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# Revised Statutes of Newfoundland 1990

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## CHAPTER C-12

### AN ACT RESPECTING THE WELFARE OF CHILDREN

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### Short title

1. This Act may be cited as the *Child Welfare Act*.

1972 No37 s1

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### Definitions

2. In this Act

(a) "child" means an unmarried boy or girl actually or apparently under the age of 16;

(b) "child in need of protection" means

(i) a child who is without adequate care or supervision,

(ii) a child who is without necessary food, clothing or shelter, as may be available with the level of financial assistance given in relation to that child under the laws of the province,

(iii) a child who is living in circumstances that are unfit or improper for the child,

(iv) a child in the care or custody of a person who is unfit, unable or unwilling to provide adequate care for the child,

(v) a child who is living in a situation where there is severe domestic violence,

- (vi) a child who is physically or sexually abused, physically or emotionally neglected, sexually exploited or in danger of that treatment,
  - (vii) a child who is in the care and custody of a person who fails to provide adequately for the child's education or attendance at school,
  - (viii) a child who has no living parents and who has no person willing to assume responsibility or with a legal responsibility for the child's maintenance,
  - (ix) a child who is in the care or custody of a person who refuses or fails
    - (A) to provide or obtain proper medical or other recognized remedial care or treatment necessary for the health or well-being of the child, or
    - (B) to permit the care and treatment to be supplied to the child when it is considered essential by a qualified medical practitioner,
  - (x) a child who is brought before the court with the consent of the parent, guardian or person with actual control for the purpose of transferring the guardianship of the child to the director,
  - (xi) a child who is beyond the control of the person caring for the child,
  - (xii) a child who by his or her behaviour, condition, environment or association, is likely to injure himself or herself or others,
  - (xiii) a child taken into a home or otherwise in the care and custody of a person contrary to subsection 3(3) or (5) of the *Adoption of Children Act*, and
  - (xiv) a child actually or apparently under the age of 12 who performs an action that contravenes a provision of an Act or a regulation made under that Act or a municipal regulation or by-law or an Act of the Parliament of Canada;
- (c) "board" means the Child Welfare Board appointed under this Act;
- (d) "court", except where the context otherwise allows, means a youth court or a Provincial Court judge;
- (e) "department" means the Department of Social Services,
- (f) "detention home" means a building or part of a building set apart permanently or temporarily for the custody or detention of children detained under this Act pending the disposition of their cases by a court;
- (g) "director" means the Director of Child Welfare appointed under this Act and includes the Assistant Director of Child Welfare appointed under this Act;

- (h) "foster home", with respect to a child who lacks normal parental relations, means a home, approved by the director or other person designated by the minister generally or specially for the purpose, other than that of the child's parents or relatives, in which the child may be placed to be treated as a member of the family;
- (i) "guardian", with respect to a child, means the natural parent and a guardian of the child's person legally appointed, and includes the director when the child has been committed to the director's care;
- (j) "home" means a private dwelling occupied by persons who live as a household;
- (k) "institution" means a building or part of a building, other than a private home, set apart for the care and custody of children, or a training school or an orphanage and includes an infants' home or maternity home;
- (l) "judge", except where the context otherwise allows, means a judge of a youth court or a Provincial Court judge;
- (m) "minister" means the Minister of Social Services
- (n) "parent" includes grandparent, step-parent, foster-parent and parent by adoption;
- (o) "psychiatrist" means a medical practitioner specially qualified in psychiatry, but is considered to include a registered medical practitioner not so officially qualified who may be employed under this Act when a qualified psychiatrist is not available;
- (p) "receiving home" means a building or part of a building fitted for the reception and examination, physical or mental, of a child in need of protection and established or approved as a receiving home by the minister, and supervised by the director, and is considered to include a foster home;
- (q) "relative" means a person related by blood, marriage or adoption; "
- (r) "situation" means a place where a child is placed for employment under the supervision of the director;
- (s) "social worker" means a social worker of the department; and
- (t) "youth court" means a court designated as a youth court under the *Young Persons Offences Act*.

1972 No37 s2; 1973 No31 Sch; 1974 No34 s2; 1974 No100 ss2&4; 1977 c69 s1;  
1981 c54 s1&2; 1984 c2 s28; 1988 c61 s85; 1989 c11 s3(14)

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#### **Act to be read with another Act**

**3.** This Act shall be read with Part IX of the *Labour Standards Act* and regulations made under that part of the *Labour Standards Act*.

1974 No34 s3; 1977 c52 s72

**PART I  
DIRECTOR AND CHILD WELFARE BOARD**

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**Interpretation**

**4.** (1) This Act is to be interpreted recognizing the principle that the paramount consideration in a determination under this Act with respect to a child in need of protection is the best interests of that child.

(2) In determining the best interest of the child for the purpose of this Act the following shall be considered:

- (a) the right of a child to love, affection and understanding;
- (b) the right of a child to an environment to stimulate and encourage his or her development;
- (c) the necessity for appropriate care or treatment or both for mental, emotional and physical health of the child;
- (d) the love, affection and ties that exist between the child and each person to whom the child's custody is entrusted, each person to whom access to the child is granted and where appropriate, each sibling of the child;
- (e) the views and preferences of the child, where those views and preferences can be reasonably ascertained;
- (f) the effect upon the child of a disruption of the child's sense of continuity;
- (g) the child's cultural and religious heritage; and
- (h) the merits of a plan proposed by the director under which the director would be caring for the child, in comparison with the merits of the child returning to or remaining with his or her parents.

1981 c54 s3

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**Director of Child Welfare**

**5.** The Lieutenant-Governor in Council may appoint a Director of Child Welfare who shall administer and enforce this Act, under the control and direction of the minister.

1972 No37 s3

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**Appearance in court**

6. The director, the assistant director or a social worker of the department may appear in court in respect of a matter arising out of a provision of this Act and he or she may conduct a prosecution instituted as a result of an alleged violation of this Act.

1990 c33 s1

[Back to Top](#)**Assistant director**

7. The Lieutenant-Governor in Council may appoint an Assistant Director of Child Welfare who shall perform the duties that the director directs and shall perform the duties of the director in the absence, or inability to act, of the director or if there is no director.

1972 No37 s5

[Back to Top](#)**Powers of certain officers**

8. The director, the assistant director, social workers and other officers of the department are protected from civil actions for anything done in the good faith exercise of the powers conferred by this Act.

1972 No37 s6; 1974 No100 s4

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9. (1) The Lieutenant-Governor in Council may appoint a board which shall be known as the Child Welfare Board and which shall consist of not less than 5 and not more than 9 members.

(2) Members of the board

(a) shall hold office during pleasure for 3 years from January 1 following their appointment, and until their successors are appointed;

(b) are eligible for reappointment; and

(c) shall serve without remuneration, but may be paid their actual travelling expenses incurred while attending meetings of the board.

(3) When a vacancy occurs among the members of the board because of death, resignation or illness or where, for another reason in the opinion of the minister, a member should be replaced, the Lieutenant-Governor in Council may appoint a successor to that member and the successor shall hold

office for the remainder of the unexpired term of the member being replaced and the successor is eligible for re-appointment.

(4) The Lieutenant-Government in Council may designate 1 of the members of the board to be its chairperson, and the board shall meet at the chairperson's call or that of the director.

(5) The board shall

(a) meet as often as may be necessary for the consideration of questions concerning the welfare of the children of the province;

(b) help and advise the director in the administration of this Act;

(c) promote the proper treatment of children to whom this Act applies;

(d) encourage, through study and discussion, the development and maintenance of sound standards of child protection in the province; and

(e) perform those other duties consistent with this Act that may be prescribed by the Lieutenant-Governor in Council or the minister.

1972 No37 s7

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### **Receiving homes**

**10.** Subject to the prior approval of the Lieutenant-Governor in Council, the minister may establish receiving homes for children in need of protection.

1972 No37 s8; 1981 c54 s7

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### **Psychiatrist**

**11.** The minister may appoint a medical practitioner, where possible a medical practitioner qualified in psychiatry, who shall examine the physical and mental condition of a child dealt with under this Act and who shall report to the minister.

1972 No37 s9

## **PART II CHILD IN NEED OF PROTECTION**

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**Director may apply for declaration of neglect**

**12.** (1) Where it is believed, on reasonable or probable grounds, that a child is in need of protection, the director or a social worker or a person authorized by the director in writing may apply to a judge for a declaration that the child is a child in need of protection.

(2) The director or a social worker or the person authorized by the director to make the application under subsection (1) shall, at least 10 days before the date set for the hearing of that application, notify the child's parents or guardian, if known, of

- (a) the name of the child in respect of whom the application is being made;
- (b) the subparagraph of paragraph 2(b) under which the child is considered to be a child in need of protection; and
- (c) the time and place of the hearing of the application.

(3) The judge shall immediately hear the application and may compel the attendance of witnesses at the hearing.

(4) Where the judge, upon the hearing of the application, finds that the child is a child in need of protection, the judge may so declare and may make an order in respect of the child.

1972 No37 s10; 1974 No100 s4; 1981 c54 s7

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### **Apprehension and detention**

**13.** (1) Where he or she has reasonable grounds for believing that a child is a child in need of protection

- (a) a constable or other peace officer;
- (b) a social worker;
- (c) the director; or
- (d) a person authorized by the director

may apprehend that child without warrant.

(2) Where it appears to a judge, on information laid before him or her on oath or affirmation, that there are reasonable grounds for believing that there is a child in need of protection at a place under his or her jurisdiction, the judge may issue a warrant authorizing a person referred to in subsection (1) to

- (a) enter, by force where necessary, a building or other place specified in the warrant and search for the child; and
- (b) apprehend the child where, in his or her opinion, the child appears to be a child in need of protection,

and it is not necessary to describe a child by name in an information or a warrant laid or issued under this subsection.

(3) Where a child has been apprehended under subsection (1) or (2), the person making the apprehension shall immediately notify the guardian and a person in whose care the child may have been at the time of apprehension that the child has been apprehended.

(4) A child apprehended under subsection (1) or (2) before an order is made under section 19 may be

- (a) examined by a qualified medical practitioner;
- (b) detained in a receiving home;
- (c) detained in a hospital if considered advisable by the director or a person designated by the director;
- (d) with the consent of the director returned to his or her guardian or other person in whose care the child is found at the time of apprehension; or
- (e) with the consent of the director placed in the charge of a relative or other person as referred to in section 21,

however the guardian and a person in whose care the child may have been at the time of the apprehension shall immediately have notice of the detention of the child.

(5) Where a child is detained in a hospital under subsection (4), the medical superintendent or senior medical officer of the hospital shall be advised of that detention and afterward for the purposes of this section the hospital shall be considered a receiving home.

(6) For the purposes of this section

- (a) notice of the apprehension or detention of a child may be oral or written and shall include a statement of the reasons for the apprehension or detention and the name, business address and telephone number of the person who has apprehended or detained the child; and
- (b) the validity of proceedings is not affected where the person who has apprehended or detained a child or the director is unable, after reasonable effort, to give notice in accordance with subsections (3) and (4).

1988 c45 s1

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#### **Parents or guardian of child to be notified**

**14.** (1) A person who has apprehended a child under section 13, the director, a social worker or a person authorized in writing by the director shall, within 5 days after the date of apprehension, notify the parents or guardian of the child, stating the time and place for judicially investigating the facts of the case, which time shall not be more than 15 days after the date of apprehension of the child, unless otherwise ordered by the judge.

- (2) A person who has apprehended a child under section 13 shall make a written report to the director, setting out the circumstances of the case and the time and place for judicially investigating the facts.
- (3) The judge may compel the attendance of witnesses in an investigation under this section.
- (4) The judge, in an investigation under this section, shall investigate the facts of the case and ascertain whether the child is a child in need of protection, his or her age, name and residence.
- (5) Where, on an investigation under this section, the judge finds that a child is not a child in need of protection, the judge shall order that the child be returned to his or her parents, guardian or other person in whose care the child may be.
- (6) Where, on an investigation under this section, the judge finds that the child is a child in need of protection, the judge may so declare, and in that event the judge may make an order under section 19.
- (7) An order made under section 19 shall recite the facts ascertained in an investigation under this section and the judge shall deliver a certified copy of the order to the director.

1988 c45 s1; 1989 c12 s6

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### **Medical attention**

**15.** (1) Where a child has been

- (a) detained under paragraph 13(4)(b) or (c);
- (b) committed to the care of the director or placed in the charge of a relative or some other person under paragraph 13(4)(e); or
- (c) taken into the care and custody of the director under section 35;

the director or a person designated by the director may, where a qualified medical practitioner recommends the provision of the care, authorize the provision of the medical, surgical and psychiatric care that the director or the person designated by the director considers necessary, without the consent of the guardian of the child or of another person and without an order of a court in the province including a court as defined by paragraph 2(d), and no liability attaches to the director or to a person designated by the director or a qualified medical practitioner or to a hospital by reason only that a child is provided with medical, surgical or psychiatric care under this subsection.

(2) Notwithstanding subsection (1) where a child is apprehended because the guardian refuses to permit essential medical, surgical or remedial treatment that is recommended by a qualified medical practitioner, and where the director considers it to be in the best interest of the child, the director or a person designated by the director shall apply to a judge for an order and the judge may by order authorize the treatment.

(3) For the purposes of this section the term "judge" means a judge of the Provincial Court, the Trial Division or the Unified Family Court.

(4) For the purposes of this section, "medical treatment" or "surgical treatment", includes the provision of a blood transfusion or injection.

(5) The guardian of the child shall be notified of the time and place at which an application under subsection (2) is to be heard not less than 1 day before the time fixed for the hearing.

(6) Where an application is made under this section, all evidence shall be given under oath or affirmation.

(7) Where an application is made under this section and where a judge considers it to be in the best interest of the child, that judge may

(a) hear the application at any time or place;

(b) receive evidence by telephone or other means of telecommunication; and

(c) administer an oath or affirmation by telephone or other means of telecommunication.

(8) Where a judge is satisfied that the treatment is in the best interest of the child, that judge shall by order authorize the treatment and shall

(a) complete and sign the order in duplicate indicating within the order the time, date and place at which it was made;

(b) immediately deliver 1 copy of the order to the applicant;

(c) as soon as is practicable file the order with the clerk of the court over which the judge presides; and

(d) record the names of the persons giving evidence, the facts ascertained, the manner and location in which the evidence was received and shall file this record as soon as practicable with the clerk of the court over which the judge presides.

(9) Where a child is treated under an order under this section,

no liability attaches to the person treating the child by reason only that the guardian of the child did not consent to the treatment.

1988 c45 s1

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#### Notice

**16.** For the purposes of this Part, where a judge is satisfied that the time required for notice to a person might endanger the health or safety of the child, the judge may reduce the time required for notice to that person or may dispense with notice to that person.

1988 c45 s1

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### Temporary detention

**17.** At any time pending the final determination of an investigation under section 14, the judge may make an order for the temporary detention and care of the child concerned that the judge considers appropriate, and the provisions of subsection 19(5) shall apply with the necessary changes to the order for temporary detention and care.

1972 No37 s13; 1988 c45 s2

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### Wishes of child

**18.** Nothing in this Act shall affect the power of the court to consult the wishes of a child declared to be a child in need of protection in determining what order ought to be made or a right which a child now possesses to exercise a free choice.

1972 No37 s14; 1981 c54 s7

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### Order may be made

**19.** (1) Where it appears to a judge that the public interest and the interests of a child declared by the judge to be a child in need of protection or of a child against whom an offence has been committed may be best served by doing so, the judge may make an order

(a) that the child be returned to his or her parents or guardians or other person in whose care the child may be, subject to supervision by the director;

(b) that the child be committed temporarily or permanently to the care and custody of some suitable person, subject to approval and supervision by the director; or

(c) that the child be committed temporarily or permanently to the care and custody of the director, who may order that the child be placed in a foster home, training school or other institution which has been approved by the minister for the care of children in need of protection.

(2) Where a hearing under this Act is proceeding at the same time as custody of a child is being determined, the director may apply to have the 2 matters heard together, whether the proceeding is being heard by the Provincial Court, the Trial Division or the Unified Family Court.

(3) Where a child is committed temporarily or permanently to the care and custody of the director, the court may order that the obligation of the parents to provide support to the child shall continue and Part III of the *Family Law Act* shall apply to permit the director to apply for an order for support of the child.

(4) The order under subsection (3) shall be for the benefit of the Crown on the terms and conditions and for the period that the court considers appropriate.

(5) A child in need of protection who is or is apparently under the age of 12 years shall not be committed to an institution unless an attempt has first been made to provide for that child in the child's own home or in a foster home.

(6) Where a child has been committed temporarily to the care and custody of

(a) a person under paragraph (1)(b); or

(b) the director under paragraph 1(c),

the director or social worker or some other person authorized by the director in writing shall, during the period of temporary commitment or at or after the expiration of that period, bring the matter again before the judge for further and other consideration and action and where the parents or guardian of the child have been notified in accordance with subsection (7), the judge shall inquire and determine whether the circumstances justify an order returning the child to his or her parents or guardian or other person in whose care the child may have been or a further order under this section, and the judge shall make the order that the circumstances of the case require.

(7) The director or a social worker or some person authorized by the director in writing shall notify the parents or guardian of the child of the time and place of the inquiry referred to in subsection (6).

(8) Evidence taken at a prior hearing and the order of temporary committal made after the prior hearing may be admitted as evidence in an inquiry under subsection (6) without proof or on the proof that the judge may require.

(9) Pending the final determination of an inquiry under subsection (6) the judge may make an order for temporary detention and care of the child that the judge considers appropriate.

(10) Where a child is committed temporarily under this Act to the care and custody of the director, the commitment shall be made for a fixed period not exceeding 12 months, but in no case shall an order be made which would result in the continuous temporary commitment of the child beyond 36 months from the date of the first order for the child's temporary commitment.

(11) Where an order has been made under this section, a judge may, upon application of the director or of a social worker or of a person designated for the purpose by the director or of a parent or guardian of the child to whom the order relates or of a person entitled to make a complaint in respect of that child,

(a) vary the order;

(b) terminate a commitment or order for maintenance, temporary or permanent, or both the commitment and order for maintenance, made in the order; or

(c) terminate the commitment or order for maintenance, temporary or permanent, or both the commitment and order for maintenance, made in the order, and make an order, in this section referred to as a "further order", that the judge could originally have made under this section,

where the judge is satisfied that

(d) there has been a material alteration in the needs or circumstances of the child or of a person against whom an order for maintenance is made under this section; or

(e) the best interest of the child is best served by the

(i) variation,

(ii) termination, or

(iii) termination and further order,

and the provisions of this subsection apply to a further order made under paragraph (c) of this subsection, and

(f) evidence taken at a prior hearing and a prior order relevant to the matter being considered by the judge may be admitted as evidence for the purposes of this subsection without proof or on the proof that the judge may require.

(12) A judge making an order for maintenance under this section may, in a case where there is a pension or income payable to the person against whom the order for maintenance is made and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, order that the part that the judge thinks appropriate of the pension or income be attached and be paid to the person that the judge directs, and the order is authority to the person by whom the pension or other income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to the person by whom the pension or other income is payable.

(13) Where a child who has been committed to the care and custody of the director reaches the age of 16 years while in the care and custody, the director may, if he or she considers it advisable to do so,

(a) continue the care and custody of that child until that child reaches the age of 19 years or until some earlier date considered advisable by the director; and

(b) continue maintenance of that child until that child reaches the age of 21 years or until some earlier date considered advisable by the director.

(14) Where the director continues the maintenance of a child

(a) under subsection (13) beyond the child's reaching the age of 16; or

(b) beyond the child's reaching the age of 17 years,

a judge may, on application of the director or a social worker or some other person authorized by the director in writing, order a parent or guardian or other person responsible for the maintenance of that child to provide maintenance for that child in a weekly, bi-weekly, semi-monthly or monthly sum that the judge considers reasonable and payable to the person on behalf of that child as the judge may direct.

(15) An order under subsection (14) shall have no effect after the child reaches the age of 19 years.

1972 No37 s15; 1974 No100 s4; 1981 c54 ss5&7; 1985 c13 s2; 1988 c45 s3; 1988 c60 s82; 1988 c61 s85; 1989 c11 s3(14)

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#### **Trial of child**

**20.** A judge shall investigate the case of every child and dispose of it in premises other than an open court room, and, in the case of a person charged with an offence against a child, the judge may in his or her discretion proceed in private.

1972 No37 s17

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#### **Examination respecting child on certain premises**

**21.** Where a relative or other suitable person possesses premises with the necessary facilities and accommodation, a child may, after apprehension under this Part, be temporarily placed in charge of that relative or person until the child's case is disposed of, and the judge may in his or her discretion hold the examination into the case of that child in those premises.

1972 No37 s18

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#### **Parent loses right to custody of child**

**22.** (1) Where a parent applies to the Trial Division for an order for the production of a child committed under this Act and the court is of the opinion that the parent has abandoned or deserted the child or that the parent has otherwise so conducted himself or herself so that the court should refuse to enforce the parent's rights to the custody of the child, the court may in its discretion decline to make the order.

(2) If, at the time of an application under subsection (1), the child is being brought up by another person, the Trial Division if it directs the child to be given up to the parent, may order that the parent pay to that other person the whole of the expense properly incurred in bringing up the child or the portion that seems just.

(3) Where a parent has abandoned or deserted his or her child or allowed his or her child to be brought up by another person at that person's expense for a time and under the circumstances that satisfy the Trial Division that the parent was neglectful of parental duties, the court shall not make an order for the delivery of the child to the parent unless, at the time of the application under subsection (1), the parent satisfies the court that, having regard to the best interests of the child, he or she is an appropriate person to have the custody of the child.

1972 No37 s19; 1974 No57 s38(s262); 1981 c54 s7; 1986 c142 Sch A; 1988 c39 s4

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**Possession of harmful drugs**

**23.** (1) In urgent circumstances and where there are reasonable grounds for believing that a child is in possession of intoxicating liquor or harmful drugs

- (a) a constable or other peace officer;
- (b) a social worker;
- (c) a school teacher;
- (d) the director; or
- (e) a person acting under the authority or direction of the director

may take that child to the home of the child, or to a receiving home, or another place in which children are cared for under this Act, for the purpose of having the clothing of the child searched by a suitable person and, if anything referred to in this section is found upon that search, it shall be disposed of as the director may order.

(2) In this section urgent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or safety or the loss or destruction of evidence.

(3) A judge who is satisfied by information upon oath or affirmation that there are reasonable grounds for believing that a child is in possession of cigarettes, cigarette papers, tobacco, intoxicating liquor, harmful drugs, an obscene book or other obscene printed, type-written matter or an obscene picture, photograph, model or other object, may issue a warrant authorizing a person referred to in subsection (1) to take that child to

- (a) the home of the child;
- (b) a receiving home; or
- (c) another place in which children are cared for under this Act

for the purpose of having the clothing of the child searched by a suitable person and, if anything referred to in this section is found upon that search, it shall be disposed of as the director may order.

1988 c39 s19

**PART III  
OFFENCES AGAINST CHILDREN**

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**Offence**

**24.** A person who wilfully commits or omits an act producing, promoting or contributing to a child being or becoming a child in need of protection, is guilty of an offence and liable on summary

conviction to a fine not exceeding \$200 or, in default of payment to imprisonment for a term not exceeding 2 months, or to both a fine and imprisonment.

1988 c39 s28

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### **Removal of child from custody**

**25.** (1) Where a person having the custody, charge or care of a child has been

- (a) convicted of committing in respect of that child an offence involving wilful injury to the person, physical or mental health or morals of the child;
- (b) committed for trial for the offence; or
- (c) ordered to keep the peace towards the child

by a court, that court, either at the time when the person is convicted, committed for trial or ordered to keep the peace, and without requiring new proceedings to be instituted for the purpose, or at any time, and another court before which a person may bring the case, may, where satisfied on inquiry that it is expedient so to deal with the child, order that the child be taken out of the custody, charge or care of the person so convicted, committed for trial or bound over, and be committed to the care of the director until the child reaches the age of 17 or for a shorter period.

(2) The court referred to in subsection (1) or a court of similar jurisdiction may of its own motion or on the application of a person by order renew, vary or revoke the order, but an order shall not be made under this section unless a parent of the child has been convicted of or committed for trial for the offence or is under committal for trial for having been, or has been proved to the satisfaction of the court making the order to have been, party or privy to the offence or has been bound over to keep the peace towards the child.

(3) An order under this section shall be in writing and may be made by the court in the absence of the child, and the consent of a person to undertake the care of a child in pursuance of an order shall be proved in a manner that the court may think sufficient to bind him or her.

(4) When an order is made under this section in respect of a person who has been committed for trial, if that person is acquitted of the charge or if the charge is dismissed for lack of prosecution, the order shall immediately be void, except with regard to anything that may have been lawfully done under it.

1972 No37 s35

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### **Taking deposition from child in case of illness, etc.**

**26.** (1) Where a judge of a court is satisfied on the evidence of a registered medical practitioner that the attendance before the court of a child in respect of whom an offence is alleged to have been committed would involve serious danger to the child's life or health, the judge may take in writing the deposition of the child on oath or affirmation.

(2) The judge shall sign the deposition and add to it a statement of his or her reason for making the deposition, the day when and place where the deposition was taken and the names of the persons present at the taking of the deposition.

1972 No37 s36

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#### **Giving child tobacco, liquor, etc.; offence**

**27.** A person who sells, gives to or causes to come into the possession of a child cigarettes, cigarette papers, tobacco, intoxicating liquor, a drug which is or in quantity might be harmful, an obscene book or other printed, typewritten or other written obscene matter or an obscene picture, photograph, model or other object is guilty of an offence and liable on summary conviction to a fine not exceeding \$200 or, in default of payment, to imprisonment for a term not exceeding 2 months, or to both a fine and imprisonment.

1972 No37 s37

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#### **Employment of child**

**28.** A person who employs a child without the written consent of the child's parents or guardian is guilty of an offence and liable on summary conviction to a fine not exceeding \$200 or, in default of payment to imprisonment for a term not exceeding 2 months, or to both a fine and imprisonment.

1988 c39 s4

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#### **Employment of child under 16**

**29.** (1) A person shall not employ a child under the age of 16

(a) between the hours of 10 p.m. of one day and 7 a.m. the following day; or

(b) in an occupation which the Lieutenant-Governor in Council, by order, declares to be a prohibited occupation for the purposes of this section.

(2) An employer shall keep a register of every child employed by that employer.

(3) The employer shall insert in the register referred to in subsection (2) the date of beginning of employment and the date of birth, which the employer shall verify, of every child employed by the employer, but this subsection does not apply to occupations in which members of the employer's family are employed under his or her continuous supervision.

(4) The employer and those of his or her employees authorized to deal with the register referred to in subsection (2) shall open that register to inspection at reasonable times by a person authorized in writing by the director to inspect it.

(5) A person shall not during school hours on a day during which schools in the district in which the child lives are open employ for remuneration a child whose attendance at school is required under the *School Attendance Act*.

(6) A person who has the control or management of a theatre, bowling alley or other place of public amusement or who is authorized to admit persons to that place, shall not

(a) before 4.30 p.m. on a day during which the school at which the child is enrolled is open; or

(b) if the child is not enrolled at a school, on a day during which the schools in the district in which the child lives are open,

admit a child whose attendance at school is required under the *School Attendance Act* except for organized games, entertainments or other activities arranged by the principal of the school.

(7) A person who has the control or management of a restaurant, theatre, bowling alley or other place of public amusement or who is authorized to admit persons to that place, shall not admit or allow to remain a child apparently under the age of 15 years after 7 p.m. unless the child is accompanied by a parent or guardian or by some adult with the consent of the parent or guardian.

(8) A person who fails to comply with subsections (1) to (7) is guilty of an offence and liable on summary conviction to

(a) a fine of not more than \$20 a day for every day during a part of which a child is employed contrary to subsection (1) or (5) or, in default of payment, to imprisonment for a term not exceeding 6 months; and

(b) a fine of not more than \$50 for an offence under subsection (2), (3), (4), (6) or (7) or, in default of payment, to imprisonment for a term not exceeding 14 days.

1972 No37 s39; 1975-76 No16 s2; 1988 c39 s17

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### **Offences; 1 summons for 2 or more children**

**30.** (1) Where a person is charged with committing an offence under this Act in respect of 2 or more children, the same information or summons may charge the offence in respect of all or any of them, but the person charged shall not be liable to a separate penalty for each child unless upon separate information.

(2) A person shall not be summarily convicted of an offence under this Act unless the offence was wholly or partly committed within 6 months before the information was laid, but evidence may be taken of acts constituting or contributing to constitute the offence and committed at a previous time.

(3) When an offence under this Act charged against a person is a continuous offence, it shall not be necessary to specify in the information or summons the date of the acts constituting the offence.

1972 No37 s41

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**Procedure to search for child and to summon person guilty of neglect**

**31.** (1) Where it appears to a judge, on information laid before him or her on oath or affirmation by a person who in the opinion of the judge is in good faith acting in the interests of the child, that there is reasonable cause to suspect that a child has been or is being ill-treated or neglected in a place within the jurisdiction of the judge, the judge may issue a summons to the person apparently having custody of the child to bring the child before the judge, and, failing obedience to the summons, the judge may issue a warrant authorizing a person named in the warrant to search for the child and, if the person finds the child, to bring the child immediately before the judge, and the judge may have the child dealt with in accordance with this Act.

(2) The judge may, by a warrant issued under subsection (1) or a separate warrant, have a person accused of an offence in respect of the child to be apprehended and brought before the judge to be dealt with according to law.

(3) A person authorized by warrant under this section to search for a child may enter, if necessary by force, a house, building or other place specified in the warrant and may remove the child from that place.

(4) It is not necessary in an information laid or warrant issued under this section to describe a child by name.

1972 No37 s42

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**Offences**

**32.** (1) A person shall not

(a) induce or attempt to induce a child to leave the building or premises or custody or control of a home or institution to which the child has been confined by competent authority;

(b) induce or attempt to induce a child to leave a place where the child has been lawfully placed for the purposes of being nursed, supported, educated or adopted;

(c) induce or attempt to induce a child to break an agreement lawfully entered into by or with the authority of the director; or

(d) detain or harbour a child referred to in paragraph (a), (b) or (c) after a demand made by or on behalf of the director or a social worker for delivery up of the child.

(2) A person who violates subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$200 or, in default of payment, to imprisonment for a term not exceeding 2 months, or to both a fine and imprisonment.

1972 No37 s43; 1974 No100 s4

**PART IV  
GENERAL**

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**Regulations**

**33.** (1) Regulations may be made by

- (a) the City of St. John's;
- (b) the City of Corner Brook City;
- (c) the City of Mount Pearl;
- (d) The St. John's Metropolitan Area board;
- (e) the council of a town, community or region constituted or continued under the *Municipalities Act*,

regulating, controlling and licensing the employment of children as

- (f) express or dispatch messengers;
- (g) vendors of newspapers and small wares;
- (h) shoe shiners; or
- (i) pin children in bowling alleys,

and for prohibiting children from engaging in those occupations without a licence.

(2) A licence fee imposed under regulations made under subsection (1) shall not exceed the sum of \$0.50 a year, and a child who is engaged in 2 or more of the occupations referred to in that subsection shall not be compelled to pay more than 1 licence fee.

(3) A licensee under regulations made under subsection (1) shall not engage in an occupation for which the licensee is licensed after 8 p.m. in the months of December, January and February, or after 9 p.m. throughout the rest of the year, or during school hours.

(4) A licence is not valid if its terms contravene this Act, and a licence which contravenes this Act shall be cancelled by the director.

1972 No37 s44; 1979 c33 Sch C; 1988 c39 s4

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**Acceptance of child for board and lodging**

**34.** (1) A person shall not accept a child under the age of 12 years into a home for the purpose of providing that child with board or lodging, or both, unless that person

(a) has received permission under this section from the director or other person designated by the minister generally or specially for the purpose, in this section referred to as the "designated person"; or

(b) is a mother, father, sister, brother, aunt or uncle of a parent of the child.

(2) The director or designated person may issue licences to persons permitting them to receive children generally and provide them with board and lodging in their homes and each licence shall

(a) contain the name and address of and otherwise describe the licensee;

(b) specify the place in which the licensee is to receive, board or lodge the children and the number of children who may be in receipt of board or lodging at that place; and

(c) contain those conditions that the director or designated person may attach to the licence.

(3) The director or designated person may attach to a licence issued under this section those conditions that the director considers appropriate, and may attach different conditions to licences issued to different persons.

(4) The director or designated person may refuse to issue or may revoke a licence under this section without assigning a reason for the refusal or revocation.

(5) A person who violates or consents to a violation of subsection (1) or a condition attached to a licence issued under subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$500 or, in default of payment, to imprisonment for a term not exceeding 3 months, or to both a fine and imprisonment.

(6) A father or mother who allows or agrees to allow or gives up his or her child to be received into a home or provided with board or lodging, or both, contrary to subsection (1) is guilty of an offence and liable on summary conviction to the penalty set out in subsection (5).

(7) Where a person has been convicted of an offence under subsection (5) or (6), the court may declare that the child in respect of whom the offence was committed is a child in need of protection.

(8) This section does not apply where a child is received into a home to be provided with board and lodging and the board and lodging are to be provided for a period not in excess of 1 year

(a) during the temporary absence from the province of 1 or both of the parents;

(b) during the illness of 1 or both of the parents; or

(c) while the child is absent from the home of the child's parents for the purpose of attending school.

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#### **Director may take child into custody**

**35.** (1) Where, because of the special circumstances, the director considers it in the best interests of the child to do so, the director may, upon the written request of the parent or guardian of a child, take the child into the director's care and custody.

(2) The director may, upon accepting a child under subsection (1), make those arrangements for the support, care and welfare of the child that in the circumstances the director considers appropriate.

(3) Where the director enters into an agreement for support of a child taken into the director's care and custody under subsection (1) that agreement may be enforced as a domestic contract under section 42 of the *Family Law Act*.

(4) Where a child referred to in subsection (1) reaches the age of 16 years while in the care and custody of the director, the director may, where he or she considers it in the best interests of that child to do so,

(a) continue the care and custody of that child until that child reaches the age of 19 years or until some earlier date considered advisable by the director; and

(b) continue the maintenance of that child until that child reaches the age of 21 years or until some earlier date considered advisable by the director.

(5) Where the director has, under subsection (1), taken a child into his or her care and custody, the director may apply to the court, on behalf of the child, for an order for support under Part III of the *Family Law Act* and the court shall consider the child to be a dependant of his or her parents for the purposes of this application.

(6) An order under subsection (5) shall be for the benefit of the Crown on the terms and conditions that the court considers appropriate in the circumstances.

(7) The director does not by taking a child into his or her care and custody under subsection (1) become the legal guardian of the child and the director may terminate the care and custody at any time.

(8) When a provision of this Act conflicts with this section, this section shall prevail.

1972 No37 s46; 1988 c60 s82

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#### **Welfare of child paramount consideration**

**36.** Where in a proceeding before a court, including the Trial Division, the custody or upbringing of a child is in question, the court, in deciding that question, shall regard the best interests of the child as the first and paramount consideration, notwithstanding whether,

from another point of view, the claim of the father, or a right at common law possessed by the father, in respect of the custody or upbringing is superior to that of the mother, or the claim of the mother is superior to that of the father.

1972 No37 s47; 1974 No57 s38(s2262); 1981 c54 s7; 1986 c42 Sch A

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#### **Visits to child**

**37.** A person entrusted with the care of a child shall permit the child to be visited, and a place where the child may be or lives, to be inspected by the director or a social worker.

1972 No37 s48; 1974 No100 s4

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#### **Reporting of ill-treatment of children**

**38.** (1) A person having information of the abandonment, desertion, physical ill-treatment or need for protection of a child shall report the information to the director or a social worker.

(2) Subsection (1) applies notwithstanding that the information is conditional or privileged, and no action lies against the informant unless the giving of the information is done maliciously or without reasonable cause.

(3) A person who fails to comply with or contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months or to both a fine and imprisonment.

1972 No37 s49; 1974 No100 s4; 1981 c54 s6

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#### **Agreements**

**39.** The minister may enter into an agreement with an institution or organization for the provision of a service under this Act.

1972 No37 s50

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#### **Ministers of religion have right of admission to institutions**

**40.** (1) Subject to the regulations that may be made by the minister with the approval of the Lieutenant-Governor in Council, ministers of religion have the right of admission to every receiving home or other home or institution established or recognized under this Act for the care of children for the purpose of access to those children placed or detained there as belong to their respective

denominations and may give instructions to them on the days and at the time appointed by the regulations for the religious education of those children.

(2) The religious persuasion of a child coming within the scope of this Act or within the scope of regulations or powers made or conferred by this Act shall in all cases be properly safe-guarded.

1972 No37 s51

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### **Regulations**

**41.** (1) The Lieutenant-Governor in Council may make regulations,

- (a) providing for the licensing of receiving homes and foster homes;
- (b) prescribing the procedure governing applications and proceedings under this Act;
- (c) prescribing the records to be kept under this Act and the returns to be made to the minister;
- (d) prescribing the duties under this Act of the director and social workers;
- (e) respecting foster homes and receiving homes;
- (f) prescribing the documents or information which must accompany applications under this Act;
- (g) prescribing the rate to be paid in respect of board, clothing and school books supplied to the children
  - (i) in foster homes, receiving homes and other institutions, who have been committed to and are under the care and custody of the director in accordance with this Act, or
  - (ii) who live with and are cared for by grandparents, or other relatives not being the parents, of the children in a home, which is considered by the director or other person designated by the minister for the purpose as being satisfactory for their welfare;
- (h) providing for the payment of school fees and for transportation of children who have been committed to and are under the care and custody of the director in accordance with this Act;
- (i) for the purposes of section 40;
- (j) providing for medical and dental care for children who have been committed to and are under the care and custody of the director in accordance with this Act;

(k) providing for supplementary allowances for handicapped children; and

(l) generally to give effect to the purpose of this Act.

(2) A person who fails to comply with or otherwise contravenes regulations made under subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$200 or, in default of payment, to imprisonment for a term not exceeding 2 months, or to both a fine and imprisonment.

(3) Regulations made under subsection (1) may be made with retroactive effect to a date stated in the regulations.

1972 No37 s52; 1974 No100 s4; 1975-76 No16 s3

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#### **Offence respecting advertising**

**42.** A person shall not, without prior written permission from the minister or the director, insert in a newspaper or other printed publication or publish by means of radio or television an advertisement dealing with the adoption, boarding out or care of children coming within the scope of this Act or of the *Adoption of Children Act*.

1972 No37 s53

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#### **Courts having jurisdiction under this Act**

**43.** Except where otherwise provided in this or another Act, an information, suit or other proceeding under this Act may be laid, prosecuted or proceeded with before a youth court or a Provincial Court judge.

1984 c2 s28

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#### **General offence**

**44.** (1) A person who fails to comply with or otherwise contravenes a provision of this Act or of a regulation made under this Act is guilty of an offence.

(2) Where no penalty is provided for a breach of this Act or of a regulation made under this Act, a person committing the breach is liable on summary conviction to a fine not exceeding \$200, or in default of payment, to imprisonment for a term not exceeding 2 months, or to both a fine and imprisonment.

1972 No37 s55

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### Appeal

**45.** An appeal lies from a decision or order of the minister or the director or from an order, judgement or conviction of a judge under this Act to

(a) the Trial Division if the decision, order, judgment or conviction under appeal was made by the minister, the director or a Provincial Court judge; or

(b) the Court of Appeal if the decision, order, judgment or conviction under appeal was made by a judge of the Trial Division or of Unified Family Court,

and the provisions of the *Judicature Act*, or the *Summary Proceedings Act* and the applicable rules of court, shall govern the proceedings on the appeal.

1988 c45 s4

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### Act to be liberally construed

**46.** This Act shall be liberally construed to the end that the care of children coming within its provisions shall approximate as nearly as may be that which should be given by their parents.

1972 No37 s57

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### Payments

**47.** Payments required to be made by or on behalf of the Crown under an agreement entered into under this Act or in carrying out this Act or the regulations shall be paid by the Minister of Finance, on the request of the minister, out of the Consolidated Revenue Fund of the province.

1972 No37 s58