

No. 31

2nd Session, 14th Legislature, Alberta
9 Elizabeth II

BILL 31

A Bill to amend The Child Welfare Act

HON. MR. JORGENSEN

Explanatory Note

2. Clauses (c), (d) and (e) of section 5 relate to welfare organizations that may be established under sections 43 to 47. These sections are repealed by this Bill (see clause 11) and section 5 is amended accordingly. Section 5, clauses (c), (d) and (e) presently read:

"5. The Commission shall
.....

- (c) encourage the formation of child welfare organizations in the Province and assist in their organization and co-operate with them,
- (d) advise child welfare organizations and instruct them in the performance of their duties,
- (e) ensure that a record is kept by such organizations of particulars connected with each case under their care,".

3. Sections 6 and 7 presently read:

"6. The Minister, with the approval of the Lieutenant Governor in Council shall appoint a committee of three or more persons, one of whom shall be designated as chairman, to be known as the "Home Investigating Committee".

7. The Home Investigating Committee shall

- (a) examine and dispose of applications received from prospective foster-parents,
- (b) keep careful and accurate records of foster homes approved by it,
- (c) arrange for the supervision and inspection of foster homes in which children have been placed for adoption or otherwise, and
- (d) perform such other duties in relation to foster homes as may be assigned to it by the Commission."

The functions of the Home Investigating Committee are to be carried out by the Child Welfare Commission (see clause 2).

4. The definitions of "institution" in clause (g) and of "nursery" in clause (j) are replaced by a broader definition of "institution or nursery". Section 9, clauses (g) and (j) presently read:

"9. In this Part,
.....

- (g) "institution" means a house or other building or part thereof where four or more children are maintained by public funds;
.....
- (j) "nursery" means any play school, day nursery, nursery school, kindergarten, boarding nursery or home, other than a kindergarten established under section 395 of The School Act, where, whether for compensation or not, four or more children may be left by their parents or guardians for supervision or care during the day or for longer periods;"

5. Section 10, subsection (1) presently reads:

"10. (1) Each municipality shall appoint one or more child welfare workers for the enforcement of this Act, and notice of each appointment shall be given forthwith to the Commission."

6. Duty of apprehending authority to care for child who is apprehended under section 12.

BILL

No. 31 of 1961

An Act to amend The Child Welfare Act

(Assented to _____, 1961)

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

1. *The Child Welfare Act*, being chapter 39 of the Revised Statutes, is hereby amended.

2. Section 5 is amended by striking out clauses (c), (d) and (e) and by substituting the following:

- (c) arrange for the examination and disposal of applications received from prospective foster parents,
- (d) keep careful and accurate records of foster homes approved by it,
- (e) arrange for the supervision and inspection of foster homes in which children have been placed for adoption or otherwise,

3. Sections 6 and 7 are repealed.

4. Section 9 is amended

- (a) by striking out clause (g) and by substituting the following:

(g) "institution or nursery" means a building or part thereof, other than a home maintained by a person to whom the children living in that home are related by blood or marriage, wherein care, supervision or lodging is provided for for four or more children under the age of eighteen years but does not include a place of accommodation designated by the Minister as not constituting a child caring institution or nursery;

- (b) by striking out clause (j).

5. Section 10 is amended by adding immediately after subsection (1) the following new subsection:

(1a) No welfare worker appointed under subsection (1) may exercise any of the powers given by this Act until his appointment has been approved by the Commission.

6. The following new section is added immediately after section 12:

7. (a) Section 14, subsection (1) presently reads:

"14. (1) Where it appears to the judge that the public interest and the interest of a child declared by him to be a neglected child may be best served thereby, the judge may make any one of the following orders:

- (a) that the case be adjourned sine die, and that the child be returned to his parent or guardian or other person in whose charge he may be, subject to the direction of the judge; or
- (b) that the child be temporarily committed to the care and custody of the Superintendent for such specified period not exceeding twelve months as in the circumstances of the case the judge deems necessary."

(b) Provision for bringing case back to court if child neglected during period of adjournment under subsection (1).

8. Section 14a is amended to clarify the procedure in applying for an order of permanent wardship. Subsection (2) presently reads:

"(2) Where a child has been declared a neglected child and committed to the temporary care and custody of the Superintendent, or where the Superintendent is of the opinion that a child is a neglected child and should be made a permanent ward of the Government, the Superintendent or any person authorized by him in writing may apply to a judge upon such notice to the parent or guardian of the child as a judge may direct, for an order committing the child to the permanent care and custody of the Superintendent."

9. At the present time The Child Welfare Act makes no provision for the parents to contribute toward the maintenance of a child temporarily committed under section 14 to the custody of the Superintendent of Child Welfare. This new section will permit the court to make an order requiring the parents to so contribute.

12a. From the time that a child is apprehended under section 12 until final disposition by the judge, the authority who apprehends the child is responsible for the care, maintenance and physical well-being of the child and no liability shall attach either to such authority or to any duly qualified medical practitioner by reason only that the child is provided with necessary medical or surgical care during such time.

7. Section 14 is amended

(a) as to subsection (1) by striking out clause (a) and by substituting the following:

(a) that the case be adjourned for not longer than twelve months from the date of the order and that the child in the interim be returned to his parents or guardian or other person having actual custody of the child at the time of apprehension subject to inspection and supervision by the Superintendent, or

(b) by adding the following new subsection immediately after subsection (1):

(1a) Where a case is adjourned pursuant to clause (a) of subsection (1), the Superintendent may, at any time he deems it advisable during the period of adjournment and by service of a notice in accordance with subsection (1) of section 13, bring the case again before the judge for further and other consideration and action under this section.

8. Section 14a is amended by striking out subsection (2) and by substituting the following:

(2) Where a child has been declared a neglected child and committed to the temporary care and custody of the Superintendent or where the Superintendent is of the opinion that a child is a neglected child and should be made a permanent ward of the Government, the Superintendent or any person authorized by him in writing may apply to a judge, on notice of motion, for an order committing the child to the permanent care and custody of the Superintendent.

(2a) A copy of the notice of motion shall be served personally upon the parent or guardian of the child at least ten days before the day fixed for the hearing of the application, but the judge, at the time fixed for the hearing, may make an order for substituted or other service or may dispense with the service.

(2b) A copy of any affidavit or other material to be used in support of the application shall not be served upon the parent or guardian.

9. The following new section is added immediately after section 14a:

10. Sections 22 and 23 presently read:

"22. When a neglected child is committed permanently to the care and custody of the Superintendent by an order under section 14a or by a surrender of custody under section 51, the Superintendent thereupon becomes the sole guardian of the person of the child.

23. When the Superintendent becomes the legal guardian of the person of a child, the legal guardianship continues until the child reaches the age of eighteen years unless the order or surrender of custody instrument specifies an earlier age for the termination of the guardianship."

Sections 22 and 23 are revised to make it clear that where children are permanently committed or surrendered to the care and custody of the Superintendent he becomes the sole and full legal guardian of the children. These amendments also continue his guardianship up to 21 years of age instead of 18. The amendments are to apply to children presently under his guardianship as well as those coming under his guardianship after the amendments come into force.

14b. (1) Where a neglected child is temporarily committed to the care and custody of the Superintendent under section 14, the judge making the order

- (a) shall enquire as to the ability of the persons liable under the law for the child's support and maintenance to contribute to the support and maintenance of the child, and
- (b) may, after giving such persons an opportunity to be heard, order them to pay to the Superintendent such monthly sum for the maintenance of the child as he considers proper, having regard to their ability to pay.

(2) A judge may, from time to time, vary the amount to be paid under the order, on the application of

- (a) the Superintendent, or
- (b) any person against whom the order is made,

upon proof of such circumstances as in his opinion justify a varying of the terms of the order.

(3) An order made under this section may be enforced in the same manner as an order made under *The Alimony Orders Enforcement Act*.

(4) The amount fixed by an order under this section shall not exceed the current rate paid by the Province for foster home care.

10. (1) Sections 22 and 23 are struck out and the following sections are substituted:

22. (1) Where

- (a) a neglected child is committed permanently to the care and custody of the Superintendent by an order under section 14a, or
- (b) a child is surrendered to him by an instrument under section 51,

the Superintendent becomes the sole legal guardian of the person and estate of the child.

(2) This section shall not be construed as affecting in any way any rights, duties or responsibilities of the Public Trustee with respect to any property held by him for or on behalf of an infant who is committed permanently to the care and custody of the Superintendent.

23. Where the Superintendent becomes the sole legal guardian of the person and estate of a child, the guardianship of the child continues

- (a) until he reaches the age of twenty-one years,
- (b) until he is adopted, or
- (c) until he is discharged from the care and custody of the Superintendent pursuant to section 48,

whichever first occurs, and thereupon any order under section 14a or instrument under section 51 in respect of that child terminates.

11. Sections 43 to 47 providing for the incorporation and operation of children's aid societies are repealed.

12. Section 49, subsection (1) is amended for greater clarity. Section 49, subsection (1) presently reads:

"49. (1) No person shall operate an institution or nursery without first having obtained a licence to do so from the Commission."

13. Section 50, which deals with the regulation of institutions and nurseries is amended to provide a greater degree of control. Subsections (7), (8) and (9) presently read:

"(7) Every institution or nursery shall

(a) at least once annually supply the Commission with information and particulars in accordance with regulations made by the Minister in that behalf, and

(b) furnish the Commission on request and without undue delay with such further information or particulars as the Commission may require concerning a child with whom the institution or nursery has dealt or to whom the institution or nursery has given care.

(8) A person or institution or nursery contravening a provision of this section is guilty of an offence and liable on summary conviction to a fine of not more than one hundred dollars, and in default of payment to a term of imprisonment of not more than three months.

(9) Any institution or nursery contravening the provisions of this section is liable on conviction for a second offence to have the authority of the institution or nursery to operate cancelled by order of the Lieutenant Governor in Council."

(2) Sections 22 and 23 as enacted by this section apply to all persons

- (a) who were committed permanently or surrendered to the care and custody of the Superintendent, and
- (b) who have not reached the age of eighteen years, before the commencement of this section.

11. Sections 43 to 47 are repealed.

12. Section 49 is amended

- (a) as to subsection (1) by striking out the words "without first having obtained a" and by substituting the words "unless he is the holder of a subsisting",
- (b) by adding the following new subsection immediately after subsection (3):
 - (4) The Minister may, in his discretion, exempt any institution or nursery or class thereof from complying with this section and section 50.

13. Section 50 is amended by striking out subsections (7), (8) and (9) and by substituting the following:

(7) The person in charge of every institution or nursery shall, by the first day of March in each year, provide the Commission with a report setting forth

- (a) the full name of every child in the institution or nursery on the thirty-first day of December of the preceding calendar year and of every child who was in the institution or nursery at any time during that calendar year,
- (b) a financial statement showing the revenue, expenditure and liabilities of the institution or nursery during the preceding calendar year, and
- (c) such other information concerning the affairs and management of the institution or nursery as may be required by the Commission to enable it to determine whether the institution or nursery is operated in a manner conducive to the best interest of the children therein.

(8) Where it appears to the Commission that

- (a) an institution or nursery is neglecting or has become incapable of giving adequate care to any child entrusted to its care,
 - (b) the premises described in a licence have become unfit or unsuitable for the purpose authorized by the licence, or
 - (c) the number of children kept in an institution or nursery exceeds the number specified in its licence,
- the Commission may, upon thirty days' notice in writing to the licence holder, cancel the licence.

14. A new section is added providing for temporary care of children for a limited time, by agreement, in cases where it is not necessary to go before the court for an order of guardianship.

The present section 57 deals with the children's aid societies to which sections 43 to 47 apply. These sections are repealed by clause 11 of this Bill.

15. Section 73, subsections (1) and (2) presently read:

"73. (1) An adult person having attained the age of twenty-one years and wishing to adopt an unmarried minor as his child may apply by petition to the Commission.

(2) The Commission shall investigate the application in the interests of the child and shall submit the proposed adopter's petition for an order of adoption to a judge within sixty days of the receipt thereof."

(9) An appeal lies to the Minister against the cancellation of a licence pursuant to subsection (8), and the Minister may in his discretion

(a) confirm the cancellation, or

(b) order that the licence be reinstated, either unconditionally or subject to such conditions as the Minister may prescribe.

(9a) Any person who

(a) operates an institution or nursery without being the holder of a subsisting licence to do so from the Commission, or

(b) contravenes any of the provisions of this section, is guilty of an offence and liable on summary conviction to a fine of not more than one hundred dollars and in default of payment to imprisonment for a term of not more than sixty days.

14. Section 57 is struck out and the following is substituted:

57. (1) A parent or other person who has actual custody of a child and who, through necessitous circumstances, illness or other misfortune likely to be of a temporary duration, is unable to make adequate provision for the child may apply to the Superintendent to have the child placed temporarily in a foster home or institution.

(2) The Superintendent may enter into an agreement with the applicant to accept the child for care in a foster home or institution for a period not exceeding three months and to assume that part of the cost of maintenance of the child that the parent or other person is unable to pay.

(3) Where the Commission considers it to be in the best interests of the child to do so, the Superintendent may renew an agreement for a further period not exceeding three months.

(4) The Superintendent may, if he considers it to be in the best interests of the child, terminate the agreement and cause the child to be brought before a judge for examination and in such case the child shall be deemed to be apprehended under section 12 as of the date of termination of the agreement and sections 13 to 16 apply *mutatis mutandis*.

(5) The Minister shall, out of the moneys appropriated by the Legislature for the purpose, pay that portion of the cost of maintaining the child that is not paid by the parent or other person pursuant to the agreement.

15. Section 73, subsection (2) is amended by striking out the words "sixty days" and by substituting the words "six months".

16. Section 74, subsection (1), clause (a) presently reads:

- "74. (1) The petition shall be supported by affidavit or affidavits, which shall disclose,
- (a) with regard to the child to be adopted,
 - (i) the name, age, sex, place of residence since birth and parentage,
 - (ii) the religion of the child's parents, or where the child is illegitimate, the religion of the mother, and
 - (iii) if the child has a guardian other than its parents or the Superintendent, the religion of the guardian, so far as known,".

The requirement that all places of residence since birth be shown is omitted.

17. Consent to adoption of a permanent ward of the Government. Section 76, subsection (1) presently reads:

- "76. (1) Subject to the other provisions of this Part respecting consent, no order of adoption shall be made without the consent
- (a) of the child, if the child has attained the age of fourteen years,
 - (b) of the guardian or guardians of the child."

18. The definition of "mother" for the purposes of Part III of the Act dealing with children of unmarried parents is revised for greater certainty. Section 93, clause (b) presently reads:

"93. In this Part,

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- (b) "mother" means
 - (i) a single woman or widow who has been delivered of an illegitimate child, or who is pregnant and likely to be delivered of an illegitimate child, or
 - (ii) a married woman who is living apart from her husband and who has been delivered of an illegitimate child, or who is pregnant and likely to be delivered of an illegitimate child, and who is living apart from her husband at the time of the conception of the child;".

19. Section 96 presently reads:

"96. The Commission shall by inquiry through child welfare organizations, maternity homes and otherwise obtain all possible information with respect to each child born out of wedlock."

The amendment would remove the requirement that an investigation be made in all cases.

20. Section 101, subsection (1), clause (b) presently reads:

"101. (1) In all proceedings, whether or not the putative father appears in obedience to the summons or pursuant to his recognizance, the judge, upon proof of the service of the summons or of the giving of the recognizance, as the case may be, and upon sufficient evidence being adduced before him as to the fact of the putative father's paternity, may make an order declaring the putative father to be the father of the child and requiring the declared father to make to the Commission any or all of the following payments:

-
- (b) a sum of money weekly, monthly or yearly towards the maintenance and education of the child until the child attains the age of sixteen years, or thereafter as long as he is mentally or physically incapable of earning his own living;".

21. A method of terminating payments under affiliation orders in certain cases is provided. The present subsection (2) is repealed. Section 104, subsection (2) presently reads:

"(2) No application to vary an affiliation order shall be made until the expiration of one year from the date of the order it is sought to vary.

16. Section 74, subsection (1), clause (a) is amended by striking out the words "since birth" in subclause (i).

17. Section 76 is amended by adding the following new subsection immediately after subsection (1) :

(1a) Where a child has been made a permanent ward of the Government, the only guardian whose consent is required under this section is the Superintendent.

18. Section 93 is amended by striking out clause (b) :
by substituting the following:

(b) "mother" means

(i) a single woman who has been delivered of a child or who is pregnant and likely to be delivered of a child,

(ii) a widow who

(A) has been delivered of a child, or

(B) is pregnant and likely to be delivered of a child,

twelve months or more after the death of her husband, or

(iii) a married woman living apart from her husband who

(A) has been delivered of a child, or

(B) is pregnant and likely to be delivered of a child,

twelve months or more after she ceased ~~co-~~
~~habiting~~ with her husband;

19. Section 96 is amended by adding immediately after the word "shall" the words ", in its discretion,".

20. Section 101, subsection (1), clause (b) is amended by striking out the words "thereafter as long as" and by substituting the words "until the child attains the age of eighteen years if".

21. Section 104 is amended by striking out subsection (2) and by substituting the following:

(2) An order under this Part for the payment of money for the maintenance and education of a child terminates

(a) on the death or adoption of the child, or

(b) subject to subsection (3), on the marriage of the mother where she retains the child in her custody.

(3) Before an order terminates under clause (b) of subsection (2), the Superintendent may apply to a judge for the continuation of the order after the marriage of the mother, and the judge, if he considers it to be in the best interests of the child, may so order.

22. Section 110 is amended for greater flexibility and to authorize the disposition of moneys no longer payable for the purposes for which they were collected. Section 110 presently reads:

- "110. The Commission or the Superintendent shall
- (a) ensure that all payments directed to be made by the declared father under an affiliation order are duly made, and in default of payment shall take necessary proceedings for the enforcement of the order, including the enforcement of a security given by the declared father,
 - (b) in default of payment, take the proceedings authorized by The Alimony Orders Enforcement Act, and
 - (c) ensure that moneys collected under an affiliation order are paid and applied forthwith, without any deduction, to or for the persons entitled to relief in accordance with the terms of the order and the provisions of this Part."

23. (a) Section 114, subsection (1) is amended to extend its scope and authorize the mother of an illegitimate child to be a party to a paternity agreement. It presently reads:

"114. (1) Where the putative father admits the paternity or possible paternity of the child and makes an adequate offer to provide for the maintenance and education of the child, he may enter into an agreement therefor with the Superintendent."

(b) Provision is made for the variation of a paternity agreement by mutual consent. At the present time these voluntary agreements can be varied only by a court order.

24. Forms 1 and 2 related to the incorporation of societies under sections 43 to 47. These sections are being repealed by clause 11 of this Bill.

22. Section 110 is struck out and the following is substituted:

110. (1) The Commission shall take such action as it considers necessary to collect any moneys payable to it under an affiliation order, including the taking of proceedings for the enforcement of the order and the realizing upon any security given by the declared father.

(2) Any proceedings for the enforcement of an affiliation order shall be taken by the Commission in accordance with *The Alimony Orders Enforcement Act*.

(3) The Commission shall ensure that the moneys collected under an affiliation order are paid out and applied for the purposes specified in the order and where moneys for the maintenance and education of a child are collected in other than equal monthly sums, shall cause the moneys to be paid out in such monthly sums as the Commission considers reasonable.

(4) Where upon the termination of an affiliation order any moneys collected under the order for the maintenance and education of a child remain in the hands of the Commission such moneys shall, in the discretion of the Commission, be

(a) repaid to the declared father who paid the money, or

(b) forfeited to the Crown.

23. Section 114 is amended

(a) by striking out subsection (1) and by substituting the following:

114. (1) Where a putative father admits the paternity or possible paternity of a child and makes an acceptable offer to pay all or any of the payments mentioned in subsection (1) of section 101, he may enter into an agreement therefor

(a) with the Superintendent, or

(b) with the Superintendent and the mother of the child,

(b) by adding the following new subsection immediately after subsection (4):

(5) A paternity agreement may be varied at any time by agreement of the parties thereto.

24. The Schedule is amended by striking out Forms 1 and 2.

25. This Act comes into force on the day upon which it is assented to.

No. 31

SECOND SESSION

FOURTEENTH LEGISLATURE

9 ELIZABETH II

1961

BILL

An Act to amend The Child Welfare
Act

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. JORGENSEN
