

1994 BILL 208

Second Session, 23rd Legislature, 43 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 208

CHILD WELFARE AMENDMENT ACT, 1994

MS HANSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 208
Ms Hanson

BILL 208

1994

CHILD WELFARE AMENDMENT ACT, 1994

(Assented to _____, 1994

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

1 The Child Welfare Act is amended by this Act.

2 Section 1 is amended

(a) by repealing section 1(1)(l) and substituting the following:

(l) "Indian means

*(i) an Indian as defined in the *Indian Act* (Canada), or*

(ii) a Metis person, or

(iii) a non-status Indian;

*(b) in subsection (1)(z) by adding "or mental health services"
after "protective services" and by adding "but does not include
a residential placement" after "agreement";*

*(c) in subsection (2)(f) by adding "or is at risk of emotional
injury" after "injured";*

*(d) in subsection (2)(g) by adding "or to seek treatment
required to ameliorate injuries already suffered" after*

Explanatory Notes

1 Amends chapter C-8.1 of the Revised Statutes of Alberta 1980.

"emotional injury";

(e) in subsection (3)(a)(ii) by adding the following after clause (E)

(F) if a parent fails to provide or refuses or is unable to consent to the provision of treatment to alleviate injuries suffered by the child.

3 *Section 2 is amended*

(a) in clause (c) by striking out "the least invasion of its privacy and interference with its freedom that is compatible with its own interest, the interest of individual family members and society" and substituting "to a level of freedom that is compatible with its own interest, the interest of the individual family member, society and the best interest of the child";

(b) in clause (e)(ii) by striking out "other less intrusive measures are not sufficient" and substituting "it is necessary";

(c) in clause (f) by repealing clauses (f)(iii) and (iv);

(d) in clause (k) by adding the following after "relationships":

by including the following:

- (i) identification of the problems which the intervention is seeking to ameliorate,*
- (ii) a description of recommended services, the reasons for assuming they will be effective, and a statement of their availability,*
- (iii) a description of expected changes in conditions or behaviour which will serve as measures to determine when intervention will no longer be necessary,*
- (iv) reasons why the child cannot be adequately protected through in-home support services including a description of previous in-home services considered, attempted and rejected,*
- (v) an outline of details of parental participation and of services which will maximize the exercise of parental*

3 Section 2(c) presently reads:

2 A Court and all persons shall exercise any authority or make any decision relating to a child who is in need of protective services under this Act in the best interests of the child and in doing so shall consider the following as well as any other relevant matter:

(c) the family has the right to the least invasion of its privacy and interference with its freedom that is compatible with its own interest, the interest of the individual family members and society;

Section 2(e)(ii) presently reads:

(e) the family is responsible for the care and supervision of its children and every child should have an opportunity to be a wanted and valued member of a family, and to that end

(ii) a child should be removed from the family only when other less intrusive measures are not sufficient to protect the survival, security or development of the child;

access and visitation with the child,

- (vi) an indication that the placement being considered is the least restrictive, closest to home appropriate alternative for the child,
- (vii) where reunification is the goal, retention of parental rights to consent to major decisions and to be consulted throughout,
- (viii) specification of expected time limits for achieving the objectives of the intervention and the consequences of not meeting them,
- (ix) if termination of parental rights is being pursued or sought, details of how an alternate permanent placement, in a family setting, will be pursued or arranged,
- (x) provision for resolution of disputes or mediation.

(e) by adding the following after clause (m):

- (n) the child's views and preferences should be considered so that the child's wishes are sought out in all decision making at the judicial, quasi-judicial, administrative and case-work levels; as well as in the instruction and selection of advocates and other representatives;
- (o) a child should be kept informed on its entry into and throughout its involvement with the child welfare system of its right of participation and should be provided with impartial mechanisms to enforce or insist on such participation;
- (p) a child should have adequate access to information regarding all procedures and should be kept informed about the subjects of the decisions as well as available alternatives;
- (q) the child's requests should be duly considered and the child should be provided with access to appropriate independent advocates who can ensure on the child's participation in the appropriate manner;

(r) when a child is removed from the home, such removal should be predicated on the assumption that the appropriate placement or treatment is, or will forthwith be made available to the child;

(s) following time limited placement out of the parental home, a child should be returned to its parents, unless, despite the provision of reunification services, the child still cannot be protected from the harm or risks which justified the initial removal or if there are new risks present;

(t) where it is unlikely that the child will be able to be safely cared for by his parents, even with the provision of support services, or following a specified period of out-of-home placement, placement in another permanent, stable setting should be aggressively pursued;

(u) clients, families and children should be involved in service planning, goal setting and negotiations including: the choice of in-home support services, the choice of foster placement, treatment services; access to children while in care; time frame expectations; and the assignment of residual decision making authorities with respect to the child;

(v) the principles of family support and the preference for early voluntary access to child welfare services should be reinforced and services should be available on request or on the basis of risk regardless of whether the child has been deemed to be in need of protection.

4 Section 2.1 is amended by

(a) adding the following after clause (3)(f):

(g) review this Act every 3 years and provide the Minister with an evaluation of the effectiveness of this Act.

(b) in subsection (3.1) by adding "and (g)" after "subsection (3)(e)".

5 The following is added after section 2.1:

2.2 The Minister shall discharge the following obligations:

(a) with respect to the protection of children, to protect the child from violence, physical, sexual and emotional harm, including violence or harm arising from inappropriate discipline and punishment, exploitation and neglect;

(b) with respect to the care of and services provided for children

(i) the Minister is obligated to:

(A) provide child welfare workers and caregivers who are accessible, available, responsive, responsible, supportive and competent;

(B) provide affectionate, continuous stable care in the most normalized (least restrictive) appropriate setting capable of meeting the child's needs and enabling his normal growth and development;

(C) provide adequate food, shelter, clothing, health care and treatment including treatment for the circumstances which require or justify state intervention;

(D) provide or ensure the child's access to appropriate educational opportunities;

(E) be aware of the child's cultural and personal history.

(c) to know, protect and enforce to a child's legal and administrative rights which include

(i) notice to be heard and to participate in decisions that affect his life;

(ii) to be informed of rights specifically provided in law;

(iii) privacy, confidentiality and access to personal information;

(iv) to know and to participate in his own culture, religion, language and history;

(v) to know and to have access to significant persons in

his life;

6 Section 3 is amended by repealing subsection (1) and substituting the following:

(1) Any person who has reasonable and probable grounds to believe that a child was previously or is presently in need of protective services shall forthwith report the matter to a director and a peace officer.

7 Section 5 is amended

(a) by striking out all the words after "cause the matter to be" and substituting "investigated.";

(b) by repealing subsection (2) and substituting the following:

(2) If a director, following an investigation of a matter pursuant to subsection (1), is of the opinion that it would be consistent with the protection of the child to refer a member of the family or the family to community resources for services, he may give such a referral if he is satisfied that the community resource is able to address the needs of the child.

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

(2.1) A director who gives a referral pursuant to subsection (2) shall satisfy himself that the referral was acted upon.

8 Section 7(2) is amended by striking out "16" and substituting "15".

9 The following is added after section 16:

16.1 A child who is 12 years of age or more, a foster parent or any person who is concerned about the treatment of a child may apply to the Court in the prescribed form for an order under section 26, section 29, or section 32.

10 Section 31 is amended by adding the following after subsection (3):

(4) If the Court is of the opinion that it is unlikely that the child will be returning to his family and that any delay in placing the child would not be in the best interests of the

6 Section 3(1) presently reads:

3(1) Any person who has reasonable and probable grounds to believe and believes that a child is in need of protective services shall forthwith report the matter to a director.

child, the Court shall make an order for a period of less than 2 years.

(5) All orders made by the Court under this section shall specify who is to have access to the child from among the child's siblings, extended family and peers.

(6) Before making an order under this section, the Court shall satisfy itself that the biological parents, if their whereabouts is known, have been consulted and notified of any order which would effect their access to the child.

11 Section 32 is amended

(a) by adding the following after subsection (1):

(1.1) An application by a director under subsection (1) shall be accompanied by a detailed plan for the permanent placement of the child within a specific time.

(b) in subsection (7), by adding "or other permanent arrangements with respect to the child" after "adoption".

12 Section 33 is amended by adding the following after subsection (1):

(1.1) A guardian or a child who is 12 years of age or over may apply to the Court for an order terminating the permanent guardianship agreement or order.

(1.2) The Court, in hearing an application pursuant to subsection (1.1) shall consider the matters set out in the regulations.

13 Section 41(1) is amended by striking out "If a child is the subject of a temporary or permanent guardianship order, a" and substituting "A" and adding "for a child" after "certificate".

14 Section 42(6) is amended by adding the following after clause (b):

(c) require the secure treatment institution to prepare and file, in consultation with the child and the guardian of the child, a plan for the treatment of the child.

11 Section 32(7) presently reads:

32(7) The Court shall not make an order under subsection (6) unless it is satisfied that the access provided by the order will not interfere with the adoption of the child.

13 Section 41(1) presently reads:

41(1) If a child is the subject of a temporary or permanent guardianship order, a director may issue a secure treatment certificate in the prescribed form for a period of not more than 10 days in respect of the child if he has reasonable and probable grounds to believe that

(a) the child is suffering from a mental or behavioural disorder,

15 Section 57(1) is amended by striking out "after the date of the consent" and substituting "from the time of placement in custody".

16 Section 73 is amended:

(a) in subsection (2) by striking out "has reason to believe" and substituting "after having taken reasonable steps to determine whether or not a child is an Indian, believes";

(b) in subsection (3) by striking out "has reason to believe" and substituting "after having taken reasonable steps to determine whether or not a child is an Indian, believes";

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

(2.1) In carrying out a consultation required by subsection (2), a director shall advise all parties involved in the consultation of the purpose, extent and time frame in which the consultations shall occur.

17 Section 78(1)(a) is amended by striking out "or" and adding "any other interested party on behalf of the child" after "director".

18 Section 84 is amended by adding the following after subsection (3):

(4) Among the members appointed to an Appeal Panel there shall be included the following:

(a) one or more former consumers of child protection services;

(b) a child care professional;

(c) a member of the public.

19 The following is added after section 84:

84.1(1) The Minister shall establish 1 or more Aboriginal Appeal Panels each consisting of not fewer than 3 nor more than 7 persons appointed by the Minister.

(2) A member of an Aboriginal Appeal Panel may be appointed for a term of not more than 3 years and for not more than 2 consecutive terms.

- (b) the child is in a condition presenting a danger to himself or others, and*
- (c) it is necessary to confine the child in order to remedy or alleviate the disorder.*

- (3) The Minister shall
- (a) designate the chairman, vice-chairman and secretary of an Aboriginal Appeal Panel,
 - (b) prescribe the number of members of an Aboriginal Appeal Panel that constitutes a quorum, and
 - (c) authorize and provide for the payment of the remuneration and expenses of the members of an Aboriginal Appeal Panel.
- (4) Among the members appointed to an Aboriginal Appeal Panel there shall be included one or more of the following:
- (a) former consumers of child protection services;
 - (b) child care professionals with experience with aboriginal children;
 - (c) members of the aboriginal community.

20 *Section 85 is amended:*

- (a) *in subsection (1) by adding "provided that an appeal involving an Indian child shall be heard by an Aboriginal Appeal Panel" after "section 86";*
- (b) *by adding "or Aboriginal Appeal Panel" after "Appeal Panel" wherever it occurs; and,*
- (c) *by adding the following after subsection (7):*
 - (8) An Appeal Panel or an Aboriginal Appeal Panel shall have the power of commissioners under section 3 of the *Public Inquiries Act*.

21 *Section 86 is amended by adding the following after subsection (1):*

- (1.1) Upon making a decision which effects any of the persons set out in subsection (1), a director shall advise that person of his right to appeal under this section and give that person a written, dated notice of the decision.

22 *The following is added after section 86:*

86.1 The Minister shall prepare and a member of an Appeal Panel shall participate in a training program which shall deal with the following matters:

- (a) family dynamics,
- (b) child and youth development,
- (c) sexual abuse,
- (d) this Act and the philosophy underlying it,
- (e) due process of law,
- (f) the rules of evidence,
- (g) aboriginal child welfare issues,
- (h) parenting skills,
- (i) interviewing and investigating,
- (j) communication skills,
- (k) the child protection system,
- (l) the department of Social Services structure and function.

23 *This Act comes into force on Proclamation.*