

[AS REPORTED FROM THE HEALTH AND WELFARE COMMITTEE]

House of Representatives, 6 August 1982.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Mr Young

CHILDREN AND YOUNG PERSONS AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Children and Young Persons Act 1974

BE IT ENACTED by the General Assembly of New Zealand
5 in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Children and Young Persons Amendment Act

No. 100—2

(1981) 1982, and shall be read together with and deemed part of the Children and Young Persons Act 1974* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of January 1983. 5

2. Notification of birth of child to unmarried mother—
The principal Act is hereby amended by repealing section 10.

3. Powers in respect of unaccompanied children and young persons—(1) The principal Act is hereby amended by repealing section 12 (as amended by subsections (1) to (3) of section 51 of the Summary Offences Act 1981), and substituting the following section: 10

“12. (1) Where a child or young person is found unaccompanied by his parent or guardian or by any other person who has the care of him and— 15

“(a) He is associating with known criminals or drug addicts; or

“(b) He is in an environment which is detrimental to his physical or moral well-being,—

any member of the Police may, using such force as may reasonably be necessary, take the child or young person and forthwith deliver him into the custody of his parents or guardian or of any other person who has the care of him. 20

“(2) Where the member of the Police cannot find any of the persons to whom the child or young person may be delivered under subsection (1) of this section, he may— 25

“(a) Deliver the child or young person to any person who, having regard to the circumstances, is able and willing to care for the child or young person; or

“(b) Place the child or young person in the custody of the Director-General by delivering the child or young person to a Social Worker. 30

“(3) Placement of a child or young person in the custody of the Director-General under subsection (2) (b) of this section shall be sufficient authority for the detention of the child or young person by a Social Worker or in a residence under this Act until— 35

“(a) A parent or guardian or person having the care of the child or young person is found; or

*1974, No. 72

Amendments: 1977, No. 126; 1980, No. 87

5 “(b) The child or young person is made the subject of a complaint under section 27 of this Act and is brought before a Children and Young Persons Court so that the Court may determine whether he is to be held in custody pending the disposal of the complaint; or

“(c) The expiry of a period of 3 days after the day on which the child or young person was detained pursuant to subsection (1) of this section—

10 whichever first occurs.

“(4) Where—

15 “(a) A member of the Police finds a child or young person in a public place (within the meaning of section 2 (1) of the Summary Offences Act 1981) during school hours and reasonably believes that child or young person to be between the age of (5 years) 6 years and the age of 15 years; and

20 “(b) The child or young person or any person accompanying the child or young person is unable to give to the member of the Police a satisfactory explanation for the child’s or the young person’s absence from school at that time,—

the member of the Police—

25 “(c) May deliver the child or young person—

“(i) To the school at which the member of the Police believes the child or young person is or should be enrolled; or

30 “(ii) To his parents or guardian or to any other person having the care of the child or young person; and

“(d) May report the matter to a Social Worker.

“(5) In this section the term ‘young person’ means, subject to subsection (4) of this section, a boy or girl of or over the age of 14 years but under the age of 16 years.”

35 (2) Section 51 of the Summary Offences Act 1981 is hereby consequentially amended by repealing subsections (1) to (3).

4. Matters to be referred to Children’s Boards—Section 15 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

40 “(5) In determining its course of action the Board shall, bearing in mind the needs and rights of the child, his parents

or guardians, and the community, and the degree of co-operation offered by the child and his parents or guardians, seek—

- “(a) To reduce or (*get rid of*) remove any problems or difficulties which have arisen because the child’s needs for care, protection, or control are not being met; or
- “(b) To prevent the child from committing offences in the future.”

5. Proceedings not to be published—Section 24 of the principal Act is hereby amended by adding the following subsection:

“(4) This section shall not apply in respect of the proceedings that result where a young person is brought before a District Court for sentence or decision pursuant to an order made under section 36 (1) (j) of this Act.”

6. Proceedings in respect of children or young persons in need of care, protection, or control—Section 27 of the principal Act is hereby amended by inserting, after subsection (2) (as substituted by section 7 (1) of the Children and Young Persons Amendment Act 1977), the following subsection:

“(2A) Where it is alleged in a complaint made under this section that a child is in need of care, protection, or control, that complaint shall not be heard and determined by a Court unless—

- “(a) The facts alleged in support of the complaint have been reported to a Children’s Board pursuant to section 15 of this Act; or
- “(b) The Court decides that the delay in dealing with the substance of the complaint that would be caused by the reporting of those facts to a Children’s Board would be—
- “(i) Prejudicial to the care and well-being of the child; or
- “(ii) Contrary to the public interest.”

7. Manner of dealing with charges—Section 34 (2) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraphs:

“(c) Where the offence is an indictable offence not punishable summarily (other than murder or manslaughter), the Children and Young Persons Court may—

5 “(i) If in its opinion, when all the evidence has been given, the evidence adduced by the informant is sufficient to put the young person on his trial for the indictable offence; or

10 “(ii) If, before the evidence has been given or while the evidence is being given or after all the evidence has been given, the young person indicates to the Court that he desires to plead guilty to the indictable offence,—

15 give the young person an opportunity of foregoing his right to trial by jury and of electing to have the information heard and determined in a Children and Young Persons Court by a District Court Judge appointed under section 21 of this Act; and

20 “(d) If the young person accepts the opportunity given to him under paragraph (c) of this subsection and elects to have the information so heard and determined, the Children and Young Persons Court shall have jurisdiction to hear and determine the information and otherwise deal with the young person in accordance with this Act as if the offence were punishable summarily.”

8. Reports of Social Workers—(1) The principal Act is hereby amended by repealing section 41 (as amended by section 11 of the Children and Young Persons Act 1974), and
30 substituting the following section:

“41. (1) It shall be the duty of every person who lays an information in respect of an offence alleged to have been committed by a young person, or who makes any complaint in relation to any child or young person, forthwith to advise
35 the Director of the Social Welfare District in which the information is laid or the complaint is made of the subject-matter of the information or complaint and of the date set down for the hearing of the matter.

“ (2) It shall be the duty of the Registrar of a Children and
40 Young Persons Court to which any proceedings have been removed from any other Court forthwith to advise the Director of the Social Welfare District in which the Children and Young Persons Court is situated of the subject-matter of the proceedings, and of the time when and the place where
45 the matter will be dealt with by the Court.

“(3) Subject to subsection (6) of this section, before the Court makes any order following a finding that a charge or complaint is proved, a Social Worker may, and shall when so required by a Judge exercising the jurisdiction of the Court, report to the Court on—

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“(a) The circumstances of the case; and

“(b) The personality, behaviour, character, and personal history of the child or young person; and

“(c) Such details of the parentage of the child or young person and of his family situation and background as may be of assistance to the Court in determining the most suitable method of dealing with him.

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“(4) Where a report is required under subsection (3) of this section, the Social Worker shall be allowed a reasonable time within which to furnish his report.

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“(5) The Court shall consider any report furnished by a Social Worker.

“(6) A Social Worker’s report must be available to the Court—

“(a) Before it makes any decision or order under section 31 of this Act; and

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“(b) Before it makes an order under section 36 (1) (i) of this Act.

“(7) Any Social Worker may, in the course of completing his report, apply in writing to the principal or head teacher of any State or private school for a written report in the prescribed form for the guidance of the Court and to assist the Social Worker in completing his report to the Court, and it shall be the duty of the principal or head teacher to supply such written report as will inform the Court of the child’s or young person’s intellectual capacity, scholastic performance, behaviour, and such other details of background as may prove helpful to the Court in reaching a decision about the child or young person.

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“(8) Any Social Worker who furnishes, and any principal or head teacher who supplies, any report under this section shall not be under any civil or criminal liability in respect thereof unless he has acted in bad faith or without reasonable care.”

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(2) Section 11 of the Children and Young Persons Amendment Act 1977 is hereby consequentially repealed.

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9. Custody of child or young person before disposal of complaint or following arrest—The principal Act is hereby amended by repealing section 43, and substituting the following section:

5 “43. (1) Where a child or young person is arrested with or without warrant for any offence, whether punishable by imprisonment or not, any member of the Police may—

“(a) Release the child without bail; or

“(b) Release the young person with or without bail; or

10 “(c) Deliver the child or young person into the custody of his parents or guardian or of any other person who has the care of the child or young person or of any other person approved by the member of the Police for the purpose.

15 “(2) If it is not, in the view of a member of the Police, practicable or desirable to exercise, in respect of any child or young person who has been arrested for any offence, any of the powers conferred by subsection (1) of this section, the member of the Police shall, as soon as practicable and in any
20 event not later than 24 hours after the arrest, place the child or young person in the custody of the Director-General—

“(a) By delivering the child or young person to a Social Worker; and

25 “(b) By presenting to the Social Worker on the prescribed form—

“(i) Identifying details of the child or young person; and

“(ii) The circumstances of the arrest of the child or young person; and

30 “(iii) The date and time of the intended appearance of the child or young person before the Court.

Struck Out

35 “(3) Notwithstanding the provisions of subsection (2) of this section, if, in the opinion of a member of the Police and a Social Worker, a young person is likely to abscond or to be unruly or violent to a degree that the arrangements for custody available to the Director-General are not sufficient to ensure the young person’s safe custody until appearing before the Court, the young person may on the joint certificate in the
40 prescribed form of that member of the Police and that Social Worker be retained in Police custody for a period exceeding 24 hours and until appearance before the Court.

New

“(3) Notwithstanding the provisions of subsection (2) of this section, if a senior Social Worker and a member of the Police, being a senior sergeant or a commissioned officer, are satisfied—

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“(a) That a Social Worker has good cause to believe that a young person is—

“(i) Likely to abscond; or

“(ii) Be violent; and

“(b) That suitable facilities for the detention in safe custody of that young person are not available to the Director-General in the locality in which the young person is detained,—

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the young person may, on the joint certificate in the prescribed form of that senior Social Worker and that member of the Police, be detained in Police custody for a period exceeding 24 hours and until appearance before the Court.

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“(3A) Where a senior Social Worker and a member of the Police issue a joint certificate under subsection (3) of this section, there shall, within 3 days after the day on which the certificate is issued, be furnished by the senior Social Worker to the Director-General and by the member of the Police to the Commissioner of Police—

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“(a) A copy of the certificate; and

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“(b) A written report on—

“(i) The circumstances in which the certificate came to be issued; and

“(ii) The duration of the period for which the young person has been detained, or is likely to be detained, in Police custody.

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“(4) Placement of a child or young person in the custody of the Director-General under subsection (2) of this section shall be sufficient authority for the detention of the child or young person by a Social Worker or in a residence under this Act, or under the care of any suitable person approved by a Social Worker, until—

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“(a) In the case of a young person, he is brought before a Children and Young Persons Court to answer the charge; or

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5 “(b) In the case of a child, he is made the subject of a complaint under section 27 of this Act and is brought before a Children and Young Persons Court so that the Court may determine whether he is to be held in custody pending the disposal of the complaint; or

“(c) The expiry of a period of 3 days after the day on which the child or young person was arrested—
whichever first occurs.

10 “(5) Where any child or young person who is the subject of a complaint under section 27 of this Act appears before a Children and Young Persons Court presided over by a District Court Judge or a Justice or where any child or young person is brought, following his arrest, before such a Court
15 under paragraph (a) or paragraph (b) of subsection (4) of this section, that Court may, at any time and from time to time before the charge or complaint is determined, order that the child or young person be held in custody pending the disposal of the charge or complaint if, in the opinion of the Court,—

20 “(a) The child or young person is likely to abscond; or
“(b) The child or young person is in need of care and control for the period of custody; or

“(c) It is desirable in the interests of the child or young person that he be held in custody.

25 “(6) A Children and Young Persons Court presided over by a District Court Judge or Justice or the High Court may from time to time review any order made under subsection (5) of this section.

30 “(7) An order made under subsection (5) of this section is sufficient authority for the detention of a child or young person in a residence under this Act or by a Social Worker or any member of the Police:

35 “Provided that a child or young person shall not be held, by virtue of any such order, in the custody of any member of the Police for more than 24 hours at any one time unless the Court has specifically ordered that the child or young person may be held in Police custody.

40 “(8) The provisions of this section are in addition to and not in substitution for the provisions of section 47 of the Criminal Justice Act 1954.

“(9) Section 316 (5) of the Crimes Act 1961 shall, in respect of children and young persons, be read subject to the provisions of this section and of Part II of this Act.

“(10) Nothing in this section shall limit the inherent jurisdiction of the High Court or the provisions of any Act under which a young person may be granted bail except that any powers conferred by any such provisions on a District Court shall, where the person charged is a young person (other than one charged with murder or manslaughter), be exercised by a Children and Young Persons Court presided over by a District Court Judge or a Justice.” 5

New

9A. Appeal by child or young person—Section 53 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection: 10

“(3) Where, on the hearing of any complaint under section 27 of this Act in respect of a child or young person, a Children and Young Persons Court finds that the grounds of the complaint are proved, the child or young person may appeal to the High Court against the finding or against any admonition, discharge, or order, given or made under section 31 (1) or section 31 (3) of this Act, or against both the finding and any such admonition, discharge, or order.” 15 20

9B. Appeal by parents—The principal Act is hereby amended by repealing section 54, and substituting the following section:

“54. (1) Where, on the hearing of any complaint under section 27 of this Act in respect of a child or young person, a Children and Young Persons Court finds that the grounds of the complaint are proved, any parent or guardian of the child or young person or any person who has been acting in the place of a parent may appeal to the High Court against the finding or against any admonition, discharge, or order, given or made under section 31 (1) or section 31 (3) of this Act, or against both the finding and any such admonition, discharge, or order. 25 30

“(2) Where on the hearing of any charge against a young person a Children and Young Persons Court makes an order placing the young person under the guardianship of the Director-General or under the supervision of a Social Worker or postponing its final consideration of the matter, any parent or guardian of the young person or any person who has been acting in the place of a parent, may appeal to the High Court against the order. 35 40

New

“(3) Where on the hearing of any charge against a young person a Children and Young Persons Court makes an order under paragraph (e) or paragraph (f) of section 36 (1) of this Act requiring a parent or guardian of the young person to pay any sum by way of compensation or to make restitution, that parent or guardian may appeal to the High Court against the order.”

10. Appeal by Police or Social Worker—(1) The principal Act is hereby amended by inserting, after section 55, the following section:

“55A. Where any complaint under any of the provisions of paragraphs (a), (b), (c), (d), and (g) of section 27 (2) of this Act has been heard by a Children and Young Persons Court, the complainant may appeal to the High Court against the finding of the Children and Young Persons Court or against any admonition, discharge, or order, given or made under section 31 (1) of this Act, or against both the finding and any such admonition, discharge, or order.”

(2) Section 57 (1) (a) of the principal Act is hereby consequentially amended by omitting the words “or section 55”, and substituting the words “section 55, or section 55A”.

11. Review of supervision orders—Section 65 of the principal Act is hereby amended by omitting the expression “6 months” in both places where it appears, and substituting in each case the expression “3 months”.

12. Inspection of homes—Section 92 (1) of the principal Act is hereby amended by inserting, after the words “any part thereof”, the words “or inspect any system of foster care recognised by the Director-General under section 86 (4) of this Act”.

13. Search warrants—The principal Act is hereby amended by inserting, after section 104, the following section:

“104A. (1) Any Judge or Justice or any Registrar (not being a member of the Police) who, on application in writing made on oath by any member of the Police or a Social Worker is satisfied that there are reasonable grounds for suspecting that a child or young person to whom section 104 (1) of this Act

applies is for the time being at any known premises or place, may issue a warrant authorising any member of the Police or Social Worker to enter and search, by force if necessary, any such premises or place specified in the warrant, and to remove the child or young person using such force as may reasonably be necessary and return him to the residence from which he absconded or from which he is absent or place him in any other residence under this Act. 5

“(2) It shall be the duty of everyone executing any warrant issued under subsection (1) of this section to have it with him and to produce it if required to do so.” 10

14. Amendment to Department of Social Welfare Act 1971—The Department of Social Welfare Act 1971 is hereby amended by repealing section 9, and substituting the following section: 15

“**9. Honorary Social Workers**—(1) The Director-General may from time to time appoint such persons as he thinks fit to be Honorary Social Workers.

“(2) No person shall, by reason only that he is an Honorary Social Worker, be deemed to be employed under the provisions and for the purposes of the State Services Act 1962. 20

“(3) Every Honorary Social Worker shall, in respect of the exercise and performance by him of the powers, duties, and functions conferred or imposed on him, act in accordance with any directions that the Director-General may give to him. 25

“(4) Every appointment under this section shall be for such term, not exceeding 2 years, as the Director-General thinks fit; but any person appointed under this section may from time to time be reappointed. 30

“(5) Any person appointed under this section may resign his office at any time by giving written notice to that effect to the Director-General.

“(6) The Director-General may at any time revoke the appointment of any person as an Honorary Social Worker.” 35