

BILL

No. 106

An Act to amend *The Missing Persons and Presumption of Death Act*

(Assented to _____)

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

Short title

1 This Act may be cited as *The Missing Persons and Presumption of Death Amendment Act, 2017*.

SS 2009, c M-20.01 amended

2 *The Missing Persons and Presumption of Death Act* is amended in the manner set forth in this Act.

Section 2 amended

3 Section 2 is amended:

(a) in clause (b) by striking out “for Saskatchewan”;

(b) by adding the following clauses after clause (b):

“(b.1) ‘**health information**’ means personal health information as defined in *The Health Information Protection Act* and includes any additional prescribed information;

“(b.2) ‘**minister**’ means the member of Executive Council to whom for the time being the administration of this Act is assigned”;

(c) in clause (c) by adding “, except in Part II.1,” after “ ‘missing person’ ”; and

(d) by adding the following clause after clause (c):

“(c.1) ‘**police service**’ means:

- (i) a police service within the meaning of *The Police Act, 1990*;
- (ii) the Royal Canadian Mounted Police; or
- (iii) a prescribed agency or organization”.

New section 2.1

4 The following section is added after section 2:

“Crown bound

2.1 The Crown is bound by this Act”.

Section 8 amended

5(1) Subsection 8(1) is repealed.

(2) Subsection 8(2) is amended:

(a) in the portion preceding clause (a) by striking out “*ex parte* application” and substituting “application without notice”; and

(b) in clause (b) by striking out “within the meaning of *The Police Act, 1990* or to the Royal Canadian Mounted Police”.

(3) Clause 8(3)(a) is amended by striking out “or a member of a police service within the meaning of *The Police Act, 1990* or of the Royal Canadian Mounted Police”.

New Part II.1

6 The following Part is added after Part II:

“PART II.1

Police Service Access to Records

“Definitions

14.1 In this Part:

‘government institution’ means a government institution as defined in *The Freedom of Information and Protection of Privacy Act*;

‘local authority’ means a local authority as defined in *The Local Authority Freedom of Information and Protection of Privacy Act*;

‘missing person’ means a person whose whereabouts are unknown despite reasonable efforts to locate the person and:

(a) who has not been in contact with those individuals who would likely or normally be in contact with the person; or

(b) whose safety is feared for given the person’s age, physical or intellectual capabilities or the circumstances surrounding the person’s absence;

‘person’, except if used to refer to a missing person, includes:

(a) a partnership;

(b) an unincorporated association;

(c) a government institution;

(d) a local authority; or

(e) any other prescribed entity;

‘record access order’ means an order made pursuant to section 14.4;

‘search order’ means an order made pursuant to section 14.3;

‘vulnerable person’ means a person for whom a decision-maker has been appointed pursuant to *The Adult Guardianship and Co-decision-making Act* or a personal attorney is acting pursuant to *The Powers of Attorney Act, 2002*, or any other prescribed person.

“When application may be made

14.2(1) A member of a police service may apply for a search order or a record access order if the police service is conducting an investigation into a missing person.

(2) An application for a search order or a record access order may be made to the court without notice in the prescribed manner.

“Search order

14.3 If the court is satisfied by information on oath or affirmation that there are reasonable grounds to believe that a missing person who is a minor or a vulnerable person or belongs to any category of prescribed persons may be in a dwelling or other premises, the court may make an order authorizing members of a police service to enter, by force if necessary, the dwelling or other premises and search for the missing person.

“Record access order

14.4(1) The court may make an order requiring a person to give the police service access to, and if requested, copies of, all or some of the records mentioned in subsection (2) if the court is satisfied that:

(a) the order may assist the police service in its attempt to locate the missing person; and

(b) the records are in the possession or under the control of the person.

(2) In an order made pursuant to subsection (1), access to all or some of the following records may be required:

(a) records containing contact or identification information;

(b) telephone and other electronic communication records, including:

(i) records related to signals from a wireless device that may indicate the location of the wireless device;

(ii) cell phone records;

(iii) inbound and outbound text messaging records; and

(iv) internet browsing history records;

(c) global positioning system tracking records;

(d) video records, including closed circuit television footage;

(e) records containing employment information;

(f) records containing health information;

(g) records from a school, university or other educational institution containing attendance information;

(h) records containing travel and accommodation information;

(i) records containing financial information;

(j) any other records specified in the order that the court considers appropriate.

(3) If the missing person is a minor or a vulnerable person and there are reasonable grounds to believe that the missing person may be in the company of another person, the court may order that members of the police service be given access to and, if requested, copies of the records set out in subsection (2) regarding the person who may be in the company of the missing person.

(4) The court may impose any restrictions or limits on the records to be produced in an order pursuant to this section that the court considers appropriate.

(5) The court may include a provision in an order pursuant to this section requiring a person to provide members of the police service with an accounting of the efforts made by the person to locate any records that cannot be found.

“Emergency demand for records

14.5(1) In this section, ‘**commanding officer**’ means:

- (a) the chief of a police service;
- (b) the commanding officer of the Royal Canadian Mounted Police; or
- (c) the senior officer in an agency or organization that is prescribed as a police service.

(2) A member of a police service may serve a written demand on a person requiring that person to give members of the police service access to those records that are in the person’s possession or under the person’s control if the member has reasonable grounds to believe that:

- (a) a missing person is at risk of imminent serious bodily harm or death;
- (b) immediate access to the records mentioned in subsection (3) may assist the police service in locating the missing person before he or she suffers any harm; and
- (c) it is not practicable to obtain a record access order given the urgency of the circumstances.

(3) The following records relating to a missing person may be specified in a demand for records pursuant to subsection (2):

- (a) records containing contact or identification information;
- (b) the following telephone and electronic communication records:
 - (i) records related to signals from a wireless device that may indicate the location of the wireless device;
 - (ii) cell phone records;
 - (iii) inbound and outbound text messaging records;
 - (iv) internet browsing history records;
- (c) global positioning system tracking records;
- (d) video records, including closed circuit television footage;
- (e) records containing employment information to the extent that the records might indicate when the missing person was last seen or heard from and when, where and how the missing person is paid;

(f) records containing health information to the extent that the records might indicate if the missing person has recently been admitted to a hospital and, if so, the name of the hospital, the date and time of admission and the reason for admission;

(g) records from a school, university or other educational institution containing attendance information;

(h) records containing travel and accommodation information;

(i) records containing financial information to the extent that the records might indicate:

(i) if one or more of the missing person's credit cards were recently used and, if so, when, from where and for what purpose the credit card was used; or

(ii) if one or more of the missing person's bank accounts were recently accessed and, if so when, from where and for what purpose the bank account was accessed;

(j) any other prescribed records.

(4) With respect to those records mentioned in clauses (3)(b) to (j), a demand for records pursuant to subsection (2) must specify the period that the requested records relate to and that period must not exceed 14 days before the alleged date of disappearance.

(5) A demand for records pursuant to subsection (2) must be in the prescribed form.

(6) A person who is served with a demand for records pursuant to subsection (2) must locate all the records specified in the demand that are in his or her possession or under his or her control and give members of the police service access to and, if requested, copies of those records as soon as possible, having regard to the urgent circumstances of the demand.

(7) When a member of a police service serves a demand for records pursuant to subsection (2) on a person, the member must file a written report with his or her commanding officer that sets out the circumstances in which the demand was made.

“Failure to comply with demand

14.6(1) If a person who is served with a demand for records pursuant to section 14.5 does not comply with the demand, a member of the police service may apply to the court in the prescribed manner for an order directing the person to comply with the demand.

(2) The court may make an order requiring the person to comply with a demand for records if the court is satisfied that:

(a) the records in question are in the possession or under the control of the person; and

(b) the order may assist the police service in locating the missing person.

(3) An order pursuant to this section may be subject to any terms or conditions that the court considers appropriate in the circumstances.

“Restriction on use

14.7(1) Notwithstanding *The Local Authority Freedom of Information and Protection of Privacy Act*, a police service may use information and records obtained pursuant to this Act only for:

- (a) the purpose of locating a missing person or a use consistent with that purpose; or
- (b) a purpose for which the information may be disclosed pursuant to section 14.8.

(2) If the investigation into a missing person becomes a criminal investigation, this section does not prevent information and records obtained by a police service pursuant to this Act from being used in the criminal investigation.

“Disclosure of information and records limited

14.8(1) Any information or records obtained by a police service pursuant to this Act are confidential and may not be disclosed except in accordance with this section.

(2) Notwithstanding *The Local Authority Freedom of Information and Protection of Privacy Act*, information or records obtained by a police service pursuant to this Act may be disclosed only:

- (a) for the purpose of locating a missing person or a use consistent with that purpose;
- (b) if required by law;
- (c) to another law enforcement agency in Canada or a law enforcement agency in another country under an arrangement, written agreement, treaty or legislative authority, but only to the extent necessary to further the investigation into the missing person;
- (d) if the person to whom the information or records relate has consented to the disclosure; or
- (e) in accordance with subsections (3) to (6).

(3) Notwithstanding *The Local Authority Freedom of Information and Protection of Privacy Act*, for the purposes of furthering its investigation into a missing person, a police service may release to the public the following information obtained pursuant to this Act relating to the missing person through a media release, by posting the information on a website or in any other manner the police service considers appropriate:

- (a) the missing person’s name;
- (b) a physical description of the missing person;
- (c) a photograph of the missing person;
- (d) if the missing person has a medical condition that poses a serious or immediate threat to the person’s health, a statement that the missing person may need immediate medical attention;
- (e) pertinent vehicle information;
- (f) the location where the missing person was last seen;
- (g) the circumstances surrounding the disappearance of the missing person.

(4) A police service may publicly announce that a missing person has been located.

(5) A police service may disclose information and records obtained pursuant to this Act to other police services, law enforcement agencies, government institutions and local authorities to the extent necessary to coordinate investigations and other activities respecting missing persons.

(6) If an investigation into a missing person becomes a criminal investigation, this section does not prevent the disclosure of information and records obtained pursuant to this Act for the purposes of the criminal investigation.

“No access to privileged information

14.9 Nothing in this Act compels the disclosure of any information or records that are subject to any type of legal privilege, including solicitor-client privilege.

“Other rights unaffected

14.91 This Act does not restrict any authority that a police service would otherwise have to collect any information or records.

“Offence

14.92(1) No person shall contravene section 14.7 or 14.8.

(2) Every person who contravenes section 14.7 or 14.8 is guilty of an offence and liable on summary conviction to a fine of not more than \$50,000.

“Protection from liability

14.93 No action or proceeding lies or shall be commenced against a member of a police service or any other person if that person is acting pursuant to the authority of this Act or the regulations, for anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person or by any of those persons pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any order made pursuant to this Act or any duty imposed by this Act or the regulations.

“Annual report re emergency demands

14.94(1) If a police service has made a demand for records pursuant to section 14.5, it must prepare an annual report regarding its demand for records.

(2) The annual report mentioned in subsection (1) must:

- (a) indicate the number of missing person investigations in which a demand for records was made in the year;
- (b) indicate the number of persons who were served with a demand for records in the year; and
- (c) contain prescribed information regarding each demand for records.

(3) The police service must:

- (a) provide the annual report to the minister; and
- (b) make the annual report available to the public in the prescribed manner”.

Section 16 amended

7 Clause 16(a) is amended by striking out “of the estate”.

Section 30 amended

8 The following clauses are added after clause 30(d):

“(d.1) prescribing any other entities or persons for the purposes of section 14.1;

“(d.2) respecting applications for search orders and record access orders pursuant to subsection 14.2(2);

“(d.3) respecting demands for records pursuant to section 14.5;

“(d.4) respecting applications for orders pursuant to section 14.6;

“(d.5) respecting annual reports pursuant to section 14.94;

“(d.6) respecting the collection, use and retention of information and records obtained pursuant to this Act;

“(d.7) respecting the service of orders pursuant to this Act;

“(d.8) respecting the type of records to be kept and maintained pursuant to Part II.1”.

Coming into force

9 This Act comes into force on proclamation.

SECOND SESSION

Twenty-eighth Legislature

SASKATCHEWAN

B I L L

No. 106

An Act to amend *The Missing Persons and
Presumption of Death Act*

Received and read the

First time

Second time

Third time

And passed

Honourable Don Morgan
