

CAYMAN ISLANDS



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THE CHILDREN (AMENDMENT) LAW, 2009

(LAW 4 OF 2009)

THE CHILDREN (AMENDMENT) LAW, 2009

ARRANGEMENT OF SECTIONS

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CAYMAN ISLANDS

Law 4 of 2009.

I Assent

Stuart Jack

Governor.

Date: 20th May, 2009

A LAW TO AMEND THE CHILDREN LAW, 2003 IN ORDER TO PROVIDE FOR THE MANDATORY REPORTING OF POSSIBLE CASES OF CHILD ABUSE; TO PROVIDE FOR THE ACQUISITION OF PARENTAL RESPONSIBILITY BY UNMARRIED FATHERS AND STEP-PARENTS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Children (Amendment) Law, 2009. Short title and commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Governor in Cabinet, and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. The Children Law, 2003, in this Law referred to as the “principal Law”, is amended in section 2- Amendment of section 2 of the Children Law, 2003- interpretation
 - (a) by deleting the definition of the word “Department” and substituting the following definition-
“ “Department” means the Department having responsibility for the welfare of children”; and
 - (b) by inserting, in the appropriate alphabetical sequence the following definitions-
“ “abuse” or “neglect”, in relation to a child, means-
 - (a) sexual abuse of the child; or

- (b) physical or emotional abuse of the child, or neglect of the child, to the extent that-
 - (i) the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's wellbeing; or
 - (ii) the child's physical or psychological development is in jeopardy; and

“abused” or “neglected” has a corresponding meaning;

“parent” includes a step-parent; and

“sexual abuse” includes-

- (a) the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct;
- (b) the rape, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children; or
- (c) involving children in looking at pornographic material or watching sexual activities or encouraging children to behave in sexually inappropriate ways;”.

Amendment of section 4- parental responsibility for children

3. The principal Law is amended in section 4(2) by repealing paragraph (b) and substituting the following paragraph-

“(b) the father shall also have parental responsibility for the child where-

- (i) he, along with the mother, registers the birth of the child; or
- (ii) he otherwise acquires it in accordance with the provisions of this Law.”.

Insertion of section 4A- acquisition of parental responsibility by a step-parent

4. The principal Law is amended by inserting after section 4, the following section -

“Acquisition of parental responsibility by a step-parent

4A. (1) Where a child's parent (“parent A”) who has parental responsibility for the child is married to a person who is not the child's parent (“the step-parent”)-

- (a) parent A or, if the other parent of the

child also has parental responsibility for the child, both parents, may by agreement with the step-parent provide for the step-parent to have parental responsibility for the child; or

- (b) the court may-
 - (i) on application by the step-parent after inquiry by the court into the family circumstances of the child; or
 - (ii) on application by one or both parents and the step-parent, order that the step-parent shall have parental responsibility for the child.

(2) An agreement under subsection (1)(a) is also a “parental responsibility agreement”, and section 4(2) applies in relation to such agreements as it applies in relation to parental responsibility agreements under section 6.

(3) A parental responsibility agreement under subsection (1)(a), or an order under subsection (1)(b), may only be brought to an end by an order of the court made on the application of-

- (a) the person who has parental responsibility for the child; or
- (b) the Department, on behalf of the child.

(4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.”.

5. The principal Law is amended in section 19 as follows-

- (a) by inserting, after subsection (4), the following subsection-

“(4A) Before determining what, if any, services to provide for a particular child in need pursuant to the functions conferred on it by this section, the Department shall, so far as is practicable and consistent with the child’s welfare-

Amendment of section 19- provision of services for children in need, their families and others

- (a) ascertain the child's wishes and feelings regarding the provision of those services; and
 - (b) give due consideration, having regard to his age and understanding, to such wishes and feelings of the child as they have been able to ascertain.”; and
- (b) by repealing subsection (5)(a) and substituting the following paragraph-

“(a) shall facilitate the provision by others (including in particular voluntary organisations) of services which the Department has power to provide by virtue of this section or sections 20, 22, 25(1) and (2)(b),(c),(d) and (e) and 26; and”.

Amendment of section 22- provision of accommodation for children: general

6. The principal Law is amended in section 22(5)(a) and (b) by inserting the after the word “wishes” the words “and feelings”.

Amendment of section 24- general duty of Department in relation to children it looks after

7. The principal Law is amended in section 24-

- (a) by deleting the marginal note thereto and substituting the following-

“General duty of Department in relation to children it looks after”; and

- (b) by inserting after subsection (3), the following subsection (3A)-

“(3A) The duty of the Department under subsection (3)(a) to safeguard and promote the welfare of a child looked after by it, includes, in particular, a duty to promote the child's educational achievement.”.

Insertion of Part IIIA- notification and investigations of abuse

8. The principal Law is amended by inserting after Part III, the following Part IIIA-

“PART IIIA

NOTIFICATION AND INVESTIGATION OF ABUSE

Notification of abuse or neglect

32A. (1) If-

- (a) a person to whom this section applies has a reasonable suspicion that a child has been or is being abused or neglected; and
- (b) the suspicion is formed in the course of

the person's work,

that person shall notify the Department of the suspicion as soon as practicable after he forms the suspicion.

- (2) This section applies to the following persons-
- (a) a medical practitioner;
 - (b) a pharmacist;
 - (c) a nurse;
 - (d) a dentist;
 - (e) a psychologist;
 - (f) a police officer;
 - (g) a probation officer;
 - (h) a social worker;
 - (i) a minister of religion;
 - (j) a person who is an employee of an organisation formed for religious or spiritual purposes;
 - (k) a teacher, principal, counsellor or other employee in an institution established for the care and education of children;
 - (l) a person who provides child care services;
 - (m) any person who is an employee of an entity as defined in the Public Management and Finance Law (2005 Revision) and being a person who-
 - (i) is engaged in the actual delivery of those services to children; or
 - (ii) holds a management position in the relevant entity, the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children; or
 - (n) any other person who, by virtue of his employment or occupation, paid or unpaid, has a responsibility to discharge a duty of care towards a child.

(3) A notification under this section shall be accompanied by a statement of the observations, information and opinions on which the suspicion is based.

(4) A person does not exhaust his duty of care to a child by giving a notification under this section.

(5) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of one year or both.

(6) The Governor in Cabinet may, by order published in the Gazette, amend the list of persons in subsection (2).

Protection from liability for voluntary or mandatory notification

32B. A person who, whether voluntarily or pursuant to a requirement of this Law, notifies the Department of a suspicion that a child has been or is being abused or neglected or provides any information to the Department in respect of such a notification-

- (a) cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct; and
- (b) insofar as he has acted in good faith, incurs no civil or criminal liability in respect of the notification or the provision of the information.

Confidentiality of notification of abuse or neglect

32C. (1) For the purposes of this section, “a notifier” is a person who notifies the Department that he suspects that a child has been or is being abused or neglected.

(2) Subject to this section, a person who receives a notification of child abuse or neglect from a notifier, or who otherwise becomes aware of the identity of a notifier, shall not disclose the identity of the notifier to any other person unless the disclosure is made-

- (a) in the course of official duties, to another person acting in the course of official duties;
- (b) with the consent of the notifier; or
- (c) by way of evidence adduced in accordance with subsections (3) and (4).

- (3) Subject to subsection (4)-
 - (a) no evidence as to the identity of a notifier, or from which the identity of the notifier could be deduced, may be adduced in proceedings before a court without the permission of the court; and
 - (b) unless such permission is granted, a party or witness in those proceedings shall not be asked, and, if asked, cannot be required to answer, any question that cannot be answered without disclosing the identity of, or leading to the identification of, the notifier.

(4) A court shall not grant permission under subsection (3) unless-

- (a) the court is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice; or
- (b) the notifier consents to the admission of the evidence in the proceedings.

(5) An application for permission to adduce evidence under subsection (3)-

- (a) shall not, except as authorised by the court, be heard and determined in public; and
- (b) shall be conducted in such a manner as to protect, so far as may be practicable, the identity of the notifier pending the determination of the application.

Department not obliged to take action

32D. Subject to section 32E, nothing in this Law requires the Department to take or initiate any action under this Law in relation to a notification of suspected abuse or neglect of a child if the Department is satisfied-

- (a) that the information or observations on which the notifier formed his suspicion were not in the opinion of the Department after consultation with the Attorney-General, sufficient to constitute

- (b) reasonable grounds for the suspicion; or that, while there are reasonable grounds for such a suspicion, proper arrangements exist for the care and protection of the child and the matter of the apparent abuse or neglect has been or is being adequately dealt with.

Assessment and investigation of report by Department

32E. On receiving a report about a child under section 32A, the Department shall assess the information in the report and after such assessment, may-

- (a) refer the report to the Commissioner of Police for further investigation so that the child may be brought before a court as the case may require; and
- (b) inform the person having custody, care or control of the child, of the report, unless in the opinion of the Department, the information would cause physical or emotional harm to any person, endanger the safety of the child or impede an investigation under paragraph (a).”.

Amendment of section 36-parental contact etc. with children in care

9. The principal Law is amended in section 36 by-

- (a) inserting after subsection (6) the following subsection-

“(6A) Notwithstanding subsection (6), during any period in which a person specified in subsection (1) is refused contact with a child, the Department shall nevertheless provide such person with information if requested, on the wellbeing of the child.”; and

- (b) repealing subsection (2) and substituting the following subsection-

“(2) On an application made by the Department or the child, the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and any named person; and such order may provide that that named person undergo and successfully complete a parenting programme approved by the Ministry responsible for the welfare of children.”.

Insertion of section 47A- authorisation of medical and psychiatric examinations by Department

10. The principal Law is amended by inserting after section 47 the following section-

“Authorisation of medical or psychiatric examination by Department

47A. (1) The Department may authorise the medical or psychiatric examination of a child where the consent of a parent or a court order would otherwise be required if-

- (a) the Department reasonably believes that the child is in need of emergency protection to safeguard his wellbeing;
- (b) the parent refuses to provide consent for the medical or psychiatric examination; and
- (c) the wellbeing of the child is likely to be further compromised during the period within which the court assesses an application by the Department.

(2) If the child is of sufficient understanding and capacity to make an informed decision, he may refuse to submit to a medical or psychiatric examination authorised under subsection (1).”.

11. The principal Law is amended in section 50 by inserting, after subsection (3), the following subsection-

Amendment of section 50- duty of Department to investigate

“(3A) For the purposes of making a determination under this section as to the action to be taken with respect to a child, the Department shall, so far as is practicable and consistent with the child’s welfare-

- (a) ascertain the child’s wishes and feelings regarding the action to be taken with respect to him; and
- (b) give due consideration, having regard to his age and understanding, to such wishes and feelings of the child as it has been able to ascertain.”.

12. The principal Law is amended in section 54 as follows-

Amendment of section 54- refuges for children at risk

- (a) by inserting after subsection (1), the following subsections-

“(1A) Where a voluntary organisation acting on behalf of the Department arranges for a foster parent to provide such a refuge, the Governor in Cabinet may issue a certificate under this section with respect to that foster parent.

(1B) In subsection (1A) “foster parent” means a person who is, or who from time to time is, a foster parent

with whom children are placed by a voluntary organisation.”; and

(b) by inserting after subsection (3), the following subsection-

“(3A) Where a certificate is in force with respect to a foster parent, none of the provisions mentioned in subsection (4) shall apply in relation to any person providing a refuge for a child in accordance with arrangements made by the voluntary organisation.”.

Amendment of section 68- welfare of privately fostered children

13. The principal Law is amended in section 68-

(a) by repealing subsection (1) and substituting the following subsection-

“(1) The Department shall satisfy itself that the welfare of children who are or are proposed to be privately fostered within the Islands is being or will be satisfactorily safeguarded and promoted and ensure that such advice is given to those concerned with them as appears to the Department to be needed.”; and

(b) in subsection (5), by inserting after the words “a child who is” the words “or proposed to be” and by inserting after the words “is being” the words “or will be”.

Insertion of section 88A- attendance in court by parent

14. The principal Law is amended by inserting after section 88 the following section-

“Attendance in court by parent

88A (1) Where under this Law a child is brought before a court, the parents of the child shall attend the court at all stages of the proceedings and any child care training programme ordered by the court, unless the court is satisfied that it would be unreasonable to require their attendance.

(2) Pursuant to subsection (1) the court may, in whatever manner as it sees fit, enforce the attendance of the child’s parents.”.

Amendment of Schedule 7- foster parents: limits on number of foster children

15. The principal Law is amended in Schedule 7 by repealing paragraph 1(b).

Amendment of Schedule 8-privately fostered children

16. The principal Law is amended in Schedule 8 by deleting paragraph 7(8) and substituting the following sub-paragraph-

“(8) Nothing in sub-paragraphs (1)(e) to (g) confers any right of appeal on a person who is, or would be if exempted under Schedule 7, a departmental foster parent.”.

Passed by the Legislative Assembly the 19th day of March, 2009.

EDNA MOYLE

Speaker.

WENDY LAUER

Clerk of the Legislative Assembly.