

2000 BILL 29

Fourth Session, 24th Legislature, 49 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 29

**PROTECTION OF CHILDREN INVOLVED IN
PROSTITUTION AMENDMENT ACT, 2000**

MRS. FORSYTH

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 29

2000

PROTECTION OF CHILDREN INVOLVED IN PROSTITUTION AMENDMENT ACT, 2000

(Assented to _____, 2000)

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

Amends SA
1998 cP-19.3

1 The *Protection of Children Involved in Prostitution Act* is amended by this Act.

2 Section 1(1) is amended by adding the following after clause (f):

(f.1) “program” means a program established under section 7;

3 Section 2 is amended

(a) in subsection (1)

(i) by adding “, and the Court may grant an order,” after “peace for an order”;

(ii) in clause (b) by striking out “72 hours” and substituting “5 days”;

(iii) by striking out “peace may” and substituting “peace may, by order,”;

(b) in subsection (10) by striking out “72 hours” and substituting “5 days”;

(c) by adding the following after subsection (12):

Explanatory Notes

1 Amends chapter P-19.3 of the Statutes of Alberta, 1998.

2 Definition.

3 Section 2(1) and (10) presently read:

2(1) If a police officer or director believes on reasonable and probable grounds that a person is a child and is in need of protection, the police officer or director may apply to a judge of the Court or to a justice of the peace for an order

(a) authorizing the police officer or director to apprehend and convey the child to the child's guardian or to an adult who in the opinion of the police officer or director is a responsible adult who has care and control of the child, or

(b) authorizing the police officer or director to apprehend and convey the child to a protective safe house and authorizing a director to confine the child for up to 72 hours to ensure the safety of the child and to assess the child,

and if the judge of the Court or justice of the peace is satisfied that the child may be found in a place or premises, the judge of the Court

(13) A director must inform a child with respect to whom a show cause hearing is to be held under subsection (12), in writing, of

- (a) the director's reasons for, and the time period of, the confinement,
- (b) the time and place of the show cause hearing,
- (c) the right to attend the show cause hearing,
- (d) the right to contact a lawyer, and
- (e) the telephone number of the nearest office of the Legal Aid Society of Alberta.

(14) A director or a child with respect to whom a show cause hearing is being held or is to be held, or both the director and child, may ask the Court to grant an adjournment of up to 2 days, or of more than 2 days if the director and the child agree.

(15) If the Court grants an adjournment under subsection (14), the Court may make an interim order to confine the child to a protective safe house if the show cause hearing will not be completed within the time period of the confinement set by the director under subsection (10).

4 The following is added after section 2:

Review of
confinement
decision

2.1(1) If a child is confined to a protective safe house under section 3(1)(b)(iii), the director must forthwith give the child a request for review form provided for in the regulations and inform the child in writing of

- (a) the director's reasons for, and the time period of, the confinement,
- (b) the right to ask the Court to review the director's decision to confine,
- (c) the right to contact a lawyer, and
- (d) the telephone number of the nearest office of the Legal Aid Society of Alberta.

(2) If a show cause hearing has not been held under section 2(12) with respect to the child, a child who is confined

or justice of the peace may authorize the police officer or director to enter, by force if necessary, that place or premises to search for and apprehend the child.

(10) Notwithstanding subsection (1)(b), a director may confine for up to 72 hours a child conveyed to a protective safe house under subsection (9) if the director considers it necessary in order to ensure the safety of the child and to assess the child.

4 Review of confinement decision.

under section 3(1)(b)(iii) may ask the Court to review the director's decision to confine by completing a request for review form, filing it with the Court and serving it on a director as soon as practicable.

(3) A review must be held within one day of filing and serving on a director the request for review.

(4) Notwithstanding subsection (3), a director or a child with respect to whom a review is being held, or both the director and child, may ask the Court to grant an adjournment of up to 2 days, or of more than 2 days if the director and the child agree.

(5) If the Court grants an adjournment under subsection (4), the Court may make an interim order to confine the child to a protective safe house if the review will not be completed within the time period of the confinement set by the director under section 3(1)(b)(iii).

(6) After hearing a review under this section, the Court may make an order confirming, varying or terminating the director's decision to confine.

(7) The Court shall not under subsection (6) extend the time period of the confinement set by the director under section 3(1)(b)(iii).

5 Section 3 is amended

(a) in subsection (1)(b) by striking out "subject to subsection (2),";

(b) by repealing subsections (2) and (3) and substituting the following:

(2) If a child is confined under subsection (1)(b)(iii) and after assessing the child a director is of the opinion that the child would benefit from a further period of confinement, the director may apply to the Court for an order to confine the child for a further period of confinement in a protective safe house for up to 21 days by completing, filing and serving on the child an application to confine form provided for in the regulations while the child is still confined.

(3) If a director does not make an application under subsection (2) and the director does not release the child from a confinement made pursuant to

5 Section 3 presently reads:

3(1) If a child is apprehended under section 2,

(a) a police officer that apprehends the child must notify a director forthwith, and

(b) subject to subsection (2), on the child's being conveyed to a protective safe house, a director must

(i) return the child to the custody of the child's guardian or to an adult who in the opinion of the director is a responsible adult who has care and control of the child,

(ii) release the child if the child has attained the age of 16 years and in the opinion of the director the child is capable of providing for the child's own needs and safety, or

- (a) subsection (1)(b)(iii), or
- (b) an interim order to confine under section 2(15) or 2.1(5),

the child is deemed to have been apprehended under section 17 of the *Child Welfare Act*.

(4) If, on an application under subsection (2), the Court is satisfied that

- (a) release of the child from a protective safe house presents a risk to the life or safety of the child because the child is unable or unwilling to stop engaging in or attempting to engage in prostitution,
- (b) less intrusive measures are not adequate to reduce the risk, and
- (c) it is in the best interests of the child to order a period of further confinement for the purposes of making programs or other services available to the child in a safe and secure environment,

the Court may make an order for further confinement of the child to a protective safe house for up to 21 days.

(5) A director may apply to the Court to renew an order to confine by completing, filing and serving on the child an application to renew an order to confine form provided for in the regulations, and if the Court is satisfied that the grounds in subsection (4) are met, the Court may renew the order one time to confine the child to a protective safe house for up to a further 21 days.

(6) If a child who is confined under subsection (1)(b)(iii) or who is subject to an order to confine leaves a protective safe house without the authorization of a director, a director or a peace officer may apprehend and convey the child, and detain the child while the child is being conveyed, to a protective safe house.

6 The following is added after section 3:

Adjournment

3.1(1) The Court may adjourn the hearing of an application under section 3 for not more than 7 days

- (a) with the consent of the child and a director, or

(iii) confine the child, pursuant to section 2, in a protective safe house to ensure the safety of the child and to assess the child.

(2) If a child is confined and is neither returned under subsection (1)(b)(i) nor released under subsection (1)(b)(ii) within 72 hours after the confinement under section 2, a director must apply to the Court under section 19 of the Child Welfare Act for a supervision order, a temporary or permanent guardianship order or an order returning the child to the custody of the child's guardian.

(3) If a director makes an application under subsection (2), the child is deemed to have been apprehended under the Child Welfare Act.

6 Adjournment, service, review, appeal.

(b) if the Court is satisfied that the adjournment is necessary in order to obtain evidence to assist the Court in determining whether an order to confine should be made.

(2) Unless the Court is satisfied that it would be in the best interest of the child to order otherwise, the Court must in respect of a child who is confined under this Act extend the confinement pending the hearing of an application under section 3.

(3) The number of days that the hearing of an application under section 3 is adjourned must be included in a calculation of the duration of the order made at the hearing if the child is confined in a protective safe house during the adjournment.

Review of
confinement
order

3.2(1) A child with respect to whom an order to confine has been made, or a director, may apply to the Court by completing and filing a notice for review form provided for in the regulations for a review of the Court order to confine under section 3.

(2) An application under subsection (1) may be made

(a) by a director, at any time during the period of the order and the period of any renewal of the order, or

(b) by the child who is the subject of the order or the guardian of the child, once during the period of the order and once during the period of any renewal of the order.

(3) A review must be heard not more than 5 days after the notice of review is filed with the Court or within any further period the Court directs.

(4) After a review is heard under this section, the Court may make an order confirming, varying or terminating the order to confine.

(5) The Court shall not under subsection (4) extend the period of confinement in the order being reviewed.

Service

3.3(1) The applicant must, not less than 2 days before the date fixed for a hearing, serve a notice of the nature, date, time and place of the hearing under sections 3.2 and 3.5 by any method orally or in writing,

- (a) if the applicant is the child, on the director,
- (b) if the applicant is the director, on the child and on the guardian unless a director is the guardian, and
- (c) if the applicant is the guardian of the child, on the child and director.

(2) The Court or Court of Queen's Bench may do any of the following at the time of hearing:

- (a) approve service made in a manner it considers adequate in the circumstances;
- (b) approve a shortened period as sufficient notice;
- (c) dispense with service on any person other than the director.

Appeal

3.4(1) An order of the Court made under section 3(4) or (5) may be appealed to the Court of Queen's Bench not more than 15 days after the date on which the order is made or renewed

- (a) by a director,
- (b) by a guardian on behalf of the child who is the subject of an order to confine, or
- (c) by the child who is the subject of an order to confine.

(2) If the Court refuses to make an order to confine under section 3(4) or to renew an order to confine under section 3(5), the applicant may appeal the refusal to the Court of Queen's Bench not more than 15 days after the date of the refusal.

Procedure on appeal

3.5(1) An appeal to the Court of Queen's Bench under this Act must be commenced by

- (a) filing a notice of appeal setting out the grounds of the appeal with the clerk of the Court, and
- (b) filing a copy of the notice of appeal in the Court of Queen's Bench.

(2) If a notice of appeal is filed pursuant to this section, the appellant may apply to the Court or the Court of Queen's

Bench for an order staying the execution of the order appealed pending the hearing of the appeal.

(3) On a notice of appeal being filed with the clerk of the Court, the clerk must forward to the clerk of the Court of Queen's Bench the record of the evidence taken and all other material in the possession of the Court that pertains to the matter being appealed not more than 7 days from the day the notice of appeal is filed with the clerk of the Court.

(4) On the requirements of subsection (3) and section 3.3(1) having been met, the Court of Queen's Bench must set down the appeal for hearing.

(5) Unless the Court of Queen's Bench directs otherwise, the appeal must come on for a hearing at the first sitting of the Court of Queen's Bench to be held after the filing of the notice of appeal in the Court of Queen's Bench.

(6) Notwithstanding subsections (4) and (5), if an appeal is not heard within 90 days of the filing of the notice of appeal, unless the Court of Queen's Bench grants leave to extend the time within which the appeal must be heard, the clerk of the Court of Queen's Bench must fix the next available date as the date on which the appeal must be heard and must notify the parties of the time and place of the hearing.

Decision of
Court

3.6(1) On hearing an appeal, the Court of Queen's Bench must determine the appeal on the material filed with or forwarded to the Court of Queen's Bench and any further evidence that the Court of Queen's Bench may require or permit to be given.

(2) The Court of Queen's Bench may

- (a) confirm the order or refusal,
- (b) revoke or vary the order made, or
- (c) make any order the Court could have made in the hearing before it.

7 Section 4 is amended

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

7 Section 4 presently reads:

4(1) If a child has been apprehended and conveyed to a protective safe house, a director must notify the guardian of the child forthwith

(a) that the child has been apprehended, and

(1.1) If a director makes an application for an order to confine or to renew an order to confine under section 3, the director must notify the guardian of the child forthwith of the nature, time and place of the application.

(b) in subsection (2) by striking out “subsection (1)” and substituting “this section”.

8 The following is added after section 6:

Definition

6.1 In sections 6.2 to 6.6, “Court” means the Provincial Court and the Court of Queen’s Bench.

Exclusion from hearing

6.2(1) Subject to subsection (2), if the Court is satisfied that

(a) the evidence or information presented to the Court may be seriously injurious or seriously prejudicial to the child who is the subject of a hearing under this Act or to a child who is a witness at a hearing under this Act, or

(b) it would be in the interest of public morals, the maintenance of order or the proper administration of justice to exclude any or all members of the public from the courtroom,

the Court may exclude any person, including a guardian of the child or the child, from all or part of the proceedings if the Court considers that person’s presence to be unnecessary to the conduct of the proceedings.

(2) The Court may not exclude a director or a lawyer representing a child.

Ban on publication

6.3(1) Except with the consent of the Court, no person shall publish by any means any report of a Court proceeding under this Act in respect of a child in which the name of the child or a guardian of the child, or any information serving to identify the child or a guardian of the child, is disclosed.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$2000 and in default of payment to imprisonment for a term of not more than 6 months.

(b) of the intention, if any, of the director to confine the child pursuant to section 3(1)(b)(iii).

(2) Notice under subsection (1) may be by any method and may be oral or in writing.

(3) The validity of proceedings under this Act is not affected by the director's inability, after reasonable effort, to give notice in accordance with this section.

8 Court proceeding matters, evidence.

Witnesses

6.4(1) In a proceeding before the Court under this Act, the Court or a justice of the peace on the application of a party, or the Court on its own motion, may

- (a) compel the attendance of any person and require the person to give evidence on oath,
- (b) require the production by any person of any documents or things, and
- (c) exercise the powers that are conferred for those purposes on a justice of the peace under Part XXII of the *Criminal Code* (Canada).

(2) The record of the evidence given at any other hearing, any documents and exhibits received in evidence at any other hearing and an order of the Court are admissible in evidence in a hearing under this Act.

(3) The evidence of each witness in a Court proceeding under this Act must be taken under oath and forms part of the record.

(4) Notwithstanding subsection (3), if the Court considers it proper to do so and is satisfied that no better form of evidence is readily available, the Court may

- (a) accept evidence by affidavit, or
- (b) accept hearsay evidence.

Confidential
evidence

6.5(1) Notwithstanding Part XXII of the *Criminal Code* (Canada), the Court may issue a subpoena requiring

- (a) the Commission under the *Alcohol and Drug Abuse Act*,
- (b) a board under the *Hospitals Act*,
- (c) a board under the *Mental Health Act*, or
- (d) the Chief Medical Officer under the *Public Health Act*,

or the designate of any of them to produce any documents, records or other information they possess or control that may relate to the proceedings before the Court with respect to a child.

(2) The person named in a subpoena or the person's designate must attend at the time and place stated in the subpoena with any documents, records or other information that may relate to the proceedings before the Court and must remain in attendance throughout the proceedings unless the person is excused by the Court.

(3) If as the result of the issuing of a subpoena under subsection (1) a person is required to produce any documents, records or other information that is otherwise confidential under the *Alcohol and Drug Abuse Act*, *Hospitals Act*, *Mental Health Act* or *Public Health Act*, the documents, records or other information must be dealt with in accordance with this section.

(4) The person named in the subpoena or the person's designate must permit a director, the child or a lawyer representing either of them to examine the documents, records or other information before the time stated in the subpoena.

(5) A director or a child may apply to the Court at the time stated in the subpoena or at any other time during the proceedings before the Court to have all or part of the documents, records or other information admitted into evidence.

9 The following is added after section 7:

Program
access while
not confined

7.1(1) If the director is of the opinion that a child is in need of protection, an agreement to make programs or other services available to the child may be entered into by

- (a) the child's guardian, the child and a director, or
- (b) if the child is 16 years of age or older, the child and a director.

(2) The agreement must be in the form provided for in the regulations and must

- (a) describe the programs or other services to be made available,
- (b) state the contributions, financial or otherwise, to be made by the guardian with respect to the programs or other services to be made available to the child,

9 Program access while not confined.

(c) state the duration of the agreement, and

(d) state how the agreement may be amended or terminated.

(3) The duration of an agreement under this section may not exceed 6 months but the agreement may be renewed.

10 Section 8(1)(b) is amended by striking out “in any application made to the Court”.

11 The *Child Welfare Act* is amended

(a) **by repealing section 19(1.1);**

(b) **in section 87(3) by adding** “or the *Protection of Children Involved in Prostitution Act*” **after** “under this Act”.

12 This Act comes into force on Proclamation.

10 Section 8(1) presently reads:

8(1) The Lieutenant Governor in Council may make regulations

(a) respecting the rules to be followed in a proceeding before the Court under this Act;

(b) respecting the forms, including notices, to be used in any application made to the Court under this Act.

11 Consequential amendment.

12 Coming into force.