

DRUG-ENDANGERED CHILDREN ACT

Chapter D-17

Table of Contents

- 1** Interpretation
- 2** Apprehension order
- 3** Notice of apprehension
- 4** Director's responsibilities
- 5** Deemed apprehension
- 6** Regulations
- 7** Offence
- 8** Consequential amendment
- 9** Coming into force

Preamble

WHEREAS the safety, security and well-being of children is a paramount concern of the Government of Alberta;

WHEREAS children exposed to illegal manufacturing of drugs, indoor cannabis grow operations, trafficking and other forms of illegal drug activity are victims of abuse; and

WHEREAS the Government of Alberta is committed to protecting children from the dangers of exposure to illegal drug manufacturing, indoor cannabis grow operations, trafficking and other forms of illegal drug activity;

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) "child" means a person under the age of 18 years;
- (b) "Court" means the Provincial Court;

(c) "director" means a director under the *Child, Youth and Family Enhancement Act*;

(d) "drug" means a controlled substance and an analogue as defined in the *Controlled Drugs and Substances Act* (Canada);

(e) "emotionally injured" means emotionally injured within the meaning of the *Child, Youth and Family Enhancement Act*;

(f) "guardian" means a guardian as defined in the *Child, Youth and Family Enhancement Act*;

(g) "indoor cannabis grow operation" means a place or premises where cannabis is grown either in soil or hydroponically;

(h) "Minister" means the Minister designated with the responsibility for the *Child, Youth and Family Enhancement Act*;

(i) "physically injured" means physically injured within the meaning of the *Child, Youth and Family Enhancement Act*;

(j) "police officer" means a police officer as defined in the *Police Act*;

(k) "sexually abused" means sexually abused within the meaning of the *Child, Youth and Family Enhancement Act*;

(l) "traffic" means traffic as defined in the *Controlled Drugs and Substances Act* (Canada).

(2) For the purposes of this Act, a child is a drug-endangered child if

(a) the guardian exposes the child or allows the child to be exposed to, or to ingest, inhale or have any contact with, a chemical or other substance that the guardian uses to illegally manufacture a drug;

(b) the guardian illegally manufactures a drug in the presence of the child, or causes or allows the child to enter or remain in any place or premises where a drug is illegally manufactured or stored;

(c) the guardian possesses a chemical or other substance with which the guardian intends to illegally manufacture a drug in a place or premises where a child resides;

(d) the guardian exposes the child or allows the child to be exposed to an indoor cannabis grow operation, or to the process of extracting oil or resins from cannabis plants;

(e) the guardian involves the child in or exposes the child to trafficking;

(f) the child has been or is being, or there is a substantial risk that the child will be, physically injured, emotionally injured or sexually abused because the guardian is exposing the child to other forms of illegal drug activity.

Apprehension order

2(1) If a director or police officer has reasonable and probable grounds to believe that a child is a drug-endangered child, the director or police officer may make an ex parte application to a judge of the Court or to a justice of the peace for an order

(a) authorizing the director or police officer to apprehend the child, and

(b) if the judge or justice is satisfied that the child may be found in a place or premises, authorizing the director, police officer or any person named in the order to enter, by force if necessary, that place or those premises to search for and apprehend the child.

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

(3) 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 or justice of the peace who, as soon as practicable, must cause the record or a transcription of the record, certified by the judge or justice of the peace as to time, date and contents, to be filed with the clerk of the Court.

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

(5) 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 the director or police officer to appear personally before a judge of the Court or a justice of the peace;

(b) the identity of the child, if known;

(c) a statement setting out the director's or police officer's grounds for believing that the child is a drug-endangered child;

(d) a statement of the director's or police officer's grounds for believing that the child will be found in the place or premises to be searched;

(e) a statement as to any prior application for an order under this section in respect of the same child of which the director or police officer has knowledge.

(6) A judge of the Court or a justice of the peace referred to in subsection (2) who is satisfied that an application made by telephone or other means of telecommunication

(a) conforms to the requirements of subsection (5), and

(b) discloses reasonable grounds for dispensing with personal appearance for the purpose of making an application under subsection (1)

may make an order conferring the same authority respecting search and apprehension as may be conferred under subsection (1).

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

(a) the judge 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 director or police officer, on the direction of the judge 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 or justice of the peace making the order and the time, date and place at which it was made, and

(c) the judge 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.

(8) 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 subsection (1).

(9) Notwithstanding subsection (1), a director or police officer may apprehend a child without an order if the director or police officer has reasonable and probable grounds to believe that the child's life, health or safety is seriously and imminently endangered because the child is a drug-endangered child.

(10) A person who is authorized to apprehend a child under subsection (9) and who has reasonable and probable grounds to believe that the child may be found in a place or premises may, without an order and by force if necessary, enter that place or those premises and search for the child.

Notice of apprehension

3(1) If a child has been apprehended, a director must notify the guardian of the child forthwith that the child has been apprehended.

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

(3) Notice under subsection (1) must include a statement of the reasons for the apprehension and the telephone number of the nearest office of the Legal Aid Society of Alberta.

(4) The validity of proceedings under this Act is not affected by reason only that a director is unable, after reasonable effort, to give notice in accordance with this section.

Director's responsibilities

4 If a child has been apprehended under this Act, a director has exclusive custody of the child and is responsible for the care, maintenance and well-being of the child while the child is apprehended under this Act.

Deemed apprehension

5 If a director does not return the child to the child's guardian within 2 days from the date of the apprehension, the child is deemed to have been apprehended under section 19 of the *Child, Youth and Family Enhancement Act*.

Regulations

6 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.

Offence

7 Any person who

(a) wilfully causes a child to be a drug-endangered child, or

(b) obstructs or interferes with, or attempts to obstruct or interfere with, a director, a police officer or any other duly authorized person exercising any power or performing any duty under this Act

is guilty of an offence and liable to a fine of not more than \$25 000 or to imprisonment for a term of not more than 24 months or to both a fine and imprisonment.

8 *(This section amends the Child, Youth and Family Enhancement Act; the amendment has been incorporated into that Act.)*

Coming into force

9 This Act comes into force on Proclamation.

(NOTE: Proclaimed in force November 1, 2006.)