

1988

# c 36 Child and Family Services Amendment Act, 1988

Ontario

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## CHAPTER 36

**An Act to amend the  
Child and Family Services Act, 1984**

*Assented to June 22nd, 1988*

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

**1.—(1) Subsection 40 (2) of the *Child and Family Services Act, 1984*, being chapter 55, is repealed and the following substituted therefor:**

(2) A justice of the peace may issue a warrant authorizing a child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a child protection worker's sworn information that there are reasonable and probable grounds to believe that,

Warrant to  
apprehend  
child

- (a) the child is in need of protection; and
- (b) a less restrictive course of action is not available or will not protect the child adequately.

(2a) A justice of the peace shall not refuse to issue a warrant under subsection (2) by reason only that the child protection worker may bring the child to a place of safety under subsection (6). Idem

(2) Subsection 40 (4) of the said Act is amended by adding at the end thereof "or to specify the premises where the child is located".

(3) Subsection 40 (5) of the said Act is amended by striking out "the" in the third line and inserting in lieu thereof "any".

(4) Clause 40 (6) (a) of the said Act is repealed and the following substituted therefor:

- (a) a child is in need of protection; and
- . . . . .

**(5) Subsections 40 (10) to (17) of the said Act are repealed and the following substituted therefor:**

Right of entry, etc.

(10) A child protection worker who believes on reasonable and probable grounds that a child referred to in subsection (6) is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

Regulations re power of entry

(11) A child protection worker authorized to enter premises under subsection (5) or (10) shall exercise the power of entry in accordance with the regulations.

Peace officer has powers of child protection worker

(12) Subsections (2), (5), (6), (9), (10) and (11) apply to a peace officer as if the peace officer were a child protection worker.

Protection from personal liability

(13) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or for an alleged neglect or default in the execution in good faith of that duty.

**2. The said Act is amended by adding thereto the following sections:**

SPECIAL CASES OF APPREHENSION OF CHILDREN

Warrant to apprehend child in care

**40a.**—(1) A justice of the peace may issue a warrant authorizing a peace officer or child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a peace officer's or child protection worker's sworn information that,

- (a) the child is actually or apparently under the age of sixteen years and has left or been removed from a society's lawful care and custody without its consent; and
- (b) there are reasonable and probable grounds to believe that there is no course of action available other than bringing the child to a place of safety that would adequately protect the child.

Idem

(2) A justice of the peace shall not refuse to issue a warrant to a person under subsection (1) by reason only that the person may bring the child to a place of safety under subsection (4).

No need to specify premises

(3) It is not necessary in a warrant under subsection (1) to specify the premises where the child is located.

(4) A peace officer or child protection worker who believes on reasonable and probable grounds that,

Apprehension of child in care without warrant

- (a) a child is actually or apparently under the age of sixteen years and has left or been removed from a society's lawful care and custody without its consent; and
- (b) there would be a substantial risk to the child's health or safety during the time necessary to obtain a warrant under subsection (1),

may without a warrant bring the child to a place of safety.

(5) Where a child is detained under this Part in a place of safety that has been designated as a place of open temporary detention as defined in Part IV (Young Offenders) and leaves the place without the consent of,

Apprehension of child absent from place of open temporary detention

- (a) the society having care, custody and control of the child; or
- (b) the person in charge of the place of safety,

a peace officer, the person in charge of the place of safety or that person's delegate may apprehend the child without a warrant.

(6) A person who apprehends a child under subsection (5) shall,

Idem

- (a) take the child to a place of safety to be detained until the child can be returned to the place of safety the child left; or
- (b) return the child or arrange for the child to be returned to the place of safety the child left.

**40b.**—(1) A peace officer who believes on reasonable and probable grounds that a child actually or apparently under twelve years of age has committed an act in respect of which a person twelve years of age or older could be found guilty of an offence may apprehend the child without a warrant and on doing so,

Apprehension of child under twelve

- (a) shall return the child to the child's parent or other person having charge of the child as soon as practicable; or

- (b) where it is not possible to return the child to the parent or other person within a reasonable time, shall take the child to a place of safety to be detained there until the child can be returned to the parent or other person.

Notice to parent, etc.

(2) The person in charge of a place of safety in which a child is detained under subsection (1) shall make reasonable efforts to notify the child's parent or other person having charge of the child of the child's detention so that the child may be returned to the parent or other person.

Where child not returned to parent, etc., within twelve hours

(3) Where a child detained in a place of safety under subsection (1) cannot be returned to the child's parent or other person having charge of the child within twelve hours of being taken to the place of safety, the child shall be dealt with as if the child had been taken to a place of safety under subsection 40 (6) and not apprehended under subsection (1).

Definition

**40c.**—(1) In this section, “parent” includes,

- (a) an approved agency that has custody of the child;
- (b) a person who has care and control of the child.

Warrant to apprehend runaway child

(2) A justice of the peace may issue a warrant authorizing a peace officer or child protection worker to apprehend a child if the justice of the peace is satisfied on the basis of the sworn information of a parent of the child that,

- (a) the child is under the age of sixteen years;
- (b) the child has withdrawn from the parent's care and control without the parent's consent; and
- (c) the parent believes on reasonable and probable grounds that the child's health or safety may be at risk if the child is not apprehended.

Idem

(3) A person who apprehends a child under subsection (2) shall return the child to the child's parent as soon as practicable and where it is not possible to return the child to the parent within a reasonable time, take the child to a place of safety.

Notice to parent, etc.

(4) The person in charge of a place of safety to which a child is taken under subsection (3) shall make reasonable efforts to notify the child's parent that the child is in the place of safety so that the child may be returned to the parent.

(5) Where a child taken to a place of safety under subsection (3) cannot be returned to the child's parent within twelve hours of being taken to the place of safety, the child shall be dealt with as if the child had been taken to a place of safety under subsection 40 (2) and not apprehended under subsection (2).

Where child not returned to parent within twelve hours

(6) A justice of the peace shall not issue a warrant under subsection (2) where a child has withdrawn from the care and control of one parent with the consent of another parent under circumstances where a proceeding under section 37 of the *Children's Law Reform Act* would be more appropriate.

Where custody enforcement proceedings more appropriate  
R.S.O. 1980, c. 68

(7) It is not necessary in a warrant under subsection (2) to specify the premises where the child is located.

No need to specify premises

(8) Where a peace officer or child protection worker believes on reasonable and probable grounds that a child apprehended under this section is in need of protection and there may be a substantial risk to the health or safety of the child if the child were returned to the parent,

Child protection proceedings

- (a) the peace officer or child protection worker may take the child to a place of safety under subsection 40 (6); or
- (b) where the child has been taken to a place of safety under subsection (5), the child shall be dealt with as if the child had been taken there under subsection 40 (6).

#### POWER OF ENTRY AND OTHER PROVISIONS FOR SPECIAL CASES OF APPREHENSION

**40d.**—(1) A person authorized to bring a child to a place of safety by a warrant issued under subsection 40a (1) or 40c (2) may at any time enter any premises specified in the warrant, by force, if necessary, and may search for and remove the child.

Authority to enter, etc.

(2) A person authorized under subsection 40a (4) or (5) or 40b (1) who believes on reasonable and probable grounds that a child referred to in the relevant subsection is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

Right of entry, etc.

(3) A person authorized to enter premises under this section shall exercise the power of entry in accordance with the regulations.

Regulations re power of entry

Police  
assistance

(4) A child protection worker acting under section 40a or 40c may call for the assistance of a peace officer.

Consent to  
examine child

(5) A child protection worker who deals with a child under subsection 40b (3) or 40c (5) as if the child had been taken to a place of safety may authorize the child's medical examination where a parent's consent would otherwise be required.

Place of  
open  
temporary  
detention

(6) Where a person who brings a child to a place of safety under section 40a or 40b believes on reasonable and probable grounds that no less restrictive course of action is feasible, the child may be detained in a place of safety that is a place of open temporary detention as defined in Part IV (Young Offenders).

Protection  
from  
personal  
liability

(7) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or section 40a, 40b or 40c or for an alleged neglect or default in the execution in good faith of that duty.

**3. Subsection 42 (2) of the said Act is amended by striking out "under subsection 43 (1) (child protection hearing)" in the fourth and fifth lines.**

**4. Subsection 43 (1) of the said Act is amended by inserting after "40 (1)" in the second line "or a matter is brought before the court".**

**5. Section 48 of the said Act is amended by inserting after "40 (1)" in the first line "or a matter is brought before the court".**

**6. Subsection 74 (2) of the said Act is amended by inserting after "40" in the second line "or 40d".**

**7. Subsections 75 (5) and (6) of the said Act are repealed and the following substituted therefor:**

Allowing  
child to  
loiter, etc.

(5) No parent of a child less than sixteen years of age shall permit the child to,

- (a) loiter in a public place between the hours of midnight and 6 a.m.; or
- (b) be in a place of public entertainment between the hours of midnight and 6 a.m., unless the parent accompanies the child or authorizes a specified individual eighteen years of age or older to accompany the child.

(6) Where a child who is actually or apparently less than sixteen years of age is in a place to which the public has access between the hours of midnight and 6 a.m. and is not accompanied by a person described in clause (5) (b), a peace officer may apprehend the child without a warrant and proceed as if the child had been apprehended under subsection 40b (1).

Police may take child home or to place of safety

**8. Clause 80 (b) of the said Act is repealed and the following substituted therefor:**

- (b) obstruct, interfere with or attempt to obstruct or interfere with a child protection worker or a peace officer who is acting under section 40, 40a, 40b, 40c or 40d.

**9. Subsection 89 (2) of the said Act is repealed and the following substituted therefor:**

(2) A provincial director may detain a young person in a place of secure temporary detention if the circumstances described in paragraph 1 or 2 apply to the young person and if the provincial director is satisfied that it is necessary to detain the young person in a place of secure temporary detention to ensure the young person's attendance in court or to protect the public interest or safety:

Where secure detention available

1. The young person is charged with an offence for which an adult would be liable to imprisonment for five years or more and,
  - i. the offence includes causing or attempting to cause serious bodily harm to another person,
  - ii. the young person has, at any time, failed to appear in court when required to do so under the federal Act or the *Juvenile Delinquents Act* (Canada) or escaped or attempted to escape from lawful detention, or
  - iii. the young person has, within the twelve months immediately preceding the offence on which the current charge is based, been convicted of an offence for which an adult would be liable to imprisonment for five years or more.
2. The young person is detained in a place of temporary detention and leaves or attempts to leave without the consent of the person in charge or is charged with having escaped or attempting to

R.S.C. 1970, c. J-3

R.S.C. 1970,  
c. C-34

escape from lawful custody or being unlawfully at large under the *Criminal Code* (Canada).

**10.—(1) Subsections 94 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:**

Apprehension of young person absent from place of temporary detention  
R.S.O. 1980,  
c. 400

(1) A peace officer, the person in charge of a place of temporary detention or that person's delegate, who believes on reasonable and probable grounds that a young person detained under the federal Act or the *Provincial Offences Act* in a place of temporary detention has left the place without the consent of the person in charge and fails or refuses to return there may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of temporary detention.

Idem: place of open custody

(2) A peace officer, the person in charge of a place of open custody or that person's delegate, who believes on reasonable and probable grounds that a young person held in a place of open custody as described in section 91,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to the place of open custody upon completion of a period of temporary release under clause 91 (b),

may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of open custody or a place of temporary detention.

Young person to be returned within forty-eight hours

(3) A young person who is apprehended under this section shall be returned to the place from which he or she is absent within forty-eight hours after being apprehended unless the provincial director detains the young person in secure temporary detention under paragraph 2 of subsection 89 (2).

**(2) Subsections 94 (5) and (6) of the said Act are repealed and the following substituted therefor:**

Authority to enter, etc.

(5) Where a person authorized to apprehend a young person under subsection (1) or (2) believes on reasonable and probable grounds that a young person referred to in the relevant subsection is on any premises, the person may with or without a warrant enter the premises, by force, if necessary, and search for and remove the young person.

(6) A person authorized to enter premises under subsection (5) shall exercise the power of entry in accordance with the regulations.

Regulations re exercise of power of entry

**11.—(1) Paragraph 2 of subsection 110 (1) of the said Act is amended by striking out “or” at the end of subparagraph ii and by adding thereto the following subparagraph:**

- ii. a society that has custody of the child under an order made under Part III (Child Protection), if the child consents to the application, or

**(2) Subsections 110 (2) and (3) of the said Act are repealed and the following substituted therefor:**

(2) Where an application is made under subsection (1), the court shall deal with the matter within ten days of the making of an order under subsection (5) (legal representation) or, where no such order is made, within ten days of the making of the application.

Time for hearing

**(3) Section 110 of the said Act is amended by adding thereto the following subsections:**

(4a) Where a hearing is adjourned, the court may make a temporary order for the child’s commitment to a secure treatment program if the court is satisfied that the child meets the criteria for commitment set out in clauses 113 (1) (a) to (f) and, where the child is less than twelve years old, the Minister consents to the child’s admission.

Interim order

(4b) For the purpose of subsection (4a), the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances.

Evidence on adjournments

**12. Subsection 111 (3) of the said Act is amended by striking out “a single 180 day” in the second line and inserting in lieu thereof “the”.**

**13. Subsection 112 (4) of the said Act is amended by adding thereto the following clause:**

- (da) a society that has custody of the child under an order made under Part III (Child Protection).

**14. Subsections 114 (1) and (2) of the said Act are repealed and the following substituted therefor:**

Period of  
commitment

(1) The court shall specify in an order under subsection 113 (1) the period not exceeding 180 days for which the child shall be committed to the secure treatment program.

Where  
society is  
applicant

(2) Where a child is committed to a secure treatment program on a society's application and the period specified in the court's order is greater than sixty days, the child shall be released on a day sixty days after the child's admission to the secure treatment program unless before that day,

- (a) the child's parent consents to the child's commitment for a longer period; or
- (b) the child is made a Crown or society ward under Part III (Child Protection),

but in no case shall the child be committed to the secure treatment program for longer than the period specified under subsection (1).

**15.—(1) Section 116 of the said Act is amended by adding thereto the following subsection:**

Idem

(1a) Where a person is kept in the secure treatment program under subsection 114 (4) after attaining the age of eighteen years,

- (a) the person, with the written consent of the administrator;
- (b) the person's parent, with the written consent of the person and the administrator;
- (c) a physician, with the written consent of the administrator and the person; or
- (d) the administrator, with the written consent of the person,

may, before the expiry of the period of commitment, apply for one further order extending the person's commitment to the secure treatment program.

**(2) Subsection 116 (2) of the said Act is amended by inserting after "(1)" in the first line "or (1a)".**

**(3) Subsection 116 (3) of the said Act is amended by adding at the end thereof "or (1a)".**

**(4) Subsection 116 (5) of the said Act is repealed and the following substituted therefor:**

(5) The court shall specify in an order under subsection 116 (4) the period not exceeding 180 days for which the child shall be committed to the secure treatment program. Period of extension

**16. The said Act is further amended by adding thereto the following sections:**

REVIEW OF COMMITMENT

**117a.**—(1) Any one of the following persons may apply to the court for an order terminating an order made under subsection 113 (1) (commitment) or 116 (4) (extension): Review of commitment

1. The child, where the child is twelve years of age or more.
2. The child's parent.
3. The society having care, custody or supervision of the child.

(2) Subsections 110 (4), (5), (6), (7) and (8) (hearing) and sections 111 (child's waiver) and 112 (assessment) apply with necessary modifications to an application made under subsection (1). ss. 110 (4-8), 111, 112 apply

(3) The court shall make an order terminating a child's commitment unless the court is satisfied that, Termination of order

- (a) the child has a mental disorder;
- (b) the secure treatment program would continue to be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
- (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances; and
- (d) the child is receiving the treatment proposed at the time of the most recent order under subsection 113 (1) or 116 (4), or other appropriate treatment.

(4) In making an order under subsection (3), the court shall consider whether there is an appropriate plan for the child's care on release from the secure treatment program. Idem



after receiving a notice under subsection (6) unless the Official Guardian is satisfied that another person will provide legal representation for the child within that time.

(9) Where a child is admitted to a secure treatment program under this section, any person, including the child, may apply to the Board for an order releasing the child from the secure treatment program.

Application  
for review

(10) Where an application is made under subsection (9), the child may be kept in the secure treatment program until the application is disposed of.

Child may be  
kept in  
program  
while  
application  
pending  
Procedure

(11) Subsections 110 (6), (7) and (8) (hearing) and section 111 (waive oral evidence) apply with necessary modifications to an application made under subsection (9).

(12) Where an application is made under subsection (9), the Board shall dispose of the matter within five days of the making of the application.

Time for  
review

(13) The Board shall make an order releasing the child from the secure treatment program unless the Board is satisfied that the child meets the criteria for emergency admission set out in clauses 118 (2) (a) to (e).

Order

**18. Section 119 of the said Act is amended by adding thereto the following subsections:**

(2) Where a child who has been admitted to a secure treatment program leaves the facility in which the secure treatment program is located without the consent of the administrator, a peace officer may apprehend the child with or without a warrant and return the child to the facility.

Apprehen-  
sion of child  
who leaves

(3) Where a child is returned to a facility under subsection (2), the time that the child was absent from the facility shall not be taken into account in calculating the period of commitment.

Period of  
commitment

**19. Subsection 125 (2) of the said Act is amended by inserting after "child" in the third line "who has been admitted to a secure treatment program under this Part".**

**20. Clause 126 (2) (c) of the said Act is amended by striking out "any" in the first line and inserting in lieu thereof "the".**

**21. The said Act is further amended by adding thereto the following section:**

Definition

**166a.—(1)** In this section, “record of a mental disorder” means a record or a part of a record made about a person concerning a substantial disorder of emotional processes, thought or cognition of the person which grossly impairs the person’s capacity to make reasoned judgments.

Disclosure pursuant to subpoena

(2) A service provider shall disclose, transmit or permit the examination of a record of a mental disorder pursuant to a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act unless a physician states in writing that he or she believes that to do so,

(a) is likely to result in harm to the treatment or recovery of the person to whom the record relates; or

(b) is likely to result in,

(i) injury to the mental condition of another person, or

(ii) bodily harm to another person.

Hearing to be held

(3) The court before which a matter described in subsection (2) is in issue on motion or, where a disclosure, transmittal or examination is not required by a court, the Divisional Court on motion shall determine whether the record referred to in the physician’s statement should be disclosed, transmitted or examined.

Idem

(4) A motion under subsection (3) shall be on notice to the physician and shall be held in the absence of the public.

Consideration of court

(5) In a motion under subsection (3), the court shall consider whether or not the disclosure, transmittal or examination of the record referred to in the physician’s statement is likely to have a result described in clause (2) (a) or (b) and for the purpose the court may examine the record.

Order of court

(6) The court shall not order that the record referred to in the physician’s statement be disclosed, transmitted or examined if the court is satisfied that a result described in clause (2) (a) or (b) is likely unless satisfied that to do so is essential in the interests of justice.

(7) Where a record of a mental disorder is required under this section, the clerk of the court or body in which it is admitted in evidence or, if not so admitted, the person to whom the record is transmitted shall return the record to the service provider forthwith after the determination of the matter in issue in respect of which the record was required.

Return of  
record to  
service  
provider

**22.—(1) Clause 199 (a) of the said Act is amended by striking out “(14)” in the second line and inserting in lieu thereof “(10) and section 40d”.**

**(2) Section 199 of the said Act is amended by adding thereto the following clause:**

(h) prescribing forms and providing for their use.

**23. Clause 200 (1) (m) of the said Act is amended by striking out “by a warrant issued under subsection 94 (4)” in the second line and inserting in lieu thereof “under subsection 94 (5)”.**

**24.—(1) Clause 202 (a) of the said Act is amended by striking out “children” in the first line and inserting in lieu thereof “persons”.**

**(2) Clause 202 (i) of the said Act is amended by striking out “or combinations of drugs” in the first line and inserting in lieu thereof “combinations of drugs or classes of drugs”.**

**25. A child who is a patient in a psychiatric facility under a certificate of involuntary admission under the *Mental Health Act* on the day this section comes into force and who is in premises where a secure treatment program has been established or approved shall be deemed to have been committed to the secure treatment program under section 113 for a period that ends when the certificate expires.**

Transition  
R.S.O. 1980,  
c. 262

**26. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.**

Commence-  
ment

**27. The short title of this Act is the *Child and Family Services Amendment Act, 1988*.**

Short title

