

1987 BILL 29

Second Session, 21st Legislature, 36 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 29

YOUNG OFFENDERS AMENDMENT ACT, 1987

MR. DAY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 29
Mr. Day

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1987

YOUNG OFFENDERS AMENDMENT ACT, 1987

(Assented to _____, 1987)

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

1 *The Young Offenders Act is amended by this Act.*

2 *Section 1(1)(g) is amended by adding “, but does not include a person who has the custody or control of that young person by reason only of proceedings under this Act” after “of that young person”.*

3 *Section 2(2) is repealed and the following is substituted:*

(2) The procedure to pay out of court a specified sum pursuant to section 6 of the *Summary Convictions Act* does not apply to a young person who is under 16 years of age when the alleged offence is committed.

4 *Section 6 is amended*

(a) *in subsection (1)*

(i) *in clause (b) by adding “of temporary detention” after “places”;*

(ii) *by adding “or a person authorized by the Lieutenant Governor in Council” after “Council”;*

(b) *by adding the following after subsection (1):*

(1.1) A young person who is detained in a place of temporary detention pursuant to subsection (1) may, in the course of being transferred from that place to youth court or from youth court to that place, be held under the supervision and control of a peace officer.

(c) *by repealing subsection (3) and substituting the following:*

(3) Subsection (1) does not apply in respect of any temporary restraint of a young person under the supervision and control of a peace officer after arrest, but a young person who is so

Explanatory Notes

1 This Bill will amend chapter Y-1 of the Statutes of Alberta, 1984.

2 Section 1 presently reads in part:

1(1) In this Act,

(g) "parent" includes, in respect of a young person, any person who is under a legal duty to provide for that young person or any person who has, in law or in fact, the custody or control of that young person;

3 Section 2 presently reads in part:

(2) The procedure to pay out of court a specified sum pursuant to section 6 of the Summary Convictions Act does not apply to a young person

(a) who is under 16 years of age when the alleged offence is committed, or

(b) who is alleged to have committed an offence under the Liquor Control Act.

4 Section 6 presently reads:

6(1) A young person who is arrested and detained shall be detained

(a) in a place of temporary detention, or

(b) in a place or a place within a class of places

designated by the Lieutenant Governor in Council.

(2) A young person who is detained in custody in accordance with this section may, during the period of detention, be transferred by the provincial director from one place of temporary detention or designated place described in subsection (1) to another designated place or place of temporary detention.

(3) Subsection (1) does not apply in respect of any temporary restraint of a young person in the hands of a peace officer after the arrest of the young person.

(4) No young person who has been arrested shall be detained in any part of a place where an adult who has been charged with or convicted of an offence against any law of Canada or a province is detained unless a youth court judge, or if a youth court judge is not reasonably available, a justice

restrained shall be transferred to a place of temporary detention referred to in subsection (1) as soon as reasonably practicable, and in no case later than the first reasonable opportunity after the appearance of the young person before a youth court judge or a justice pursuant to section 454 of the *Criminal Code* (Canada).

(d) *in subsection (4)*

(i) *by striking out “No” and substituting “A”;*

(ii) *by striking out “in any part of a place where an” and substituting “separate and apart from any”;*

(iii) *by striking out “is detained”;*

(iv) *by striking out “as defined in the Summary Convictions Act”;*

(e) *by repealing subsection (6).*

The following is added after section 6:

6.1(1) If a youth court judge or a justice is satisfied that

(a) a young person who has been arrested would, but for this section, be detained in custody,

(b) a responsible person is willing and able to take care of and to exercise control over the young person, and

(c) the young person is willing to be placed in the care of that person,

the young person may be placed in the care of that person instead of being detained in custody.

(2) A young person shall not be placed in the care of a person under subsection (1) unless

(a) that person undertakes in writing to take care of and to be responsible for the attendance of the young person in court when required and to comply with any other conditions that the youth court judge or justice may specify, and

(b) the young person undertakes in writing to comply with the arrangement and to comply with any other conditions that the youth court judge or justice may specify.

(3) If a young person has been placed in the care of a person under subsection (1) and

(a) that person is no longer willing or able to take care of or to exercise control over the young person, or

(b) it is, for any other reason, no longer appropriate that the young person remain in the care of that person,

the young person, the person in whose care the young person has been placed or any other person may, by application in writing to a youth court judge or a justice, apply for an order under subsection (4).

as defined in the Summary Convictions Act, authorizes the detention, being satisfied that

(a) the young person cannot, having regard to his own safety or the safety of others, be detained in a place referred to in subsection (1), or

(b) no place referred to in subsection (1) is available within a reasonable distance.

(5) A person who contravenes subsection (1) or (4) is guilty of an offence.

(6) If a youth court judge, or if a youth court judge is not reasonably available, a justice as defined in the Summary Convictions Act, is satisfied that

(a) a responsible person is willing and able to take care of and exercise control over a young person who has been arrested, and

(b) the young person is willing to be placed in the care of that person, and if that person undertakes in writing to take care of and to be responsible for the attendance of the young person in court when required, the young person may be placed in the care of that person instead of being detained.

5 Placement of young person in the care of a responsible person.

(4) If a youth court judge or a justice is satisfied that a young person should not remain in the custody of the person in whose care he was placed under subsection (1), the youth court judge or justice shall

(a) make an order relieving the person and the young person of the obligations undertaken pursuant to subsection (2), and

(b) if the young person is not present at the hearing, issue a warrant for the arrest of the young person,

and the young person shall subsequently be dealt with under section 457 of the *Criminal Code* (Canada).

6.2 Any person who wilfully fails to comply with section 6 or with an undertaking entered into pursuant to section 6.1(2) is guilty of an offence.

6 *Section 7 is amended by striking out “8(1)” and substituting “8(2)”.*

7 *Section 8 is amended*

(a) *in subsection (1) by adding “or cause to be given” after “give”;*

(b) *in subsection (2) by adding “or cause to be given” after “give”;*

(c) *by adding the following after subsection (2):*

(2.1) Subject to subsections (3) and (4), if a young person is alleged to have committed an offence under the *Liquor Control Act* and the peace officer issues a summons referred to in section 6 of the *Summary Convictions Act* to the young person, the peace officer shall, as soon as practicable, give or cause to be given to a parent of the young person written notice of the summons.

(d) *in subsection (10)*

(i) *by striking out “Failure to give notice in accordance with subsection (2)” and substituting “Subject to subsections (11) and (12), failure to give notice in accordance with subsection (2) or (2.1)”;*

(ii) *by striking out “or” at the end of clause (a) and by adding the following after clause (a):*

(a.1) notice is given in accordance with subsection (8)(a),
or

(e) *by repealing subsection (11) and substituting the following:*

(11) Subject to subsection (2.1), subsections (1) to (10) do not apply if a young person is issued a summons referred to in section 6 of the *Summary Convictions Act* and that person pays out of court the specified sum within the specified time.

(12) If the person referred to in subsection (11) does not pay out of court the specified sum within the specified time, a youth court judge or justice may issue a warrant for the arrest of that person and notice to the parent shall be given in accordance with subsection (1) on the arrest of that person.

6 Section 7 presently reads:

7 Subsections 8(1) to (7) of the federal Act apply to proceedings under this Act.

7 Section 8 presently reads:

8(1) Subject to subsections (3) and (4), if a young person is arrested and detained pending his appearance in court, the officer in charge at the time the young person is detained shall, as soon as practicable, give, orally or in writing, to a parent of the young person notice of the arrest including the place of detention and the reason for the arrest.

(2) Subject to subsections (3) and (4),

(a) where a summons or an appearance notice is issued in respect of a young person, the person who issued the summons or appearance notice, or

(b) if a young person is released on giving his promise to appear, giving an undertaking or entering into a recognizance, the officer in charge,

shall, as soon as practicable, give in writing to a parent of the young person notice of the summons, appearance notice, promise to appear, undertaking or recognizance.

(3) If the whereabouts of the parents of a young person,

(a) who is arrested and detained,

(b) in respect of whom a summons or an appearance notice is issued, or

(c) who is released on giving his promise to appear, giving an undertaking or entering into a recognizance,

are not known or it appears that no parent is available, a notice under this section may be given to an adult relative of the young person who is known to the young person and is likely to assist him or, if no such adult relative is available, to another adult who is known to the young person and is likely to assist him, as the person giving the notice considers appropriate.

(4) If a young person described in subsection (3) is married, a notice under this section may be given to the spouse of the young person instead of a parent.

(5) If doubt exists as to the person to whom a notice under this section should be given, a youth court judge may give directions as to the person

8 *Section 12(2) is amended*

(a) *by striking out “In no case shall” and substituting “Subject to section 16,”;*

(b) *by striking out “be liable” and substituting “is not liable”.*

9 *Section 13 is amended*

(a) *by repealing subsection (2)(c) and substituting the following:*

(c) that the person or organization for whom the community service is to be performed

(i) is part of a program approved by the provincial director, or

(ii) has agreed to its performance.

(b) *by adding the following after subsection (3):*

(4) A youth court may, on application by or on behalf of the young person in respect of whom a disposition has been made under section 12(4) or (5) allow further time for the completion of the disposition.

to whom the notice should be given, and a notice given in accordance with those directions is sufficient notice for the purposes of this section.

(6) A notice under this section shall, in addition to any other requirements, include

- (a) the name of the young person in respect of whom it is given,
- (b) the charge against the young person, and
- (c) the time and place of appearance.

(7) A notice under this section may be given by mail.

(8) If there has been a failure to give a notice in accordance with this section and none of the persons to whom a notice may be given attends court with the young person, a youth court judge before whom proceedings are held against the young person may

- (a) adjourn the proceedings and order that the notice be given in the manner and to the person he directs, or
- (b) dispense with the notice if, in his opinion, having regard to the circumstances, notice should be dispensed with.

(9) Subject to subsection (10), failure to give notice in accordance with this section does not affect the validity of proceedings under this Act.

(10) Failure to give notice in accordance with subsection (2) renders invalid any subsequent proceedings under this Act relating to the case unless

- (a) a person to whom a notice may be given under this section attends court with the young person against whom proceedings are held, or
- (b) notice is dispensed with pursuant to subsection (8)(b).

(11) Subsections (1) to (10) do not apply if, subject to section 2(2), the young person pays out of court a specified sum pursuant to section 6 of the Summary Convictions Act.

8 Section 12 presently reads in part:

(2) In no case shall a young person who was under 16 years of age when he committed an offence be liable to be committed into custody in respect of that offence.

9 Section 13 presently reads:

13(1) The youth court shall, in imposing a fine on a young person under section 12, have regard to the present and future means of the young person to pay.

(2) No disposition may be made under section 12 to perform community service unless the youth court is satisfied

- (a) that the young person against whom the disposition is made is a suitable candidate for such a disposition,
- (b) that the disposition will not interfere with the normal hours of work, education or training of the young person, and
- (c) that the person for whom the community service is to be performed has agreed to its performance.

(3) No disposition may be made under section 12 to perform community service unless the service can be completed in 100 hours or less and within 6 months of the date of the disposition.

10 *Section 14 is amended*

(a) *in subsection (1) by adding “and” at the end of clause (a), by striking out “and” at the end of clause (b) and by repealing clause (c);*

(b) *in subsection (2) by adding the following after clause (b):*

(b.1) that the young person shall notify the clerk of the youth court, the provincial director or the youth worker assigned to his case of any change in his place of employment, education or training;

11 *Section 16 is repealed and the following is substituted:*

16(1) A person who wilfully fails or refuses to comply with a disposition or any term or condition of it is guilty of an offence.

(2) Subject to subsection (3), a young person who is convicted of an offence under subsection (1) is liable to a disposition under section 12 or to be committed into custody for a period not exceeding 6 months, or both.

(3) A young person who was under 16 years of age when he committed an offence under subsection (1) is liable to a disposition under section 12 or to be committed into custody for a period not exceeding 14 days, or both, in respect of that offence, but if the offence arises from the failure or refusal to comply with a disposition that was made pursuant to a conviction for an offence under sections 142(1) and 171 of the *School Act*, the young person is not liable to be committed into custody.

10 Section 14 presently reads in part:

14(1) Where the disposition given under section 12 is a probation order, the following conditions shall be included in the order:

(a) that the young person bound by the probation order shall keep the peace and be of good behaviour,

(b) that the young person shall appear before the youth court when required by the youth court to do so, and

(c) that the young person shall notify the provincial director or the youth worker assigned to his case of any change of address or any change in his place of employment, education or training.

(2) A probation order made under section 12 may include any one or more of the following conditions that the youth court considers appropriate:

(a) that the young person bound by the probation order report to and be under the supervision of the provincial director or a person designated by him or by the youth court;

(b) that the young person remain in Alberta;

(c) that the young person make reasonable efforts to obtain and maintain suitable employment;

(d) that the young person attend school or any other place of education, training or recreation that is appropriate;

(e) that the young person reside with a parent, or any other adult whom the court considers appropriate, who is willing to provide for the care and maintenance of the young person;

(f) that the young person reside in a place that the provincial director specifies;

(g) that the young person comply with any other conditions set out in the order that the court considers desirable, including conditions for securing

the good conduct of the young person and for preventing the commission by the young person of other offences.

11 Section 16 presently reads:

16 A young person who wilfully fails or refuses to comply with a disposition or any term or condition of it is guilty of an offence and liable to a disposition under section 12 or, if he was 16 years of age or more when he committed the offence, to be committed into custody for a specified period not exceeding 6 months, or both.

12 *Section 20 is amended*

(a) *in subsection (1) by striking out “aggrieved by” and substituting “who is a victim of”;*

(b) *by adding the following after subsection (1):*

(1.1) Subsection (1) does not apply in respect of the disclosure of information in the course of the administration of justice where it is not the purpose of the disclosure to make the information known in the community.

(1.2) The youth court may, on the application of any young person or child referred to in subsection (1), make an order permitting any person to publish a report in which the name of that young person or child, or information serving to identify that young person or child, would be disclosed, if the court is satisfied that the publication of the report would not be contrary to the best interests of that young person or child.

13 *Section 21(3)(a) is repealed and the following is substituted:*

(a) subject to section 577 of the *Criminal Code* (Canada) and section 11(7) of this Act, the young person,

(a.1) the young person’s counsel, if any,

14 *Section 27 is amended by repealing subsections (2) and (3).*

15 *Section 28 is repealed.*

12 Section 20 presently reads:

20(1) Subject to section 30, no person shall publish by any means any report

(a) of an offence committed or alleged to have been committed by a young person, or

(b) of a hearing, adjudication, disposition or appeal concerning a young person who committed or is alleged to have committed an offence

in which the name of the young person, a child or a young person aggrieved by the offence or a child or a young person who appeared as a witness in connection with the offence, or in which any information serving to identify the young person or child, is disclosed.

(2) A person who contravenes subsection (1) is guilty of an offence.

13 Section 21 presently reads in part:

(3) The youth court, after it has found a young person guilty of an offence or during a review of a disposition under section 15 may, in its discretion, exclude from the youth court any person other than

(a) the young person or his counsel, if any,

(b) the provincial director,

(c) the youth worker to whom the young person's case is assigned, or

(d) the Attorney General or his agent,

when any information is being presented to the youth court the knowledge of which may, in the opinion of the youth court, be seriously injurious or seriously prejudicial to the young person.

14 Section 27 presently reads:

27(1) In proceedings under this Act where the evidence of a child or a young person is taken, it shall be taken only after the youth court has

(a) in all cases, if the witness is a child, and

(b) where it considers it necessary, if the witness is a young person,

instructed the child or young person as to the duty of a witness to speak the truth and the consequences of failing to do so.

(2) The evidence of a child or a young person shall be taken under solemn affirmation as follows:

I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth.

(3) Evidence of a child or a young person taken under solemn affirmation shall have the same effect as if taken under oath.

15 Section 28 presently reads:

28(1) The evidence of a child may not be received in any proceedings under this Act unless, in the opinion of the youth court, the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

(2) No adjudication shall be made on the evidence of a child alone, unless it is corroborated by some other material evidence.

16 Section 29 is amended by adding the following after subsection (5):

(6) For the purposes of this section, an adult consulted pursuant to subsection (2)(c) is, in the absence of evidence to the contrary, deemed not to be a person in authority.

17 Section 30(1) is repealed and the following is substituted:

30(1) Every clerk of the youth court may keep records of every proceeding arising under this Act that comes before the youth court.

(1.1) Any record kept pursuant to subsection (1) shall be kept separate from records of cases in ordinary court.

16 Section 29 presently reads in part:

(2) No oral or written statement given by a young person to a peace officer or other person who is, in law, a person in authority is admissible against the young person unless

(a) the statement was voluntary,

(b) the person to whom the statement was given has, before the statement was made, clearly explained to the young person, in language appropriate to his age and understanding, that

(i) the young person is under no obligation to give a statement.

(ii) any statement given by him may be used as evidence in proceedings against him,

(iii) the young person has the right to consult another person in accordance with clause (c), and

(iv) any statement made by the young person is required to be made in the presence of the person consulted, unless the young person desires otherwise,

(c) the young person has, before the statement was made, been given a reasonable opportunity to consult with counsel or a parent, or in the absence of a parent, an adult relative, or in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person, and

(d) where the young person consults any person pursuant to clause (c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.

17 Section 30 presently reads in part:

30(1) Every clerk of the youth court shall keep, separate from records of cases in ordinary court, a complete record of every proceeding arising under this Act that comes before the youth court.