

Bill No. 34 of 1945.

A BILL RESPECTING JUVENILE OFFENDERS

NOTE.

This is a new Act and is applicable only to offences by juveniles under eighteen years of age against Provincial Statutes and by-laws of municipalities, and to sexual immorality. The more serious offences, namely, offences against *The Criminal Code* will continue to be dealt with under *The Juvenile Delinquents Act*.

“Court” is defined as the Juvenile Court established under *The Child Welfare Act* and “Judge” as a Judge of the Juvenile Court designated to have jurisdiction under this Act.

Section 3 constitutes as offences to be dealt with under the Act, breaches of provincial Statutes and municipal by-laws and sexual immorality.

Section 4 defines the duties of the Child Welfare Commission under this Act, and section 5 provides for judges of the Juvenile Court being designated to have jurisdiction under this Act.

Section 6 gives exclusive jurisdiction under this Act to Juvenile Court Judges designated for the purpose.

Sections 7 to 10 set out the procedure to be followed in the apprehension and trial of a child under this Act.

Section 11 prohibits, with the exception mentioned in subsection (3), the confinement of children in gaols, etc., but only in detention homes or shelters.

Section 12 provides that where there is no detention home used exclusively for children, a child shall not be detained unless such course is considered necessary in the opinion of the officers mentioned.

Sections 13 and 14 deal with bail and postponement of hearings respectively.

Section 15 provides for informality of proceedings.

Section 16 defines the powers of the judge in cases where a child has been adjudged to be a juvenile offender, and subsection (2) authorizes the Court to make an order upon the municipality to which the child belongs to pay such amount for its support as the judge may determine to be necessary, and subsection (3) sets out how the Court is to determine the municipality to which the child belongs.

Section 17 provides that, in cases where a fine is imposed and the Court is satisfied that a parent or guardian has

conducted to the commission of the offence, the Court may direct that the fine, etc., not exceeding fifty dollars, shall be paid by the parent or guardian. The section also provides for recovery of the fine, etc., against the parent by distress, and also provides for imprisonment on default.

Section 18 provides that Protestant and Roman Catholic children shall only be placed in foster homes of Protestant and Roman Catholic families respectively.

Section 19 prohibits, with certain exceptions, the presence of a child in Court during the trial or preliminary hearing of any person charged with an offence.

Section 20 prohibits a juvenile offender after conviction under this Act from being imprisoned in a gaol or penitentiary or any place where adults are imprisoned.

Section 22 makes it an offence for any person to induce a child to leave a detention home, etc., or attempts to remove a child therefrom or to knowingly harbour a child who has unlawfully left an institution.

Section 23 deals with the powers of the Juvenile Court and the Judge to maintain order and to enforce the execution warrants, etc., issued by him.

Section 24 deals with the right of appeal from decisions of the Juvenile Court under this Act. An appeal can only be taken when special leave to appeal has been granted by a Judge of the Supreme Court. The procedure to be followed if leave is granted is set out in the section. Subsection (7) provides that the appeal shall be heard on the material before the Juvenile Court, and such further evidence as the Supreme Court Judge may require or permit.

W. S. GRAY,
Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 34 of 1945.

An Act Respecting Juvenile Offenders.

(Assented to _____, 1945.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

SHORT TITLE

1. This Act may be cited as "*The Juvenile Offenders Act.*"

INTERPRETATION

- 2.** In this Act, unless the context otherwise requires,—
- (a) "Child" means any boy or girl under the age of eighteen years;
 - (b) "Commission" means the Child Welfare Commission constituted under *The Child Welfare Act*, Chapter 8 of the Statutes of Alberta, 1944;
 - (c) "Court" or "Juvenile Court" means the Juvenile Court constituted under Part II of the said *The Child Welfare Act*;
 - (d) "Detention home" means a building or part of a building set apart for the custody or detention of children, pending the disposition of their cases by a judge of the Juvenile Court, and subject to the supervision of the Commission;
 - (e) "Guardian" includes any person who has in law or in fact the custody or control of any child;
 - (f) "Industrial school" means any industrial school or juvenile reformatory or other reformatory institution or refuge for children duly approved by provincial statute or by the Lieutenant Governor in Council;
 - (g) "The judge" means any judge of the Juvenile Court designated by the Lieutenant Governor in Council to have jurisdiction under this Act;
 - (h) "Juvenile offender" means any child who violates any provision of a Provincial Statute or of any by-law or ordinance of any municipality or any provision of *The Criminal Code* creating an offence which is not an indictable offence, or who is guilty of sexual immorality or any similar form of vice;
 - (i) "Minister" means the member of the Executive Council charged with the administration of this Act;

- (j) "Municipality" means a city, town, village, municipal district, improvement district and special area;
- (k) "Probation officer" means any probation officer duly appointed under the provisions of any provincial statute or of *The Juvenile Delinquents Act, 1929*;
- (l) "Shelter" means any building or part of a building, under the supervision of or approved by the Commission which may be used for the temporary care of children;
- (m) "Superintendent" includes the Superintendent of Child Welfare appointed under the provisions of *The Child Welfare Act*, and any other person however designated appointed under the provisions of this Act to perform similar duties, and any person appointed as a deputy superintendent;
- (n) "Ward of the Government" means,—
 - (i) any child who, by order of a judge has been committed temporarily or permanently to the care and custody of the Superintendent;
 - (ii) any child surrendered to the Superintendent by indenture, agreement or otherwise.

3.—(1) The commission by a child of any of the acts enumerated in paragraph (h) of section 2 of this Act shall constitute an offence, and shall be dealt with as hereinafter provided.

(2) Where a child is adjudged to have committed an offence, he shall be dealt with as one requiring help and guidance and proper supervision.

4. The Commission shall,—

- (a) enforce the provisions of this Act;
- (b) assist and advise the Minister in the administration of this Act;
- (c) perform such other duties under the provisions of this Act as may be prescribed by the Minister.

5.—(1) The Lieutenant Governor in Council may designate any judge or judges of the Juvenile Court to have jurisdiction under this Act.

(2) The Lieutenant Governor in Council may fix the salary to be paid to any judge designated under the provisions of subsection (1) and may from time to time vary or alter the same.

6.—(1) The Juvenile Court when presided over by a judge designated under the provisions of section 5 of this Act shall, notwithstanding the provisions of subsection (21) of section 14 and section 75 of *The Child Welfare Act*, have jurisdiction in all cases with respect to juvenile offenders as defined in paragraph (h) of section 2 of this Act.

(2) A juvenile offender shall be tried and dealt with under this Act and not otherwise, and prosecutions and trials under this Act shall be summary and shall *mutatis mutandis* be governed by the provisions of *The Criminal Code* relating to summary convictions in so far as such provisions are applicable.

7. When any child is apprehended under the provisions of this Act with or without a warrant, such child shall be placed in the custody of a probation officer who shall deal with the child in a manner which shall best serve the interests of the child, and he shall as soon as possible after the apprehension of the child, inform his parents of the action taken.

8.—(1) Due notice of the hearing of any charge of an offence committed under this Act shall be served on the parent or parents or the guardian of the child, or if there be neither parent nor guardian, or if the residence of parent or parents or guardian be unknown, then on some near relative living in the city, town or municipality, if any there be, whose whereabouts is known, and any person so served shall have the right to be present at the hearing.

(2) The judge may give directions as to the persons to be served under this section, and such directions shall be conclusive as to the sufficiency of any notice given in accordance therewith.

9.—(1) The Clerk of every Juvenile Court shall have power *ex officio* to administer oaths, and also in the absence of the judge, to adjourn any hearing for a definite period not to exceed ten days.

(2) In the absence of the Clerk, a probation officer may act as Clerk.

(3) It shall be the duty of the Clerk of the Juvenile Court to notify a probation officer in advance when any child is to be brought before the Court for trial.

10.—(1) The trials of children under the provisions of this Act shall take place without publicity and separately and apart from the trials of other accused persons, and at suitable times to be designated and appointed for that purpose.

(2) Such trials shall be held in the private office of the judge or in some other private room in the court house or municipal building, or in the detention home, or if no such room or place is available, then in the ordinary court room.

(3) No report of an offence committed or said to have been committed by a child, or of the trial or other disposition of a charge against a child, shall without the special leave of the judge seized with the case be published in any newspaper or other publication.

11.—(1) No child, pending a hearing under the provisions of this Act, shall be held in confinement in any gaol or other place in which adults are or may be imprisoned, but shall be detained at a detention home or shelter used exclusively for children or under other charge approved of by the judge or by the mayor or reeve of the city, town, village or municipal district, or in an improvement district or special area, by a probation officer.

(2) Any person violating the provisions of subsection (1) shall be liable on summary conviction before a judge to a fine not exceeding one hundred dollars or to imprisonment not exceeding thirty days, or to both fine and imprisonment.

(3) The provisions of this section shall not apply to a child apparently over the age of fourteen years who, in the opinion of the judge, or in his absence, of the mayor or reeve of the city, town, village or municipal district, or in the case of an improvement district or special area, a probation officer, cannot safely be confined in any place other than a gaol or lock-up.

12.—(1) Where a warrant has been issued for the arrest of a child, or where a child has been arrested without a warrant in a place in which there is no detention home used exclusively for children, no incarceration of the child shall be made or had unless in the opinion of the judge or in his absence, of the mayor or reeve of the city, town, village or municipal district, or in the case of an improvement district or special area, of a probation officer, such course is necessary in order to insure the attendance of such child in court.

(2) In order to avoid, if possible, such incarceration, the verbal or written promise of the person served with notice of the proceedings as aforesaid, or of any other proper person, to be responsible for the presence of such child when required, may be accepted; and in case such child fails to appear, at such time or times as the court requires, the person or persons assuming responsibility as aforesaid shall be deemed guilty of contempt of court, unless in the opinion of the court there is reasonable cause for such failure to appear.

13. Pending the hearing of a charge under the provisions of this Act, the judge may accept bail for the appearance of the child charged at the trial as in the case of other accused persons.

14. The judge may postpone or adjourn the hearing of a charge under the provisions of this Act for such period or periods as he may deem advisable, or may postpone or adjourn the hearing *sine die*.

15.—(1) Proceedings under this Act with respect to a child, including the trial and disposition of the case, may be as informal as the circumstances will permit, consistent with a due regard for a proper administration of justice.

(2) No adjudication or other action of a juvenile court with respect to a child shall be quashed or set aside because of any informality or irregularity where it appears that the disposition of the case was in the best interests of the child.

16.—(1) In the case of a child adjudged to be a juvenile offender, the judge may in his discretion take either one or more of the several courses of action hereinafter in this section set out as he may in his judgment deem proper in the circumstances of the case,—

- (a) suspend final disposition;
- (b) adjourn the hearing or disposition of the case from time to time for any definite or indefinite period;
- (c) impose a fine not exceeding twenty-five dollars, which may be paid in periodical amounts or otherwise;
- (d) commit the child to the care or custody of a probation officer or of any other suitable person;
- (e) allow the child to remain in its home, subject to the visitation of a probation officer, such child to report to the court or to the probation officer as often as may be required;
- (f) cause the child to be placed in a suitable family home as a foster home, subject to the friendly supervision of a probation officer and the further order of the court;
- (g) commit the child to the charge of the Superintendent as defined in *The Child Welfare Act*;
- (h) commit the child to a detention home to await disposition by the Superintendent of Child Welfare.

(2) In every such case the court shall make an order upon the municipality to which the child belongs to pay such amount for its support as the judge may determine to be necessary; provided, however, that the municipality may from time to time recover from the parent or parents any sum or sums paid by it pursuant to such order.

(3) For the purpose of this section, any child shall be deemed to belong to the municipality in which the child has last resided, prior to the date of apprehension, for a period of six months; but, in the absence of evidence to the contrary, residence of six months in the municipality in which the child is taken into custody shall be presumed;

Provided always that for the purpose of this section, the time during which a child is outside the Province or during which a child is an inmate of a children's boarding home, a correctional or charitable institution, a hospital or any home or institution for custodial, medical or other care or supervision, shall not be included in the calculation of time of residence of the child;

Provided also that if a child of a woman in receipt of an allowance under *The Mothers' Allowance Act* is apprehended under the provisions of this Act, the child shall, not-

withstanding any other provision hereof, be deemed to belong to the municipality liable for payment of any part of the allowance under *The Mothers' Allowance Act*.

17.—(1) Where a child is adjudged to have been guilty of an offence and the court is of the opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without restitution or any other action, the court may if satisfied that the parent or guardian has condoned to the commission of the offence by neglecting to exercise due care of the child or otherwise, order that the fine, damages or costs awarded be paid by the parent or guardian of the child, instead of by the child.

(2) Where a fine is imposed and ordered to be paid by the parent or guardian, the limit of amount imposed shall not exceed fifty dollars and costs and damages.

(3) Where, under the provisions of this section or of section 16, a sum of money is ordered to be paid, the judge may adjudge either by the order respecting the payment of such sum or by an order made subsequently, that the same shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress by imprisonment, and the provisions of *The Criminal Code* relating to summary convictions shall apply to any such order and the enforcement of the same.

(4) No order shall be made under this section without giving the parent or guardian an opportunity of being heard; but a parent or guardian who has been duly served with notice of the hearing pursuant to section 8 of this Act shall be deemed to have had such opportunity, notwithstanding the fact that he has failed to attend the hearing.

(5) A parent or guardian shall have the same right of appeal from an order made under the provisions of this section as if the order had been made on the conviction of the parent or guardian.

(6) Any action taken under this section may be additional to any action taken under section 16.

18. No Protestant child dealt with under this Act shall be placed in any Roman Catholic family as its foster home; nor shall any Roman Catholic child dealt with under this Act be placed in any Protestant family as its foster home; but this section shall not apply to the placing of children in a temporary home or shelter or detention home established under the authority of a statute of the province.

19.—(1) No child, other than an infant in arms, shall be permitted to be present in court during the trial of any person charged with an offence or during any proceedings preliminary thereto, and if so present it shall be ordered to be removed unless it is the person charged with the alleged offence, or unless its presence is required, as a witness or otherwise, for the purposes of justice.

(2) This section shall not apply to messengers, clerks and other persons required to attend at any court for the purposes connected with their employment.

20. No juvenile offender shall, under any circumstances, upon or after conviction, be sentenced to or incarcerated in any penitentiary, or other gaol or police station, or any other place in which adults are or may be imprisoned.

21. Every probation officer duly appointed under the provisions of *The Juvenile Delinquents Act, 1929*, of the Statutes of the Dominion of Canada, or of any provincial statute, shall have in the discharge of his or her duties as such probation officer, all the powers of a constable, and shall be protected from civil actions for anything done in *bona fide* exercise of the powers conferred on him by *The Juvenile Delinquents Act* or any provincial statute.

22. Any person who induces or attempts to induce any child to leave any detention home, industrial school, foster home or any other institution or place where such child has been placed under the provisions of this Act, or who removes or attempts to remove such child therefrom, without the authority of the Superintendent, or who, when a child has unlawfully left the custody of an institution or foster home knowingly harbours or conceals such child without notice of the child's whereabouts to the Superintendent or to the institution or to the local police authorities, shall be guilty of an offence and shall be liable upon summary conviction before a judge to a penalty not exceeding one hundred dollars or to imprisonment for a period not exceeding one year, or to both fine and imprisonment.

23.—(1) Every Juvenile Court shall have such and like powers and authority to preserve order in court during the sittings thereof and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any court in Alberta and by the judges thereof, during the sittings thereof.

(2) Every judge of a Juvenile Court, whenever any resistance is offered to the execution of any summons, warrant or execution or other process issued by him, may enforce the due execution of the same by the means provided by law for enforcing the execution of the process of other courts in like cases.

24.—(1) A Supreme Court judge may in his discretion on special grounds, grant special leave to a parent, the municipality if concerned, or the Superintendent, to appeal from any decision of the Juvenile Court under this Act.

(2) No leave to appeal shall be granted under the provisions of this section unless the judge granting the leave considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that the leave be granted.

(3) Application for leave to appeal under this section shall be made within thirty days of the making of the conviction or order complained of, and if such leave is granted, the notice of appeal shall be filed with the Clerk or Deputy Clerk of the Court of the judicial district or sub-judicial district in which the order was made within ten days from the granting of leave, and shall set out the particulars of the order appealed from and the grounds of the appeal.

(4) A copy of the notice of appeal shall be served upon the judge making the conviction or order, and upon the parent or parents of the child and the Commission and upon the municipality if any interested, within ten days from the date of the granting of leave to appeal or such longer time as a judge of the Supreme Court may order, and such service may be made personally or in such other manner as the judge granting leave to appeal may direct.

(5) The judge who made the order appealed from shall, within seven days from the time the notice of appeal is served upon him, forward to the Clerk or Deputy Clerk of the court of the judicial district or sub-judicial district in which the notice of appeal is filed, the order, the evidence taken at the hearing, all documents and exhibits filed at the hearing and a report setting out his reasons for making the order.

(6) Unless a Supreme Court judge shall otherwise direct, the appeal shall come on for hearing at the first sittings of the Supreme Court to be holden after the filing and serving of the notice of appeal, in the judicial district or sub-judicial district in which the notice of appeal is filed.

(7) Upon the hearing, the Supreme Court judge shall determine the appeal upon the material filed and such further evidence as he, in his discretion may require or permit to be given, and may affirm the order made or revoke the same, or may make any order that a judge could have made at the original hearing, and for that purpose have all the powers of a judge appointed under this Act.

25. This Act shall be liberally construed to the end that its purpose may be carried out, to wit: That the care and custody and discipline of a juvenile offender shall approximate as nearly as may be that which should be given by its parents, and that as far as practicable every juvenile offender shall be treated, not as a criminal, but as a mis-directed and misguided child, and one needing aid, encouragement, help and assistance.

26. This Act shall come into force on the first day of May, 1945.

No. 34.

FIRST SESSION
TENTH LEGISLATURE

9 GEORGE VI

1945

BILL

An Act Respecting Juvenile
Offenders.

Received and read the

First time

Second time

Third time

HON. DR. CROSS.

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