

2011 Bill 8

Fourth Session, 27th Legislature, 60 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 8

MISSING PERSONS ACT

MR. VANDERBURG

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 8

2011

MISSING PERSONS ACT

(Assented to , 2011)

Table of Contents

- 1** Definitions
- 2** Crown bound
- 3** Order regarding records and right of entry
- 4** Emergency circumstances
- 5** Failure to comply
- 6** Use of information and records limited
- 7** Disclosure of information and records limited
- 8** Privileged information
- 9** Other rights unaffected
- 10** Liability
- 11** Offence
- 12** Regulations
- 13** Coming into force

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

Definitions

1 In this Act,

- (a) “custodian” means a custodian as defined in the *Health Information Act*;
- (b) “missing person” means

- (i) an individual who has not been in contact with those persons who would likely be in contact with the individual, or
- (ii) an individual
 - (A) whose whereabouts are unknown despite reasonable efforts to locate the individual, and
 - (B) whose safety and welfare are feared for given the individual's physical or mental capabilities or the circumstances surrounding the individual's absence;
- (c) "person", except when used to refer to a missing person, includes a partnership, custodian, public body, association or other organization;
- (d) "police service" means a police service as defined in section 1(1) of the *Police Act*;
- (e) "public body" means a public body as defined in the *Freedom of Information and Protection of Privacy Act*.

Crown bound

2 This Act binds the Crown.

Order regarding records and right of entry

3(1) For the purposes of investigating the whereabouts of a missing person, a police service may apply ex parte to a justice of the peace for an order

- (a) requiring any person to make available to the police service, or to provide the police service with copies of, any of the records referred to in subsection (2) in respect of a missing person that
 - (i) may be of assistance in investigating the whereabouts of the missing person, and
 - (ii) are in the possession or under the control of the person;

- (b) in the case of a missing person who is a minor or a represented adult under the *Adult Guardianship and Trusteeship Act*, authorizing a member of a police service or any other person to enter, by force if necessary, a private dwelling or other place if there is a reasonable belief that the missing person may be located there.

(2) The records to be provided under subsection (1)(a) are as follows:

- (a) records containing contact or identification information;
- (b) telephone and other electronic communication records, including, without limitation,
 - (i) records related to signals from a wireless device that may indicate the location of the wireless device,
 - (ii) cellular telephone records,
 - (iii) inbound and outbound text messaging records, and
 - (iv) browsing history records;
- (c) global positioning system tracking records;
- (d) video records, including closed caption television footage;
- (e) records containing employment information;
- (f) records containing health information;
- (g) records containing school or post-secondary attendance information;
- (h) records containing travel and accommodation information;
- (i) records containing financial information;
- (j) any other records as the justice of the peace considers appropriate.

(3) The justice of the peace may make an order under subsection (1) if the justice of the peace is satisfied that the applicant requires the order in aid of investigating the whereabouts of the missing person.

(4) If a missing person is a minor or a represented adult under the *Adult Guardianship and Trusteeship Act* and there is reason to believe that the missing person may be in the company of another individual, the justice of the peace may make an order under subsection (1) requiring a person to make available to the applicant, or to provide the applicant with copies of, any records referred to in subsection (2) in respect of that other individual that are in the possession or under the control of the person.

(5) The justice of the peace may in an order made under subsection (1) require any person against whom the order is made to provide the applicant with an accounting of the efforts made by the person to locate any records that cannot be found.

(6) An application under this section must be in the prescribed form.

Emergency circumstances

4(1) Despite section 3(1), if there are reasonable grounds to believe that immediate access to records is necessary to prevent imminent bodily harm to or the death of a missing person, a police service may serve a written demand on any person requiring the person, within a reasonable period of time stipulated in the demand, to make available to the police service, or to provide the police service with copies of, any of the records referred to in subsection (2) in respect of the missing person that are in the possession or under the control of the person.

(2) The records to be provided under subsection (1) are as follows:

- (a) records containing contact or identification information;
- (b) telephone and other electronic communication records, including, without limitation,
 - (i) records related to signals from a wireless device that may indicate the location of the wireless device,
 - (ii) cellular telephone records,
 - (iii) inbound and outbound text messaging records, and
 - (iv) browsing history records;
- (c) global positioning system tracking records;

- (d) records containing employment information to the extent that the records might indicate when the missing person was last seen or heard from and when, where and how the missing person is paid;
- (e) records containing health information to the extent that the records might indicate if the missing person has recently been admitted to a hospital and, if the records do so indicate, which hospital and the date and time of, and the reason for, admission;
- (f) records containing school or post-secondary attendance information;
- (g) records containing financial information to the extent that the records might indicate
 - (i) if one or more of the missing person's credit cards were recently used and, if the records do so indicate, when, from where and for what purpose the credit cards were used, and
 - (ii) if one or more of the missing person's bank accounts were recently accessed and, if the records do so indicate, when, from where and for what purpose the bank accounts were accessed;
- (h) any other prescribed records.

(3) A person on whom a written demand under subsection (1) is served shall make the records available, or provide copies of the records, to the police service within the time specified in the demand.

(4) A written demand under this section must be in the prescribed form.

Failure to comply

5(1) If a person is served with a written demand under section 4(1) and the person does not comply with the demand, the police service may apply to a justice of the peace for an order directing the person to comply with the demand.

(2) The justice of the peace may make an order under subsection (1) if the justice of the peace is satisfied that

- (a) the records demanded are in the possession or under the control of the person, and
- (b) the applicant requires the order in aid of investigating the whereabouts of the missing person.

(3) An order under subsection (1) may be subject to any terms or conditions, including terms and conditions as to costs, that the justice of the peace considers appropriate in the circumstances.

Use of information and records limited

6(1) Despite section 39 of the *Freedom of Information and Protection of Privacy Act*, a police service may use information and records collected under this Act only for

- (a) the purpose of investigating the whereabouts of a missing person or a use consistent with that purpose, or
- (b) a purpose for which the information may be disclosed to it under section 7.

(2) If the investigation into the whereabouts of a missing person becomes a criminal investigation, this section does not apply to the use of information and records collected under this Act for the purposes of the criminal investigation.

Disclosure of information and records limited

7(1) Any information or records collected under this Act are confidential and may not be disclosed except in accordance with this section.

(2) Despite section 40 of the *Freedom of Information and Protection of Privacy Act*, information or records collected under this Act may be disclosed only in the circumstances described

- (a) in section 40(1)(a), (d) and (z) of the *Freedom of Information and Protection of Privacy Act*,
- (b) in section 40(1)(c), (g), (r), (s), (v) or (cc) of the *Freedom of Information and Protection of Privacy Act*, but only to the extent necessary to further the investigation into the whereabouts of a missing person, or
- (c) in subsections (3) to (7).

(3) A police service may, for the purposes of furthering its investigation into the whereabouts of a missing person, release, in the form of a media release or by posting on a website, the following information collected under this Act in respect of the missing person:

- (a) the missing person's name;
- (b) a physical description of the missing person;
- (c) a photograph of the missing person;
- (d) information about any medical conditions of the missing person that might cause imminent risk;
- (e) pertinent vehicle information;
- (f) the place that the missing person was last seen;
- (g) the circumstances surrounding the disappearance of the missing person.

(4) A police service may publicly announce that a missing person has been located.

(5) Subject to the regulations, if a missing person who is a minor is located, a police service may, without that person's consent, disclose information and records collected under this Act about the person to a parent or guardian of the person if, in the opinion of the police service, the disclosure will protect the safety of the person.

(6) Subject to the regulations, if a missing person who is a represented adult under the *Adult Guardianship and Trusteeship Act* is located, a police service may, without that person's consent, disclose information and records collected under this Act about the person to a guardian of the person if, in the opinion of the police service, the disclosure will protect the safety of the person.

(7) A police service may disclose information and records collected under this Act for the purposes of delivering a common or integrated program or service related to missing persons investigations.

(8) If the investigation into the whereabouts of a missing person becomes a criminal investigation, this section does not apply to the disclosure of information and records collected under this Act for the purposes of the criminal investigation.

Privileged information

8 Nothing in this Act compels the disclosure of any information or records that are subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege.

Other rights unaffected

9 This Act does not restrict any authority that a police service would otherwise have to collect any information or records.

Liability

10 No action or proceeding may be brought against a person in respect of anything done or omitted to be done in good faith under this Act.

Offence

11 A person who wilfully contravenes section 6 or 7 is guilty of an offence and liable to a fine of not more than \$10 000.

Regulations

12 The Lieutenant Governor in Council may make regulations

- (a) respecting applications under sections 3 and 5;
- (b) respecting the service of a written demand under section 4(1);
- (c) prescribing records for the purposes of section 4(2)(h);
- (d) respecting the collection, use and disclosure of information and records for the purposes of this Act;
- (e) respecting the type of records to be kept and maintained under this Act;
- (f) prescribing forms for the purposes of this Act;
- (g) defining terms used but not defined in this Act;
- (h) respecting any other matter that the Lieutenant Governor in Council considers necessary for carrying out the intent of this Act.

Coming into force

13 This Act comes into force on Proclamation.

