



3 1936 00021 576 2

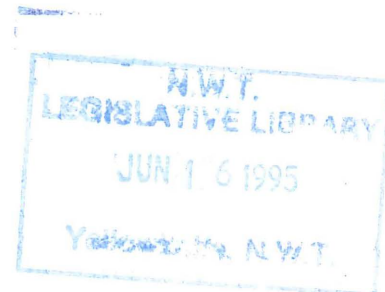
TABLED DOCUMENT NO. 139-12(7) TABLED ON JUN 1 5 1995

PROPOSED
CHILD AND FAMILY SERVICES ACT

General description

This proposed *Child and Family Services Act* is one of four proposed statutes that would reform family law legislation in the Northwest Territories. This statute would cover the protection of children, including voluntary support services and agreements and the apprehension of children.

IMPORTANT: This proposed *Child and Family Services Act* is being released for information purposes only.



PROPOSED

CHILD AND FAMILY SERVICES ACT

INTERPRETATION

Definitions

1. In this Act,

"child" means a person who is or, in the absence of evidence to the contrary, appears to be under the age of 16 years, and a person in respect of whom an order has been made under subsection 26(2);

"Child and Family Services Committee" means a Child and Family Services Committee established by a community agreement;

"child care facility" means a child care facility approved by the Minister under subsection 35(1);

"Child Protection Worker" means a Child Protection Worker appointed under subsection 30(1) or (2);

"community", except in relation to a community agreement, means a city, town or village as defined in the *Cities, Towns and Villages Act*, a hamlet as defined in the *Hamlets Act*, a charter community as defined in the *Charter Communities Act*, and a settlement as defined in the *Settlements Act*.

"community agreement" means an agreement made under subsection 31(2);

"court", except in section 47, means the Supreme Court, the Territorial Court or a justice of the peace;

"Director" means the Director of Child and Family Services appointed under subsection 28(1);

"foster home" means a foster home approved by the Minister under subsection 35(3);

"parent" includes a person who has custody of a child under a court order or an agreement.

Principles governing Act

2. This Act shall be administered and interpreted in accordance with the following principles:

- (a) the child's safety;
- (b) the child's physical, mental and emotional level of development and needs, and the appropriate care or treatment to meet those needs;
- (c) the child's cultural, linguistic and spiritual or religious upbringing and ties;
- (d) the importance for the child's development of a positive relationship with a parent, a secure place as a wanted and needed member of the family, and a stable environment;
- (e) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity;
- (f) the risk that the child may suffer harm through being removed from, kept away from, returned to, or allowed to remain in, the care of a parent;
- (g) the merits of any proposed plan of care for the child;
- (h) the child's relationship by blood or through adoption;
- (i) the child's views and preferences, if they can be reasonably ascertained;
- (j) the effects on the child of a delay in making a decision;
- (k) all other relevant factors.

1
1
2
2
3

PART I

PROTECTION OF CHILDREN

Voluntary Support Services and Agreements

Voluntary support services and agreements

4. (1) The Director may enter into a written agreement with a person who has lawful custody of a child to provide services or to assist others in providing services to support and assist the family to care for the child.

4

Voluntary support services

(2) The services referred to in subsection (1) may include, but are not limited to,

- (a) counselling;
- (b) in home support;
- (c) respite care;
- (d) parenting programs;
- (e) services for improving the family's financial situation;
- (f) services for improving the family's

4

- will suffer emotional harm and the child's parent does not provide, or refuses or is unavailable or unable to consent to, services, treatment or healing processes to prevent the harm; 5
- (f) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent does not provide, or refuses or is unavailable or unable to consent to, services, treatment or healing processes to remedy or alleviate the condition; 10
- (g) the child's health or emotional or mental well-being is harmed by the use of alcohol, drugs, solvents or similar substances and the child's parent is unavailable or unable or unwilling to properly care for the child; 15
- (h) the child requires medical treatment to cure, prevent or alleviate serious physical harm or serious physical suffering and the child's parent does not provide, or refuses or is unavailable or unable to consent to, the treatment; 20
- (i) the child suffers from malnutrition of a degree that, if not immediately remedied, could seriously impair the child's growth or development or result in permanent injury or death; 25
- (j) the child has been abandoned by the child's parent without the child's parent having made adequate provision for the child's care or custody and the child's extended family has not made adequate provision for the child's care or custody; 30
- (k) the child's parent has died without making adequate provision for the child's care or custody and the child's extended family has not made adequate provision for the child's care or custody; 35
- (l) the child's parent is unavailable or unable or unwilling to properly care for the child and the child's extended family has not made adequate provision for the child's care; 40
- (m) the child is less than 12 years of age and has killed or seriously injured another person or has persisted in 45

Investigation

Assessment
and
investigation

7. A person to whom a report is made under subsection 6(1) in respect of a child shall assess the report and, where the person considers it advisable, investigate the child's need for protection.

Action by
Child
Protection
Worker

8. (1) Where the person to whom a report is made under subsection 6(1) in respect of a child is a Child Protection Worker and during or as a result of an investigation under section 7 the Child Protection Worker has reasonable grounds to believe that the child needs protection, the Child Protection Worker

- (a) may apprehend the child;
- (b) may offer the services referred to in subsection 4(2) to the child's family without entering into an agreement under subsection 4(1) until a plan of care agreement is signed or a court makes an order under section 22; and
- (c) shall, subject to section 10, within five days after the day on which the report is made under subsection 6(1) in respect of the child, establish a plan of care committee to develop a plan of care for the child, whether or not the child has been apprehended.

Action by
peace officer
or authorized
person

(2) Where the person to whom a report is made under subsection 6(1) in respect of a child is a peace officer or an authorized person and during or as a result of an investigation under section 7 he or she has reasonable grounds to believe that the child needs protection, the peace officer or authorized person

- (a) may apprehend the child; and
- (b) shall refer the matter to a Child Protection Worker without delay after
 - (i) determining that the child's health or safety is not in immediate danger, or
 - (ii) apprehending the child under paragraph (a).

Action by
Child
Protection
Worker on
referral

(3) Where a matter is referred to a Child Protection Worker under paragraph (2)(b), the Child Protection Worker

- (a) may offer the services referred to in subsection 4(2) to the child's family without entering into an agreement under subsection 4(1) until a plan of care agreement is signed or a court

| | | |
|-----------------------------|---|----|
| | 5(1)(h); and | |
| | (b) it is necessary in order to preserve the life of the child that the child be provided immediately with medical treatment. | 5 |
| Civil liability | (2) Every person is protected from civil liability for providing medical treatment to a child for the benefit of that child where | |
| | (a) he or she acted pursuant to a direction made by the Minister under subsection (1) in respect of the child; and | 10 |
| | (b) the medical treatment is provided with reasonable care and skill. | 15 |
| Plan of care | (3) A Child Protection Worker may, but is not required to, proceed under paragraph 8(1)(c) following the child's medical treatment. | |
| | Report | 20 |
| Report on investigation | 12. After an investigation referred to in section 7 is completed, a Child Protection Worker shall, in accordance with any directions of the Minister, prepare a report on the investigation including a description of any measures taken to protect the child. | 25 |
| | Plan of Care Agreement | 30 |
| "Child's community" defined | 13. (1) In this section, "child's community" means the community in which a child lives when | |
| | (a) a report is made to a Child Protection Worker, a peace officer or an authorized person under subsection 6(1) in respect of the child, or | 35 |
| | (b) the child is apprehended by a Child Protection Worker, a peace officer or an authorized person under subsection 9(1). | 40 |
| Plan of care committee | (2) A plan of care committee shall be composed of | 40 |
| | (a) a person who has lawful custody of the child; | |
| | (b) the child, where the child has attained the age of 12 years; | |
| | (c) a member of the child's extended family who lives in the child's community, where there is a community agreement in the child's community; | 50 |
| | (d) a member of the Child and Family Services Committee, where there is a | 5 |

(b) a plan of care committee is established by the Child and Family Services Committee but cannot agree to a plan of care for the child before the expiration of 15 days after the day on which a Child Protection Worker refers the matter to it under paragraph (3)(a).

5

Plan of care agreement

14. (1) A plan of care agreement for a child may include, but is not limited to, provision for

- (a) where and with whom the child will live;
- (b) support services to make the child's home safe for the child;
- (c) access by a parent where the child will not be living with the parent;
- (d) the child's education;
- (e) the child's social and recreational activities;
- (f) the responsibilities of the persons who sign the agreement;
- (g) medical treatment for the child; and
- (h) support for the child by a parent under the *Children's Law Act* during the term of the plan of care agreement.

10

15

20

25

Form of plan of care agreement

(2) Subject to subsection (3), a plan of care agreement must be in writing and signed by all members of the plan of care committee.

30

Consent and signature of child

(3) A child who has attained the age of 12 years and is under the age of majority may consent to and sign a plan of care agreement but a plan of care agreement is valid whether or not the child consents to or signs the agreement.

35

Initial term of plan of care agreement

(4) The initial term of a plan of care agreement must not exceed 12 months.

40

Maximum term

(5) The term of a plan of care agreement, together with any extensions of the term of the agreement, must not exceed 24 months.

45

Plan of care agreement

(6) A Child Protection Worker shall ensure that a plan of care agreement is implemented according to its terms.

50

Reliance on original grounds

(3) Where a Child Protection Worker applies to a court under paragraph (2)(b) before a plan of care agreement expires,

- (a) the grounds that the Minister, a Child Protection Worker, a peace officer or an authorized person had under section 8, 9 or 11 to believe that the child needs protection are sufficient to support the application; and
- (b) notwithstanding subsection (1), the plan of care agreement is not terminated by the notice under subsection (1) and remains in effect until the court makes an order under section 22.

Hearing

Application for declaration and order

17. An application to a court under paragraph 13(3)(b), subsection 13(6) or paragraph 16(2)(b) for a declaration that a child needs protection and for an order must be made within 45 days after the day on which

- (a) a report is made to a Child Protection Worker under subsection 6(1) in respect of the child;
- (b) the matter is referred to a Child Protection Worker under paragraph 8(2)(b) or subsection 9(3), or
- (c) the child was apprehended by a Child Protection Worker under subsection 9(1).

"Band council", "member of a band" defined

18. (1) For the purpose of paragraph (2)(c), "band council" means the council of a band as defined in the *Indian Act* (Canada) and "member of a band" has the same meaning as in that Act.

Service of notice of hearing

(2) A copy of the originating notice commencing an application under paragraph 13(3)(b), subsection 13(6) or paragraph 16(2)(b) must be served on

- (a) the child's parents and the person having actual care of the child at the time the child was apprehended, if their whereabouts are known;
- (b) the members of the plan of care committee or, where a plan of care committee was not established, the persons listed in paragraphs 13(2)(a) to (d); and
- (c) the band council, where the child is a

| | | |
|--|---|----|
| Order | 22. (1) A court may make one of the following orders that is, in its opinion, in the best interests of the child who is the subject of the hearing: | 5 |
| | (a) the child remain with or be returned to his or her parent or the person having actual care of the child at the time the child was apprehended; | |
| | (b) the child remain with or be returned to his or her parent or the person having actual care of the child at the time the child was apprehended, subject to supervision by a Child Protection Worker and to any terms and conditions that the court considers necessary and proper, for a specified period not exceeding 12 months; | 10 |
| | (c) the child be committed to the temporary custody of the Director for a specified period not exceeding 12 months, and the court may specify in the order | 15 |
| | (i) any terms and conditions that the court considers necessary and proper, and | 20 |
| | (ii) that the child's parent or person having actual care of the child at the time the child was apprehended is entitled to access to the child; | 25 |
| | (d) the child be committed to the permanent custody of the Director, and the court may specify in the order any terms and conditions that the court considers necessary and proper. | 30 |
| Justice of the peace | (2) A justice of the peace may not make an order under paragraph (1)(d). | 35 |
| Plan of care | (3) A plan of care for a child approved by a court forms part of the order. | 40 |
| Return to person having lawful custody | (4) For the purposes of paragraphs (1)(a) and (b), the child shall not be returned to a person who does not have lawful custody of the child unless the child was in the care of that person at the time the child was apprehended. | 45 |
| Access | (5) Where a court makes an order allowing access under paragraph (1)(c) the court shall set out in the order the terms and conditions of access including | 50 |
| | (a) when and where the child and the person given access to the child may visit the other; | |

PART II

TEMPORARY AND PERMANENT CUSTODY

Adoption

| | | |
|---------------------------------------|--|----------|
| Delivery of child for adoption | 24. (1) Where a child's biological parent delivers the child to a Child Protection Worker for adoption, the Child Protection Worker shall apply to the Supreme Court or the Territorial Court for an order that the child be committed to the permanent custody of the Director. | 5 10 |
| Service of notice | (2) A copy of the originating notice commencing the application under subsection (1) must be served on the child's parents, if their whereabouts are known. | 15 20 |
| Care of child until hearing concluded | (3) A Child Protection Worker shall make arrangements for the child's care until the hearing is concluded. | 25 |
| Order | (4) The court to which an application is made under subsection (1) shall make an order committing the child to the permanent custody of the Director where, in the opinion of the court, it is in the best interests of the child to do so. | 30 |
| Placement of child | (5) A Child Protection Worker shall place the child for adoption in accordance with the <i>Adoption Act</i> as soon as possible after an order is made under subsection (4). | 35 |

Placement and Plan of Care

| | | |
|---|---|----|
| Placement of child and implementation of plan of care | 25. Where a court commits a child to the temporary or permanent custody of the Director under paragraph 22(1)(c) or (d), a Child Protection Worker shall | 40 |
| | (a) make arrangements as soon as possible to place the child in a child care facility or a foster home, unless the child is to be placed for adoption under the <i>Adoption Act</i> ; and | 45 |
| | (b) ensure that the plan of care approved by the court in its order is implemented according to its terms. | 50 |

PART III

GENERAL

Administration

- Appointment of Director 28. (1) The Minister shall appoint a Director of Child and Family Services.
- Duties of Director (2) The Director shall
- (a) ensure that the provisions of this Act and the regulations are carried out;
 - (b) in accordance with the directions of the Minister, visit, or direct a Child Protection Worker to visit, any child placed under a plan of care agreement or under a provision of this Act;
 - (c) in accordance with the directions of the Minister, inspect, or direct a Child Protection Worker to inspect, any child care facility, foster home or other place where a child is placed under a plan of care agreement or under a provision of this Act;
 - (d) prepare and submit an annual report to the Minister; and
 - (e) perform any other duties that are imposed on the Director by the regulations or by any other Act.
- Powers of Director (3) The Director may
- (a) in writing, authorize an assistant Director to exercise or perform all or any of the Director's powers and duties under this Act or the regulations in respect of the community or group of communities for which the assistant Director is appointed;
 - (b) in writing, authorize a Child Protection Worker to assist the Director in the exercise or performance of all or any of the Director's powers and duties under this Act or the regulations;
 - (c) exercise any power that is conferred on the Director by any other Act; and
 - (d) exercise or perform any power or duty conferred or imposed on a Child Protection Worker under this Act or the regulations.

corporation as defined in the *Settlements Act*.

Community
agreements

(2) The Minister may enter into an agreement in writing with a community

- (a) transferring to the community responsibility for any matter set out in this Act;
- (b) designating the community council for the community;
- (c) establishing a Child and Family Services Committee, the term of office of its members, and the procedures by which the Child and Family Services Committee shall conduct its meetings and carry out its duties under this Act; and
- (d) recognizing community standards to be used in determining the level of care adequate to meet a child's needs under paragraph 2(1) and whether or not a child needs protection under subsection 5(1).

Child and
Family
Services
Committee

(3) A Child and Family Services Committee is a committee of the community council and shall perform its duties in accordance with this Act, the regulations and the community agreement.

Appointment
of members

(4) The members of a Child and Family Services Committee shall be appointed by the Minister on the recommendation of the community council for the term set out in the community agreement.

Visiting and Inspection

Persons
entrusted with
care of child

32. Every person entrusted with the care of a child under this Act shall permit the Director or a Child Protection Worker

- (a) to visit the child at any time, without notice; and
- (b) to inspect the place where the child has been placed for the purpose of determining that the place conforms to the standards of living accommodation established by regulation and that the plan of care for the child, if any, is being implemented according to its terms as it relates to the responsibilities of that person.

authorized in writing by the Minister or the Director,

- (i) provide the Director, Child Protection Worker or person so authorized with full information and particulars concerning every child whom it has in its care, and
- (ii) permit the Director, Child Protection Worker or person so authorized to have access to and inspect all books and records of the child care facility or foster home dealing with the care of the children whom it has in its care.

Inquiry respecting child care facility or foster home

37. The Minister may appoint a person or persons to inquire into and report to the Minister on the management and conduct of a child care facility or foster home, and may direct the manner of conducting the inquiry, where it appears to the Minister that

- (a) the management of the child care facility or foster home is not in the best interests of the children whom it has in its care; or
- (b) it is in the public interest that the child care facility or foster home should be made the subject of public investigation.

Miscellaneous

Temporary accommodation of child

38. No child who is held or brought before a court for a hearing shall be placed or allowed to remain with a young person or an adult prisoner in a lock-up or police cell.

Infants under the age of one year

39. Unless authorized by the Director, no foster parent shall retain or receive for care apart from their parents more than three infants under the age of one year for a period exceeding 24 hours.

Obligation to support child

40. Nothing in this Act relieves any person who has an obligation to support a child from that obligation, and the fact that support is being provided does not deprive the Director of any power or right conferred on the Director by this Act or the regulations.

Liability

41. (1) No person authorized to act under this Act shall be liable for anything done or not done with regard to the welfare and the protection of a child where that person is carrying out his or her duties in good faith under this Act.

Yukon Territory has, for all purposes in the Territories, the same effect as an order made under section 22.

Procedure

| | | |
|--|--|----------|
| Application of rules of the Supreme Court | 48. The Rules of the Supreme Court respecting service of documents apply to proceedings under this Act in any court in which they are brought except where they are inconsistent with this Act. | 5 10 |
| Originating notice | 49. (1) A proceeding under this Act must be commenced by originating notice. | 15 |
| Notice of motion and affidavit | (2) An application in a proceeding must be made by notice of motion and supported by affidavit evidence, new or previously made and read in the same proceeding, as to the all the facts on which it is based that do not appear from the record. | 20 |
| Affidavits based on information and belief | (3) An affidavit in support of an application or a proceeding be based on information and belief. | 25 |
| Service of originating notice | (4) A copy of the originating notice and a copy of each affidavit in support of the notice must be served 10 days before the day named in the notice for the hearing of the application. | 30 |
| Service of notice of motion | (5) A copy of the notice of motion, and any affidavit to be relied on in support of an application that has not already been served, must be served 10 days before the return date of the motion. | 35 |
| Variation of time periods | 50. A court may vary any time specified in or under this Act before or after the time period has expired where the court considers the variation to be in the best interests of the child. | 40 45 |
| Hearings | 51. (1) All proceedings under this Act, except proceedings described in subsection 43(2), shall be heard by a court in private and no persons shall be present at the hearing other than (a) the officers of the court; (b) the parties and their counsel; and (c) any other person whom the court in its discretion expressly permits. | 50 |
| Presence of child | (2) A court may allow a child who has attained the age of 12 years to be present at a hearing. | 55 |

Hearing of
appeal

(3) The Supreme Court or Court of Appeal may, on hearing an appeal made under subsection (1), affirm, reverse or modify the order, and make any other order that the court considers necessary and proper, where in the opinion of the Supreme Court or Court of Appeal it is in the best interests of the child to do so.

5

Offence and Punishment

10

Prohibitions

56. No person shall

- (a) induce or attempt to induce a child to abscond from a child care facility, foster home or a person entrusted with the care of the child under this Act;
- (b) remove or attempt to remove a child unlawfully from the care, custody, control or charge of the Director or a Child Protection Worker;
- (c) detain or knowingly harbour an absconding child committed to the temporary or permanent custody of the Director;
- (d) having the care, custody, control or charge of a child, ill-treat, neglect, or abandon the child or procure the ill-treatment, neglect, or abandonment of the child; or
- (e) omit to perform a duty imposed on him or her by or under this Act.

15

20

25

30

Offence and
punishment

57. Every person who contravenes a provision of this Act for which no specific punishment is provided is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

35

40

Regulations

Regulations

58. The Commissioner, on the recommendation of the Minister, may make regulations

- (a) respecting additional duties of the Director;
- (b) respecting forms;
- (c) fixing, or respecting the manner of calculating, fees, costs, charges and expenses payable on proceedings under this Act not otherwise determined and for dispensing with payment where a court considers that action advisable;
- (d) respecting standards of living

45

50

