



Public Legal Education
and Information Service
of New Brunswick

WHAT PARENTS SHOULD KNOW ABOUT CHILD PROTECTION



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This pamphlet does not contain a complete statement of the law in the area of child protection and changes in the law may occur from time to time. Anyone needing specific advice on his or her own legal position should consult a lawyer.

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All parents have the legal duty to care properly for their children. This includes, for example, feeding, educating, clothing and supervising their children. The New Brunswick *Family Services Act* says parents must make sure their children are not **abused** or **neglected**. **Child abuse** happens when parents or others physically or sexually mistreat a child. **Child neglect** happens when parents do not meet the basic needs of their children for housing, clothing, health care, affection, education, and discipline. The purpose of this pamphlet is to explain to parents what can happen when someone contacts the Department of Family and Community Services because of concern over their child's well-being.

WHEN THINGS GO WRONG

Why would a social worker come to my home?

A social worker from the Department of Family and Community Services would go to your home because the Department received a complaint about your child's well-being. The Department will consider all complaints about abused or neglected children under the age of sixteen and disabled children under the age of nineteen. If the complaint makes officials suspect that the security or development of your child could be in danger, under the *Family Services Act* they must start an investigation.

Isn't what happens in my home my own business?

Yes, but not when it comes to the safety, security and development of children. The Department of Family and Community Services has a duty to protect abused or neglected children. The police will also get involved if there is a report of sexual abuse, serious physical abuse or serious neglect. For example, the police may lay criminal charges such as assault if unreasonable force is used in disciplining a child.

What could go wrong at home?

Here are some examples of what could go wrong in your home:

- ☞ You are not providing reasonable care or supervision for your child. It is an offence to leave children under the age of twelve for an unreasonable amount of time without a responsible sitter.
- ☞ Your house is unhealthy or unsafe for your child.
- ☞ You are not feeding your child adequately.
- ☞ You are not giving your child the medical attention he or she needs.
- ☞ You are having problems with drugs, alcohol or gambling and it affects your child.
- ☞ Your child is being abused physically or sexually.
- ☞ Your child is exposed to family violence.
- ☞ Your child withdraws from parental control by running away from home.
- ☞ Your child has been abandoned.
- ☞ Your child is likely to injure himself.
- ☞ You are not making your child go to school.

Who might complain about my child's well-being?

Anyone with reason to suspect that your child is being abused or neglected may have reported this to the local Child Protection Branch of the Department of Family and Community Services. Under the *Family Services Act*, the public, and especially professionals such as teachers, doctors, and social workers, have a duty to report suspected cases of child abuse or neglect to the

Department. Sometimes the parents themselves will call to ask for help with problems in the home.

Do parents have a right to know who made the complaint?

No. The *Family Services Act* states that the social worker is not allowed to tell the parents who made the complaint without the written consent of the complainant.

Do parents have a right to know what the specific complaint is?

Yes. Parents have the right to know the specific complaint or concern of the social worker.

Can the social worker talk to my child without telling me first?

Yes.

BEING INVESTIGATED

What happens while the Department is investigating the complaint?

Where the Department finds that the children are not in immediate danger, then the children may stay in their home. However, sometimes the Department may find it necessary to ask the court to remove children from their families on a temporary or permanent basis. In some cases, the Department may ask the court to remove the offending person from the home instead of the child.

The Department will tell you why they suspect your child is being abused or neglected, unless they have reason to believe that it would interfere with the investigation or put your child in danger.

What if I refuse to let the social worker into my home to investigate?

The Department needs to conduct an investigation to determine if your child is in danger and what should be done to protect your child. If you do not cooperate before or during the investigation, the Department can apply to the court for an **ex parte order** to conduct or continue its investigation. Ex parte means that the court does not consult you or any other person involved before making the order. Such an order would allow the social worker into your home or any area where they need to go to conduct the investigation.

However, you should know that if the Department has a good reason to believe that the security and development of your child is in serious or immediate danger, they do not have to wait to get a court order. In this case, the Department can conduct the investigation **without an order**.

If the Department decides to remove my child, can I stop them?

If you or any other person refuses to release the child, the Department can apply to the court for an **ex parte order** allowing them to enter and search, then remove your child.

Again, if the Department believes that your child is in danger, they can use force if necessary to remove your child without a court order.

Will the Department be able to look at my personal documents such as medical records?

Yes. If the Department has not been able to obtain a record or document that would give them information about the security or development of your child, the Department can apply to the court for an **ex parte order**. This

order would require you or any professional with relevant records or documents to produce them.

What should I do if my family and I are investigated?

- ☞ Try to stay calm.
- ☞ Find out as much as possible. Ask the social worker to be very specific about the complaint.
- ☞ Write down the reasons for the complaint or ask the social worker to write them out.
- ☞ Ask the social worker to let you think things over. However, if your child has an injury you should give an explanation for it.
- ☞ Try to get a lawyer if the matter is not settled to your satisfaction.

AFTER THE INVESTIGATION

What happens once the investigation is over?

If the social worker does not find a problem in your home then nothing will happen. If there are problems, the Department will open a child protection case and use one of the following to address the problem:

- 1) voluntary agreement
- 2) protective care
- 3) court orders

1) Voluntary Agreement

Parents who are having problems at home may be able to *voluntarily* enter into an **agreement** with the Department of Family and Community Services. The parent would agree on what they must do to improve the situation at home and care for their child properly. Voluntary agreements can range from leaving the child in the home to having the child removed with your consent and placed in the

care of the Department. For example, if the problems in your home are not too serious, you may be able to come to an agreement with the Department on what you must do or not do to keep your child safely at home.

If the problems are more serious, the parent can agree to have the child removed from the home on a temporary basis. This kind of voluntary arrangement is known as a **custody agreement**. For example, the child might live in a foster or group home while the parent is taking part in a drug or alcohol rehabilitation program.

In either case, the Department will require the parents to work out a **service plan**. A service plan is a plan of action to set things right in your home. You will have to go and meet with a social worker. The social worker is there to help you and may be able to offer you services under the child protection program. The social worker will consult with his or her supervisor and others in the Department about how best to protect your child. You may be able to get the following help:

- ☞ parent counselling;
- ☞ child counselling;
- ☞ parent aids, helpers;
- ☞ nutritional counselling, budgeting counselling;
- ☞ help on how to prepare good meals;
- ☞ help with housekeeping;
- ☞ daycare.

Parents should try to play an active role in developing the service plan. When you agree to the service plan you should intend to keep it. If you do not, the Department may decide to ask the court to remove or continue to keep your child from your home. Even if the Department takes further action, such as applying for a court order, they will always require the parent to develop a service plan.

2) Protective Care

Sometimes the Department will place a child in protective care while it decides how best to protect the child. Depending on the seriousness of the problem, the child may or may not be taken out of the home.

Why would the Department place my child under protective care?

The Department places children under protective care to protect them when they feel that the security or development of the child is in **serious** danger. If a social worker or police officer removes your child, he or she must tell you as soon as possible. If the child was removed because of abuse the social worker must seek immediate medical confirmation of the abuse.

Does the Department have to get a court order to place my child under protective care?

The Department can place your child under protective care for up to five days without a court order.

What will happen during those five days?

The Department must:

- ☞ release the child from protective care; or
- ☞ work out a voluntary agreement on the care and custody of your child; or
- ☞ apply to the court for an order about the care and custody of your child.

What if the Department releases my child within five days?

If the Department releases your child without a court order or a voluntary agreement on the care of your child, you have the right to apply to the court for a review of the Department's use of protective care. If you wish to have a

review, you must apply within thirty days after your child was released from protective care. You must give the Department fourteen days notice.

If the court finds that your child was placed under protective care without a good reason, the court can make a declaratory order stating its findings. This review process can provide you with a written document but it does not offer any financial compensation.

If the Department decides to apply for an order, what will happen next?

You will be told immediately. To determine whether the Department had a good reason for placing your child under protective care, the court will hold an interim hearing. This must happen no later than seven working days after your child was placed under protective care. You should plan to attend this hearing. If the court is satisfied that the Department had a good reason, they will make an interim order to keep your child under protective care. At this time, the court will set a time and place to hear the Department's application for an order about the care and custody of your child.

If the court is not satisfied that the Department had a good reason for placing your child under protective care, the court will make an interim order returning the child to the care of the parent. However, the court will set a time and place to hear the Department's application.

If the parent does not object to the particular application which the Department wishes to obtain for the care of his or her child, then the court may make the order at the interim hearing.

3) Court Orders

Will I have to go to court if the Department applies for an order?

Usually you will have to go to court for a hearing. The Department will tell you when and where.

What kind of court order will the Department apply for?

There are 5 different types of orders that the Department may obtain:

Supervisory Order — This order, which can last up to 6 months, allows the Department to observe your child and family. The child stays with you under certain conditions. This order may be extended.

Protective Intervention Order — This order, which can last up to 6 months, stops a person who is a source of danger to the child from contacting the child. The child lives at home. This order also may be extended.

Custody Order — This order, which can last up to 6 months, allows the Department to put your child in a foster home or in an approved child placement facility. This order may be extended. However, the total amount of time the child is in custody cannot last longer than 24 months.

Guardianship Order — This order allows the Department to take your child away from you permanently. This is used as a last resort only after other measures to safeguard the child have failed. When guardianship is granted, the child may be placed for adoption.

Place of Safety Order — This order, which can last up to 6 months, allows the Department to put your child who is already

in custody or guardianship in a safe place as set out in the *Family Services Act*. This is used if your child is likely to harm himself or herself. These orders may be extended.

GOING TO COURT

Will I need a lawyer?

If you have not already contacted a lawyer, you should do so. If you cannot afford a lawyer, you **may** be eligible for legal aid.

Am I eligible for legal aid?

Domestic legal aid is available to parents in financial need *only* if the Department is applying for a *Custody Order* or a *Guardianship Order*. If you are not eligible for legal aid you can speak to “**duty counsel**”. Duty counsel is a lawyer who gives people free legal advice at the courthouse before they go to court. If you have been charged with a criminal offence like assault, you may be eligible to get legal aid.

What will happen in court?

The first time you go to court the judge will probably set a date to hear the matter. The next hearing may not take place for another month or so. Your child may or may not be allowed to stay at home during this time. In some cases, the court may require the child, parent or a person who is close to the child to undergo a psychiatric, psychological or physical examination before the next hearing. At the next hearing the judge may hear evidence from both parties. The judge may then make the order which the Department has applied for or dismiss the application.

How will the judge decide?

Under the law, the judge must decide what is in the “*best interests of the child.*” The judge will listen to the relevant evidence and decide.

Can I appeal the decision of the judge?

Yes, but you must have grounds for appeal. You should contact a lawyer to see if such grounds exist. You must do so quickly.

SUGGESTIONS FOR MAKING AND KEEPING SERVICE PLANS

- ☞ Be open to the help that the social worker is offering you. If you need help to straighten out problems at home, ask the social worker for help right away.
- ☞ If you wish, get a lawyer or a helpful friend to come to the planning meeting with you.
- ☞ Think about what you can do and ask your social worker to put your ideas into the plan.
- ☞ Avoid promises you cannot keep. For example, do not promise that you will always be at home with your child. Instead, promise that you will try to find a babysitter whenever you need to go out.
- ☞ Be sure the plan has a review date so you can check your progress and ask for changes if needed.

SUGGESTIONS FOR GETTING YOUR CHILD OUT OF TEMPORARY CUSTODY

- ☞ Remember, the Department is looking for signs that your abilities as a parent are improving. Getting angry and losing your temper will not help your case.
- ☞ Remember, having regular contact with the social worker may help you get your child back sooner.
- ☞ Remember, the more interest you show in your child, the more likely it is the Department will see that you want to care properly for your child. Take as much responsibility for your child's care as you are allowed.

- ☞ Remember, the faster you make the changes asked by the court the less time your child will be in temporary custody.

SUGGESTIONS FOR GOING TO COURT

- ☞ If you cannot get a lawyer to represent you, make a list of what you want to say at court to help you remember.
- ☞ Wait for the judge or anyone else to finish speaking and then make your points. If you do not agree with what others say, make a note of it and mention it when you speak.
- ☞ When it is your turn to speak, speak to the judge, not the social worker.
- ☞ Be early. Arrive at court about thirty minutes before court starts.
- ☞ Be sure to talk to duty counsel.
- ☞ Wear appropriate clothes. There is no dress code at court but you should try to avoid jeans and t-shirts.
- ☞ Bring along a relative or friend for emotional support.