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A GUIDE TO THE LAW IN ALBERTA REGARDING

CHILD, YOUTH AND FAMILY ENHANCEMENT ACT

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GENERAL

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**CHILD, YOUTH AND FAMILY ENHANCEMENT
ACT**

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INTRODUCTION

1. What is the Child, Youth and Family Enhancement Act?

The Child, Youth and Family Enhancement Act (the Act) is the piece of legislation that replaces the Child Welfare Act in the province of Alberta. The Act guides the actions of Child and Family Services workers, and explains the rights of the parents, guardians, and children affected in situations where a child is in need of intervention. The Act deals with many different matters in the area of child welfare, such as intervention services and adoption.

Intervention services are implemented when a director has a reasonable and probable belief that a child is in need of intervention. The Act helps the director determine what steps can and should be taken to intervene. In the case of a child being in need of intervention, every effort will be made to support the family to allow the child to remain in his/her home. Sometimes, however, the child's best interests would be better served if he/she was placed in the custody of the director. At this point, the director has the opportunity to either enter into an agreement with the guardian, or to apply to the Court for a court order prescribing guardianship.

This pamphlet will focus on the different court orders that can be granted to the director. The orders which will be discussed here are the apprehension order, supervision order, temporary guardianship order, permanent guardianship order, and secure services order.

2. Important Definitions

Child: Any person under the age of 18.

Director: A director is the person responsible for investigating reports made to the Ministry of Child and Family Services regarding the safety and security of a child. The director also

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makes the preliminary determination of whether a child is in need of intervention, and makes the appropriate application to the Court.

Guardian: A guardian is the person who is responsible for the care, maintenance, and well-being of the child. Typically, a child's guardian(s) are the mother and/or the father. However, any other individual may be appointed a child's guardian by way of a Court order or agreement.

Intervention: Intervention encompasses the types of services that will, or could be, provided to a child whose survival, security, and development are not being adequately protected by his/her guardian.

GENERAL INFORMATION

1. Circumstances Where Intervention May be Required

The Act outlines the types of circumstances that might signal that a child is in need of intervention. A child is considered to be in need of intervention when there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered due to one or more of the following:

- a. the child has been abandoned or lost;
- b. the guardian of the child is dead and the child has no other guardian;
- c. the child is neglected by his/her guardian;
 - i. neglect can include, but is not limited to, inability or unwillingness to provide the necessities of life, provide necessary access to medical or surgical treatment, or adequate care or supervision.
- d. the child has been, or there is a substantial risk that the child will be, physically injured or sexually abused by his/her guardian;

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- i. physical injury includes, but is not limited to, cuts, bruises, or fractures that result from a non-accidental application of force.
 - ii. sexual abuse includes, but is not limited to, inappropriate touching and conduct and includes prostitution related activities
- e. the child has been emotionally injured by his/her guardian;
 - i. emotional injury includes, but is not limited to, rejection, neglect, lack of attention, or exposure to domestic violence
 - f. the child has been subjected to cruel and unusual treatment or punishment by the guardian; and/or
 - g. the guardian of the child is unable or unwilling to protect the child from physical, sexual or emotional abuse, and/or cruel and unusual treatment or punishment, (this can include subjecting the child to an individual that has substance abuse problems).

2. Factors Considered by Court

When making its decision regarding a child's future guardian and a child's residence, the Court must take several different factors into consideration. The Court's first priority is to ensure that the **child's best interests** are served by the decision. In order to do so, the Court will comparatively weigh the benefits and risks to a child if he/she remains with his/her present guardian, or in the custody of the director. Further, the Court will consider whether a child is a valued member of his/her family, has stable and permanent relationships, has access to educational resources and health care, and lives in a safe, nurturing environment. Additionally, a child that can form an opinion is entitled to express that opinion on matters affecting him/her and that opinion will be considered by those making decisions that will affect the child.

3. Responsibility to Report a Child in Need of Intervention

According to the Act, any individual that has reasonable and probable grounds to believe that a child is in need of intervention

should report that information to a director. Any person that fails to report a child in need of intervention is guilty of an offence and may be found liable to a fine of not more than \$2000. Further, if an individual does not pay the fine, he/she could be imprisoned for a term of not more than 6 months. In almost all circumstances, an individual who reports a potential child in need of intervention is free from the possibility of legal action. Even individuals who gain information in confidence, where the breach of that confidence would typically be a criminal offence, are free from any legal action. If a report is made maliciously or without reasonable and probable grounds, then an individual could face legal action.

4. Apprehension Order

An apprehension order gives the director the authority to take the child from the custody of his/her guardian. If the director determines that a reasonable and probable belief exists that a child is in need of intervention, he/she can make an application to the Court for this order. An apprehension order can also be granted if a child that was in the director's custody has either left or been removed without the director's consent. After a child has been apprehended, the director has exclusive custody of the child until the child is returned to his/her guardian, or an application to the Court for further supervision or guardianship has been decided.

5. Supervision Order

In particular circumstances, the Court may determine that a child should be returned to the custody of his/her guardian, but that further supervision and protective services are required for the survival, security and development of the child. Typically, a supervision order will consist of planned visits by the director in the home of the child and his/her guardian for a period of not more than 6 months.

A supervision order will often contain terms and conditions that must be followed by the department, the guardian and/or any other person residing with the child. An example of one such term is: "The Court orders the child's guardian to attend Alcoholics Anonymous meetings three times a week for three months."

6. Temporary Guardianship Order

If the Court determines that a child is in need of intervention, and that child's survival, security and development are at risk if he/she remains in the custody of his/her guardian, then the Court may grant a temporary guardianship order (TGO).

A TGO is granted when the Court believes that the child will be returned within a reasonable time to the custody of his/her guardian, or because the child is 16 years of age or older and may be able to live independently. In the case of a TGO, the director becomes a joint guardian of the child. During the period that the TGO is in effect, the guardian or any other person living in the residence of the child may be required by the Court to submit to a fitness assessment before the return of the child to that guardian can be considered.

Generally, a TGO can only last for a total of 6 months if the child is under 6 years old or 9 months if the child is 6 years of age or older. These time periods can be extended by the Court if there are good reasons for doing so. The maximum length of time that a child can remain in the custody of a director under a temporary guardianship order is: 15 months for a child under 6 years old or 18 months for a child 6 years of age or older.

7. Permanent Guardianship Order

Where the Court determines that the survival, security and development of a child will not be adequately protected if the child either remains with, or is returned to, his/her guardian, the Court will grant a permanent guardianship order (PGO). A PGO differs from a TGO because it is granted in situations where the Court

has determined that the possibility of the child being returned to the custody of his/her guardian within a reasonable time is unlikely. Under a PGO, the director becomes the sole guardian of the child and a Public Trustee becomes the sole trustee of the estate of the child. A review process does not exist for a PGO; thus, the only way to dispute the order is to make an application for appeal in the Court of Queen's Bench.

8. Secure Services Order

A secure services order gives the director the authority to confine a child in a Secure Services Facility for a period of not more than 5 days. A Court will grant a secure services order when it is satisfied that the child is in a condition that presents an immediate danger to him/herself or others, where confinement is necessary to stabilize and assess the child, and where less intrusive measures are not available. If the director determines that a further period of confinement is required to stabilize the child, or to assess the child and prepare a plan for services, he/she may apply for a further period of not more than 5 days. A secure services order may be renewed for a period of not more than 20 days.

a. Who Can be Subject to a Secure Services Order?

A child could be subject to a secure services order if he/she is:

- i. in the custody of a director;
- ii. subject to a supervision order, temporary guardianship order or permanent guardianship order; or
- iii. subject to a family enhancement agreement under section 8 of this Act.

If the child is subject to a supervision order, a custody agreement under section 9 of this act, or a family enhancement agreement under section 8 of this act the director must have the written consent of the child's guardian before applying for a secure services order.

APPEALS

Prior to any appeal or administrative review it is highly recommended that you speak to legal counsel to determine whether your circumstances are appropriate for an appeal or review.

Any order made under this Act can be appealed to the Court of Queen's Bench within **30 days** of the order being made or renewed. Several different individuals can appeal the Court's decision, such as a guardian (other than a director), the guardian of the child immediately prior to the issuing of the order, the child if he/she is 12 years of age or older, the child if he/she is subject to a secure services order, a director, or the Minister. **It is highly recommended that you seek legal counsel before proceeding with an appeal of an order under this Act.**

An administrative review of an order under this act is also possible within **30 days** of the order. **It is highly recommended that you seek legal counsel before proceeding with an administrative review of an order under this Act.**

FREQUENTLY ASKED QUESTIONS

YOU SHOULD CONSULT WITH A LAWYER AS SOON AS POSSIBLE REGARDING THE SPECIFIC CIRCUMSTANCES OF YOUR ISSUE REGARDING THE Child, Youth and Family Enhancement Act

1. My child was apprehended and was not returned within 2 days, what happens now?

If your child is not returned to you within 2 days of being apprehended, then the director must make an application to the Court within 10 days for either a supervision order, a temporary or permanent guardianship order, or an order returning the child to your care. If a director applies for a temporary or permanent

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guardianship order, the director must also apply of an order for custody of the child until the application for the temporary or permanent guardianship order is withdrawn or disposed of. The application for guardianship must be dealt with within 42 days.

You should consult with a lawyer as soon as possible regarding the specific circumstances of your child's apprehension. The number for the nearest Legal Aid Society of Alberta office should be written on your notice of apprehension.

2. My child was apprehended, but the director did not have an apprehension order. Was the director still allowed to apprehend him/her?

If the director had reasonable and probable grounds to believe that your child's life or health would be seriously or imminently endangered by the amount of time it would take to obtain an apprehension order, he/she can apprehend him/her without an order. Further, if the director has reasonable and probable grounds to believe that your child would be found in a particular place or premises, he/she can enter and search that place or premises for him/her. **You should consult with a lawyer as soon as possible regarding the specific circumstances of your child's apprehension.**

3. I breached a condition of my supervision order, what happens now?

If you have failed to comply with the terms stipulated in the supervision order, the Court has two courses of action it may take. First, the Court can choose to renew, vary, or extend the supervision order for a further period of time. Second, the Court can order that your child be placed under either a temporary or permanent guardianship order. The latter means that your child will be removed from your custody and placed in the custody of the director.

4. My child is subject to a supervision order (or a temporary guardianship order). What happens now?

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Any order made under this Act can be appealed to the Court of Queen's Bench within 30 days of the order being made or renewed. Once that 30 days has passed you may still apply to the court for an order renewing, varying or terminating the original order or for a new order. During the period of the order either you or your child, if he/she is 12 years of age or older, can apply to the Court to have the order reviewed. **You can only have the order reviewed once.** The director, however, can apply to the Court for a review at any time during the period of the order.

The Court, upon review of the order, will take several matters into consideration such as the following:

- a. whether the circumstances which caused the implementation of the order have changed;
- b. whether the intervention ordered has been provided to the child or to the child's family;
- c. whether the director's plan for the care of the child has been followed (if such a plan was developed); and
- d. whether a guardian, other than the director, has complied with the order.

The Court, upon review, has the ability to either renew, vary, or terminate the current order, or to make a new order under a different section of the Act.

2. My child is under a temporary guardianship order. Can I see him/her?

Yes, you can potentially have access to your child; however, the issue of access is in the discretion of the director and the Court. To gain access, you should first meet with the director to try to negotiate an agreement. However, in the instance that you are unable to reach an agreement, you can make an application to the Court for access. In their consideration of the application, the Court will consult with your child, if he/she is 12 years of age or older, to see if he/she consents to the access.

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You are not the only person who can apply for access. The director, your child if he/she is 12 years of age or older, or any other person with whom he/she has had a significant relationship can also make an application for access.

3. My child is under a temporary guardianship order. How long does it remain in effect?

A TGO remains in effect until one of four things happen: 1) the order expires or is terminated by the Court; 2) a private guardianship order is made in respect of the child; 3) your child turns 18-years-old; or 4) your child gets married. The total period of time your child can remain in custody under a TGO is 6 months, if he/she is under the age of 6, or 9 months, if he/she is 6 years of age or over. However, you should be aware that a TGO can be extended for one further period of not more than 6 months if the Court finds that sufficient reasons exist to do so. In exceptional circumstances the TGO can be extended for one further period of not more than three months.

4. My child is subject to a permanent guardianship order. Can I still see him?

Yes. You can potentially have access to your child; however, the issue of access is in the discretion of the director and the Court. To gain access, you should first meet with the director to try to negotiate an agreement. However, in the instance that you are unable to reach an agreement, you can make an application to the Court for access. In their consideration of the application, the Court will consult with your child, if he/she is 12 years of age or older, to see if he/she consents to the access. Also, when the Court is considering access in PGO cases, it will determine whether access will, or could, interfere with any potential adoption. If the Court does make a determination that access would, or could, interfere with an adoption, it has the authority to deny access.

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You are not the only person who can apply for access. The director, your child if he/she is 12 years of age or older, or any other person with whom he/she has had a significant relationship can also make an application for access.

5. My child is subject to a permanent guardianship order. Is there a possibility he/she will ever be returned into my custody?

Yes. A possibility still exists that you could become your child's guardian again. If the director is satisfied that your child should be returned to your custody, he/she must make an application to the Court to terminate the PGO. If you were your child's guardian immediately before the PGO was made, then you automatically become his/her guardian again when the order is terminated, unless the Court states otherwise.

6. My child is subject to a permanent guardianship order. How long is it in effect?

A PGO remains in effect until one of five circumstances occurs: 1) the order is terminated by the Court; 2) a private guardianship order is made in regards to your child; 3) an adoption order is made in regards to your child; 4) your child turns 18 years old; or 5) your child gets married.

7. The director is making an application to the Court to have either a temporary guardianship order, or permanent guardianship order granted. During the application process, will my child be allowed to live with me?

If the director is making an application to the Court for either a TGO or a PGO with regards to your child, he/she must also make an application for custody of your child until a decision is reached by the Court. The Court can order one of two things: 1) that your child be placed in the custody of the director; or 2) that your child be returned to you until the TGO or PGO application has been dealt with. If the Court awards custody to the director, it will likely stipulate any access that is to be granted to you.

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Further, if custody is awarded to the director, he/she must meet with you and your family to develop a plan outlining the services that will be provided to you to assist in the return of your child, and an alternative permanent placement for your child. This plan must be developed within 42 days of the application for the TGO or PGO being made.

8. How do I get my child's secure services order reviewed?

You (if you are a guardian), your child, or a director can apply to the Court for a review of the order. A director can make an application at anytime during the period of the order, or renewal of the order. You and your child, however, can make an application to the Court only once during the period of the order and once during the renewal of the order. The hearing should be heard no more than 3 days after the application is made to the Court. If someone other than you makes the application, you will be notified no less than 1 day before the application is heard.

YOU SHOULD CONSULT WITH A LAWYER AS SOON AS POSSIBLE REGARDING THE SPECIFIC CIRCUMSTANCES OF YOUR ISSUE REGARDING THE *Child, Youth and Family Enhancement Act*

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REFERRAL NUMBERS

Alberta Children's Services	www.child.gov.ab.ca
Adoption Services	780-422-0178
Alberta Courts Website	www.albertacourts.ab.ca
Child Abuse Hotline	1-800-387-KIDS
Children's Services Crisis Unit (Edmonton)	780-422-2001
.....	toll-free 1-800-638-0715
Children and Family Services - Edmonton and Area Website	www.edmontonandareacfsa.gov.ab.ca
.....	780-427-2250 or 780-422-3355
Local Child Welfare Office - listed in the directory under the Government of Alberta	
Community and Family Services	780-496-4000
Edmonton Centre for Equal Justice	780-702-1725
.....	ww.ecej.ca
Emergency Social Services/Child and Family Crisis Unit	780-427-3390
Edmonton Police Service	
Information	780-421-3333
Complaints	780-423-4567
.....	www.police.edmonton.ab.ca
Government of Alberta	310-0000
.....	www.gov.ab.ca
Legal Aid Society of Alberta	780-427-7575
.....	www.legalaid.ab.ca

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Lawyer Referral Service 1-800-661-1095
www.lawsocietyalberta.com/publicservices/lawyerreferralservice.cfm

Province of Alberta Family and Youth Court (Edmonton)
..... 780-427-2743