

ACT AMENDING THE CHILD WELFARE ACT (583/2006)

In accordance with decision of Parliament,

the following provisions in the Child Welfare Act of 5 August 1983 (683/1983) *are amended*: section 24, paragraph 1, section 25, title of section 26, sections 31, 32 and 37, section 37 as it partly reads in Act 139/1990; and

a new paragraph 3 *is added* to section 26, a new paragraph 3 to section 38 when the present paragraph 2 becomes paragraph 3, and new 23 a, 25 a, 30 a, 31 a-31 c, 32 a-32 f and 35 a to the Act, as follows:

General provisions on substitute care

Section 23 a

SCOPE OF APPLICATION OF PROVISIONS

The provisions of this Chapter concerning the powers to impose restrictions given to the director or other personnel of a child welfare institution are applied in the child welfare institutions referred to in section 29 irrespective of whether the person concerned is a person belonging to the personnel with public service employment relationship or other personnel, unless otherwise provided by the law. Provisions on the criminal liability of persons other than those with public service employment relationship in the use of the powers to impose restrictions are laid down in Chapter 40, section 12, of the Penal Code (39/1889).

Section 24

HUMAN RELATIONS AND ACCESS

In substitute care the child shall be ensured the significant, continuous and secure human relations that are important for his development. The child has the right to meet his parents and other persons close to him by receiving guests or visiting places outside the substitute care home and to keep in touch with them by telephone or by sending and receiving letters or comparable other confidential messages or other deliveries.

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Section 25

RESTRICTION OF ACCESS

The right of access of a child in substitute care to his parents or other persons close to him can be restricted by a decision referred to in section 25 a if it has not been possible to agree on contacts between the child and his parents or other persons close to him in the care plan referred to in section 11 or otherwise for particular reasons and if:

1) the access endangers the purpose of the child's substitute care and restriction is necessary in view of the child's care and upbringing; or

- 2) such access clearly endangers the life, health, development or safety of the child; or
- 3) such restriction is necessary for the safety or security of the parents or other children of the family, or of the children or staff in the residential home or institution; or
- 4) a child who has attained the age of 12 objects to access; the same applies to children under 12 if the child is developed enough so that his will can be taken into account.

On the conditions referred to in paragraph 1 it is allowed:

- 1) to restrict the child's access to his parents or other persons close to him;
- 2) to restrict the child's right to keep in touch with persons close to him by telephone or by using other means or tools of communication;
- 3) to read and withhold a letter or comparable confidential message sent by the child or addressed to the child or to check and withhold other delivery; and
- 4) the substitute care home may confiscate the means and tools of communication the child has possession of or to restrict their use.

On the conditions referred to above it is allowed not to disclose the child's whereabouts during substitute care to parents or custodians while the child is in care.

The restriction of access referred to in paragraphs 1-3 can be used only to the extent it is in each case necessary to fulfil a purpose laid down in the law. The letters or confidential messages that have been withheld must be kept separate from other documents concerning the child so that they only can be read by the bodies referred to in section 25 a, paragraph 2.

Section 25 a

DECISION TO RESTRICT ACCESS

Restricting the access as referred to in section 25, paragraphs 1-3, is subject to a decision, which is made for a fixed period of time, for a maximum of one year at a time. The reasons for the restriction, the persons whom the restriction applies to, what kind of contacts the restriction applies to and to which extent it will be realised shall be mentioned in the decision.

The organ referred to in section 6, paragraph 1, of the Social Welfare Act shall make the decision on restriction of access. A decision on a short-term restriction of 30 days at most referred to in section 25, paragraphs 1 and 2, can however be made by the director of the child welfare institution. If it is necessary to extend the restriction or it was originally intended to be determined for a longer period than 30 days, the organ will decide on the matter. A restriction on access must be removed as soon as it is no more necessary in the manner referred to in section 25, paragraph 1.

Section 26

DISCLOSING INFORMATION TO A CHILD. OPPORTUNITY FOR DISCUSSION

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The child must be provided sufficient opportunities for personal discussion on matters concerning himself and the realisation of substitute care with the social worker referred to in section 10, paragraph 3, who is responsible for the child's affairs as detailed in the care plan.

Section 30 a

GENERAL CONDITIONS FOR THE USE OF RESTRICTIVE MEASURES

During substitute care arranged in the form of residential care, restrictive measures may be aimed at a child under sections 31, 31 a – 31 c, 32 and 32 a – 32 d only to the extent as the fulfilment of the purpose of taking into care, the health or safety of the child or another person or securing some other interests laid down in the said provisions so demands. The measures shall be undertaken as safely as possible and respecting the child's human dignity.

Section 31

CONFISCATION OF SUBSTANCES AND OBJECTS

If a child is in possession of substances used for intoxication or equipment especially suitable for their use, these shall be confiscated by the residential home. The residential home shall likewise confiscate those substances or objects a child is in possession of that are meant for harming the child himself or another person. The residential home may also confiscate substances or objects that are as to their properties suitable for endangering the child's own or another person's life, health or safety or for damaging property, if it is probable that the child uses those substances or objects in a way referred to in this provision. The handing over or destruction of confiscated possessions is subject to what is laid down elsewhere in the law. Provisions on destruction of alcoholic beverages or other substances containing alcohol referred to in the Alcohol Act (1143/1994) and of beverages referred to in section 34 (5) of the Act are laid down in section 60 of the Alcohol Act. When the substitute care in the residential home ends the confiscated possessions must be returned to the child unless otherwise provided regarding returning or destroying of possessions elsewhere in the law.

The confiscation referred to in paragraph 1 can be made by the director or a member of the care and pedagogical staff of the residential home. The matter shall be reported without delay to the director or a person belonging to the care and pedagogical staff designated by the director, who shall make a decision on confiscation if the possessions are not returned.

The residential home may likewise confiscate other substances and objects a child is in possession of than those referred to in paragraph 1 that probably seriously hamper the arranging of substitute care for the child or other children or the keeping of public order in the residential home. The decision on confiscation is made by the director or by a person belonging to the care and pedagogical staff of the residential home designated by the director. The measure may not be continued longer than is necessary for the reason mentioned in the provision or for the care and upbringing of the child.

Section 31 a

FRISK AND BODILY SEARCH

If there are adequate grounds to suspect that a child has in his clothes or otherwise on him substances or objects referred to in section 31, paragraph 1, it is allowed to perform a *frisk* on him. The frisk is performed by the director or a person belonging to the care and pedagogical staff of the residential home designated by the director. The frisk must be performed in the presence of another person belonging to the care and pedagogical staff unless there are special reasons for doing otherwise. The person performing and the persons present at the frisk must be of the same sex as the child, unless is it question of a health care professional.

If there are adequate grounds to suspect that the child has used intoxicating substances referred to in section 31, paragraph 1, the child can be subjected to a *bodily search*, which may include a breath test or taking of a blood, hair, urine or saliva sample. The decision on

performing a bodily search is made and the search is performed by the director or a person belonging to the care and pedagogical staff of the residential home designated by the director or by another person with professional qualifications suitable for the task. The bodily search must be performed so that it does not cause the child unnecessary harm.

If the bodily search is performed by a person other than a health care professional, another member of the care and pedagogical staff of the residential home or other person with professional qualifications suitable for the task must be present. A blood sample may only be taken by a health care professional. A bodily search may only be performed or attended by a person of the same sex as the child, unless it is a question of a health care professional.

Notwithstanding the provisions above in paragraphs 1 and 3 the person performing the frisk or bodily search may however be of the opposite sex than the child is, if it is necessary to undertake the measure immediately in order to ensure the safety of the child or another person.

Section 31 b

CHECKING OF POSSESSIONS AND DELIVERIES. LEAVING DELIVERIES UNFORWARDED

If there are adequate grounds to suspect that a child is in possession of substances or objects referred to in section 31, paragraph 1, it is allowed to check the facilities used by the child or the child's possessions.

If there are adequate grounds to suspect that a letter or comparable confidential message or delivery addressed to a child contains substances or objects referred to in section 31, paragraph 1, it is allowed to check the content of the delivery without reading the letter or confidential message.

The decision on the check referred to in paragraphs 1 and 2 is made and performed by the director or a person belonging to the care and pedagogical staff of the residential home designated by the director. The check must be performed in the presence of the child and another member of the care and pedagogical staff. The facilities used by the child and his possessions can however be checked for special reasons without the presence of the child or another person. The reason for the check must be told to the child.

For special reasons the organ referred to in section 6, paragraph 1, of the Social Welfare Act also has the right to make a decision according to which a message or some other delivery referred to in paragraph 2 can be left wholly or partly unforwarded to the child if the content of the message or delivery can, taking account of the conditions as a whole, be reasonably judged to seriously endanger the life, health, safety or development of the child or another person. The delivery must be forwarded without delay to the organ for decision-making.

Section 31 c

RESTRAINING THE CHILD PHYSICALLY

The director or a member of the care and pedagogical staff of the residential home may restrain a child physically if the child based on confused or threatening behaviour probably would injure himself or others and the restraining is necessary to prevent an immediate endangering of the life, health or safety of the child or another person or significant damage to property. The restraining must be of a therapeutic nature and it must, judged as a whole, be justifiable taking into account the behaviour and situation of the child even otherwise.

Physical restraining may also involve moving the child to another place. The measure must be terminated as soon as it is no more necessary.

The person who has resorted to physical restraining shall give the director of the residential home a report of it in writing. When the director of the residential home resorts to physical restraining, the report must be submitted to the organ referred to in section 6, paragraph 1, of the Social Welfare Act.

Provisions on excessive use of physical restraining are laid down in Chapter 4, section 6 (3) and (7), of the Penal Code.

Section 32

RESTRICTIONS ON THE FREEDOM OF MOVEMENT

If it is necessary for his care and in his best interests, a child may, for a given period, be forbidden to leave the grounds of the residential home, the residential home or the premises of a certain residential unit,

- 1) if the child has been taken into care on the grounds of having seriously endangered his health or development by consuming intoxicants, committing an illegal act other than a minor offence, or by other comparable behaviour; or
- 2) if the child behaves in the manner stated above in point 1 while he is in the residential home; or
- 3) if the restriction is otherwise necessary for the care of the child in order to protect him from behaviour that would seriously harm the child himself.

The restriction referred to in paragraph 1 may not continue for a longer period than seven days without a new decision. A restriction may continue uninterrupted for a maximum of 30 days. Restriction may not be ordered on a larger scale or for a longer period than the care and upbringing of the child necessitates. The measure must be terminated as soon as it is no more necessary in the manner referred to in paragraph 1.

The director or a person belonging to the care and pedagogical staff of the residential home designated by the director may decide on a restriction of the freedom of movement totalling seven days at most. A decision on a longer restriction totalling 30 days at most is made by the organ referred to in section 6, paragraph 1, of the Social Welfare Act. The organ must be without delay informed of the matter for its decision-making.

Section 32 a

ISOLATION

A child may be isolated from the other children in the residential home if his behaviour constitutes a danger to himself or others, or if the isolation is necessary for other particularly justified reasons for the life, health or safety of the child. The isolation shall not be ordered on a larger scale or for a longer period than the care of the child necessitates. The isolation may not continue uninterrupted for more than 24 hours without a new decision. The isolation shall be terminated as soon as it is no more necessary.

The decision on isolation is made by the director or a person belonging to the care and pedagogical staff of the residential home designated by the director. The isolation must take place under a continuous attendance of the care and pedagogical staff of the residential

home. When a child has been ordered to be isolated, a person responsible for the child's safety must be appointed simultaneously. The conditions of the child under the isolation shall be arranged so that the child obtains adequate attendance and care as well as an opportunity for discussions with a member of the care staff.

The isolation may be continued without interruption by a new decision only if the conditions for isolation referred to in paragraph 1 still exist. A further condition is that it still is not appropriate or possible to arrange the care of the child otherwise. Even in that case the total period of isolation may not exceed 48 hours.

Prior to making the decision on continuing the isolation the child must undergo a medical examination, if that is not obviously unnecessary. If necessary, a medical examination must also be performed at the start of isolation or during it.

The director or a person belonging to the care and pedagogical staff of the residential home designated by the director shall immediately inform the organ referred to in section 6, paragraph 1, of the Social Welfare Act of the isolation or its continuation.

Section 32 b SPECIAL CARE

Special care refers to the special, multiprofessional care and attendance provided for a child in substitute care in a child welfare institution, during which the child's freedom of movement can be restricted as laid down in section 32 c and 32 d to the extent required by the care and attendance.

Section 32 c ARRANGING SPECIAL CARE

If it is necessary for the private interests of a child, the child can be provided during substitute care special care to break a vicious circle of serious substance abuse or crime or if the child's behaviour otherwise seriously endangers his life, health or development. The aim of special care is to stop a behaviour that harms the child himself and to enable provision of comprehensive care and attendance for the child. A further condition is that it is not possible, taking into account the child's need for care and attendance, to arrange substitute care for the child in some other manner.

The decision on arranging special care is made by the organ referred to in section 6, paragraph 1, of the Social Welfare Act. Section 12, paragraph 1, of the Social Welfare Act is not applied to the decision-making. The decision shall be based on a multiprofessional assessment of the child's situation made for arranging special care based on pedagogical, social work, psychological and medical expertise.

Special care can be provided for a maximum of 30 days. The time is calculated from the actual start of special care. A decision on arranging special care expires if its implementation could not be started within 90 days from making the decision. For particularly weighty reasons, special care can be continued for a maximum of 60 days if the provision of substitute care for the child still necessarily requires it on grounds referred to in paragraph 1. Special care shall be terminated immediately if it proves ineffective in view of the objectives set or when it is no more needed.

Section 32 d PROVISION OF SPECIAL CARE

Special care can be provided in a child welfare institution that has at its disposal the adequate pedagogical, social work, psychological and medical expertise needed for providing special care. The residential home shall have staff with suitable professional qualifications for the task as well as facilities that are as to their sanitary and other conditions appropriate for provision of special care. For the period of the special care the child may be hindered from leaving the premises without permission or supervision.

During special care the persons with expertise referred to in paragraph 1 shall meet the child on a regular basis as well as take part in the planning, implementation and assessment of the special care. Furthermore, the child must undergo necessary medical examinations during special care. A record shall be kept during the period of special care of those measures and other measures to provide special care and of their impact on the child and his situation and on future provision of special care. Further provisions on the content of the record can be laid down by decree of the Ministry of Social Affairs and Health, as necessary.

The care plan for the child shall be revised at the end of special care.

Section 32 e

RECORDING RESTRICTIVE MEASURES. IMPACT ON THE CARE AND EDUCATIONAL PLAN

With a view to securing the monitoring and supervision of the use of restrictive measures referred to in sections 31, 31 a – 31 c, 32 and 32 a the child welfare institution shall appropriately record the restrictive measures it has applied. The record shall contain a description of the restrictive measure, the grounds for and the duration of the measure, the name of the person who has decided on the measure, implemented it in practice and been present at it, and, as necessary, the special reason referred to in section 31 a, paragraph 1, and section 31 b, paragraph 3. In addition, the possible impact of the measure on the care and educational plan shall be mentioned. It must also be mentioned how the child was heard before deciding on or undertaking the restrictive measure, and the child's opinion on the matter must also be included in the record. Further provisions on the content of the record can be laid down by decree of the Ministry of Social Affairs and Health, as necessary.

When revising the care plan regarding a child, the achievement of the objectives of the restrictive measures aimed at the child and their impact on the care plan must be assessed in particular. If it appears that the care plan should be revised immediately, the director or a member of the care and pedagogical staff of the residential home designated by the director shall without delay inform the organ referred to in section 6, paragraph 1, of the Social Welfare Act of the matter.

Section 32 f

SUPERVISION BY THE STATE PROVINCIAL OFFICE

The relevant State Provincial Office shall monitor the activities of the child welfare institutions and in particular supervise the use of restrictive measures based on this Act. The State Provincial Office may provide a child an opportunity for confidential discussions with a representative of the Office.

Section 35 a

FURTHER PROVISIONS ON APPEAL AGAINST RESTRICTIONS

A decision concerning restriction of access referred to in section 25, paragraph 3, or section 25 a or restrictive measures referred to in section 31, 31 b (4), 32, 32 a or 32 c may be appealed. A decision by an official under an organ referred to in section 6, paragraph 1, of the Social Welfare Act is appealed to an administrative court. The appeal shall be lodged within 30 days of being informed of the decision. The provisions of the Administrative Judicial Procedure Act (586/1996) apply to appeal.

A decision concerning restriction of access may be appealed by a child who has attained the age of 12 years as well and by the child's parent, custodian or other person whose contacts with the child are restricted by the decision.

Section 37

APPEAL TO THE SUPREME ADMINISTRATIVE COURT

Appeals against a decision on care orders, on placement in substitute care, on restriction of access and on termination of care, and on matters concerning housing as laid down in section 13, paragraph 1, of this Act, made by an administrative court in pursuance of this Act may be lodged with the Supreme Administrative Court as laid down in the Administrative Judicial Procedure Act (154/1950). The petition of appeal with its appended documents may also be lodged with an administrative court to be forwarded to the Supreme Administrative Court.

Other decisions than those laid down in paragraph 1 relating to family-oriented and individual child welfare rendered by an administrative court in virtue of this Act may not be appealed.

Section 38

ENFORCEMENT OF AN ORDER SUBJECT TO APPEAL

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Notwithstanding appeal, a decision concerning restriction of access and the restrictive measures referred to in section 35 a, paragraph 1, can be implemented immediately.

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This Act enters into force on 1 November 2006. The Act is applied to those decisions referred to in section 35 a, paragraph 1, that have been made after the Act's entry into force.

Measures necessary for the implementation of the Act may be undertaken before its entry into force.