

**Submission to the  
Legislative Assembly of Nunavut Standing Committee on Legislation  
Bill 36 – *The Mental Health Act***

Submitted by the Representative for Children and Youth

April 6, 2020



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**NUTAQQANUT INULRAMIRNULLU**  
UQAGTIKHAANIK

REPRÉSENTANT DE  
L'ENFANCE ET DE LA JEUNESSE

REPRESENTATIVE FOR  
CHILDREN AND YOUTH

As the Representative for Children and Youth, I am pleased to provide this submission to the Standing Committee on Legislation for its review of Bill 36 - *The Mental Health Act*.

This submission is written on behalf of the Representative for Children and Youth's Office and is informed by the United Nations *Convention on the Rights of the Child*,<sup>1</sup> a legally binding, international, human rights agreement, which explains all of the rights young people have and the responsibilities that governments have in supporting these rights.

As a signatory to the United Nations *Convention on the Rights of the Child*, Canada has agreed to uphold child rights, making it necessary for all governments, including the Government of Nunavut, to take steps to include child specific rights in legislation in order to provide young people with the additional support that their age warrants.

As it is the role of my office to take every opportunity to ensure that the best interests of young people and their rights are at the forefront of all government initiatives, the Representative for Children and Youth's Office makes these recommendations to the Standing Committee on Legislation, in support of young people's rights and in accordance with our legal duty to make recommendations on child and youth-related legislation, pursuant to Section 3 of the *Representative for Children and Youth Act*.<sup>2</sup>

### **No Decision About Me Without Me**

It is essential that adults teach and empower young people to make decisions. Including the young person in the decision making process when the decision being made affects them, is an effective way for the young person to learn this skill. Article 12 of the United Nations *Convention on the Rights of the Child*<sup>3</sup> requires government to support a child's right to express their opinion in all matters affecting them and that their opinion should be given "due weight in accordance with the age and maturity of the child."<sup>4</sup> It is important that this right be included in a meaningful way in legislation and that no minimum age requirement be associated with the decision to include them.

The following four recommendations are made on the founding principle of no decision about me without me and *ajiiqatigiinniq*, decision making through discussion and consensus.

#### **Recommendation #1**

**Amend part 1, section 2 of Bill 36 to add specific criteria that sets out when a minor will be considered a mature minor including language that ensures that:**

- (a) there will be no minimum age for a young person to be declared a mature minor; and**

**(b) the health professional has determined that the medical treatment and the procedure to be used is in the best interests of the minor and their continuing health and well-being.**

The criteria governments use to decide if a young person is a mature minor should be publicly available, yet it is equally important that the decision about maturity and capacity of the young person be made on a case-by-case basis.

Government is responsible for protecting young people and their best interests must be a consideration at all times, especially when determining whether or not a young person is a mature minor. The Inuit societal value of *pijitsirniq*, serving and providing for family and community, reinforces the responsibility of service providers to make decisions in accordance with the best interests of the child.

### **Recommendation #2**

**Amend part 1, section 3 of Bill 36 to require health professionals to allow minors to choose their *tikkuaqtaujuq* or *tikkuaqtaujuut*, or in cases where the minor does not have the capacity to choose, require health professionals to consider every minor's opinion, as to whom their *tikkuaqtaujuq* or *tikkuaqtaujuut* should be.**

Bill 36, as proposed, allows adults and mature minors to designate a person(s) as their *tikkuaqtaujuq* or *tikkuaqtaujuut*. For minors, the designation defaults to their parents or persons who are lawfully entitled to give consent to the minor's medical treatment. In most cases, a young person's parents may be the most appropriate *tikkuaqtaujuut*; however, there may be exceptions where they are not. With the best interests of the young person seeking mental health supports or who has been identified as requiring mental health supports in mind, the legislation must require the health professional to allow minors to choose or at least consider every minor's opinion as to the selection of their *tikkuaqtaujuq* or *tikkuaqtaujuut*.

### **Recommendation #3**

**Amend part 1, subsection 3(9) of Bill 36 to include the minor as an individual who may apply to the Board of Review for a decision respecting "the consent or decision" referred to in that subsection.**

Subsection 3(9) does not allow the minor to apply to the Board of Review. The minor could request to be declared a mature minor, but a young person may not be considered a mature minor for the purposes of making medical decisions or they may not want to take on sole responsibility for decisions related to their care while being mature enough to understand that there is a disagreement between themselves and their selected *tikkuaqtaujuq* or *tikkuaqtaujuut*. Implementing this recommendation would give them the opportunity to request a decision from the Board of Review on that point.

#### **Recommendation #4**

**Amend part 7 of Bill 36 to require the Board of Review to consider the opinion of the young person when making a decision about them, unless the Board of Review determines that doing so is inappropriate or in any way harmful to the young person.**

Article 12 of the United Nations *Convention on the Rights of the Child* also specifies that young people shall “be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child”.<sup>5</sup> When the Board of Review is considering an issue concerning a child or youth, they must be held to this standard in Nunavut’s legislation and be required to offer every young person an opportunity to express their opinion, unless the Board of Review determines that providing this opportunity can reasonably be expected to be inappropriate or harmful to the young person.

#### **Supporting recommendations made in *Our Minds Matter***

The Standing Committee on Legislation is familiar with my office’s recommendations in *Our Minds Matter: A Youth-Informed Review of Mental Health Services for Young Nunavummiut (Our Minds Matter)*.<sup>6</sup> Many of the recommendations do not require legislative change; however, Bill 36 appears to address some of the concerns that were raised during our review and noted in our report. For instance, sections 14, 45, and 58 of Bill 36 should facilitate the provision of follow-up and aftercare upon discharge, which aligns with one aspect of Recommendation #5 of *Our Minds Matter*.<sup>a</sup> While Nunavut’s legislation only governs healthcare workers and the provision of mental health care in the territory, I hope that the Government of Nunavut will also require similar actions from those who are providing services to young Nunavummiut on behalf of the Department of Health through contracts out-of-territory.

In addition, it appears that Section 17 of Bill 36 — notification following suicide attempt — may address Recommendation #7 of *Our Minds Matter*.<sup>b</sup> I note that this section of Bill 36 will not

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<sup>a</sup> Recommendation #5 is that “The Department of Health ensure that contracts that adequately meet service demands are established for out-of-territory mental health services for children and youth where these services are not currently available in Nunavut, and ensure that children and youth receive appropriate aftercare and follow-up upon return to their home communities.”

<sup>b</sup> Recommendation # 7 is that “The Department of Health implement recommendations iii(4) and iii(5) from the 2015 Coroner’s Inquest into Suicide, and apply these recommendations in cases of suicidal ideation in addition to suicide attempts. These recommendations state, in part, that the Government of Nunavut,

Recommendation iii(4)

Establish a formal follow-up protocol for individuals who have attempted suicide by April 2016.

Recommendation iii(5)

Change the Mental Health Act to allow for family to be contacted and immediately involved after a suicide attempt regardless of the age of the person who has attempted suicide. This should be systematic, and it

come into force before initial regulations pertaining to it are made. I encourage the Standing Committee on Legislation to use their influence to ensure that the government moves forward on these regulations in an urgent manner.

The following recommendation is made in the spirit of *piliriqatigiinni/ikajuqtigiinni*, working together for a common cause, in recognizing the value of departments working together to ensure young people have a safe, familiar space to pursue wellness.

#### **Recommendation #5**

#### **Amend part 2, section 4 of Bill 36 to specifically include the delivery of intensive mental health interventions for students in schools.**

In *Our Minds Matter*, the Representative for Children and Youth's Office called on "the Department of Health and the Department of Education [to] collaborate to ensure a full range of mental health services, including universal programming, targeted interventions, and intensive interventions are delivered in Nunavut schools."<sup>7</sup>

During our review of mental health services for young Nunavummiut, young people told us that they want mental health services in the school. This recommendation speaks directly to their requests. Making intensive mental health services available in schools, in addition to their availability at the local health centre, provides options to best meet the needs of young Nunavummiut. Service providers would be responsible for working with their young clients to determine the most appropriate setting for service delivery on a case by case basis.

Adding the delivery of intensive mental health interventions for students in schools will allow the Department of Health and the Department of Education to work together to create a model that best serves Nunavut's children and youth.

#### **Reporting on the mental health status of children and youth: Embedding the government's responsibility to consider children and youth separately from adults in the *Mental Health Act***

Part 2, Section 5 of Bill 36 requires the Minister to design a strategy to meet the mental health and addictions needs of Nunavummiut. Children and youth have unique mental health needs that may not be met with the same resources that are used for adults because of their ongoing development. Given that 40% of Nunavummiut are 19 years of age or younger,<sup>8</sup> it is important

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requires also that Mental Health workers receive training and re-orientation to always develop safety plans and conduct counselling with the family present. This is a new recommendation that involves allotment of resources to re-training and a change in orientation to a more family and community intervention approach.

To supplement recommendation iii(5), we further recommend adding the option of an alternative adult if a family member is deemed inappropriate."

that their mental health needs be given specific attention in the mental health and addictions strategy and in the annual reporting required under Section 75.

The following two recommendations reflect *pijitsirniq*, serving and providing for family and community, by recognizing the important role that young people have in the family and in the community.

#### **Recommendation #6**

**Amend part 2, section 5 of Bill 36 to require that the mental health and addictions strategy address the specific mental health needs of children and youth.**

#### **Recommendation #7**

**Amend part 9, section 75 of Bill 36 to require that the annual report include, at a minimum, statistics on services and outcomes of children and youth who had contact with mental health services.**

#### **Reporting of critical injuries to the Representative**

Paragraph 4(1)(b) of the *Representative for Children and Youth Act* allows the Representative for Children and Youth to “review any matter related to the death or critical injury of any child or youth.”<sup>9</sup> Under this legislation, the Coroner and the Director of Child and Family Services are required to report certain deaths and critical injuries to the Representative for Children and Youth. While these reports provide the Representative for Children and Youth with some information on the deaths of young people and critical injuries and deaths of young people specifically in contact with the child and family services system, these reports do not provide a comprehensive picture of the wellness of children and youth in Nunavut.

Required reporting of this information will assist the Representative for Children and Youth in fulfilling their duties. These duties include providing suggestions and recommendations to government departments and designated authorities about the effectiveness, responsiveness, and relevance of legislation and policies related to children and youth, and about the availability, effectiveness, responsiveness, and relevance of programs and services related to children and youth.<sup>10</sup>

The following two recommendations support *inuuqatigiitsiarniq*, respect and care for other people and our relationships, as they will provide my office with information to inform our recommendations to government that will identify ways to prevent the injuries and deaths of young Nunavummiut.

### **Recommendation #8**

**Amend Bill 36 to require that reports made pursuant to part 3, section 7 regarding suicide attempts be forwarded to the Representative for Children and Youth as a critical injury, where the attempt is made by an individual who meets the definition of a child or youth as defined in the *Representative for Children and Youth Act*.**

The Mental Health Commission of Canada recognizes a suicide attempt as a significant risk factor for death by suicide<sup>11</sup>. Any suicide attempt, regardless of the level of physical harm suffered, is a critical injury and should be reported to the Representative for Children and Youth.

### **Recommendation #9**

**Amend Bill 36 to require that information collected pursuant to part 3, subsection 8(5) be forwarded to the Representative for Children and Youth as a critical injury, where the information concerns an individual who meets the definition of a child or youth as defined in the *Representative for Children and Youth Act*.**

Bill 36 presents an opportunity to increase the mandatory reporting to the Representative for Children and Youth about the children and youth who suffer injuries that may result in serious or long-term impairment of their health, including their mental health. These injuries may include, but are not limited to, witnessing a traumatic event and the death of a parent or sibling.

### **Disclosure and providing information: Embedding the government's obligations under the *Representative for Children and Youth Act***

There are several references to the Representative for Children and Youth in Bill 36. These are important sections of the Bill that will strengthen protections for children and youth and we encourage the Standing Committee on Legislation to support these protections. However, there is room for the proposed legislation to be further strengthened using a similar approach and adding specific references where it is appropriate to do so.

The following two recommendations support *piliriqatigiinniq/ikajuqtigiinniq*, working together for a common cause, by mirroring requirements of the Department of Health with those that are already in place in the *Representative for Children and Youth Act* in the *Mental Health Act*.

### **Recommendation #10**

**Amend part 3, section 13(1) of Bill 36 to allow for the disclosure of information to the Representative for Children and Youth.**

Section 26 of the *Representative for Children and Youth Act* requires that any individual who has custody or control of information that the Representative for Children and Youth considers necessary to perform their duties or exercise their powers “shall disclose the information to the Representative.”<sup>12</sup> This is a broad provision and will apply to the information gathered pursuant to Bill 36. However, for the certainty of individuals interpreting the legislation, the recommendation is being made that Bill 36 be amended to specifically allow for disclosures to the Representative for Children and Youth.

Since our office opened in 2015, and despite continuous information sessions, training, and protocols with the departments who are most often involved in our advocacy work, front line service providers continue to question the authority that I and my delegates have to collect information that the front line workers have access to. Individuals tend to be knowledgeable of legislation that most impacts their work. Embedding their duty to provide information to the Representative for Children and Youth within their enabling legislation is the best way to ensure there are no barriers to receiving information necessary to perform my duties as laid out in the *Representative for Children and Youth Act*.

#### **Recommendation #11**

**Amend part 5, section 32 of Bill 36 to require that, where the individual is a child or youth, as defined in the *Representative for Children and Youth Act*, they will be provided with information on the Representative for Children and Youth’s Office as outlined in section 22 of the *Representative for Children and Youth Act*.**

Section 31 of Bill 36 requires that a child or youth is provided with the means to communicate with or receive private visits from the Representative for Children and Youth. This is important because it provides certainty about the obligations of individuals who work under the *Mental Health Act* and ensures that children, youth, and their families are provided with the opportunity to have their rights supported. However, in Bill 36 there is no requirement to inform children, youth, and their families that they have the right to access my office.

The proposed legislation provides for the regulations to specify what rights information must be provided. However, Section 22 of the *Representative for Children and Youth Act* requires that child or youth serving facilities provide information about the Representative for Children and Youth to all children and youth receiving services at the facility. These sections do apply to hospitals and health centres in Nunavut. However, for certainty, and to appropriately mirror the responsibilities that already exist in the *Representative for Children and Youth Act*, these requirements should appear in Bill 36 to further raise awareness and improve compliance.



### **Ensuring child rights specific knowledge of service providers**

Bill 36, as proposed, includes specific provisions outlining the general rights of patients as well as the requirements and necessary knowledge of human rights and administrative law related to involuntary mental health services for a rights advocate or a mental health rights specialist. While the United Nations *Universal Declaration of Human Rights*<sup>13</sup> sets a universal standard for human rights, the United Nations *Convention on the Rights of the Child* recognizes the specific rights of children and takes into account their vulnerability and dependence on adults.<sup>14</sup> It is essential that child rights are included as unique in Bill 36, as well as being more specifically understood by rights advocates or mental health rights specialists for the purposes of the *Mental Health Act*. As noted previously, 40% of Nunavummiut are 19 years of age or younger.<sup>15</sup>

These three recommendations support *pijitsirniq*, serving and providing for family and community, by requiring that the individuals who will be serving children and youth are familiar with their rights.

#### **Recommendation #12**

**Amend part 5, section 18 of Bill 36 to include a general statement of child rights as they are agreed to in the United Nations *Convention on the Rights of the Child*, in addition to the rights enjoyed by others.**

#### **Recommendation #13**

**Amend part 8, subsection 71(2) of Bill 36 to include a requirement that in order to be a rights advocate, a person must be knowledgeable of child rights as per the United Nations *Convention on the Rights of the Child*.**

#### **Recommendation #14**

**Amend part 9, section 77 of Bill 36 to include a requirement that a health professional must be knowledgeable of the United Nations *Convention on the Rights of the Child* in order to be designated as a mental health rights specialist for the purposes of the Act.**

### **Conclusion**

As the Representative for Children and Youth, I make this submission in the spirit of collaboration and in support of Nunavut taking this opportunity to meet Canada's international commitment to the United Nations *Convention on the Rights of the Child*. Incorporating these recommendations into the *Mental Health Act* support child rights, particularly:

**Article 3:** The right to the protection of the best interests of the child;

**Article 4:** The responsibility of government to implement children's rights;

**Article 12:** The right to have one’s opinion heard and considered;

**Article 19:** The right to be protected from all forms of violence;

**Article 23:** The right of disabled children to special care, education and training;

**Article 24:** The right to the highest attainable standard of health;

**Article 25:** The right to periodic reviews of placements;

**Article 39:** The right to rehabilitative care; and

**Article 42:** The right to know their rights.

Thank you for the opportunity to contribute to this important work. I look forward to following how the Standing Committee on Legislation responds to these recommendations. I am available to meet with you to discuss this submission or to provide more information about child rights and the work of our office.

Yours sincerely,

Jane Bates  
Representative for Children and Youth

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<sup>1</sup> Office of the High Commissioner for Human Rights. (1989). *Convention on the Rights of the Child*. Geneva, CH: Office of the High Commissioner for Human Rights. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>2</sup> *Representative for Children and Youth Act*, S Nu 2013, c27. Retrieved from <https://www.nunavutlegislation.ca/en/download/file/fid/11264>

<sup>3</sup> Office of the High Commissioner for Human Rights. (1989). *Convention on the Rights of the Child*. Geneva, CH: Office of the High Commissioner for Human Rights. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>4</sup> Office of the High Commissioner for Human Rights. (1989). *Convention on the Rights of the Child*. Geneva, CH: Office of the High Commissioner for Human Rights. Para. 35. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>5</sup> Office of the High Commissioner for Human Rights. (1989). *Convention on the Rights of the Child*. Geneva, CH: Office of the High Commissioner for Human Rights. Para. 36. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>6</sup> Representative for Children and Youth’s Office. (2019). *Our minds matter: A youth-informed review of mental health services for young Nunavummiut*. Iqaluit, NU: Representative for Children and Youth’s Office. Retrieved from [https://rcynu.ca/sites/rcynu.ca/files/RCYO\\_MHReview\\_EN\\_Web.pdf](https://rcynu.ca/sites/rcynu.ca/files/RCYO_MHReview_EN_Web.pdf)

<sup>7</sup> Representative for Children and Youth’s Office. (2019). *Our minds matter: A youth-informed review of mental health services for young Nunavummiut*. Iqaluit, NU: Representative for Children and Youth’s Office. Page 4. Retrieved from [https://rcynu.ca/sites/rcynu.ca/files/RCYO\\_MHReview\\_EN\\_Web.pdf](https://rcynu.ca/sites/rcynu.ca/files/RCYO_MHReview_EN_Web.pdf)

<sup>8</sup> Statistics Canada. (2017). Nunavut [Territory] and Canada [Country] (table). Census Profile. 2016 Census. Statistics Canada Catalogue no. 98-316-X2016001. Ottawa. Released November 29, 2017. Retrieved from <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E>

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- <sup>9</sup> *Representative for Children and Youth Act*, S Nu 2013, c27. Page 4. Retrieved from <https://www.nunavutlegislation.ca/en/download/file/fid/11264>
- <sup>10</sup> *Representative for Children and Youth Act*, S Nu 2013, c27. Retrieved from <https://www.nunavutlegislation.ca/en/download/file/fid/11264>
- <sup>11</sup> Mental Health Commission of Canada. (2018). *Research on suicide and its prevention: What the current evidence reveals and topics for future research*. Ottawa, ON.
- <sup>12</sup> *Representative for Children and Youth Act*, S Nu 2013, c27. Page 13. Retrieved from <https://www.nunavutlegislation.ca/en/download/file/fid/11264>
- <sup>13</sup> General Assembly of the United Nations, Universal Declaration of Human Rights, 10 December 1948, 217 A (III). Retrieved from : <https://www.refworld.org/docid/3ae6b3712c.html>
- <sup>14</sup> UNICEF Canada. (n.d.). About the Convention on the Rights of the Child. Retrieved from <https://www.unicef.ca/en/policy-advocacy-for-children/about-the-convention-on-the-rights-of-the-child>
- <sup>15</sup> Statistics Canada. (2017). Nunavut [Territory] and Canada [Country] (table). Census Profile. 2016 Census. Statistics Canada Catalogue no. 98-316-X2016001. Ottawa. Released November 29, 2017. Retrieved from <https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm?Lang=E>