

Legal Proceedings

This section focuses on general requirements relating to child protection proceedings under *The Child and Family Services Act*.

Legal proceedings related specifically to child abuse investigations are covered in Section 1.3.3, [Child Abuse Investigations](#) and to child protection interventions for medical care in Section 1.3.6, [Apprehension for Medical Treatment](#).

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Agency Intervention

The Child and Family Services Act gives agencies the power to intervene to protect a child. Key provisions in this regard are as follows:

- [Section 13](#) gives agencies the power to place a homemaker in a home in the absence of a parent or guardian for up to seven days.
- [Section 18.4](#) requires an agency to immediately investigate information that a child is or might be in need of protection.
- [Section 20](#) provides for court orders prohibiting contact with a child by a person who is believed to have subjected a child to abuse or is likely to do so.
- [Subsection 21\(1\)](#) as amended by section 37 of the [Child and Family Services Authorities Regulation](#) empowers the director, an authority, an agency or the police to apprehend a child believed to be in need of protection and take the child to a place of safety.

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- [Section 25](#) outlines procedures when there is a refusal to give a medical consent and it is imperative a child be examined or treated (see Section 1.3.6, [Apprehension for Medical Treatment](#)).
 - [Section 26](#) allows an agency to leave an apprehended child with or return the child to the person in whose charge the child was at the time of apprehension.

Rights of Children

Provisions in the Act pertaining to the rights of children in child protection proceedings include the following:

- [Subsection 2\(2\)](#) gives children over 12 years of age the right to have their views and preferences known to the court.
- [Section 34](#) provides for the right to counsel. Subsections (1.1), (2) and (3) pertain to counsel for children.

Rights of Parents

The rights of parents or guardians of a child under Part III of the Act include the following:

- [Section 24](#) of the Act requires an agency to make reasonable efforts to notify the parents or guardian of the apprehension of a child.
- [Section 27](#) contains provisions regarding access by the parents or guardian of an apprehended child pending a child protection hearing.
- [Section 39](#) contains provisions regarding access by a parent or guardian of temporary and permanent wards.

Child Protection Proceedings

Child protection proceedings are civil in nature. The courts determine whether a child is in need of protection on the *balance of probabilities*. In contrast, the evidentiary test in a criminal proceeding is *beyond a reasonable doubt*.

Child protection proceedings must provide for due process of law and comply with the principles of fundamental justice (see section 7 of the [Canadian Charter of Rights and Freedoms](#)). The following sections are particularly important in this regard:

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- [Section 27](#) prescribes the process for applying to court following the apprehension of a child.
 - [Section 28](#) provides for transferring an application to another court or another agency and [section 42](#) for transferring an order of guardianship to another agency.
 - [Section 29](#) explains when applications are returnable.
 - [Section 30](#) sets out the requirements with respect to notices of hearing.
 - [Section 31](#) provides for third parties to apply to intervene prior to a child protection hearing.
 - [Section 38](#) lists the orders that can be made under the Act.
 - [Section 40](#) provides for further hearings and orders.

Prescribed Forms

Schedule A of [Child and Family Services Regulation](#) contains forms prescribed for use in child protection proceedings under *The Child and Family Services Act* as follows:

- Form CFS-17 – Backing for Forms CFS-18, CFS-19 and CFS-20
- Form CFS-18 – Petition and Notice of Hearing ([section 20](#))
- Form CFS-19 – Petition and Notice of Hearing ([section 30](#))
- Form CFS-20 – Petition and Notice of Further Hearing ([section 40](#))
- Form CFS-21 – Notice of Hearing as Adjourned (section 30 or section 40)
- Form CFS-22 – Affidavit of Service (section 30 or 40)
- Form CFS-23 – Information and for a Warrant to Search for a Child ([section 21\(3\)](#))
- Form CFS-24 – Warrant to Search for a Child (section 21(3))
- Form CFS-25 – Information and Application to Obtain a Warrant to Apprehend an Absconded Child ([Section 40](#))
- Form CFS-26 – Warrant to Apprehend an Absconded Child ([section 53](#))
- Form CFS-27 – Order ([section 38](#) or 40) – used in contested cases
- Form CFS-28 – Order (section 38 or 40) – used for consent orders
- Form CFS-29 – Consent and Waiver of Notice (sections 20, 30 or 40)

Printable versions of these forms are available through the Child and Family Services Information System (CFSIS). The content of the printable versions is the same in the regulation and can only be changed through amending the regulation.

Policy

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No Contact Orders

Agencies are encouraged to make appropriate use of no-contact orders under [section 20](#) of *The Child and Family Services Act* as an alternative to or following an apprehension under [section 21](#) or as an intervention plan following apprehension. Factors to be considered in proceeding under section 20 include the following:

- The agency believes that a person has subjected a child to abuse or is likely to do so.
- A child can be safely left with or returned to his or her family once an alleged abuser ceases to reside in the same premises as the child.
- The child's parent, guardian or caregiver will fully cooperate with the agency in deterring the alleged abuser from having any contact or association with the child.

Supervision Orders

[Subsection 38\(1\)](#) of the Act provides for the granting of supervision orders. Clause 38(a) pertains to returning a child to a parent or guardian and clause (b) to placing a child with another person.

Agencies may make appropriate use of supervision orders as an alternative to orders of temporary or permanent guardianship. Factors to be considered in recommending a supervision order include the following:

- A safety assessment indicates a child can be safely left with or returned to his or her family or placed with another person (see [Safety Assessment](#) in Section 1.1.1, Intake).
- The agency providing ongoing services can implement a service plan in compliance with provincial standards (see [Service Plan](#) in Section 1.1.3, Planning)

Transferring Apprehension Cases

An apprehending agency has legal responsibility for the care and supervision of an apprehended child until the apprehension is withdrawn or the case is transferred to another agency.

An apprehending agency must make an application under [subsection 27\(1\)](#) of the Act for a child protection hearing within four juridical days or such further period as the court may allow unless the apprehended child is no longer in need of protection and can be safely returned to a parent or guardian.

To transfer an apprehension case to another agency, the apprehending agency must make a motion under [subsection 28\(2\)](#) of the Act to substitute the name of the transferee (receiving) agency for the apprehending agency. Alternatively, the apprehending agency may request the court under [section 42](#) to transfer guardianship to another agency with that agency's consent.

Given the legal requirements noted above, it is imperative that apprehending agencies share information on a timely basis with receiving agencies and that receiving agencies do not delay accepting the transfers. [Intake disposition](#) standards in Section 1.1.1, Intake, and [transfer](#) standards in Section 1.1.6, Service Completion, apply to transferring apprehension cases to the extent they do not conflict with legal proceedings under *The Child and Family Services Act*.

Offences against Children

In addition to intervening directly to protect a child, child and family services agencies also have a duty to report suspected offences against children to the police. This responsibility is covered in detail under [Child Protection Offences](#) in Section 1.3.7, Working with Law Enforcement.

Standards

1. **Agency Child Protection Staff** – An agency issues written authorization to all agency staff authorized to investigate child protection referrals and to apprehend children in need of protection. It is issued at the time the person is assigned responsibility for child protection services and rescinded when the person ceases to have responsibility for these services or is no longer employed by the agency. The documentation preferably includes a card with photo identification and is returned to the agency at the point the person ceases to have responsibility for child protection services or to work for the agency.

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2. **Access to Agency Counsel** – An agency has written policies and procedures regarding access to agency counsel by child protection workers and supervisors including current contact information and guidelines regarding appropriate and effective use of counsel. These policies and procedures are distributed or available to all agency child protection workers and supervisors. An agency may rely on policy and procedures developed and approved by its mandating authority.
3. **Preparing Court Documents** – An agency maintains an administrative system whereby court documents under Part III of *The Child and Family Services Act* are promptly and properly prepared for:
- filing of applications
 - serving notices
 - court hearings

The system for court documents may be combined with the one required for child abuse committee documents (see [Standard 4](#) in Section 1.3.3, Child Abuse Investigations).

4. **Tracking Legal Requirements in Child Protection Proceedings** – Agency supervisors maintain a system for tracking legal requirements relating to child protection proceedings to ensure:
- there are no unnecessary delays in filing of applications
 - administration of the authority determination protocol (see [Standard 20](#) in Section 1.1.1, Intake) does not conflict with legal requirements
 - reasonable attempts are made to serve notices
 - parents or guardians are informed in a timely fashion of the reasons for an apprehension and of their access rights

Supervisors may rely on the agency's administrative system (see Standard 3 above) if it includes a tracking function.

5. **Storage of Court Documents** – An agency maintains a filing system whereby documents for court proceedings under Part III of *The Child and Family Services Act* are readily accessible to:
- the intake worker or case manager and supervisor responsible for the case
 - administrative support staff responsible for preparing and storing the documents
 - agency management and counsel

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When documents are stored in a separate administrative filing system, copies are also placed on appropriate service (case) records (see [Terminology](#) in Section 1.7.1, Service Records). At the conclusion of a legal proceeding, original copies of documents are transferred to the case record for permanent storage.