

1977 BILL 37

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Third Session, 18th Legislature, 26 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 37**

**THE CHILD WELFARE AMENDMENT ACT, 1977**

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THE MINISTER OF SOCIAL SERVICES  
AND COMMUNITY HEALTH

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First Reading .....

Second Reading .....

Third Reading .....

*Bill 37*

## **BILL 37**

1977

### **THE CHILD WELFARE AMENDMENT ACT, 1977**

*(Assented to \_\_\_\_\_, 1977)*

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

*1. The Child Welfare Act is hereby amended.*

*2. Section 25 is amended by adding the following subsections:*

(3) Where it appears to the judge that there are reasonable grounds to do so, he may

(a) adjourn the hearing from time to time, and

(b) order that during the adjournment the child remain under the care of the Director or be returned to his parents or either of them, or to his guardian or to any other person, either

(i) subject to inspection and supervision as provided under section 23, or

(ii) not subject to inspection or supervision.

(4) An order under subsection (3), clause (b) may be made upon any other condition that the judge considers warranted in the circumstances.

*3. Section 27 is amended*

*(a) as to subsection (2) by striking out the words "judge who" and substituting the words "clerk of the court that";*

## Explanatory Notes

1. This Bill will amend chapter 45 of the Revised Statutes of Alberta 1970.

2. Section 25 presently reads:

*25. (1) Where a child has been made a temporary ward of the Crown a further hearing may be held before a judge*

*(a) at any time during the period of temporary wardship if the Director considers it advisable, or*

*(b) at the expiration of the period of temporary wardship, or*

*(c) once during the period of temporary wardship but after the expiration of the period of appeal provided in section 27, upon the application of a parent or guardian of the child.*

*(2) Upon the further hearing the judge shall enquire and determine whether the circumstances justify the continuation of the temporary wardship or justify the return of the child to his parents, or either of them, or to his guardian or other person in whose care he may have been at the time of apprehension either*

*(a) subject to inspection and supervision as provided in section 23, or*

*(b) not subject to such inspection and supervision,*

*and as the circumstances require, the judge may make a further order under section 24, discharge a subsisting order under section 24, make an order under section 23 or find the child to be no longer a child in need of protection.*

3. Section 27, subsections (2) and (3) presently read:

*(2) A copy of the notice of appeal shall be served upon the judge who made the order and*

*(a) upon the parent or parents of the child or the guardian or other person in whose care the child may have been, or*

(b) *by striking out subsection (3) and substituting the following:*

(3) The clerk of the court that made the order appealed from shall, within seven days from the time the notice of appeal is served upon him, forward to the clerk of the court of the judicial district in which the notice of appeal is filed

- (a) the order,
- (b) the depositions or transcript evidence taken at the hearing, and
- (c) all documents and exhibits filed at the hearing.

4. *Section 41, subsection (1) is amended*

(a) *by adding after the word “believe” the words “and believes”, and*

(b) *by adding after the word “shall” the word “forthwith”.*

5. *Part 6 is struck out and the following substituted:*

## **PART 6**

### **COMPULSORY CARE**

**86.** In this Part,

- (a) “certificate” means a compulsory care certificate or a renewal certificate;
- (b) “compulsory care certificate” means a certificate issued pursuant to section 88;
- (c) “compulsory care order” means an order issued pursuant to section 87, subsection (1);
- (d) “institution” means an institution as defined in section 14;
- (e) “judge” means
  - (i) a judge of the juvenile court, or
  - (ii) a judge of the District Court acting under section 24;
- (f) “Legal Aid Office” means an office operated by The Law Society of Alberta under an agreement with the

(b) upon the Director,

as the case may be, within thirty days from the date of the making of the order, or such longer time as a judge of the Supreme Court may order.

(3) 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 of the court of the judicial district in which the notice of appeal is filed

(a) the order,

(b) the depositions or transcript evidence taken at the hearing,

(c) all documents and exhibits filed at the hearing, and

(d) a report setting out his reasons for making the order.

4. Section 41, subsection (1) presently reads:

41. (1) Any person who has reasonable and probable ground to believe that a child has been abandoned, deserted, physically ill-treated or is in need of protection shall report the ground of such belief to the Director or to any child welfare worker of the Department.

5. Part 6 presently reads:

**PART 6**

**CONFINEMENT OF CHILDREN**

86. (1) In this section "institution" means an institution as defined in Part 2.

(2) For the purposes of this section, a child shall be deemed to be confined if he is restricted in any manner to any room, cell or other part of an institution for a period in excess of that which a parent would reasonably impose upon his child in the exercise of discipline of the child.

(3) The Attorney General shall designate a judge of the Juvenile Court who shall

(a) review each week the reports in respect of all children who have been confined in Alberta during that week, and

(b) receive applications for a hearing to review the confinement of any child.

(4) Every person in charge of an institution in Alberta shall provide to the judge once a week a report, in a form satisfactory to the judge, in respect of each child who has been confined within that institution during that week, giving the reasons for confinement.

(5) The judge may at any time direct that there be a hearing before himself or before any other judge of the Juvenile Court designated by him, for the purpose of conducting a review of the confinement of any child the report of whose confinement has been reviewed by him.

Attorney General made pursuant to section 4 of *The Legal Profession Act*;

- (g) “renewal certificate” means a certificate issued pursuant to section 89.

**87.** (1) Where an order has been made under section 24 of this Act or under section 20, subsection (1), paragraph (h) or (i) of the *Juvenile Delinquents Act* (Canada), the judge may, subject to subsection (3), make a further order that the child be confined in an institution for the period stated in the order.

(2) The maximum period during which a child may be confined under a compulsory care order is 90 days from the date on which the order was made or until the child reaches the age of 18 years, whichever is the shorter period.

(3) A judge may only make a compulsory care order where he is satisfied that

- (a) the child is in a condition presenting a danger to himself or others or is otherwise out of control, and
- (b) it is in the best interests of the child that the child be confined in an institution.

*(6) An application for a hearing to review the confinement of any child may be made*

*(a) by a parent or guardian of the child, or*

*(b) by the child, who may apply with or without any person interested on his behalf, or*

*(c) by the Director.*

*(7) Upon receipt of an application for a hearing to review the confinement of a child, the judge shall direct that there be a hearing within 10 days, before himself or before any other judge of the Juvenile Court designated by him, for the purpose of conducting a review of the confinement of the child in respect of whom the application is made.*

*(8) In directing that a hearing be held under this section, the judge shall also direct that the person in charge of the institution concerned produce the child at the hearing and that notice of the hearing be served upon the Director, the guardian or guardians of the child and, where applicable, upon the judge of the Juvenile Court whom he designates to hold the hearing.*

*(9) The provisions of section 21 apply with all necessary modifications to a hearing under this section.*

*(10) In conducting a hearing under this section, the judge holding the hearing shall inquire and determine whether the circumstances justify the termination of the confinement or justify the continuation of the confinement with or without conditions and may make an order*

*(a) that the confinement be terminated and that the child be not further confined without leave of a judge, or*

*(b) that the confinement be continued but be terminated on or before a date specified by the judge and that the child be not further confined without leave of a judge, or*

*(c) that the confinement be continued at the discretion of the Director,*

*as appears to him just in the circumstances.*

- (4) Where the judge makes a compulsory care order he shall
- (a) inform the child of the reason for doing so, and
  - (b) provide the child, his parent or parents or his representative, if any, with a written statement showing
    - (i) the authority and reason for his confinement and the period of his confinement,
    - (ii) the place where the child may obtain a copy of the prescribed form of application for a hearing,
    - (iii) that the child may be represented by legal counsel at any hearing, and
    - (iv) the address and telephone number of a Legal Aid Office.

**88. (1) Where the Director**

- (a) has reasonable cause to believe that a child who is a ward of the Crown
  - (i) is suffering from an emotional or behavioural disturbance, and
  - (ii) is in a condition presenting a danger to himself or others or is otherwise out of control,

and

- (b) is of the opinion that it is in the best interests of the child that the child be confined in an institution,

the Director may issue a compulsory care certificate with respect to that child.

(2) A compulsory care certificate is sufficient authority to confine the child named therein in an institution for the period stated on the certificate.

(3) The maximum period during which a child may be confined under a compulsory care certificate is 30 days from the date on which the certificate was issued or until the child reaches the age of 18 years, whichever is the shorter period.

(4) The compulsory care certificate shall be in the prescribed form and shall include a statement of

- (a) the authority under which the certificate was issued,
- (b) the reasons for the child's confinement, and
- (c) the date on which the certificate expires.





**89.** (1) Before the expiration of a compulsory care order, a compulsory care certificate or a previous renewal certificate, the Director may issue a renewal certificate with respect to that child where the Director

- (a) has reasonable cause to believe that the child
  - (i) is suffering from an emotional or behavioural disturbance, and
  - (ii) is in a condition presenting a danger to himself or others or is otherwise out of control,
- and
- (b) is of the opinion that it is in the best interests of the child that the child be confined in an institution.

(2) A renewal certificate is sufficient authority to confine the child named therein in an institution for the period stated on the certificate.

(3) The maximum period during which a child may be confined under a renewal certificate is 90 days from the date on which the certificate was issued or until the child reaches the age of 18 years, whichever is the shorter period.

(4) The renewal certificate shall be in the prescribed form and shall include a statement of

- (a) the authority under which the certificate was issued,
- (b) the reasons for the child's confinement, and
- (c) the date on which the certificate expires.

**90.** Where the Director issues a renewal certificate with respect to a child and the effect of that renewal certificate would be to authorize the confinement of the child for a period of more than six consecutive months from the latest of the following dates, namely,

- (a) the date on which a compulsory care order was made with respect to that child, or
- (b) the date on which a compulsory care certificate was issued with respect to that child, or
- (c) the date on which an order was made by a judge of the juvenile court under section 97 confirming a certificate or compulsory care order issued or made with respect to that child, or



- (d) the date on which an order was made by a Supreme Court judge under section 98 confirming or reinstating a certificate or compulsory care order issued or made with respect to that child,

the Director shall make an application under section 96 for a hearing.

**91.** (1) A certificate or a compulsory care order is sufficient authority for any person to apprehend and convey the child named therein to an institution specified by the Director and to detain that child while he is being so conveyed until he arrives at the institution.

(2) Where the child named in a certificate or compulsory care order is in an institution, the certificate or compulsory care order is sufficient authority to transfer the child to another institution and to detain the child while he is being transferred.

(3) During the term of any certificate or compulsory care order, the Director may grant a child a leave of absence from an institution for medical, humanitarian or rehabilitative reasons upon such terms and conditions as may be prescribed by the Director.

(4) Where a child who is the subject of a certificate or a compulsory care order leaves an institution and a leave of absence has not been granted or leaves an institution pursuant to a leave of absence but fails to return within the time prescribed, the Director may order any peace officer to return the child to the institution.

(5) Upon receipt of an order pursuant to subsection (4), every peace officer is empowered to arrest without warrant the person named therein and return him to the institution.

**92.** The Director is responsible for ensuring that every child confined in an institution pursuant to a certificate or compulsory care order is provided with

- (a) such diagnostic and treatment services as the child is in need of and the staff of the institution is capable of providing and is able to provide, and
- (b) such level of security as is reasonably required for the confinement of the child.

**93.** Where in the opinion of the Director it is no longer in the best interests of a child who is the subject of a certificate that he be confined in an institution, the Director shall

- (a) cancel the certificate, and



- (b) notify the child, his parent or parents, his representative, if any, and the person in charge of the institution in which the child is confined of the cancellation of the certificate.

**94.** Where a certificate is issued with respect to any child, the Director shall give the child, his parent or parents and his representative, if any, a copy of the certificate and a written statement showing

- (a) the right of the child to apply to a judge of the juvenile court for a hearing,
- (b) the place where the child may obtain a copy of the prescribed form of application for a hearing,
- (c) that the child may be represented by legal counsel at any hearing, and
- (d) the address and telephone number of a Legal Aid Office.

**95.** (1) The Director shall send a copy of each certificate issued under this Part to a clerk of the juvenile court within 48 hours of issuing the certificate.

(2) On receipt by a clerk of the juvenile court of a certificate pursuant to subsection (1) a judge shall review the certificate.

(3) Where a judge is not satisfied that

- (a) it is in the best interests of the child that he be confined in an institution, or
- (b) the period of confinement of the child is appropriate, or
- (c) the certificate is properly issued,

he shall direct that a hearing be conducted.

**96.** (1) A child with respect to whom a certificate has been issued or a compulsory care order has been made, his parent or parents or his representative, if any, or the Director may apply once during the period of the certificate or order to the juvenile court for a hearing.

(2) An application for a hearing shall be made in the prescribed form.

(3) The clerk shall give notice of the nature, time and place of any hearing under this Part by registered mail or by any other method authorized by a judge to



- (a) the Director,
- (b) the child, his parent or parents and his representative, if any,
- (c) the person in charge of the institution in which the child is being confined, and
- (d) any other person that the judge considers may be affected by the application and should be notified,

at least five days before the date fixed for the hearing.

(4) Sections 20 and 21 apply with all necessary modifications to a hearing by a juvenile court under this Part.

(5) The hearing shall be heard within 14 days of

- (a) a direction of a judge under section 95, or
- (b) an application being made under this section,

or within such further period as a judge may direct.

**97.** (1) Where a hearing is held pursuant to section 95 or 96, the judge of the juvenile court may make an order

- (a) cancelling the certificate or terminating the compulsory care order, with or without conditions, where he is of the opinion that it is no longer in the best interests of the child that he be confined in an institution, or
- (b) confirming the certificate or compulsory care order.

(2) The Director shall give the child, his parent or parents, his representative, if any, and the person in charge of the institution in which the child is confined a copy of the order of the judge and a written statement of the right of the child to appeal the order of the judge to the Supreme Court.

(3) Where the direction of the judge under section 95 or the application for a hearing under section 96 relates to a certificate that is replaced by a renewal certificate before the date on which the hearing is held, the order under this section shall relate to the renewal certificate.

**98.** (1) Within 30 days from the day on which a judge of the juvenile court makes an order under section 97,

- (a) the child, his parent or parents, or his representative, if any, or
- (b) the Director,





may appeal to the Supreme Court by filing with the clerk of the Supreme Court of the judicial district within which the order was made a notice of appeal setting out the particulars of the order appealed from and the grounds of the appeal.

(2) A copy of the notice of appeal shall be served upon the clerk of the juvenile court which made the order and

(a) upon the child, his parent or parents or his representative, if any, or

(b) upon the Director,

as the case may be, within 30 days from the date of the making of the order, or such longer time as a judge of the Supreme Court may order.

(3) The clerk of the juvenile court which made the order appealed from shall within seven days from the time the notice of appeal was served upon him, forward to the clerk of the Supreme Court of the judicial district in which the notice of appeal is filed

(a) the order,

(b) the depositions or transcript of the evidence taken at the hearing, and

(c) all documents and exhibits filed at the hearing.

(4) Unless a judge of the Supreme Court otherwise directs, the appeal shall come on for hearing at the first sitting of the Supreme Court to be held after the filing and serving of the notice of appeal, in the judicial district in which the notice of appeal is filed.

(5) Upon the hearing, the judge of the Supreme Court shall determine the appeal upon the material filed and such further evidence as he may require or permit to be given.

(6) Where the judge of the Supreme Court is satisfied that it is in the best interests of the child to do so, he may

(a) confirm the order made, or

(b) revoke the order made, and, as the case requires, either

(i) reinstate the certificate or compulsory care order, or

(ii) cancel the certificate or terminate the compulsory care order with or without conditions.



(7) Where the order appealed from confirms a certificate and the certificate is replaced by one or more renewal certificates before the date on which the appeal is heard, the appeal and the order under subsection (6) shall relate to the latest renewal certificate.

6. *This Act comes into force on a date to be fixed by Proclamation.*

