

2005 Bill 202

First Session, 26th Legislature, 54 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 202

PROTECTION OF CHILDREN ABUSING DRUGS ACT

MRS. JABLONSKI

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 202

2005

PROTECTION OF CHILDREN ABUSING DRUGS ACT

(Assented to _____, 2005)

Preamble

WHEREAS the safety, security and well-being of children and families is of paramount importance to the people of Alberta;

WHEREAS children who abuse alcohol or drugs are a danger to themselves and require help;

WHEREAS the Legislative Assembly of Alberta recognizes the responsibility of families and communities to provide that help;

WHEREAS the Legislative Assembly of Alberta is committed to assisting families and communities in providing that help;

WHEREAS the Legislative Assembly of Alberta is committed to ensuring the health and safety of all children; and

WHEREAS the Legislative Assembly of Alberta is committed to helping children to overcome their problems with alcohol and drugs;

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

Interpretation

1(1) In this Act,

- (a) "alcohol" means liquor as defined under the *Gaming and Liquor Act*;

- (b) “child” means a person under 18 years of age;
- (c) “Commission” means the Alberta Alcohol and Drug Abuse Commission;
- (d) “Court” means the Provincial Court except in sections 12 to 16;
- (e) “director” means a director under *the Child, Youth and Family Enhancement Act*;
- (f) “drug” means alcohol or a substance
 - (i) whose use is controlled by law, or
 - (ii) that is used by the child in a manner that is not intended by the manufacturer of the substance;
- (g) “guardian” means guardian as defined in the *Child, Youth and Family Enhancement Act*;
- (h) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (i) “police officer” means a member of a municipal police service, a member of the Royal Canadian Mounted Police or a special constable;
- (j) “professional” means a person who is knowledgeable about alcohol or drug abuse, including a physician, a psychologist or a social worker;
- (k) “program” means a program established by the Minister;
- (l) “protective safe house” means premises prescribed by the Minister as a protective safe house.

(2) For the purposes of this Act, a child is abusing alcohol or a drug if there are reasonable grounds to believe the child is using alcohol or a drug in quantities that create a condition in the child that is characterised by physical, psychological or social problems.

Application for assessment

2(1) The guardian, physician, relative, teacher or spiritual advisor of a child may apply to the Commission to admit the child into a program for the treatment of alcohol or drug abuse if, in the opinion of the applicant, the child is abusing alcohol or a drug.

- (2) An application to the Commission must
 - (a) be made in writing addressed to the Commission, and
 - (b) set out in detail the reasons for the applicant's opinion that the child is abusing alcohol or a drug.

Assessment by Commission

- 3(1)** On application under section 2, the Commission must assess the child and determine whether there are reasonable grounds to believe the child is abusing alcohol or a drug.
- (2) In order to make an assessment, the Commission may request that
 - (a) the child, the child's guardian or the applicant appear before the Commission, or
 - (b) the child or the child's guardian provide the Commission with access to the child's medical records.
- (3) The Commission may determine that the child is abusing alcohol or a drug and is in need of treatment.

Voluntary treatment

- 4(1)** If the child, after a determination by the Commission, agrees to receive treatment through a program, the Commission may refer the child to a program suitable for the child.
- (2) The program may be an out-patient program or a program given while the child is confined in a protective safe house.
- (3) If the Commission determines a child is in need of treatment, 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 the Commission, or
 - (b) if the child is 16 years of age or older, the child and the Commission.
- (4) 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 duration of the agreement, and

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

(5) The period of an agreement under this section may not be more than 6 months, but the agreement may be renewed.

Apprehension

5(1) If the child does not appear at an assessment by the Commission or does not agree to participate in a program after a determination by the Commission that the child is abusing alcohol or a drug and in need of treatment, the guardian of the child may apply to a judge of the Court or to a justice of the peace for an order under subsection (2).

(2) The Court may grant an order

(a) authorizing a police officer or director to apprehend and convey the child to the child's guardian, or

(b) authorizing a police officer or director to

(i) apprehend and convey the child to a protective safe house, and

(ii) confine the child for up to 5 days to ensure the safety of the child and for assessment by the Commission.

(3) On application by the guardian, a judge of the Court or justice of the peace who is satisfied that the child may be found in a place or premises may, by order, authorize a police officer or director to enter, by force if necessary, that place or premises to search for and apprehend the child.

Telephone warrant

6(1) If, in the opinion of a police officer or director, it would be impracticable to appear personally before a judge of the Court or justice of the peace to apply for an order in accordance with section 5, the police officer or director may make the application by telephone or other means of telecommunication to a judge of the Court or justice of the peace.

(2) The information on which an application for an order by telephone or other means of telecommunication is based must be given on oath and must be recorded verbatim by the judge of the Court or justice of the peace who, as soon as practicable, must cause the record or a transcription of the record, certified by the

judge of the Court or the justice of the peace as to time, date and contents, to be filed with the clerk of the Court.

(3) For the purposes of subsection (2), an oath may be administered by telephone or other means of telecommunication.

(4) The information submitted by telephone or other means of telecommunication must include the following:

- (a) a statement of the circumstances that make it impracticable for a police officer or director to appear personally before a judge of the Court or a justice of the peace;
- (b) the identity of the child;
- (c) a statement setting out the reasons for the application under section 5(1);
- (d) a statement as to any prior application for an order under this section in respect of the same child of which the police officer or director has knowledge.

(5) A judge of the Court or justice of the peace may make an order under this section conferring the same authority respecting apprehending, conveying and confining the child and entering a place or premises as may be conferred under section 5 if the judge or justice is satisfied that the application made by telephone or other means of telecommunication

- (a) is based on information that conforms to the requirements of subsection (4), and
- (b) discloses reasonable grounds for dispensing with personal appearance for the purpose of making an application under section 5.

(6) If a judge of the Court or justice of the peace makes an order under subsection (5),

- (a) the judge of the Court or justice of the peace must complete and sign an order in the prescribed form, noting on its face the time, date and place at which it was made,
- (b) the police officer or director, on the direction of the judge of the Court or justice of the peace, must complete, in duplicate, a facsimile of the order in the prescribed form, noting on its face the name of the judge of the Court or

justice of the peace making the order and the time, date and place at which it was made, and

- (c) the judge of the Court or justice of the peace must, as soon as practicable after the order has been made, cause the order to be filed with the clerk of the Court, who must provide a copy to a director.

(7) An order made by telephone or other means of telecommunication is not subject to challenge by reason only that the circumstances were not such as to make it reasonable to dispense with personal appearance for the purpose of making an application under section 5.

Director's decision

7 If a child is apprehended under this Act,

- (a) a police officer who apprehends the child must notify a director forthwith, and
- (b) 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
 - (ii) confine the child in a protective safe house to ensure the safety of the child and to assess the child.

Involuntary assessment

8(1) If a child who has not been assessed by the Commission is conveyed to and confined in a protective safe house under section 5 or 6, the Commission or a director must assess the child and determine whether the child is abusing alcohol or a drug and is in need of treatment.

(2) An assessment under subsection (1) must be made not more than 3 days after the date of the child's confinement.

Compulsory treatment order

9(1) If a child is confined in a protective safe house under section 5 or 6, the director or the child's guardian must appear before the Court not more than 5 days after the commencement of the confinement to show cause why

- (a) the confinement is necessary and the child should be treated for alcohol or drug abuse as a resident in a protective safe house, or
 - (b) custody of the child should be returned to the guardian and the child should be treated for alcohol or drug abuse as an out-patient.
- (2) The director or the guardian must inform a child with respect to whom a show cause hearing is to be held, in writing, of
- (a) the assessment by the Commission or the director, the reasons for the confinement and the period of further confinement, if any, recommended,
 - (b) the time and place of the show cause hearing,
 - (c) the right of the child and the child's guardian to attend the show cause hearing,
 - (d) the right of the child and the child's guardian to contact a lawyer, and
 - (e) the telephone number of the nearest office of the Legal Aid Society of Alberta.
- (3) A director, a child with respect to whom a show cause hearing is held or the child's guardian may ask the Court at any time to grant an adjournment of up to 2 days, or if the director, the child and the guardian agree, of more than 2 days.
- (4) If the Court grants an adjournment under subsection (3), 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 5 days.
- (5) After hearing a review under this section, the Court may make an order
- (a) confirming, varying or terminating the period of confinement of the child in a protective safe house as recommended by the Commission or the director, and
 - (b) confirming, varying or dispensing with the program or treatment recommended by the Commission or the director.

Period of treatment

10(1) A child must not be confined under this Act for treatment in a program for a period of more than 90 days.

(2) Despite subsection (1), a child may be confined for treatment for an additional period of 10 days with the consent of the child.

(3) The child or the child's guardian may apply to the Court for an order

- (a)** varying or terminating the period of confinement of the child in a protective safe house,
- (b)** permitting the child to continue treatment in a program as an out-patient for the balance of the period of treatment, or
- (c)** requiring the child to live with the guardian or a person approved by the Court during the period of treatment in a program as an out-patient.

(4) An order under subsection (3) may be subject to any terms or conditions the Court considers necessary.

Definition

11 In sections 12 to 16, "Court" means the Provincial Court and the Court of Queen's Bench.

Service

12(1) The applicant must, not less than 2 days before the date fixed for an application to the Court, serve a notice of the nature, date, time and place of the hearing by any method orally or in writing,

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

(2) The Court may do any of the following at the time of a 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.

Exclusion from hearing

13(1) Subject to subsection (2), 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 and 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.

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

Ban on publication

14(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) A 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.

Witnesses

15(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) Despite 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

16(1) Notwithstanding Part XXII of the *Criminal Code* (Canada), the Court may issue a subpoena requiring

- (a) the Commission,
- (b) a director,
- (c) a board under the *Hospitals Act*,
- (d) a board under the *Mental Health Act*, or
- (e) 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 or excluded 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, the child's guardian or a lawyer representing any of them to examine the documents, records or other information before the time stated in the subpoena.

(5) A director, the child or the child's guardian 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.

Programs

17 The Minister may establish programs that in the opinion of the Minister are necessary to treat children who are abusing alcohol or a drug.

Safe houses

18 The Minister may prescribe premises as protective safe houses.

Regulations

19 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 under this Act;
- (c) respecting the costs of treatment or programs;
- (d) respecting the costs of the guardian or of a child who is receiving treatment under a program;
- (e) respecting the assessment of children under this Act;
- (f) respecting panels of the Commission that include professionals who are not members of the Commission;
- (g) respecting programs.

Coming into force

20 This Act comes into force on July 1, 2006.