

Child Protection: What Happens When You Go To Court

Ministry of Children and Family Development



INTRODUCTION

Most children grow up in families where they are safe and secure. But for some there may be concerns about their safety – these children need our help.

If there are concerns about your child's safety, your child welfare worker has a legal duty to respond under the **Child, Family and Community Service Act**. Your worker will assess any concerns and determine what actions will make sure your child is safe. This could include providing services to your family, providing support in the family home, or placing your child in the care of friends or relatives.

Sometimes the action needed to make your child safe involves going to court. This pamphlet gives you an overview of options that can be used before or during court, helps explain the court process and what happens when you go to court.

BEFORE COURT

Often the best outcomes for your child can be accomplished when your family and your child welfare worker work together to find solutions for your child's safety and well-being.

The following options are available:

- » **Family Group Conferencing** – a formal meeting with a conference coordinator and members of your immediate family, extended family and, where appropriate, community members to develop a plan for your child. Your child welfare worker reviews the plan to make sure it addresses the concerns about your child's safety.
- » **Traditional decision-making processes** – family members work together to solve problems and develop a plan for your child by following your community or cultural traditions. For example, in an Aboriginal community, elders might lead families and child welfare workers through a traditional process to reach decisions.
- » **Mediation** – this alternative is generally used when family group conferencing or traditional decision-making processes have not led to solutions. Mediation provides a trained, impartial person to help your family and your child welfare worker agree on the best way to meet your child's needs.

If there are concerns about your child's safety, your child welfare worker has a legal duty to respond and assess any concerns and determine what actions will make sure your child is safe.

These options are used before or during the court process. For more information about these options, talk to your child welfare worker.

THE COURT PROCESS

If there are concerns about your child's safety and solutions cannot be found through alternative options, then the case must be heard in court. A child welfare worker may apply to court for a number of orders (decisions) that do not involve the removal of a child from the family home. This can include an order:

- » for **essential health services**
- » to **remove an offender** from the child's home, or to stop that person from contacting or interfering with the child, or
- » to allow the child welfare worker to **supervise the child's care** in the family home (supervision order).

If there are concerns about your child's safety and solutions cannot be found through alternative options, then the case must be heard in court.

A child welfare worker may also apply to the court for an order after the worker has removed a child from the family home due to concerns that the child's health or safety was in immediate danger, or no less disruptive action could be taken to adequately protect the child. After the removal, child protection court proceedings take place in two stages – the **presentation hearing** and the **protection hearing**. Depending on the issues involved, and your area's court procedures, it could take several weeks or months before the process is complete.

PRESENTATION HEARING

This court hearing must begin within seven days of your child being removed from your care. Your child welfare worker will inform you of the date, time and place of the hearing so you can attend.

On the first day of the presentation hearing, the child welfare worker submits a **"report to the court"** document that outlines the circumstances of your child's removal and the recommendations for your child's safety. If you disagree with your child welfare worker, a court date will be chosen in the near future to allow the judge to hear both sides. At this future hearing, your child welfare worker will explain to the judge why your child was removed. You or your legal counsel will also tell the judge your views.

At the end of this hearing, the judge may decide that it is safe for your child to return home without any supervision by the ministry. This means there are no further court proceedings and your child will return home.

If the judge is still concerned about your child's safety, the court may make an order (decision) that your child:

- » **can return home** but only under the supervision of a child welfare worker, or
- » **must remain in care**, or
- » **may be placed in the care of a relative or friend** while a child welfare worker works with you to resolve any concerns.

If your child remains under care or under supervised care, a date is set for a protection hearing.

PROTECTION HEARING

The protection hearing will begin after the **presentation hearing**. You will receive written notice of the date, time and place of the hearing at least 10 days in advance. This notice will include what court order (decision) your child welfare worker will be asking the judge to make.

On that date, if you do not agree with the child welfare worker's application for a court order, the hearing will be adjourned and a **case conference held**.

The case conference is a formal meeting at court with the judge to see if a solution can be reached without proceeding to a protection hearing. You **must** go to the case conference and you are expected to talk directly to the judge.

Your lawyer, an advocate, or representatives from the Aboriginal community may also attend. At the case conference, the judge may make an order (decision) to ensure your child's safety as long as all parties agree. If agreement cannot be reached, a court date for the protection hearing is made.

At the protection hearing, a judge will listen to the facts from everyone involved, and make an order **about how to ensure your child is safe**. This may mean that for a specified period of time your child will:

- » **stay in care**, or
- » **return home under the supervision of your child welfare worker**, or
- » **be placed in the care of a relative or friend** while your child welfare worker works with you to resolve any concerns.

These orders are reviewed once the specified time periods have passed. At that time, your child welfare worker will determine if there are on-going concerns about your child's safety. If there are still concerns, the social worker will make application for another order and you will receive notice of another hearing.

In some cases the child welfare worker may decide it may never be safe to return a child home. In these cases, the child welfare worker may apply for a **continuing custody order**. The judge will decide whether to grant this kind of court order based on the best interests of the child. If the court makes a decision to place the child in continuing custody, **care and guardianship of the child will be the responsibility of a child welfare worker until the child reaches 19 years of age**.

The protection hearing begins after the presentation hearing, and allows the judge to hear the facts from all sides.

WHAT AM I ENTITLED TO THROUGHOUT THIS PROCESS?

You are entitled to:

- » **Have a lawyer present** at hearings. If you cannot afford a lawyer, **legal aid** may be available. Call toll-free 1-866-577-2525, or visit legalaid.bc.ca/legalaid/.
- » Access available ministry, delegated Aboriginal Child and Family Services agency or community resources to help with the return of your child to your home.
- » Participate in a complaints process if you are unhappy with decisions made by your child welfare worker, and your case is not currently before the courts (see **Resources** for contact information).

- » Speak with, or voice your concerns to, **external advocates** about your child's care or the decisions of your child welfare worker (see **Resources** for contact information).
- » Receive assistance from the office of the Representative for Children and Youth (see **Resources** for contact information).

Talk to your child welfare worker to find out what rights parents and children have throughout the child protection court process.

WHAT RIGHTS DOES MY CHILD HAVE THROUGHOUT THIS PROCESS?

If your child is over the age of 12, he or she has the opportunity to take part in decisions about how he or she will be cared for. He or she **will be served court documents about any Protection Hearing and is entitled to attend court.** He or she must also have his or her **plan of care explained** to him or her and to have his or her **views taken into account in decisions about his or her care.** When a court order is being made by the agreement of the adult parties, the agreement of a child 12 years or older is required.

If your child is Aboriginal, he or she also has the right to have his or her community told of his or her removal from the family home, and to have a designated representative from his or her community involved in all aspects of the process, including coming to the presentation hearing.

RESOURCES

This pamphlet is part of a series of informational brochures on child protection. Visit www.mcf.gov.bc.ca/child_protection/publications.htm to view:

- » Responding to Child Welfare Concerns: Your Role in Knowing When and What to Report
- » Family Development Response
- » Child Protection: What You Need to Know About Investigation
- » Child Protection: Your Role as a Relative
- » Options for Parents and Families: Collaborative Planning and Decision Making

- » What is Child Protection Mediation?
- » Family Group Conferencing factsheets

FOR FURTHER INFORMATION, QUESTIONS OR ADDITIONAL HELP:

- » Contact your local **Ministry of Children and Family Development** office the number can be found in the blue pages of your local phone book, or visit www.gov.bc.ca/mcf/index.html
- » Visit the ministry's **Complaints Process** webpage if you have a concern about something to do with the ministry and your case is not in court. www.mcf.gov.bc.ca/complaints/index.htm
- » Contact a delegated **Aboriginal Child and Family Services** agency the number can be found in the white pages or online at www.mcf.gov.bc.ca/about_us/aboriginal/delegated/pdf/agency_list.pdf
- » Contact the **Representative for Children and Youth**. The office supports and advocates on behalf of children, youth and families who need help with the child protection system. Call toll-free: 1-800-476-3933 or visit www.rcybc.ca
- » Contact your local **Member of the Legislative Assembly** (MLA). Look in the blue pages of your phone book under "British Columbia – Members of the Legislative Assembly" to find the office number.
- » Contact the **Office of the B.C. Ombudsman**. The office is responsible for investigating complaints about the practices of provincial public agencies. Call toll-free: 1-800-567-3247.
- » Read the **Legal Services Society's "Parents' Rights, Kids' Rights, A parent's guide to child protection law in BC"** at: www.lss.bc.ca/assets/pubs/parentsRightsKidsRights.pdf

Local Information:

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To receive additional copies of this pamphlet, fax a request to the Distribution Center - Victoria at 250 952-4559 or phone 250 952-4460. This pamphlet is also available online at: www.mcf.gov.bc.ca/child_protection/publications.htm

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