater safety to youth who wish to leave street life or the "protection" of a pimp, the *Child and Family Services Act* should be amended to extend the option of protection to include youth aged sixteen and seventeen, on consent. Appropriate resources should be directed to the Children's Aid Societies in Ontario, to allow them to fully implement the harm-reduction strategies of the Protocol for helping homeless and runaway youth, in order to provide long term solutions. Young people who support themselves by prostitution should be afforded the same rights and protections as other young people in need of protection, and not be subjected to quasi-criminal legislative experiments. The expertise of the many agencies that work with homeless and runaway youth and of the Panel of Experts on Child Protection should inform any legislative debate about child protection. Child protection agencies and youth-serving agencies should be funded to provide on-going, systematic research on the effectiveness of intervention strategies, in order to reduce the harm to young people seeking to escape a life of prostitution, rather than resources going to short term, "band-aid" solutions.

SUMMARY

The work of Justice for Children and Youth and other experts in children's rights and welfare has shown that effective interventions for young people must be supportive, non-judgmental and tailored to their needs. To protect children involved in prostitution in a consistent, non-punitive

manner, the *CFSA* should be amended to allow protection for youth until age 18. *Bill 86* will lead to unconstitutional and ineffective apprehensions. For these reasons, we recommend:

1. *Bill 86* should not be passed.

Alternatively, we recommend:

2. The age that youth can be found to be in need of protection under the *CFSA* be raised to 18, on consent of the young person; that CASs be supported for this expanded mandate.
3. That youth apprehended under the *Bill* be taken to a place of safety as required under the *CFSA*.
4. That engaging in prostitution with an adult be added to the grounds for protection to the *CFSA*.
5. The threshold for taking youth into custody be a high risk of serious harm, and inability to reduce risk through less intrusive means.
6. Only trained child care workers should be able to apprehend without a warrant.
7. The child should be identified by either name, or a detailed physical description.
8. That section 7 be amended in accordance with recommendation and 4.
9. The child should have the right to a show cause hearing within 24 hours of apprehension.
10. The child should be immediately informed of right to counsel and reason for apprehension.
11. That a child protection worker may not apply for a protection order relating to an apprehended 16 or 17-year-old without the consent of the young person.
12. If a protection application is made and confinement is the least restrictive means of protection, the protection worker may apply for an extension until the application is heard.
13. That at the end of confinement, the CAS shall determine whether the child is in need of protection, or can safely be returned to the custodial home.
14. All children apprehended should be treated in the same manner as children taken under the *CFSA*. They should be placed in open facilities rather than locked up.
15. Young people taken into custody should have the same rights to participate in their care, treatments, and programs as are available under the *CFSA*.
16. No child should be apprehended until regulations are in place to ensure appropriate services to assist them in leaving exploitive situations and finding long-term alternative solutions.

APPENDIX A

Section 37(2) of the *Child and Family Services Act* R.S.O. 1990, c.C.11 :

A Child is in need of protection where,

- (a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by that person's failure to care and provide for or supervise and protect the child adequately;
- (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);

(c) the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;

(d) there is a substantial risk that the child will be sexually molested or sexually exploited as described in clause (c);

(e) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent other person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment;

(f) the child has suffered emotional harm, demonstrated by severe,

(i) anxiety

(ii) depression,

(iii) withdrawal, or

(iv) self-destructive or aggressive behaviour, and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm;

h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition;

(i) the child has been abandoned, the child's parent has died or is unavailable to exercise his other custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody;

(j) the child is less than twelve years old and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence

and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, those services or treatment;

(k) the child is less than twelve years old and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately; or

(l) the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is twelve years of age or older, with the child's consent, to be dealt with under this Part.