

1999 BILL 26

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Third Session, 24th Legislature, 48 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 26

**FAMILY LAW STATUTES AMENDMENT ACT, 1999**

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MR. DOERKSEN

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 26*  
*Mr. Doerksen*

## **BILL 26**

1999

### **FAMILY LAW STATUTES AMENDMENT ACT, 1999**

*(Assented to , 1999)*

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

#### **Domestic Relations Act**

Amends RSA  
1980 cD-37

**1(1) The *Domestic Relations Act* is amended by this section.**

**(2) Section 56 is amended by adding the following after subsection (5):**

(6) The Court may include in an order under this section a provision requiring any person who has custody of a child to notify any person who is entitled to access under an access order as defined in section 61.1 of any intention to change the place of residence of that child.

(7) A notice under subsection (6) must be given at least 30 days before the change or within such other period before the change as the Court may specify and must include when the change will be made and the address of the new place of residence of the child.

## Explanatory Notes

### Domestic Relations Act

1(1) Amends chapter D-37 of the Revised Statutes of Alberta 1980.

(2) Section 56 presently reads:

*56(1) On the application of*

*(a) the father or mother of a minor, or*

*(b) a minor, who may apply without a next friend,*

*the Court may make any order it sees fit regarding the custody of the minor and the right of access to the minor of either parent.*

*(2) In making an order under subsection (1), the Court shall have regard*

*(a) to the welfare of the minor,*

*(b) to the conduct of the parents, and*

*(c) to the wishes as well of the mother as of the father.*

*(3) The Court may alter, vary or discharge the order on the application of either parent, or after the death of either parent on the application of a guardian appointed under this Part.*

*(4) The Court may in each case referred to in subsection (1) make any order respecting costs the Court considers just.*

*(5) The Court may also make an order for the maintenance of the minor by payment by the father or by the mother, or out of an estate to which the minor is entitled, of any sum from time to time that the*

**(3) The following is added after Part 7:**

**PART 7.1**

**ENFORCEMENT OF ACCESS ORDERS**

Interpretation

**61.1(1)** In this Part,

- (a) “access order” means an order or interim order of a court or an extra-provincial tribunal that includes a provision for access to a child, but does not include an order under the *Child Welfare Act*;
- (b) “access enforcement order” means an order under section 61.3;
- (c) “applicant” means a person referred to in section 61.3(1) and for the purposes of section 61.5(4) includes a person referred to in section 61.31(1);
- (d) “compensatory access” means access that may be given in substitution for access that has been denied;
- (e) “court” means the Court of Queen’s Bench or the Provincial Court of Alberta;
- (f) “custodial parent” means a person to whom custody of a child has been given under a custody order;
- (g) “denial of access” means a denial of access of a person who is entitled to access under an access order and includes the failure of a person to return a child after having exercised a right of access under an access order;
- (h) “enforcement officer” means
  - (i) a police officer as defined in section 1 of the *Police Act*,
  - (ii) a person appointed for the purposes of section 156 of the *National Defence Act* (Canada) or employed on duties prescribed in regulations made under the *National Defence Act* that require that person to have the powers of a peace officer,
  - (iii) a First Nations police officer appointed pursuant to section 42 of the *Police Act*, and

*Court considers reasonable, having regard to the pecuniary circumstances of the father or of the mother, or to the value of the estate to which the minor is entitled.*

(3) New Part providing for the enforcement of access orders.

- (iv) a person or category of persons prescribed by the regulations;
  - (i) “extra-provincial tribunal” means a court or tribunal outside Alberta with authority to grant an access order;
  - (j) “non-custodial parent” means a person who has been granted a right of access to a child under an access order;
  - (k) “presiding justice” means a presiding justice of the peace under the *Justice of the Peace Act*;
  - (l) “respondent” means a person who has or is alleged to have
    - (i) denied access in the case of an application under section 61.3, or
    - (ii) failed to exercise a right of access in the case of an application under section 61.31.
- (2) For the purposes of sections 61.3(3)(e) and (7)(d) and section 61.31, necessary expenses include the following:
- (a) travel expenses;
  - (b) the costs of locating and securing access to a child;
  - (c) lost wages;
  - (d) any other expenses the court may allow.

Application of Part

**61.2(1)** This Part applies only to the enforcement of those provisions of an access order that provide for access to a child at determinable times, on determinable days or dates or for determinable periods.

(2) Subject to section 61.3(3)(h), this Part does not apply to a denial of access or failure to exercise a right of access that occurred before this Part comes into force.

Other rights not affected

**61.21(1)** Nothing in this Part affects any other rights or remedies provided by law to enforce, confirm, vary, terminate or revoke an access order.

(2) Unless the court has jurisdiction, nothing in this Part is to be construed as authorizing the court to vary, terminate or revoke an access order.



Access  
enforcement  
orders

**61.3(1)** An application for an access enforcement order under this section may be made

- (a) by a non-custodial parent, and
- (b) by a custodial parent who has been denied access because of a failure of the non-custodial parent to return the child in accordance with the access order after having exercised a right of access.

**(2)** Where a court, on application, is satisfied that there has been a denial of access, the court may, subject to subsection (6), make an access enforcement order that is appropriate in the circumstances.

**(3)** An access enforcement order referred to in subsection (2) may contain any one or more of the following provisions:

- (a) a provision requiring the respondent to give the applicant compensatory access to the child;
- (b) a provision requiring the respondent to give security, in the form and amount and under the conditions determined by the court, for the performance of the obligation to give the non-custodial parent access to the child;
- (c) a provision requiring the respondent, the applicant or the child, or any one or more of them, to attend such educational seminar, parenting course, counselling or other similar type of session as may be directed and requiring proof of such attendance as determined by the court;
- (d) a provision providing for the appointment of a mediator in accordance with section 61.8 to assist in resolving a matter that is at issue;
- (e) a provision requiring the respondent to reimburse the applicant for any necessary expenses actually incurred as a result of the denial of access;
- (f) a provision imposing on the respondent a penalty in an amount not exceeding \$100 for each day that access has been or is denied to a maximum of \$5000 and in default of payment to imprisonment not exceeding 90 days;
- (g) a provision providing for the respondent to be imprisoned continuously or intermittently for having





denied access, or for denying access until access is given, to a maximum of 90 days;

(h) a provision, where the court is satisfied based on the respondent's history of denying access or based on other reasonable and probable grounds that access will be denied, directing an enforcement officer to assist the applicant in obtaining access to the child in accordance with section 61.6;

(i) a provision directing the respondent or the applicant, or both, to do anything the court considers appropriate in the circumstances that is intended to induce compliance with the access order.

(4) A provision referred to in subsection (3)(f), (g) or (h) may be included in an access enforcement order only if the court is satisfied that none of the other provisions listed in subsection (3) would be effective.

(5) If an access enforcement order contains a provision referred to in subsection (3)(h), the court must include sufficient particulars of the time, days, dates or periods of access to be enforced.

(6) If the court is of the opinion that the denial of access to the child was excusable in the particular circumstances, the court

(a) may refuse to make an access enforcement order, or

(b) may make an access enforcement order in accordance with subsection (7) that is appropriate in the circumstances.

(7) An access enforcement order referred to in subsection (6)(b) may contain any one or more of the following provisions:

(a) a provision requiring the respondent to give the applicant compensatory access to the child,

(b) a provision requiring the applicant, respondent or child, or any one or more of them, to attend such educational seminar, parenting course, counselling or other similar type of session as may be directed and requiring proof of such attendance,

(c) a provision providing for the appointment of a mediator under section 61.8 to assist in resolving a matter that is at issue,



- (d) a provision requiring the respondent to reimburse the applicant for any necessary expenses actually incurred as a result of the denial of access,
- (e) a provision directing the respondent or the applicant, or both, to do anything that the court considers appropriate in the circumstances that is intended to induce compliance with the access order.

(8) If the court makes an access enforcement order that contains a provision referred to in subsection (3)(c) or (7)(b), the court must direct how the responsibility to pay any expenses is to be apportioned between the parties.

Failure to exercise access

**61.31(1)** An application for an order under this section may be made by the custodial parent.

(2) Where a court, on application, is satisfied that the non-custodial parent has failed to exercise a right of access without reasonable notice to the custodial parent, the court may make an order requiring the non-custodial parent to reimburse the custodial parent for any necessary expenses actually incurred as a result of the failure to exercise access.

Best interests of the child

**61.4(1)** Any orders or decisions made by a court under this Part must take into consideration the best interests of the child.

(2) In a proceeding under section 61.3, 61.31 or 61.41, the court must give reasons for any order or decision it makes.

(3) Any proceeding under this Part may, in the discretion of the court, be held in private.

(4) The record of the evidence given at any other proceeding, any documents and exhibits received in evidence at any other proceeding and an order of the court are admissible in evidence in a proceeding under this Part.

(5) Where the court is satisfied that a person has made a frivolous or vexatious application under this Part, the court may prohibit that person from making further applications to that court without leave of the court.

Variation

**61.41(1)** A court may, on application by the custodial parent or the non-custodial parent, make an order varying, terminating or revoking an order made under this Part.

(2) Where an application is made to a court of competent jurisdiction to vary, terminate or revoke an access order, that



court may vary, terminate or revoke an order made under this Part.

(3) Where, as a result of the variation of an access order, there is an inconsistency between the varied access order and an order made under this Part, the provisions of the order under this Part that are inconsistent with the varied access order are void.

(4) Where an access order is revoked or terminated, an order under this Part made in respect of that access order is revoked or terminated, as the case may be.

Form and  
notice of  
application

**61.5(1)** Applications under sections 61.3, 61.31 and 61.41(1) must be made in accordance with the regulations.

(2) Applications under sections 61.3 and 61.31 must be accompanied by a copy of the access order to which the application relates, certified as a true copy by a judge or other presiding officer or by the registrar of the extra-provincial tribunal or the person charged with keeping the orders of the extra-provincial tribunal.

(3) No proof is required of the signature or appointment of a judge, presiding officer, registrar or other person in respect of any certificate produced as evidence under this section.

(4) If an applicant or respondent has been given a notice of an application under subsection (1) and fails to attend as required by the notice, an order may be made in the absence of that person.

(5) Notice of the provisions of an order under this Part must be given in accordance with the regulations.

Assistance of  
enforcement  
officer

**61.6(1)** Where an access enforcement order contains a provision referred to in section 61.3(3)(h), an enforcement officer must, at the request of the applicant and on production of a certified copy or the original of the access enforcement order, give assistance to the applicant, comply with the directions of the court and take all reasonable steps to locate the child and to bring the child to the applicant.

(2) Where the enforcement officer is denied entry, or is otherwise unable to enter, into premises where the enforcement officer has reasonable and probable grounds for believing that the child is located, the enforcement officer may, if the enforcement officer wishes to enter the premises, apply to a presiding justice for an order authorizing the enforcement officer to enter the premises and to bring the child to the applicant.



(3) An application under subsection (2) must be made in accordance with the regulations, and may be made by telecommunication.

(4) Where the presiding justice makes an order under subsection (2) authorizing entry into the premises, the enforcement officer may enter the premises with such assistance and using such force as is reasonably necessary.

(5) An entry referred to in subsection (4) may be made only between the hours of 8 a.m. and 9 p.m. unless the presiding justice, in the order under subsection (2), authorizes entry at another time.

(6) No action lies against an enforcement officer, or a person giving assistance under subsection (4), by reason of anything done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any of them in good faith pursuant to or in the exercise or purported exercise of any power conferred by this Part.

Report by  
enforcement  
officer

**61.7(1)** Notwithstanding section 61.6, the enforcement officer is not required to bring the child to the applicant if the enforcement officer determines that, in the circumstances, it is not in the best interest of the child.

(2) The enforcement officer must prepare a report that includes a statement that describes the events and circumstances relating to the assistance that was provided.

(3) A copy of the report prepared by the enforcement officer must be made available to the applicant and the respondent.

(4) A report referred to in subsection (2) purporting to be signed by the enforcement officer is admissible in evidence at any subsequent proceedings relating to the enforcement of the access order as prima facie proof of the contents of the report without proof of the signature or official character of the person signing the report.

(5) An enforcement officer who has prepared a report under subsection (2) may be required to attend a proceeding under this Part only with leave of the court.

Mediation

**61.8(1)** Where the court requires mediation under section 61.3, the court may appoint a person to mediate any matters at issue between the parties.

(2) No person may be appointed as a mediator without that person's consent.





(3) Evidence of an admission or communication made in the course of a mediation, or anything arising from such admission or communication, is not admissible in any subsequent proceedings under this Part except with the written consent of the mediator and all the parties to the mediation.

(4) The court must direct how the responsibility to pay the expenses of the mediation is to be apportioned between the parties.

(5) Where the matters at issue are not resolved by mediation, either party, at any time after the completion of the first mediation session, may discontinue the mediation and proceed to have the matters at issue between the parties dealt with by the court.

Regulations

**61.9** The Lieutenant Governor in Council may make regulations

- (a) respecting the manner of making applications under this Part;
- (b) designating persons or a category of persons for the purpose of section 61.1(1)(h)(iv);
- (c) respecting the circumstances in which applications under sections 61.3, 61.31 and 61.41 must be made to a specific court;
- (d) respecting the manner of giving notices under this Part;
- (e) respecting the serving of copies of orders under this Part;
- (f) respecting the report referred to in section 61.7.

#### **Provincial Court Act**

Amends RSA  
1980 cP-20

**2(1) The *Provincial Court Act* is amended by this section.**

**(2) Section 32 is amended by adding the following after subsection (1):**

(1.1) The Court may include in an order under this section a provision requiring any person who has custody of a child to notify any person who is entitled to access to that child of any intention to change the place of residence of that child.

**Provincial Court Act**

**2(1)** Amends chapter P-20 of the Revised Statutes of Alberta 1980.

**(2)** Notification of change of residence; attendance at courses.

(1.2) A notice under subsection (1.1) must be given at least 30 days before the change or within such other period before the change as the Court may specify and must include when the change will be made and the address of the new place of residence of the child.

(1.3) The Court may include in an order under this section a provision requiring the parties to attend any course or program prescribed in the regulations.

(1.4) The Lieutenant Governor in Council may make regulations respecting the courses and programs that a party must attend under subsection (1.3).

**3 This Act comes into force on Proclamation.**

**3** Coming into force.