



ST. CHRISTOPHER AND NEVIS

CHAPTER 12.12

PROBATION AND CHILD WELFARE BOARD ACT

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CHAPTER 12.12

PROBATION AND CHILD WELFARE BOARD ACT

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE PROBATION AND CHILD WELFARE BOARD AND FOR RELATED MATTERS.

(Substituted by Act 21 of 2013)

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Probation and Child Welfare Board Act.

Interpretation.

2. For the purposes of this Act—

“Adoption Committee” means the Adoption Committee appointed by the Board pursuant to the provisions of the Children (Care and Adoption) Act, Cap. 12.01;

(Inserted by Act 21 of 2013)

“Advisory Committee” means the Advisory Committee appointed by the Board pursuant to the provisions of the Children (Care and Adoption) Act, Cap. 12.01;

(Inserted by Act 21 of 2013)

“Board” means the Probation and Child Welfare Board established by Section 3;

“child” means a person under the age of eighteen years;

“child abuse” means non-accidental injury inflicted upon a child by a person responsible for the care and maintenance of the child including willful assault, ill-treatment and neglect in a manner likely to cause unnecessary suffering or injury to health including injury to or loss of sight or hearing or of any limb or organ of the body or any mental derangement and includes sexual abuse as defined by law or the involvement of any child in activities of a sexual nature to which they cannot give consent including fondling, kissing, engaging in prostitution, the photographing or depiction of a child for indecent or pornographic purposes or a course of sexual conduct that causes or is likely to cause the health or welfare of the child to be harmed or threatened;

“Child Justice Committee” means the Child Justice Committee appointed by the Board pursuant to the provisions of the Child Justice Act, Cap. 4.15;

(Inserted by Act 21 of 2013)

“foster care” means the care of children in any household in which neither parent is a member for a period exceeding three months and includes daily minding;

“foster child” means a child under the age of eighteen years whose care and maintenance are being undertaken by a person other than its parent for a period exceeding three months;

“foster home” means a private home approved by the Board for the placement of a child who is in the care of the Board;

“foster parent” means the person undertaking the care and maintenance of a foster child and approved by the Board;

“imminent danger” includes—

- (a) substantial impairment of the intellectual, psychological or emotional capacity of a child caused by inhumane acts or conduct;
- (b) substantial impairment of physical well-being as evidenced by lack of adequate nutrition and medical care;
- (c) actual or attempted sexual abuse;
- (d) substantial physical pain;
- (e) serious bodily injury resulting in physical disfigurement;
- (f) substantial impairment of the functions of a bodily member; or
- (g) injury which may result in death;

“Minister” means the Minister responsible for Social Services;

(Substituted by Act 21 of 2013)

“out of home placement”—

- (a) means a place where children are cared for; and
- (b) includes a children’s home, day nursery and reception centre.

(Inserted by Act 21 of 2013)

PART II

ADMINISTRATION

The Probation and Child Welfare Board.

3. (1) The Probation and Child Welfare Board is established by this Act.

(2) The Schedule to this Act has effect with respect to the constitution of the Board and otherwise in relation thereto.

Committees.

4. The Board may appoint—

- (a) an Adoption Committee in accordance with the Children (Care and Adoption) Act, Cap. 12.01;
- (b) an Advisory Committee in accordance with the Children (Care and Adoption) Act, Cap. 12.01;
- (c) a Child Justice Committee in accordance with the provisions of the Child Justice Act, Cap. 4.15;
- (d) such other committees to assist the Board in the exercise of its functions under this Act or any other Act.

(Substituted by Act 21 of 2013)

Functions and powers of Board.

5. The functions and powers of the Board are—
- (a) to provide and maintain out of home placement for children in need of care and protection;
 - (b) to provide counselling and other services—
 - (i) for children in need of care and protection; and
 - (ii) for the parents and guardians of those children;
 - (c) to place children in foster homes;
 - (d) to supervise foster children and foster parents;
 - (e) to receive reports of all cases and suspected cases of child abuse, to investigate those reports and to provide, where appropriate, copies of reports and investigations to the Attorney General, the Commissioner of Police and the Director of Public Prosecutions;
 - (f) to undertake the functions provided for under the Children (Care and Adoption) Act, Cap. 12.01, the Child Justice Act, Cap. 4.15, and any other functions set out under any other Act; and
(Substituted by Act 21 of 2013)
 - (g) such other functions as the Minister directs.

Parental rights and duties.

6. (1) In this section—

“parent”, except in subsection (2)(a), includes a guardian; and

“parental rights and duties” means the rights and duties that by law a parent has in relation to a child, but does not include the right to consent or withhold consent to the making of an order under the Children (Care and Adoption) Act, Cap. 12.01.

(Amended by Act 21 of 2013)

(2) The Board may apply to the High court to have the parental rights and duties in relation to a child in the care of the Board vested in the Board where—

- (a) the parents of the child are dead and he has no guardian; or
 - (b) the parents of the child—
 - (i) have abandoned the child; or
 - (ii) suffer from a mental or physical disability whether permanent or not, that renders them incapable or unfit to have the care of the child;
 - (iii) are of such habits or mode of life as to be unfit to have the care of the child; or
 - (iv) have so consistently failed without reasonable cause to discharge their parental rights and duties as to make them unfit to have the care of the child.
- (3) In making a determination under this section the judge must have regard—
- (a) to the interests of the child; and
 - (b) any other matter the judge considers appropriate.

(4) The parental rights and duties of the Board in respect of a child cease where—

- (a) an adoption order is made in relation to the child; or
- (b) the court makes an order respecting the guardianship of the child.

(5) Where a child has been in the care of the Board for at least twelve months and during that time the whereabouts of the parents of the child remained unknown, or the parents are of such habits or mode of life as to be unfit to have the care of the child then, for the purposes of this section, the parents shall be deemed to have abandoned the child.

(6) Subsection (5) applies whether or not the child was in the custody of the Board before the commencement of this Act.

(7) Any parent may request the Board in writing to bring any proceedings under this Act or under the Child Justice Act, Cap. 4.15 and where the Board fails or refuses to act within twenty-eight days after the request such parent may apply to the Juvenile Court for any order that the Court may direct.

Staff.

7. (1) Subject to this Act, the Board, with the approval of the Minister, may appoint such officers and other employees as are necessary for the proper performance of its duties under this Act.

(2) The Board may not, without the prior approval of the Minister—

- (a) assign a salary in excess of such sum as the Minister determines and notifies in writing to the Board in respect of any office established by the Board; or
- (b) appoint a person to an office established by the Board to which a salary is assigned by the Minister under paragraph (a).

(3) The Board shall, with the approval of the Minister, appoint a sufficient number of persons qualified by character, training and experience, to be probation officers who shall perform such duties as may be assigned to them under this Act and in addition function as—

- (a) welfare officers in Divorce, Maintenance, Guardianship, Custody and Affiliation proceedings and submit such reports as may be required;
- (b) guardians *ad litem* in proceedings under the Children (Care and Adoption) Act, Cap. 12.01 to safeguard the interests of the child and to provide the court with such report, information or recommendation as the court directs;

(Amended by Act 21 of 2013)

- (c) school attendance officers under the Education Act, Cap. 13.01.

(Amended by Act 8 of 1998)

PART III
FOSTER CARE

Foster parent.

8. (1) A person who wishes to be appointed a foster parent shall make application to the Board who shall respond within three months of the receipt of such application.

(2) Notwithstanding subsection (1), where a person receives a foster child in an emergency the person shall, not less than seven days after receiving the child, give written notification to the Board of the fact.

(3) A person who, at the commencement of this Act, is maintaining a foster child shall, within one month after the commencement of this Act, give the Board notice of the fact.

(4) Any person who contravenes the provisions of this section commits an offence and is liable, on summary conviction, to imprisonment for twelve months.

(Originally section 23 and renumbered section 8(4) by Act 21 of 2013)

Life Insurance.

9. For the purposes of any law relating to life insurance, a foster parent has no interest in the life of a foster child.

Leaving foster care.

10. Where a foster child—

(a) leaves a foster home; or

(b) is unlawfully taken from a foster home, the foster parent shall immediately notify the Board.

Agreement.

11. (1) The parent of a child may enter into an agreement with the Board—

(a) for the placing of the child into the care and protection of the Board;

(b) for the supervision of the child by the Board; or

(c) for the provision by the Board of services required to meet the special needs of the child.

(2) An agreement referred to in subsection (1) may be for a period of six months or such longer period as the Board and the parent consider appropriate.

(3) An agreement under this section expires on the eighteenth birthday of the child.

(4) Notwithstanding subsection (3), where a child is mentally or physically handicapped or is otherwise incapacitated an agreement under this section may be for such period as the Board and the parent consider appropriate to the needs of the child.

PART IV

REGISTRATION OF PRIVATE OUT OF HOME PLACEMENT

(Amended by Act 21 of 2013)

Private out of home placement.**12.** In this Act—

- (a) “private out of home placement” means an out of home placement provided and maintained by a person other than the Board or the Government; and
- (b) “proprietor”, in relation to a private out of home placement, means any person who maintains the centre.

(Amended by Act 21 of 2013)

Registration.

13. (1) Subject to this Act, no person shall keep a private out of home placement unless it is registered under this Act.

(2) For the purposes of this Act, the Board shall keep a register to be known as the Register of Private out of home placement, in which must be entered—

- (a) the names of Private out of home placement registered under this Act; and
- (b) such particulars relating to private out of home placement as the Board prescribes.

(3) An application under this Act for registration of a private out of home placement—

(Amended by Act 21 of 2013)

- (a) must be made by or on behalf of the proprietor;
- (b) must be made in the prescribed form; and
- (c) must contain such particulars and be accompanied by such documents as the Board prescribes.

(4) The Board may, on receipt of an application under this section, require the applicant to furnish such additional information and particulars as the Board considers relevant to the application, and the applicant must comply with the request.

Requirements of registration.

14. (1) The Board shall, as soon as practicable after it receives an application for the registration of a private out of home placement, inspect the out of home placement.

(2) Where the Board is satisfied that a private out of home placement meets the prescribed requirements the Board shall register the centre.

(3) Where the Board registers a private out of home placement it shall, in writing, notify the applicant that the centre is registered.

(4) Registration of a private out of home placement is subject to any condition the Board specifies.

(5) The Board may not register a private out of home placement that does not meet the requirements for registration.

(6) Where the Board refuses to register or cancels the registration of a private out of home placement the Board shall, in writing—

- (a) notify the applicant or proprietor of the refusal or cancellation, as the case may be, and of the reasons therefor; and
- (b) inform the applicant or proprietor that he or she has a right of appeal under section 16.

(Amended by Act 21 of 2013)

Cancellation of registration.

15. (1) The Board may, at any reasonable time, inspect a private out of home placement.

(2) The Board may cancel the registration of a private out of home placement where this Act or the regulations are contravened in relation to the out of home placement.

(Amended by Act 21 of 2013)

(3) Section 14(5) apply *mutatis mutandis* to this section.

Appeal.

16. (1) Where the Board—

- (a) refuses to register a private out of home placement; or
- (b) cancels the registration of a private out of home placement,

the applicant or proprietor of the centre may appeal to the Minister against the refusal or cancellation, as the case may be.

(Amended by Act 21 of 2013)

(2) An appeal made under subsection (1) must be filed within one month after the refusal or cancellation of registration or such further period as the Minister allows.

(3) A decision of the Minister under this section is final.

PART V

FINANCIAL

Expenses.

17. The expenses of the Board are to be defrayed out of—

- (a) moneys voted by the National Assembly for the purpose;
- (b) moneys becoming payable to or vested in the Board; and
- (c) gifts to the Board from any person, organisation or body.

Application of moneys.

18. The Board shall apply its moneys for—

- (a) the payment of its officers and employees;
- (b) the maintenance of its out of home placement;
- (c) the making of grants to private out of home placement; and
(Amended by Act 21 of 2013)
- (d) such other purposes as are necessary for the performance of its functions under this Act.

Accounts.

- 19.** (1) The Board shall keep proper accounts and records of its activities.
- (2) The accounts of the Board must be audited annually by an auditor appointed by the Board with the approval of the Minister.
- (3) The Director of Audit may, at all reasonable times, and shall, on the direction of the Minister, carry out at any time an investigation into the accounts of the Board.

Report.

- 20.** (1) The Board shall as soon as practicable after the end of each financial year and in any event not later than six months after the end of the year, submit to the Minister a report containing, in respect of the Board—
- (a) a detailed account of its activities during the preceding financial year; and
 - (b) a statement of its audited accounts.
- (2) Copies of the report and statement of accounts referred to in subsection (1) shall be laid in the National Assembly.

PART VI
MISCELLANEOUS

Regulations.

- 21.** The Minister may make regulations—
- (a) respecting foster children, foster homes and foster parents;
 - (b) respecting the fostering of children;
 - (c) respecting the admission of children to and discharge of children from out of home placement;
 - (d) respecting the premises, administration, management and staff of private out of home placement;
(Amended by Act 21 of 2013)
 - (e) respecting the fees payable in respect of children in the care and protection of the Board; and
 - (f) prescribing anything that is authorised or required by this Act to be prescribed.
(Amended by Act 21 of 2013)

Offences.

- 22.** (1) A person commits an offence who—
- (a) personates a member of the Board or a member of the staff of the Board;
 - (b) assaults, obstructs, insults or threatens any person referred to in paragraph (a) while that person is executing his or her duty under this Act;
 - (c) fails to comply with section 10; or
 - (d) contravenes section 13(1),

and is liable, on summary conviction, to a fine of one thousand dollars or imprisonment for twelve months or both.

- (2) A person commits an offence who—
- (a) induces or attempts to induce a child—
 - (i) to leave an out of home placement or a foster home;
 - (ii) to remain away from or not to return to an out of home placement or a foster home; or
 - (b) detains or harbours a child who has left an out of home placement or a foster home,

and the person is liable, on summary conviction, to imprisonment for two years.

(Amended by Act 21 of 2013)

Delegation.

23. The Board may delegate to a Committee appointed by the Board or to any other person, its functions under this Act or any other Act, other than the power of delegation pursuant to this section.

(Inserted by Act 21 of 2013)

Financial disclosure.

24. (1) A person whose financial information is necessary to undertake a means assessment shall, on the request of the Board, present his or her financial information.

(2) Any person needed under subsection (1) to verify that information may be requested to do so by the Board.

(3) A person who provides false information under this section is liable in accordance with the provisions of the Perjury Act, Cap. 4.23.

(Inserted by Act 21 of 2013)

SCHEDULE*(Section 3(2))***THE PROBATION AND CHILD WELFARE BOARD***(Substituted by Act 21 of 2013)*

1. The Board consists of a chairperson and not less than seven and not more than eleven other members, appointed by the Minister by instrument in writing.
2. Members of the Board must appoint one from among themselves to be deputy chairperson.
3. Members of the Board, subject to paragraphs 4 and 6, hold office for three (3) years but are eligible for re-appointment.
4. A member may at any time resign his or her office by instrument in writing addressed to the chairperson, who shall forthwith forward the instrument to the Minister, and upon the receipt by the Minister of the instrument the member ceases to be a member of the Board.
5. (1) The chairperson may at any time resign his or her office by instrument in writing addressed to the Minister and the chairperson's resignation takes effect upon the receipt of the instrument by the Minister.
(2) Where the chairperson ceases to be chairperson, he or she also ceases to be a member.
6. The Minister may, by instrument in writing, at any time, revoke the appointment of the chairperson or any member if the Minister considers it expedient so to do.
7. Any member who is absent from St. Christopher and Nevis without leave of the Minister or fails without reasonable excuse to attend three consecutive meetings of the Board ceases to be a member of the Board.
8. Where there is a vacancy in the membership of the Board the Minister may fill the vacancy.
9. The Board shall meet at least once a month for the transaction of business at such places and times and on such days as the Board determines.
10. The chairperson, or in the absence of the chairperson, the deputy chairperson, may at any time call a special meeting, and shall call a special meeting within seven days of a requisition for that purpose addressed to him or her in writing by at least three members of the Board.
11. The chairperson, or in his or her absence the deputy chairperson, is to preside at all meetings of the Board.
12. Four members of the Board shall form a quorum.
13. In the absence of both the chairperson and the deputy chairperson the members present and constituting a quorum must elect one of their number to preside at the meeting.
14. The decisions of the Board are to be by a majority of votes and in addition to an original vote, in any case in which the voting is equal the chairperson, deputy chairperson or other member presiding at the meeting has a second or casting vote.

15. The appointment, removal, death or resignation of the chairperson or any member must be notified in the *Gazette*.

16. The Board may appoint a committee for any function of the Board that in its opinion would be better regulated or managed by a committee; and the Board may delegate any of its functions to such a committee.

17. Members of the Board are eligible for such remuneration as the Minister determines.

(Inserted by Act 8 of 1998)
