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Law 8,069, of July 13th, 1990 - Statute of the Child and Adolescent

Chapter II – Care Entities

Section I - General Provisions

Art. 90. The care entities are responsible for maintaining their own units and for planning and implementing protection and socio-educational programs for children and adolescents, under the following regimen:

- I – socio-familiar guidance and support;
- II – socio-educational support in open space;
- III - family placement;
- IV – foster care; (Text by Law 12,010/09)
- V – assisted liberty;
- VI - semi-freedom;
- VII - hospitalization.

§1 Governmental and non governmental entities should enroll its programs, specifying the care regimens as defined in this article, with the Municipal Council for the Rights of Children and Adolescents, which will maintain a record of the entries and changes, to be communicated to the Guardian Council and to the judicial authority. (Included by Law 12,010/09)

§2 The resources for the implementation and maintenance of the programs referred to in this article will be prescribed in the budget allocations of the public authorities in charge of the Education, Health and Social Assistance fields, among others, being observed the principle of absolute priority of children and adolescents preconized by art. 227, caput of the Federal Constitution and the caput and sole paragraph of art. 4. of this act. (Included by Law 12,010/09)

§3 The programs under execution will be reviewed by the Municipal Council of Rights of the Child and Adolescent within every 2 (two) years, being the following criteria necessary for the renewal of the authorization for operation: (Included by Law 12,010/09)

- I - the effective respect for the rules and principles of this law as well as for the resolutions regarding the type of services rendered, issued by the Councils of Rights of Children and Adolescents at all levels; (Included by Law 12,010/09)
- II - the quality and efficiency of the work developed, officially recognized by the Guardian Council, the Public Ministry and the Childhood and Youth Courts; (Included by Law 12,010/09)
- III - when it comes to foster care or family placement programs, it shall be considered the index of success in family reintegration or foster family adaptation, as appropriate. (Included by Law 12,010/09)

Art. 91. The non-governmental entities can only operate after being enrolled with the Municipal Council for the Rights of Children and Adolescents, which will communicate the enrollment to the Guardian Council and to the judicial authority of the respective location.

§1 The enrollment will be denied to the entity that: (Included by Law 12,010/09)

- a) does not provide physical installations in adequate conditions of habitability, hygiene, health and safety;
- b) does not present a work plan consistent with the principles of this Law;
- c) is improperly constituted;
- d) has in its structure persons of ill reputation;

e) does not suit or fail to comply with the resolutions and deliberations regarding the type of services rendered, issued by the Councils of Rights of Children and Adolescents, at all levels. (Included by Law 12,010/09)

§2 The enrollment will have a maximum validity of 4 (four) years, being the Municipal Council for the Rights of the Child and Adolescent in charge of periodically reassess its renewal pertinence, subject to the provisions of §1 of this article. (Included by Law 12,010/09)

Art. 92. The entities developing foster care or family placement programs should adopt the following principles: (Text by Law 12,010/09)

I - preservation of family ties and promotion of family reintegration; (Text by Law 12,010/09)

II - integration into a foster family when exhausted the resources to maintain the natural or extended family; (Text by Law 12,010/09)

III - personalized treatment and in small groups;

IV - development of activities in co-education regimen;

V – to not break up groups of siblings;

VI - to avoid, when possible, the transfer to other entities of sheltered children and adolescents;

VII - participation in local community life;

VIII - gradual preparation to age out;

IX - the participation of community people in the educational process.

§1 The director of an entity engaged in foster care programs is equivalent to the guardian for all purposes of law. (Included by Law 12,010/09)

§2 The directors of organizations developing programs for foster care or family placement will forward to the judicial authority at least every six (6) months detailed reports about the situation of each child or adolescent sheltered and his family, for purposes of the reassessment provided in §1 of art. 19 of this Law (Included by Law 12,010/09)

§3 The different levels of government, through the Executive and Judiciary Branches, shall jointly promote the continued qualification of professionals working directly or indirectly in programs of foster care and family placement of children and adolescents, including members of the Judiciary, the Public Ministry and Guardian Council. (Included by Law 12,010/09)

§4 Unless otherwise determined by the competent judicial authority, the entities developing programs of foster care or family placement, if needed with support from the Guardian Council and social service agencies, will encourage child and adolescent contact with their parents and relatives, pursuant to the provisions of sections I and VIII of this article. (Included by Law 12,010/09)

§5 The entities developing programs for foster care or family placement may only receive public funds, if proven the compliance with principles, requirements and purposes of this Law (Included by Law 12,010/09)

§6 The breach of the provisions of this law by the director of an entity engaged in programs to foster care or family placement is a cause for his dismissal, with no prejudice to the investigation of his administrative, civil and criminal liability. (Included by Law 12,010/09)

Art. 93. The entities maintaining foster care program may, in exceptional and urgent case, shelter children and adolescents without a prior determination of the competent authority, communicating the

fact within 24 (twenty four) hours to the Judge for Childhood and Youth subject to liability. (Text by Law 12,010/09)

Sole Paragraph. Once informed, the judicial authority will, after hearing the Public Ministry and if necessary with the support of the local Guardian Council, adopt the necessary measures to promote the immediate family reintegration of the child or adolescent or if for any reason it is not possible or advisable, to its referral to a foster care or family placement program, or to a foster family, observed the provisions of §2 of art. 101 of this Law (Included by Law 12,010/09)

Art. 94. The entities conducting internment programs have the following obligations, among others:

- I - respect rights and guarantees that adolescents are entitled to;
- II - do not restrict any right that has not been subject to any restrictions on the internment decision;
- III - to offer personalized care in small units and small groups;
- IV - to preserve the identity and offer an environment of respect and dignity to the adolescent;
- V – to work towards the restoration and preservation of family ties;
- VI – to inform the judicial authority periodically the cases where the resumption of family ties is considered impracticable or impossible;
- VII – to provide physical facilities in adequate conditions of habitability, hygiene, health and safety and goods needed for personal hygiene;
- VIII – to provide food and clothing sufficient and appropriate for the age of the sheltered adolescents;
- IX – to offer medical, psychological, dental and pharmaceutical care;
- X – to provide education and professional training;
- XI – to provide cultural, sports and leisure activities;
- XII – to provide religious assistance to those who wish, in accordance with their beliefs;
- XIII – to carry out a social and personal study of each case;
- XIV - periodically reassess each case with a maximum break of six months, giving notice of the results to the competent authority;
- XV - periodically inform the interned teenager the status of his proceedings;
- XVI – to inform competent authorities all cases of adolescents suffering from infectious diseases;
- XVII – to provide proof of deposit of adolescents’ belongings;
- XVIII - maintain programs for supporting and monitoring post-prisoners;
- XIX – to provide the documents needed for citizenship exercise, for those who do not have them;
- XX – to maintain a file with notes including the date and care circumstances, name of the adolescent, parents or guardians, relatives, addresses, gender, age, monitoring of their formation, a list of their belongings and other data to enable their identification and individualized care.

§1 The obligations referred to in this article shall also be applied to entities maintaining programs of foster care and family placement. (Text by Law 12,010/2009)

§2 In carrying out the obligations referred to in this article entities shall preferably use the community resources.

Section II – Supervision of Entities

Art. 95. Government and non-governmental organizations referred to in art. 90 shall be supervised by the Judiciary Branch, the Public Ministry and Guardianship Councils.

Art. 96. The implementation plans and accounts will be submitted to the State or Municipality, according to the origin of the budget allocations.

Art. 97. The following measures are applicable to care entities that breach the obligation referred to in art. 94, without prejudice to the civil and criminal liability of its directors or representatives:

I - to governmental entities:

- a) warning;
- b) temporary removal of its directors;
- c) definitive removal of its directors;
- d) closing of the unit or interdiction of the program.

II – to non-governmental entities:

- a) warning;
- b) total or partial suspension of public money transfers;
- c) interdiction of units or suspension of the program;
- d) cancellation of the registration.

§1 In case of repeated violations committed by care entities that may endanger the rights guaranteed by this law, this fact should be informed to the Public Ministry or to the competent judicial authority for the adoption of appropriate measures including suspension of activities or dissolution of the entity. (Text by Law 12,010/09)

§2 Public law legal entities and non-governmental organizations will be liable for damages caused by their agents to children and adolescents, characterized the breach of principles guiding the activities of specific protection. (Text by Law 12,010/09)