

BILL

No. 101

An Act to amend *The Child and Family Services Act* and to make a consequential amendment to *The Freedom of Information and Protection of Privacy Act*

(Assented to _____)

HIS 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 Child and Family Services Amendment Act, 2022*.

SS 1989-90, c C-7.2 amended

2 *The Child and Family Services Act* is amended in the manner set forth in this Act.

Section 2 amended

3 Subsection 2(1) is amended:

(a) by repealing clause (d) and substituting the following:

“(d) ‘**child**’ means a person under 18 years of age”;

(b) by adding the following clause after clause (g.1):

“(g.2) ‘**extended family**’ includes a person to whom a child is related through familial, kinship or spousal relationships, adoption or the customs of Indigenous peoples”;

(c) by adding the following clauses after clause (j):

“(j.1) ‘**Indigenous**’, with respect to a child, group, community or people, means First Nations, Métis or Inuit;

“(j.2) ‘**Indigenous governing body**’ means Indigenous governing body as defined in *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada)”;

(d) by repealing clause (p) and substituting the following:

“(p) ‘**place of safety**’ means a place designated by a director as a place of safety”.

CHILD AND FAMILY SERVICES AMENDMENT ACT, 2022

New section 4

4 Section 4 is repealed and the following substituted:**“Best interests of the child**

4(1) If a person or court is required by any provision of this Act other than subsection 49(2) to determine the best interests of a child, the person or court must take into account all factors related to the circumstances of the child, including:

- (a) the nature and strength of the relationship the child has with a parent, an extended family member or other person who has a close connection with the child, and the effect of maintaining that relationship;
- (b) the mental, emotional, physical and educational needs of the child and the appropriate care or treatment, or both, to meet those needs;
- (c) the child’s views and preferences, given due weight in accordance with the age and maturity of the child;
- (d) the child’s cultural, linguistic, religious and spiritual heritage and upbringing;
- (e) the home environment proposed to be provided for the child;
- (f) the plans, with respect to the care of the child, of the person to whom it is proposed that the care of the child be entrusted;
- (g) the importance of continuity in the child’s care and the possible effect on the child of disruption of that continuity;
- (h) the effect on the child of a delay in making a decision; and
- (i) the merits and the risks of any plan proposed by the ministry or agency that would be caring for the child, compared with the merits and the risks of the child returning to or remaining within the family.

(2) If the child is an Indigenous child, in addition to the factors set out in subsection (1), the following factors must be considered in determining the best interests of the child:

- (a) in the case of a decision concerning the removal of the child from the child’s family, the importance of placement within the child’s extended family or community as the preferred environment for the care and upbringing of the child;
- (b) the importance to the child of preserving the child’s cultural identity and connections to the language and territory of the Indigenous group, community or people to which the child belongs;

CHILD AND FAMILY SERVICES AMENDMENT ACT, 2022

(c) the importance of the child belonging to the child's Indigenous community;

(d) the capacity of persons, other than the child's parent, proposed to care for the child, respecting access and opportunities to maintain family, community and cultural experience and connections;

(e) the importance of involving the Indigenous group, community or people to which the child belongs in planning with respect to Indigenous children and families.

(3) For the purposes of subsections (1) and (2), the best interests of the child are to be a primary consideration with respect to decisions or actions taken by the person or court”.

New section 10**5 Section 10 is repealed and the following substituted:****“Agreements re children over 16**

10(1) A director may enter into an agreement with a child aged 16 or 17 years who is in need of care and supervision if:

(a) reasonable efforts to support the child in the home of the child's parent or another adult person have been unsuccessful;

(b) there is no parent willing to assume the responsibility for the child; or

(c) the child cannot be re-established with the child's family.

(2) The director may, by agreement with the child in the circumstances set out in subsection (1), provide residential services, financial assistance or both to that child.

(3) Before making the agreement mentioned in subsection (2), the director must consider:

(a) whether the agreement is in the best interests of the child;

(b) whether the child understands the responsibilities and implications of entering into the agreement; and

(c) whether the child demonstrates ability and readiness to engage in a plan of care that addresses the child's safety, wellness and independence.

(4) In every agreement pursuant to subsection (2), the director shall include a provision stating that the child may seek advice from an independent third party before entering into the agreement.

(5) The term of an agreement pursuant to subsection (2) must not exceed one year but may be renewed from time to time.

(6) An agreement entered into or renewed pursuant to this section remains in effect until the date prescribed in the regulations”.

CHILD AND FAMILY SERVICES AMENDMENT ACT, 2022

Section 13 amended

6 Section 13 is amended by striking out “, in the opinion of the officer or peace officer,”.

Section 14 amended

7 Clause 14(1)(a) is amended by adding “and, if applicable, the agency” after “parent”.

Section 16 amended

8 Subsection 16(9) is repealed.

Section 17 amended

9(1) Clause 17(1)(a) is amended by striking out “take all reasonable steps that he or she considers” and substituting “make all reasonable efforts”.

(2) Subsection 17(3) is repealed and the following substituted:

“(3) If at any time an officer concludes that a child apprehended pursuant to subsection (1) would no longer be at risk of incurring serious harm if returned, the officer shall return the child to a person who has a right to custody of the child”.

Section 18 repealed

10 Section 18 is repealed.

Section 19 amended

11 Clause 19(1)(a) is amended by adding “and, if applicable, the agency” after “parent”.

Section 21 amended

12 Clause 21(1)(b) is repealed and the following substituted:

“(b) the officer determines that the child continues to be in need of protection”.

Section 24 amended

13 The following subsection is added after subsection 24(3):

“(4) In the case of an Indigenous child:

(a) an officer shall give three business days’ notice of a protection hearing to the chief, chief’s designate or agency, as applicable, containing the information set out in subsection (3); and

(b) notwithstanding any other provision of this Act:

(i) the chief, chief’s designate or agency, as the case may be, is deemed to be a party to the protection hearing; and

(ii) subsection (2) is not applicable with respect to the chief, chief’s designate or agency”.

Section 28 amended

14 Subsection 28(4) is repealed.

CHILD AND FAMILY SERVICES AMENDMENT ACT, 2022

Section 37 amended**15(1) Clause 37(4)(c) is repealed and the following substituted:**

- “(c) may consider the recommendations of:
- (i) any of the following who appears in court pursuant to subsection (11):
 - (A) a chief;
 - (B) a chief’s designate;
 - (C) an agency; or
 - (ii) a member of the Indigenous governing body with which the child is affiliated who is authorized by the Indigenous governing body”.

(2) Subsection 37(5) is amended in the portion preceding clause (a) by adding “, (2)” after “subsection (1)”.**Section 38 amended****16 Subsection 38(9) is repealed and the following substituted:**

- “(9) Subject to section 68, the total of the periods of all orders made pursuant to clause 37(1)(c) must not exceed 24 months unless the court determines an extension is required after considering the following:
- (a) the best interests of the child as determined in accordance with subsections 4(1) and (2);
 - (b) circumstances causing the child to be in need of protection have improved, as demonstrated through active case planning with the child’s parent, guardian or other person who has a right to custody;
 - (c) it can be anticipated the child may be returned to the person who has a right to custody of the child within a reasonable time”.

Section 39 amended**17 Subsection 39(2) is repealed and the following substituted:**

- “(2) Subsection (1) does not apply with respect to a child who has been adopted or placed in a home for the purpose of adoption”.

Section 51 repealed**18 Section 51 is repealed.****Section 52 amended****19 Subsection 52(3) is repealed and the following substituted:**

- “(3) The Public Guardian and Trustee of Saskatchewan:
- (a) notwithstanding clause (1)(b), is the guardian of the property of a child who is placed in the custody of the minister under an order made pursuant to subsection 37(3); and
 - (b) notwithstanding subsection (2), is the guardian of the property of a child mentioned in that subsection.
- “(4) Notwithstanding subsections (1) and (3), if a child described in those subsections is placed in the custody of an Indigenous governing body, the respective rights and responsibilities of the minister and the Public Guardian and Trustee of Saskatchewan mentioned in those subsections are concluded”.

CHILD AND FAMILY SERVICES AMENDMENT ACT, 2022

New section 53

20 Section 53 is repealed and the following substituted:**“Priority of placement**

53(1) In any case where an officer is arranging residential services for a child or an order is to be made by the court pursuant to subsection 37(1), (2) or (3), the officer or court shall, having regard to the best interests of the child as determined in accordance with subsections 4(1) and (2), give priority to:

- (a) placing the child with one of the child’s parents;
- (b) placing the child with a member of the child’s extended family; and
- (c) placing the child in an environment that is consistent with the child’s cultural background.

(2) If the order of priority set out in subsection (1) is being applied, the possibility of placing the child with or near children who have the same parent as the child, or who are otherwise members of the child’s extended family, must be considered in the determination of whether a placement would be in the best interests of the child.

(3) In the case of an Indigenous child, if the officer or court mentioned in subsection (1) intends to place the child outside of the child’s extended family or community, the officer or court must consider placing the child in an environment that respects, supports and preserves the child’s Indigenous identity”.

Section 54 amended

21 Subsection 54(3) is amended by striking out “the welfare of the child requires” and substituting “the best interests of the child supports”.

Section 61 amended

22 Subsection 61(1) is amended in the portion preceding clause (a) by striking out “Aboriginal” and substituting “Indigenous”.

Section 68 amended

23(1) Clause 68(1)(a) is amended by adding “subject to subsection (3),” before “the day”.

(2) Subsection 68(2) is amended by striking out “An agreement” and substituting “Subject to subsection 10(6), an agreement”.

(3) The following subsection is added after subsection 68(2):

“(3) The expiry of an order under which a child has been placed in the custody of the minister pursuant to clause 37(1)(c) may be extended beyond the day on which the child attains 18 years of age in the circumstances prescribed in the regulations”.

CHILD AND FAMILY SERVICES AMENDMENT ACT, 2022

New sections 74 and 74.1

24 Section 74 is repealed and the following substituted:

“Confidentiality

74(1) Notwithstanding *The Freedom of Information and Protection of Privacy Act* and *The Health Information Protection Act*, the use of, disclosure of and access to information in records pertaining to information mentioned in subsection (2) obtained pursuant to this Act is to be governed by this Act.

(2) Notwithstanding section 18 of *The Social Services Administration Act*, members of the board, mediators, officers and employees of the ministry, members of boards of directors of agencies, officers and employees of agencies, foster parents and all other persons who are employed in or assist with the administration of this Act:

- (a) shall preserve confidentiality with respect to:
 - (i) the name and any other information that may identify a person that comes to their attention pursuant to:
 - (A) this Act;
 - (B) *The Family Services Act*, not including Part III; or
 - (C) *The Child Welfare Act*, not including Part II; and
 - (ii) any files, documents, papers or other records dealing with the personal history or record of a person that have come into existence through anything done pursuant to:
 - (A) this Act;
 - (B) *The Family Services Act*, not including Part III; or
 - (C) *The Child Welfare Act*, not including Part II; and
- (b) shall not disclose or communicate the information mentioned in clause (a) to any other person except as required to carry out the intent of this Act or as otherwise provided in this section or in the regulations.
- (3) The minister may collect information, directly or indirectly, for purposes related to the following matters, and may use it for those purposes:
 - (a) administering this Act and the regulations;
 - (b) determining compliance with this Act and the regulations;
 - (c) supporting research activities and analysis related to program improvements in the best interests of children.
- (4) Subject to subsection (6) and the regulations, the minister, a director or an officer may disclose or communicate information mentioned in subsection (2) to all or any of the following:
 - (a) the guardian, parent, care provider or foster parent of a child;

CHILD AND FAMILY SERVICES AMENDMENT ACT, 2022

- (b) Indigenous governing bodies, for the following purposes:
 - (i) in cases of significant measures being taken with a child;
 - (ii) with respect to information about the child's parents, siblings, extended family members, care providers, and affiliation with an Indigenous community or Métis authority;
 - (c) bands receiving child and family services directly from the ministry;
 - (d) First Nations Child and Family Services Agencies, including materials filed with the court;
 - (e) Indigenous, provincial, and federal entities, as the case may be, for the purposes of advancing registration and membership of Indigenous children.
- (5) The minister, a director or an officer may, in accordance with the regulations, disclose or communicate information mentioned in subsection (2) relating to a deceased individual if the disclosure or communication:
- (a) is being made to the personal representative of the deceased individual for a purpose related to the administration of the deceased individual's estate;
 - (b) is to the individuals prescribed in the regulations and is limited to the deceased individual's information; or
 - (c) is necessary to administer this Act or the regulations.
- (6) No person shall, except in the following circumstances, disclose to anyone who is not an officer or a peace officer the name of a person who makes a report pursuant to section 12 and requests that the person's name not be disclosed:
- (a) the person making the disclosure is giving evidence in a protection hearing;
 - (b) the minister, a director or an officer is transferring a record pertaining to the care and protection of a child to:
 - (i) an Indigenous governing body mentioned in clause (4)(b); or
 - (ii) a First Nations Child and Family Services Agency mentioned in clause (4)(d).
- (7) Any information that may be disclosed to the person to whom it relates may, with the written consent of the person to whom it relates, be disclosed to any other person.
- (8) The minister, the director or an officer may disclose information with respect to a person mentioned in subsection (2) without the written consent of the person to whom the information relates, in accordance with the regulations.
- (9) Information mentioned in subsection (2) may be disclosed if, in the opinion of the minister, the benefit of the disclosure of information clearly outweighs any invasion of privacy that could result from the disclosure.

CHILD AND FAMILY SERVICES AMENDMENT ACT, 2022

(10) Any information disclosed pursuant to this section may be disclosed in any form that the minister considers appropriate.

(11) Any disclosure of information pursuant to this section does not constitute a waiver of Crown privilege, solicitor-client privilege or any other privilege recognized in law.

(12) The minister may, in accordance with the regulations, exchange information with a person or entity prescribed in the regulations for the purposes of a program or activity designed to benefit the health, safety, welfare or social well-being of an individual if that exchange is consistent with the purposes of this Act.

“Right of access, procedure, etc.

74.1(1) Subject to subsections (4) to (6) and the regulations, an individual has the right to obtain access to information about the individual that is contained in a record in accordance with this Act that is in the custody or control of the ministry.

(2) A request for access to a record is to be made to the minister in the form and manner approved by the minister.

(3) An individual making a request mentioned in subsection (2) must prove the individual's identity to the satisfaction of the ministry.

(4) On receipt of a request made pursuant to subsection (2), the minister shall, subject to subsection (6), provide access to a record in accordance with the regulations.

(5) Subject to subsection (6) and the regulations, the minister may refuse to grant an individual access to the individual's record if:

(a) in the opinion of the minister, knowledge of the information could reasonably be expected to endanger the mental or physical health or the safety of the individual or another person;

(b) disclosure of the information would reveal confidential information about another person who has not expressly consented to the disclosure;

(c) disclosure of the information could reasonably be expected to identify a third party who provided the information in confidence under circumstances in which confidentiality was reasonably expected; or

(d) the information was collected principally in anticipation of, or for use in, a civil, criminal or quasi-judicial proceeding.

(6) If a record contains information to which an individual is refused access, the ministry shall grant access to as much of the record as can reasonably be severed without disclosing the information to which the individual making the request is refused access”.

CHILD AND FAMILY SERVICES AMENDMENT ACT, 2022

Section 80 amended

25 Section 80 is amended:**(a) by adding the following clause after clause (d):**

“(d.1) prescribing a date for the purposes of subsection 10(6)”;

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

“(r.01) prescribing circumstances for the purposes of subsection 68(3)”; and

(c) by repealing clause (r.4) and substituting the following:

“(r.4) for the purposes of section 74, governing the disclosure or exchange of any information collected or recorded pursuant to this Act or the regulations;

“(r.41) for the purposes of section 74.1, governing the access of any person or category of persons with respect to any record made or kept pursuant to this Act or the regulations”.

SS 1990-91, c F-22.01, section 23 amended

26 Clause 23(3)(c) of *The Freedom of Information and Protection of Privacy Act* is amended by striking out “section 74” and substituting “sections 74 and 74.1”.

Coming into force

27 This Act comes into force by order of the Lieutenant Governor in Council.

THIRD SESSION

Twenty-ninth Legislature

SASKATCHEWAN

BILL

No. 101

An Act to amend *The Child and Family Services Act* and
to make a consequential amendment to *The Freedom
of Information and Protection of Privacy Act*

Received and read the

First time

Second time

Third time

And passed

Honourable Gene Makowsky
