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SNL2010 CHAPTER C-12.2

CHILDREN AND YOUTH CARE AND PROTECTION ACT

Amended:

2013 cA-3.1 s85; 2014 cC-11.01 s37; 2015 cA-1.2 s123

CHAPTER C-12.2

AN ACT RESPECTING THE CARE AND PROTECTION OF CHILDREN AND YOUTH

(Assented to June 24, 2010)

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Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the *Children and Youth Care and Protection Act*.

[2010 cC-12.2 s1](#)

**PART I
INTERPRETATION**

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Interpretation

2. (1) In this Act
 - (a) "alternate dispute resolution" means a process for resolving disputes, other than litigation, that is approved by the provincial director;
 - (b) "care" means the physical daily care and nurturing of a child or youth;
 - (c) "child" means a person actually or apparently under the age of 16 years;
 - (d) "court" means the Trial Division - Family Division or the Provincial Court;
 - (e) "custody" means the rights and responsibilities of a parent in respect of a child or youth;
 - (f) "department" means the department presided over by the minister;
 - (g) "family group conference" means a formal planning and decision making meeting, facilitated by an independent co-ordinator, which brings together the parent, family or other person significant to the child, social workers and other service providers to develop a plan for a child's safety, permanency and well-being;
 - (h) "foster parent" means a person with whom a child or youth, who is in the care or custody of a manager, is placed for care with the approval of a manager and who, by agreement with a manager, has assumed responsibility for the care of the child or youth, and includes a family member or a person significant to the child or youth but does not include the child or youth's parent;
 - (i) "judge" means a judge of the court;
 - (j) "manager" means a manager appointed under section 4 ;
 - (k) "mediation" means a voluntary process in which a mediator assists the parent, family, other person significant to the child, social workers, lawyers and other service providers to discuss and resolve the referred issues;
 - (l) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
 - (m) "parent of a child" means

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- (i) the custodial mother of a child,
 - (ii) the custodial father of a child,
 - (iii) a custodial step-parent,
 - (iv) a non-custodial parent who regularly exercises or attempts to exercise rights of access,
 - (v) a person to whom custody of a child has been granted by a written agreement or by a court order, or
 - (vi) a person who is responsible for the child's care and with whom the child resides, except a foster parent;
- (n) "peace officer" means a member of the Royal Newfoundland Constabulary or a member of the Royal Canadian Mounted Police, and includes a person approved by the Attorney General to perform the duties of a peace officer;
- (o) "provincial director" means the Provincial Director of Protective Intervention and In Care appointed under section 6 ;
- (p) "qualified health practitioner" means a physician, nurse, nurse practitioner, licensed practical nurse, dentist or dental hygienist;
- (q) "residential placement" means approved board, lodging and the associated supervisory shelter or group care for a child or youth who is in the care or custody of a manager;
- (r) "social worker" means a person
- (i) registered under the *Social Workers Association Act* , and
 - (ii) employed by the department; and
- (s) "youth" means a person who is 16 years of age or over but under 18 years of age.
- (2) Notwithstanding paragraph (1)(i), in the expanded service area referred to in subsection 43.5(5) of the *Judicature Act*, "judge" means a Provincial Court judge.
- (3) For the purpose of sections 20 and 22 , in the judicial area referred to in subsection 43.5(4) of the *Judicature Act* , "judge" means a judge of the Trial Division - Family Division or a Provincial Court judge.

[2010 cC-12.2 s2](#)

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Labrador Inuit rights

3. This Act and regulations made under this Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* , the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act or a regulation made under this Act.

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Managers

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4. (1) The minister shall appoint one or more managers who shall exercise the powers and perform the duties that are conferred or imposed upon them by this Act.

(2) An appointment under subsection (1) shall be in writing and may include those terms and conditions the minister considers advisable.

(3) A manager appointed under subsection (1) may designate a person who is a social worker as acting manager to exercise the powers and perform the duties of that manager where the manager is absent or unable to act.

(4) A person appointed as a manager under subsection (1) shall be a social worker.

[2010 cC-12.2 s4](#)

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Social worker not available

5. Where a social worker is not available, the minister may authorize another person to perform the duties or exercise the powers of a social worker under this Act for a specified period and subject to the terms and conditions the minister considers necessary.

[2010 cC-12.2 s5](#)

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Provincial Director of Protective Intervention and In Care

6. The minister shall appoint a person to be the Provincial Director of Protective Intervention and In Care who shall be responsible for

- (a) establishing province-wide policies, programs and standards;
- (b) evaluating and monitoring adherence to the established policies, programs and standards; and
- (c) advising and reporting to the minister on matters related to this Act.

[2010 cC-12.2 s6](#)

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Protection from liability

7. A manager, social worker, the provincial director or other person is not personally liable for anything done or omitted in good faith in the exercise or performance, or intended exercise or performance, of

- (a) a power, duty or function conferred upon him or her by this Act; or
- (b) a power, duty or function on behalf of or under the direction of a person on whom the power, duty or function is conferred by this Act,

or for the costs in connection with an action or proceeding.

[2010 cC-12.2 s7](#)

PART II PURPOSE AND GENERAL PRINCIPLE

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Purpose

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8. The purpose of this Act is to promote the safety and well-being of children and youth who are in need of protective intervention.

[2010 cC-12.2 s8](#)

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General principle

9. (1) This Act shall be interpreted and administered in accordance with the principle that the overriding and paramount consideration in a decision made under this Act shall be the best interests of the child or youth.

(2) In determining a child or youth's best interests, all relevant factors shall be considered, including

- (a) the child or youth's safety, health and well-being;
- (b) the child or youth's physical, emotional and developmental needs;
- (c) the child or youth's relationship with family or a person significant to the child or youth;
- (d) the child or youth's identity and cultural and community connections;
- (e) the child or youth's opinion regarding his or her care and custody or the provision of services; and
- (f) the importance of stability and permanency in the context of the child or youth's care.

[2010 cC-12.2 s9](#)

PART III PROTECTIVE INTERVENTION

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Definition of child in need of protective intervention

10. (1) A child is in need of protective intervention where the child

- (a) is being, or is at risk of being, physically harmed by the action or lack of appropriate action by the child's parent;
- (b) is being, or is at risk of being, sexually abused or exploited by the child's parent;
- (c) is being, or is at risk of being, emotionally harmed by the parent's conduct and there are reasonable grounds to believe that the emotional harm suffered by the child, or that may be suffered by the child, results from the actions, failure to act or pattern of neglect on the part of the child's parent;
- (d) is being, or is at risk of being, physically harmed by a person and the child's parent does not protect the child;
- (e) is being, or is at risk of being, sexually abused or exploited by a person and the child's parent does not protect the child;
- (f) is being, or is at risk of being, emotionally harmed by a person and the child's parent does not protect the child;
- (g) is in the custody of a parent who refuses or fails to obtain or permit essential medical, psychiatric, surgical or remedial care or treatment to be given to the child when recommended by a qualified health practitioner;

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- (h) is abandoned;
 - (i) has no living parent and no adequate provision has been made for the child's care;
 - (j) has no parent available to care for the child and the parent has not made adequate provision for the child's care;
 - (k) has no parent able or willing to care for the child;
 - (l) is living in a situation where there is violence or is living in a situation where there is a risk of violence;
 - (m) is living with a parent whose actions show a propensity to violence or who has allegedly killed or seriously injured another person;
 - (n) has been left without adequate supervision appropriate to the child's developmental level; or
 - (o) is actually or apparently under 12 years of age and has
 - (i) allegedly killed or seriously injured another person or has caused serious damage to another person's property, or
 - (ii) on more than one occasion caused injury to another person or other living thing or threatened, either with or without weapons, to cause injury to another person or other living thing, either with the parent's encouragement or because the parent does not respond adequately to the situation.
- (2) For the purposes of paragraphs (1)(c) and (f), the indicators of emotional harm exhibited or demonstrated by a child may include
- (a) depression;
 - (b) significant anxiety;
 - (c) significant withdrawal;
 - (d) self-destructive behaviour;
 - (e) aggressive behaviour; or
 - (f) delayed development.
- (3) For the purposes of paragraph (1)(c), parental conduct or living situations that may lead to emotional harm or risk of emotional harm to the child may include
- (a) rejection;
 - (b) social deprivation;
 - (c) deprivation of affection;
 - (d) deprivation of cognitive stimulation;
 - (e) subjecting the child to inappropriate criticism, threats, humiliation, accusations or expectations;
 - (f) living in a situation where the mental or emotional health of a parent is negatively affecting the child;
 - (g) living in a situation where a parent is an abuser of alcohol or drugs; or

(h) living in a situation where there is violence.

[2010 cC-12.2 s10](#)

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Duty to report

11. (1) Where a person has information that a child is or may be in need of protective intervention, the person shall immediately report the information to a manager, social worker or a peace officer.

(2) Where a person makes a report under subsection (1), the person shall report all the information of which he or she has knowledge.

(3) Where a report is made to a peace officer under subsection (1), the peace officer shall, as soon as possible after receiving the report, inform a manager or social worker.

(4) This section applies, notwithstanding the provisions of another Act, to a person referred to in subsection (5) who, in the course of his or her professional duties, has information that a child is or may be in need of protective intervention.

(5) Subsection (4) applies to every person who performs professional or official duties with respect to a child, including

- (a) a health care professional;
- (b) a teacher, educational psychologist, guidance counsellor, school principal, social worker, family counsellor, member of the clergy or religious leader, persons involved in operating or providing a child care service or agency, a youth worker and a recreation worker;
- (c) a peace officer; and
- (d) a solicitor.

(6) This section applies notwithstanding that the information is confidential or privileged, and an action does not lie against the informant unless the making of the report is done maliciously or without reasonable cause.

(7) A person shall not interfere with or harass a person who gives information under this section.

(8) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment.

(9) Notwithstanding section 7 of the *Provincial Offences Act*, an information or complaint under this section may be laid or made within 3 years from the day when the matter of the information or complaint arose.

[2010 cC-12.2 s11; 2014 cC-11.01 s37](#)

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Determining the need for protective intervention

12. (1) Where a manager or social worker receives information in the form of

- (a) a request for protective intervention services;
- (b) a report under section 11 ; or

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- (c) other evidence that a child may be in need of protective intervention,

the manager or social worker shall investigate whether the child is in need of protective intervention unless, upon assessment, the manager or social worker is satisfied that the information provided was without merit or without reasonable grounds.

(2) Where, after an investigation referred to in subsection (1), the manager or social worker has determined that the child is in need of protective intervention, the manager or social worker shall

- (a) enter into a written agreement with the parent outlining the plan for the child and the child's parent with respect to the required services; or
- (b) where the manager or social worker is not satisfied that the child's need for protective intervention can be met under paragraph (a), take whatever action under this Act that the manager or social worker considers appropriate.

(3) Where,

- (a) upon assessing information received under subsection (1), a manager or social worker is satisfied that the information provided was without merit or without reasonable grounds; or
- (b) after an investigation referred to in subsection (1), a manager or social worker has determined that the child is not in need of protective intervention,

the manager or social worker may, where appropriate, refer the child or the child's parent to health care, social, legal or other services which may assist the child or the child's parent and may, in exceptional circumstances, enter into a written agreement outlining the plan for the child and the child's parent with respect to the required services.

(4) An agreement under this section shall set out the responsibilities of each party to the agreement.

[2010 cC-12.2 s12](#)

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Family group conference and alternate dispute resolution

13. (1) A manager or social worker may use a family group conference, mediation or another form of alternate dispute resolution to establish, replace or amend the plan referred to in section 12 .

(2) Where a family group conference, mediation or another form of alternate dispute resolution is agreed upon, the parties shall enter into a written agreement to participate in the process.

(3) An issue with respect to a plan referred to in section 12 may be included in a family group conference, mediation or another form of alternate dispute resolution, other than the determination by a manager or social worker that the child is in need of protective intervention and the factors that led to that determination.

[2010 cC-12.2 s13](#)

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Interview of child

14. (1) A person, who has custody of or who is entrusted with the care of a child who is the subject of an investigation under this Act, shall, when requested to do so by a manager or a social worker,

- (a) identify the child; and

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- (b) permit the child to be visited, observed and interviewed by a manager or social worker, in private where in the opinion of the manager or social worker it is appropriate, at a place where the child is located.
- (2) A manager or social worker shall notify the parent of the interview.

[2010 cC-12.2 s14](#)[Back to Top](#)**Manager denied access to child**

15. (1) Where a manager or social worker is denied access to a child and he or she believes that access to the child is necessary to determine if the child is in need of protective intervention, the manager or social worker may, without notice, apply to a judge for an order and the judge may grant an order

- (a) that a person disclose the location of the child;
- (b) that a person permit the manager or social worker or another person to interview or visually examine the child;
- (c) authorizing the manager or social worker to remove the child from the place where the child is located for an interview or medical examination; and
- (d) authorizing a qualified health practitioner to examine the child.

(2) The judge may attach those conditions to an order under this section that the judge considers appropriate.

(3) Where a child is removed from the place where the child was located for an interview or medical examination, a manager or social worker shall return the child to the parent or other person from whom the child was removed unless the manager or social worker proceeds under section 20 .

(4) At the request of a manager or social worker, a peace officer shall assist in enforcing an order made under subsection (1).

[2010 cC-12.2 s15](#)[Back to Top](#)**Location of child not disclosed**

16. (1) Where a person does not comply with an order under section 15 , a judge may issue a warrant for the persons arrest to bring him or her before the judge to explain why the order should not be enforced.

(2) Where a person referred to in subsection (1) appears before a judge and the judge believes that the persons reasons for being unable or unwilling to comply with the order are not valid, the judge may order that the person be imprisoned for 30 days or until the person complies with the order, whichever is the shorter period of time.

[2010 cC-12.2 s16](#)[Back to Top](#)**Order to produce record**

17. (1) Where a manager or social worker files an application with the court, a judge may order a person to produce information that is written, photographed, recorded or stored by other means for inspection by the manager or social worker where

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- (a) there are reasonable grounds to believe that the information is necessary for determining whether a child is in need of protective intervention;
- (b) there are reasonable grounds to believe that the person has possession or control of the information; and
- (c) the person has neglected or refused, upon request of the manager or social worker, to produce the information.

(2) Not later than 2 days before the date set for hearing an application under subsection (1), notice of the date, time and place of the hearing shall be served on the person against whom the order is sought.

(3) Notwithstanding subsection (2), where a manager or social worker believes on reasonable grounds that the information may be destroyed if notice is given, application may be made under subsection (1) without notice.

[2010 cC-12.2 s17](#)

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Order to prohibit contact

18. (1) Where there are reasonable grounds to believe that contact between a child and another person would cause the child to be in need of protective intervention, a manager or social worker may file an application with the court for an order to prohibit contact between the child and that person.

(2) The date set for hearing the application under subsection (1) shall be not later than 2 days after the application is filed, and notice of the hearing shall be served on the day the application is filed.

(3) Notice of the date, time and place of the hearing shall be served on

- (a) the person against whom the order is sought;
- (b) a parent of the child; and
- (c) the child, where the child is 12 years of age or over.

(4) Where a judge is satisfied that there are reasonable grounds to believe that contact between a child and a person named in an application under subsection (1) would cause the child to be in need of protective intervention, the judge may do one or more of the following:

- (a) prohibit the person against whom the order is sought from contacting or interfering with, or trying to contact or interfere with, the child, or from entering a place where the child is located, for a period of up to 6 months;
- (b) prohibit the person against whom the order is sought from residing with the child, or entering premises where the child resides, including premises that the person owns or has a right to occupy, for a period of up to 6 months; and
- (c) impose those conditions that the judge considers appropriate for implementing the order and protecting the child.

(5) Before an order to prohibit contact between a child and another person expires, a manager, social worker or person named in the order may file an application with the court and the judge may

- (a) grant another order;

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(b) vary the order; or

(c) rescind the order.

(6) At the request of a manager or social worker, a peace officer shall assist in enforcing an order made under this section.

(7) An order under this section may be made at any time, including before, during or after another hearing.

[2010 cC-12.2 s18](#)

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Short term care in the home

19. (1) Where a manager or social worker believes a child is without adequate supervision when premises are entered under this Act, the manager or social worker may arrange for short term care in the home to be provided until other supervision considered adequate by the manager or social worker is available for the child, but the period of care shall not exceed 72 hours.

(2) Where short term care is provided under subsection (1), a person approved by the manager or social worker may enter the premises where the child is located and care for the child.

(3) A manager or social worker shall make all reasonable efforts to notify a parent of a child of an action taken by the manager or social worker under this section.

[2010 cC-12.2 s19](#)

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Removal of child

20. (1) Where a manager or social worker believes

(a) that a child is in need of protective intervention; and

(b) a less intrusive course of action that would adequately protect the child is not available,

he or she shall file an application with the court for a warrant to remove a child.

(2) Where satisfied on the basis of a managers or social workers sworn information that there are reasonable grounds to believe that

(a) a child is in need of protective intervention; and

(b) a less intrusive course of action that would adequately protect the child is not available,

a judge may issue a warrant authorizing the manager or social worker to enter a premises or vehicle or board a vessel or aircraft, by force if necessary, to remove a child.

(3) Notwithstanding subsection (1), where a manager or social worker has reasonable grounds to believe there would be an immediate risk to the child's health and safety if no action were taken during the time required to obtain a warrant, the manager or social worker may enter a premises or vehicle or board a vessel or aircraft, by force if necessary, to remove a child without a warrant.

(4) At the request of a manager or social worker, a peace officer shall assist in enforcing a warrant issued under subsection (2), or if a warrant is not obtained, the peace officer shall assist a manager or social worker under subsection (3).

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(5) A warrant issued under subsection (2) need not describe the child by name or specify a particular premises.

(6) Notwithstanding subsection (1), a warrant is not required for the removal of a child where

- (a) the child is in the care of a manager under an agreement between a manager and a parent of the child entered into under section 12 , and the agreement expires or is about to expire or is repudiated or is about to be repudiated by the parent, and a manager or social worker believes the child is in need of protective intervention; or
- (b) a parent of a child voluntarily places the child in the care of a manager but refuses to enter into an agreement under section 12 .

[2010 cC-12.2 s20](#)

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Removal of youth

21. (1) Where a manager or social worker determines that

- (a) a youth is in need of protective intervention as defined in section 10 ;
- (b) a less intrusive course of action that will adequately protect the youth is not available; and
- (c) the youth is unable to protect himself or herself due to a lack of mental capacity,

the manager or social worker may remove the youth.

(2) Where a youth is removed under this section, the provisions of this Act that apply to determining the need for protective intervention and the removal of a child, except section 33 , apply as if that youth were a child.

[2010 cC-12.2 s21](#)

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Telewarrants

22. (1) Where, in the opinion of a manager or social worker it would not be practical to appear in person before a judge to apply for a warrant, the manager or social worker may make the application by telephone or other means of telecommunication.

(2) Where a manager or social worker removes a child under the authority of a warrant obtained under this section, the manager or social worker shall provide the person from whom the child is removed with a facsimile of the warrant.

(3) In subsection (2), "facsimile" includes a record produced by electronic means or a written record of a telephone conversation made by both parties to the conversation while it is in progress and which the parties have confirmed as to its accuracy by reading their record of the conversation to one another at the end of the conversation.

[2010 cC-12.2 s22](#)

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Notice of removal of child

23. (1) Where a child is removed, with or without a warrant, from the care of a parent or other person, a manager or social worker shall serve written notice of the removal on the parent, and the

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child, where the child is 12 years of age or over, within 24 hours after the removal stating the reason why the child was removed.

(2) A parent who is given a notice under subsection (1) shall be informed that he or she may be represented by legal counsel.

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Interim care of child after removal

24. (1) Where a child is removed under section 20 , a manager has interim care of the child until

(a) the child is returned under section 45 to the parent from whom the child was removed;
or

(b) a judge makes an order at a presentation hearing under section 31 .

(2) While the manager has interim care of the child, the manager or a social worker may

(a) authorize a qualified health practitioner to examine the child; and

(b) consent to necessary health care for the child where the parent cannot be contacted if, in the opinion of a qualified health practitioner, the health care should be provided without delay.

(3) On consenting to necessary health care for the child, a manager or social worker shall notify the parent from whom the child was removed.

(4) Where a child is removed, while hospitalized, from his or her parent by a manager or social worker, the hospital administration and the attending physician shall be advised that the child has been removed from the parent and that the manager has interim care of the child.

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Where child is not removed

25. (1) Where a manager or social worker believes on reasonable grounds that

(a) a child is in need of protective intervention;

(b) the child's safety could be assured without removing the child with the provision of protective intervention services; and

(c) a parent of the child is unwilling to accept protective intervention services for the child,

the manager or social worker shall file an application with the court for a protective intervention hearing and an order that the child is in need of protective intervention.

(2) A hearing under this section shall be held within 30 days of the filing of the application under subsection (1).

(3) Notice of the time and place of a hearing under this section shall be served not later than 3 days after the date for the hearing is obtained on

(a) a parent of the child; and

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(b) the child, where the child is 12 years of age or older.

(4) When a parent of the child is served with a notice under subsection (3), that parent shall also be served with a copy of the application.

(5) Where an application is made under this section, a judge may make an order under section 32 .

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Where child has been removed

26. Where a child has been removed, the manager or social worker shall, within 24 hours after the removal of the child, file an application with the court for a protective intervention hearing, which shall be held not later than 30 days after the child's removal, and for an order that the child is in need of protective intervention.

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Notice of hearings where child removed

27. (1) Where a child has been removed and a manager or social worker applies for a protective intervention hearing, he or she shall at the same time be given a date for a presentation hearing, which shall be held not later than 10 days after the date on which the application is filed.

(2) Notice of the time and place of a protective intervention hearing and a presentation hearing shall be served not later than 3 days after the dates for the hearings are obtained on

(a) a parent of the child; and

(b) the child, where the child is 12 years of age or over.

(3) When a parent of the child is served with a notice under subsection (2), that parent shall also be served with

(a) a copy of the application;

(b) a written report of the circumstances that led to the removal of the child; and

(c) the manager or social workers plan for the child until the protective intervention hearing.

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When sixteenth birthday intervenes

28. Notwithstanding another provision of this Act, where a child was under 16 years of age when an application for an order of continuous custody was filed, the court may hear and determine the matter and make an order as if the child were still under the age of 16 years even though the child has had his or her sixteenth birthday before the order was made.

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Plan for the child

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29. (1) A manager or social worker shall file with the court, not later than noon on the day before the presentation hearing or a hearing referred to in section 25 is scheduled, a plan for the child and provide a copy to those persons who have been served with a copy of the application.

(2) A person who has received a plan under subsection (1) may respond to the plan by filing an alternate plan with the court and, in that case, shall provide a copy of that alternate plan to the manager or the social worker.

(3) A plan filed under subsection (1) shall include

- (a) a description of the services required to address the situation or issues on the basis of which the child was determined to be in need of protective intervention;
 - (b) a description of the indicators by which the manager or social worker will determine when custody or supervision may no longer be required;
 - (c) an estimate of the time required to achieve the purpose of the intervention;
 - (d) information respecting previous involvement with the child, or a parent of the child, under this or a predecessor Act, that is relevant to the plan;
 - (e) where the child has been removed from a parents care,
 - (i) an explanation of why the child cannot be adequately protected while in the parents care, and a description of past efforts to do so,
 - (ii) an explanation of the efforts planned to maintain the child's contact with the parent, family or other person significant to the child, and
 - (iii) a description of the arrangements made or being made to recognize the importance of the child's identity and cultural and community connections; and
 - (f) where the manager or social worker proposes to remove the child from a parents care permanently, a description of the arrangements made or being made for the child's stability and permanency.
- (4) A revised plan may be filed before the conclusion of the protective intervention hearing.

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Order for medical treatment

30. (1) Where a manager or social worker believes a child is in need of protective intervention because of his or her parents refusal or failure to obtain or permit essential medical, psychiatric, surgical or remedial treatment that is recommended for the child by a qualified health practitioner, the manager or social worker may file an application with the court for an order authorizing the treatment.

(2) A parent of a child, and the child, where he or she is 12 years of age or over, shall be served with notice of the time and place of a hearing under this section which shall be held within one day after filing the application.

(3) A judge may

- (a) hear the application at any time or place;
- (b) receive evidence by telephone or other means of telecommunication; and
- (c) administer an oath or affirmation by telephone or other means of telecommunication.

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(4) Where a judge finds that a child is in need of protective intervention for a reason referred to in subsection (1), the judge may so declare and grant an order authorizing the treatment recommended by a qualified health practitioner.

(5) Where a child's treatment is authorized by an order under this section, no liability attaches to the person treating the child by reason only that the parent of the child did not consent to the treatment.

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Presentation hearing

31. (1) A presentation hearing

- (a) may be conducted by a judge in an informal manner; and
 - (b) shall be concluded within one day, unless extended by the judge.
- (2) At the conclusion of a presentation hearing, a judge may
- (a) dismiss the application for a protective intervention hearing;
 - (b) order that the child be returned to or remain with the parent under the supervision of a manager or social worker until the conclusion of the protective intervention hearing;
 - (c) order that the child be placed in the custody of a parent, other than the parent from whom the child was removed, under the supervision of a manager until the conclusion of the protective intervention hearing;
 - (d) order that the child be placed in the care of the child's family or a person significant to the child, other than the parent from whom the child was removed, under the supervision of a manager until the conclusion of the protective intervention hearing;
 - (e) order that the child be placed in or remain in the custody of a manager until the conclusion of the protective intervention hearing; or
 - (f) make a declaration that the child is in need of protective intervention and make an order under subsection 32 (2).

(3) Where a judge makes an order under subsection (2) that is not an order for continuous custody, the judge may attach reasonable conditions to that order, including conditions with respect to

- (a) the child's contact with a parent, unless the judge is satisfied that continued contact with the parent would not be in the best interests of the child;
- (b) the child's contact with a person significant to the child; and
- (c) the assessment, treatment or services to be obtained by the child or the child's parent

but an order shall not contain conditions with respect to the type or the geographic location of the placement for the child.

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Protective intervention hearing

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32. (1) At a protective intervention hearing, a judge shall determine whether a child is in need of protective intervention.

(2) Where a judge finds that a child is in need of protective intervention, the judge shall so declare and order that

- (a) the child be returned to or remain with the parent and under a manager's supervision for a specified period of up to 6 months;
- (b) the child be placed in the temporary custody of the child's family or a person significant to the child, other than the parent from whom the child was removed, with the consent of that person and under a manager's supervision, for a specified period in accordance with section 33 ;
- (c) the child be placed in the temporary custody of a manager for a specified period in accordance with section 33 ; or
- (d) the child be placed in the continuous custody of a manager.

(3) Where a judge makes an order for supervision under paragraphs (2)(a) or (b), and a person fails to comply with a specific condition of the order, the manager or social worker may make an application to the court and the date set for the hearing shall not be later than 5 days after the application is made, and notice of the hearing shall be served on the day the application is filed.

(4) Where a judge makes an order for temporary custody under paragraph (2)(b), the judge may grant a parent or a person significant to the child contact with the child.

(5) Where a judge makes an order for temporary custody under paragraph (2)(c), the judge may attach reasonable conditions to that order, including conditions with respect to

- (a) the child's contact with a parent, unless the judge is satisfied that continued contact with the parent would not be in the best interests of the child;
- (b) the child's contact with a person significant to the child; and
- (c) the assessment, treatment or services to be obtained by the child or the child's parent,

but an order shall not contain conditions with respect to the type or the geographical location of the placement for the child.

(6) Where a judge makes an order for continuous custody under paragraph (2)(d),

- (a) the order shall not contain conditions; and
- (b) the manager has custody of the child and has all the rights and responsibilities of a parent for the child's care and future planning.

(7) Where the judge finds that the child is not in need of protective intervention, the judge shall so declare and shall make an order that the child remain with or be returned to the parent from whom the child was removed and the order shall not contain conditions.

[2010 cC-12.2 s32](#)

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Time limits for temporary custody orders

33. (1) Where a judge grants an order for temporary custody under paragraph 32 (2)(b) or (c), the term of the order shall not exceed

- (a) 6 months for a first order;

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- (b) 3 months for a second order where the child who is the subject of the order is under 6 years of age when that order is made; and
- (c) 6 months for a second order where the child who is the subject of the order is 6 years of age or over when that order is made

with a maximum of 2 orders in total during the child's life.

- (2) Notwithstanding subsection (1), a third order may be granted where
 - (a) there are exceptional circumstances that in the opinion of the judge warrant exceeding the lifetime maximum of 2 orders; and
 - (b) the parent has demonstrated that he or she may reasonably be expected to resume the custody of the child within a reasonable period,

but the term of a third order shall not exceed

- (c) 3 months where the child is under 6 years of age when that order is made; or
- (d) 6 months where the child is 6 years of age or over when that order is made.

[2010 cC-12.2 s33](#)

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Adjournment

34. (1) A judge may adjourn a proceeding under this Act one or more times, for a total period of up to 3 months, to allow

- (a) a judicial case conference, family group conference, mediation or another form of alternate dispute resolution to proceed; or
- (b) an assessment to be completed, where that assessment is considered necessary by a judge, manager or social worker.

(2) Where a proceeding is adjourned under subsection (1) a time limit applicable to the proceeding is suspended.

(3) Where, as a result of a family group conference or mediation, a written agreement is made, a manager or social worker shall file the agreement with the court.

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35. (1) Where all of the time limits contained in section 33 have expired, a judge shall order that the child

**When
time
limits
expire**

- (a) be placed in the continuous custody of a manager;
- (b) be placed in the custody of a person other than a parent from whom the child was removed with the consent of that person; or

(c) be returned to the parent from whom the child was removed.

(2) An order made under paragraph (1)(a) or (c) shall not contain conditions.

(3) An order made under paragraph (1)(b) may contain conditions that apply to the person with whom the child is placed but shall not contain conditions that apply to the manager, a social worker or the department.

[2010 cC-12.2 s35](#)

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Subsequent order

36. (1) Before an order for supervision or an order for temporary custody expires, a manager or social worker may file an application with the court for another order under subsection 32 (2).

(2) The managers or social workers plan for the child shall be attached to an application under subsection (1).

(3) Notice of the time and place of a hearing with respect to an application under subsection (1) shall be served not later than 10 days before the hearing on

(a) a parent of the child; and

(b) the child, where the child is 12 years of age or over.

(4) At least 3 days before the date set for a hearing, persons receiving notice may respond to the managers or social workers plan for the child by filing an alternate plan with the court and providing a copy to the manager or social worker.

[2010 cC-12.2 s36](#)

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Bridging provision

37. Where a child is under the supervision of a manager under an order for supervision, or is in the custody of a manager or another person under an order for temporary custody, and an application for another order is filed but not heard before the expiration of the order for supervision or order for temporary custody, the child shall remain under the supervision of a manager under the order for supervision, or in the custody of a manager or other person to whom custody was granted under the order for temporary custody, until the application is heard and decided.

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Effect of temporary custody order

38. Where an order for temporary custody is made under paragraph 32 (2)(c)

(a) the manager has custody of the child for the specified period and the manager or a social worker has the right to make all decisions regarding the child during the specified period;

(b) the manager or a social worker may consent to necessary medical treatment for the child as recommended by a qualified health practitioner, where the child's parent is unavailable or refuses to consent to the treatment; and

(c) the manager shall not consent to an adoption of the child under the *Adoption Act, 2013* without the consent of the parent from whom the child was removed.

[2010 cC-12.2 s38; 2013 cA-3.1 s85](#)

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Effect of continuous custody order

39. (1) Where an order for continuous custody is made under paragraph 32 (2)(d),

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- (a) the manager becomes the sole custodian of the child and has the right to make all decisions regarding the child;
- (b) the manager or a social worker may consent to the provision of medical treatment for the child; and
- (c) the manager may consent to the adoption of the child under the *Adoption Act, 2013*.

(2) An order for continuous custody of a child does not affect the child's rights respecting inheritance or succession to property.

(3) At least 30 days before consenting to the adoption of the child under the *Adoption Act, 2013*, the manager or a social worker shall inform a person who, under subsection 31 (3) or subsection 32 (4) or (5), has been permitted contact with the child, of the manager's intention to consent to the adoption.

(4) An application for custody of or access to a child under the *Children's Law Act* shall not be made with respect to a child who is the subject of a continuous custody order made under this Act.

[2010 cC-12.2 s39; 2013 cA-3.1 s85](#)

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Financial responsibility

40. (1) Where a child is in the temporary or continuous custody of a manager, upon application by a manager or social worker, a judge may order that the obligation of the parents to provide support to the child shall continue subject to Part III of the *Family Law Act*.

(2) An order under subsection (1) shall be for the benefit of the Crown or some other person on the conditions and for the period the judge considers appropriate.

[2010 cC-12.2 s40](#)

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When continuous custody order ceases to have effect

41. (1) An order for continuous custody ceases to have effect when

- (a) the youth reaches 18 years of age;
- (b) the youth marries;
- (c) custody of the child or youth is transferred to another person, other than to another manager under section 43 ;
- (d) the youth makes a written request to the manager to have the order set aside; or
- (e) the court rescinds the order.

(2) Notwithstanding paragraph (1)(d), an order for continuous custody does not cease to have effect where the manager determines that the youth lacks the mental capacity to understand and appreciate the consequences of the request and the manager advises the youth that the order for continuous custody shall remain in place.

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Rescinding continuous custody order

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42. (1) With the leave of a judge, and where

- (a) the circumstances have changed significantly since the time an order for continuous custody was made; and
- (b) the child or youth has not been placed for adoption,

a party to a hearing at which the order was made may file an application with the court for the rescission of the order.

(2) Where a judge grants leave under subsection (1), notice of an application for a hearing shall be served not later than 10 days before the hearing on

- (a) the manager concerned;
- (b) a parent of the child;
- (c) a child, where the child is 12 years of age or over; and
- (d) another party to the continuous custody application.

(3) The judge may grant an order to rescind an order for continuous custody where he or she believes it is in the best interests of the child to do so.

[2010 cC-12.2 s42](#)

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Transfer of care, supervision or custody between managers

43. (1) A manager who has care, supervision or custody of a child or youth may transfer care, supervision or custody to another manager.

(2) Where the care, supervision or custody of a child or youth is transferred from one manager to another manager,

- (a) the other manager has care, supervision or custody of the child or youth with the same rights and responsibilities as the manager who made the transfer; and
- (b) the manager who made the transfer ceases to have care, supervision or custody of the child or youth.

(3) The transfer of care, supervision or custody is effective upon the filing of an amended order with the court which granted the original order.

[2010 cC-12.2 s43](#)

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Child returned at any time

44. A child may be returned to the parent from whom the child was removed where

- (a) the circumstances have changed so that the child in the opinion of a manager or social worker is no longer in need of protective intervention; or
- (b) the parent enters into a written agreement that is considered by a manager or social worker to be adequate to protect the child.

[2010 cC-12.2 s44](#)

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Child returned within 72 hours

45. Where a child is returned to the parent from whom the child was removed within 72 hours of removal and an application has been filed with the court for a protective intervention hearing, a manager or social worker shall

- (a) file a notice of discontinuance with the court;
- (b) provide notice of the discontinuance to the persons who received notice of the application for a protective intervention hearing; and
- (c) file with the court and provide to a parent who received notice of the discontinuance, a written explanation of the change of circumstances referred to in paragraph 44 (a) or a copy of the agreement referred to in paragraph 44 (b).

[2010 cC-12.2 s45](#)

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Child returned after 72 hours

46. (1) Where a child is returned to the parent from whom the child was removed 72 hours or more after removal but before the protective intervention hearing, a manager or social worker shall

- (a) seek leave of a judge to withdraw the application for a protective intervention hearing;
- (b) provide notice of the intention to seek leave to withdraw the application to the persons who received notice of the application for a protective intervention hearing; and
- (c) file with the court, and provide to a parent who received notice, a written explanation of the circumstances referred to in paragraph 44 (a) or a copy of the agreement referred to in paragraph 44 (b).

(2) Where leave of a judge is sought under this section, the matter shall be heard no later than the date set for the protective intervention hearing and the judge may rescind an outstanding order made in relation to the child.

[2010 cC-12.2 s46](#)

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Child returned after protective intervention hearing

47. (1) Where a child is returned to the parent from whom the child was removed after a protective intervention hearing but before the expiration of an order for temporary custody made under section 32, a manager or social worker shall file an application with the court to rescind or vary an outstanding order made in relation to the child and shall

- (a) not later than 10 days before the date set for a hearing, provide notice of the application to
 - (i) a parent of the child, and
 - (ii) the child, where the child is 12 years of age or older; and
- (b) file with the court, and provide to a parent who received notice, a written explanation of the circumstances referred to in paragraph 44 (a) or a copy of the agreement referred to in paragraph 44 (b).

(2) Where an application is made under this section, the judge may rescind or vary an outstanding order made with respect to the child.

[2010 cC-12.2 s47](#)

**PART V
GENERAL COURT MATTERS**

[Back to Top](#)**Proceedings and evidence**

48. (1) A proceeding under this Act

- (a) is civil in nature;
- (b) may be as informal as a judge may allow; and
- (c) shall be held in private, unless otherwise ordered by the judge.

(2) In a proceeding under this Act, a judge may admit and act upon

- (a) the evidence, including hearsay, that the judge considers relevant and reliable in the circumstances;
- (b) an oral statement which has been video-taped;
- (c) a written statement;
- (d) a report the judge considers relevant, including a transcript, exhibit or finding in an earlier civil or criminal proceeding; and
- (e) evidence taken and a declaration made at a prior proceeding under this Act or under a similar statute.

[2010 cC-12.2 s48](#)[Back to Top](#)**Method of proceeding**

49. A proceeding under this Act may be conducted by means of teleconference, videoconference or other means of telecommunication.

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50. A manager or social worker may appear in court in respect of a matter arising under this Act.

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51. A person significant to a child may apply to be heard at a proceeding under this Act.

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52. A person shall not, with respect to a proceeding under this Act, publish or make public information that has the effect of identifying

- (a) a child who is a witness at or a participant in a proceeding or who is the subject of a proceeding;
- (b) the child's parent or foster parent; or
- (c) a member of the child's family.

[2010 cC-12.2 s52](#)

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Participation by child

53. Where a child who is the subject of a proceeding under this Act requests that his or her views be known at the proceeding, a judge shall

- (a) meet with the child with or without the other parties and their legal counsel;
- (b) permit the child to testify at the proceeding;
- (c) consider written material submitted by the child; or
- (d) allow the child to express his or her views in some other way.

[2010 cC-12.2 s53](#)

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Variation of notice requirements

54. A judge may

- (a) shorten the time period to serve a notice under this Act; or
- (b) dispense with a requirement to serve notice of a proceeding under this Act.

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Service of documents

55. (1) Where a manager, social worker or another person is required under this Act to serve a document, service shall be made by personally serving a copy of the original document on the person to be served.

(2) Where it is impractical to personally serve a document on a person, the document may be served in another manner permitted by the *Rules of the Supreme Court, 1986* or the rules of the Provincial Court.

(3) Personal service under subsection (1) may be proved by a written or oral statement under oath by the person who served the document.

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Disclosure to parties in court proceedings

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56. (1) A party to a proceeding under this Act shall disclose in a timely manner all the information relevant to the proceeding in his or her possession where requested to do so by another party to the proceeding.

(2) Information identifying a person who has made a complaint to a manager or social worker, or who provided information to a manager or social worker with respect to a child, shall not be disclosed unless the person who provided the information consents or a judge orders its disclosure.

(3) Subsection (2) does not apply to information identifying parties to a proceeding.

[2010 cC-12.2 s56](#)

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Confidentiality of information

57. A person shall not disclose, or be compelled to disclose, at a proceeding under this Act, information obtained in a formal process under section 13 or subsection 34 (1), except

- (a) with the consent of all persons who participated in the process;
- (b) to the extent necessary to make or implement a plan with respect to a child;
- (c) where the information is disclosed in an agreement filed with the court under subsection 34 (3); or
- (d) where the disclosure is necessary for a child's safety or is required under section 11 .

[2010 cC-12.2 s57](#)

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Court order with consent

58. (1) Where a parent consents to an order made under this Act, a judge shall be satisfied that

- (a) the opinion of the child has been considered; and
- (b) the parent consenting to the order has been informed that he or she may be represented by legal counsel and understands the nature and consequences of the consent.

(2) A consent by a parent under this Act is not an admission by the parent of a ground for protective intervention alleged by a manager or social worker.

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Consolidation of matters

59. Where a proceeding under this Act is taking place at the same time as custody of a child is being determined under another Act, a party may apply to have the 2 matters heard together, whether the different proceedings are heard by the Provincial Court or the Trial Division, but, if a matter relates to an application made under the *Divorce Act* (Canada), the combined matter shall only be heard by the Trial Division.

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Variation of order

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60. Where an order has been made under this Act, a judge may, upon application accompanied by evidence to the satisfaction of the judge that the circumstances relating to the child have changed since the original order was given, vary the order.

[2010 cC-12.2 s60](#)

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Effect of out of province order

61. Where an order has been made by a judge in another province of Canada under legislative provisions similar in effect to the provisions of this Act, the order has the same effect in this province as if it were an order made under this Act, unless the judge otherwise orders.

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PART VI PLACEMENT OF CHILDREN AND YOUTH

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Placement considerations

62. (1) The placement of a child or youth shall be conducted in a manner which is least disruptive to the child or youth and recognizes the importance of placement with siblings and contact with his or her family or other persons who are significant to the child or youth.

(2) A manager or social worker shall first consider placement of a child or youth with the child or youth's family or a person with whom the child or youth has a significant relationship.

(3) Where a manager or social worker is satisfied that a child or youth cannot be placed in accordance with subsection (2), the child or youth shall be placed with a foster parent or in a residential placement.

[2010 cC-12.2 s62](#)

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Agreement for services

63. (1) A manager or social worker may make an agreement for services, including financial support, with a person with whom a child or youth has been placed for care.

(2) Where an agreement is made under subsection (1) with a non-custodial parent, the non-custodial parent is not entitled to financial support.

(3) A person who provides care under this Part shall be approved by a manager or social worker.

[2010 cC-12.2 s63](#)

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Information re child or youth's care

64. (1) A manager or social worker shall provide information relevant to the care of a child or youth to a person with whom a child or youth has been placed for care.

(2) A manager or social worker shall provide relevant information concerning the foster parent or residential placement of a child or youth to the child or youth and the parent of the child or youth, but may withhold information where, in the opinion of the manager or social worker, doing so is in the best interests of the child or youth.

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[2010 cC-12.2 s64](#)[Back to Top](#)**Change of placement of child or youth without notice**

65. A manager or social worker may remove a child or youth from a residential placement or from the care of a foster parent with whom the manager or social worker has placed the child or youth, without notice, where necessary for the safety of the child or youth.

[2010 cC-12.2 s65](#)[Back to Top](#)**Counselling for child or youth after removal**

66. A child or youth who is removed from a residential placement or from the care of a person with whom a manager or social worker has placed the child or youth shall be entitled to counselling.

[2010 cC-12.2 s66](#)**PART VII
YOUTH SERVICES AGREEMENT**[Back to Top](#)**Youth services agreement**

67. (1) A manager or social worker may enter into a written agreement for services with a youth who, in the opinion of the manager or social worker, is in need of protective intervention.

(2) Before an agreement under this section is signed, the manager or social worker shall ensure that the effect of the agreement is explained to the youth.

(3) An agreement under this section may be made, even if the youth is not or has not been in the care or custody of a manager, but shall not continue beyond the youth's completion of the high school program or an equivalent program, or the youth's nineteenth birthday, whichever comes first.

(4) Notwithstanding subsection (3), where the youth has been in the care or custody of a manager on his or her sixteenth birthday, the agreement may be extended until the age of 21, provided that the person is attending an educational or rehabilitation program.

(5) Where a youth is provided with services, the cost of those services may be recovered and an action or other proceeding for the recovery of the cost may be commenced.

[2010 cC-12.2 s67](#)[Back to Top](#)**Effect of agreement**

68. Where a manager or social worker enters into an agreement with a youth under this Act, the agreement is binding on the youth and enforceable against him or her notwithstanding he or she is less than 19 years of age.

[2010 cC-12.2 s68](#)**PART VIII
CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**[Back to Top](#)

Access to Information and Protection of Privacy Act, 2015 does not apply

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69. Notwithstanding the *Access to Information and Protection of Privacy Act, 2015*, the use of, disclosure of and access to information in records pertaining to the care and protection of children and youth obtained under this Act, regardless of where the information or records are located, shall be governed by this Act.

[2015 cA-1.2 s123](#)

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Definition

70. In this Part, "information" means personal information obtained under this Act or a predecessor Act which is held in government records by, or is in the custody of or under the control of, the department, and includes information that is written, photographed, recorded or stored in any manner.

[2010 cC-12.2 s70](#)

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Persons who may obtain information

71. (1) A person over 12 years of age has the right to and shall, on request, be given information relating to himself or herself.

(2) A person over 12 years of age who is, or has been, in the care or custody of a manager has the right to and shall, on request, be given information relating to himself or herself including

- (a) information relating to his or her birth family that the minister determines is appropriate to release;
- (b) the reasons why he or she was removed from his or her parent and information relating to the continuation of a court order relating to him or her; and
- (c) the identity of former foster parents or the name of a former residential placement.

(3) A person who has custody of a child has the right to and shall, on request, be given information about himself or herself and the child.

(4) A person who had custody of a child has the right to and shall, on request, be given information about himself or herself and the child, but only for the period of time that the person had custody.

(5) Where information excepted from disclosure under section 72 can reasonably be severed, a person who is otherwise permitted to receive information under this section shall be given the remainder of the information.

[2010 cC-12.2 s71](#)

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Information not to be disclosed

72. Notwithstanding section 71,

- (a) the provincial director or a manager shall not disclose information where
 - (i) the disclosure is prohibited under the *Adoption Act, 2013*,
 - (ii) there are reasonable grounds to believe that the disclosure might result in physical or emotional harm to that person or to another person,

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- (iii) the disclosure would identify a person who made a report under section 11 , or
 - (iv) the disclosure could reasonably be expected to jeopardize an investigation under this Act or a criminal investigation; and
- (b) the provincial director or a manager may refuse to disclose information that is a transitory record as defined in the *Management of Information Act* .

[2010 cC-12.2 s72; 2013 cA-3.1 s85](#)

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Disclosure without consent

73. The provincial director or a manager may, without the consent of another person, authorize the disclosure of information obtained under this Act if the disclosure is

- (a) necessary to ensure the safety, health or well-being of a child;
- (b) provided to persons with whom a child or youth has been placed for care;
- (c) necessary for the administration of this Act; or
- (d) for research or evaluation purposes and the person to whom that information is disclosed has signed an agreement to comply with conditions set by the minister.

[2010 cC-12.2 s73](#)

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Right to information and information sharing

74. (1) A manager or social worker has the right to information with respect to a child or a youth that is in the custody of or under the control of a public body, as defined in the *Access to Information and Protection of Privacy Act, 2015*, or a person and that is necessary to enable the manager or social worker to exercise his or her powers or perform his or her duties or functions under this Act.

(2) A public body or a person referred to in subsection (1) that has custody or control of information to which a manager or social worker is entitled under subsection (1) shall disclose that information to the manager or social worker.

(3) Notwithstanding subsections (1) and (2), information that is subject to solicitor-client privilege is not required to be disclosed unless the information is required to be disclosed under section 11 .

(4) Notwithstanding subsections (1) and (2), a peace officer may refuse to disclose information where

- (a) the disclosure would be an offence under an Act of Parliament; or
- (b) the disclosure would be harmful to law enforcement or could reasonably be expected to interfere with public safety, unless the information is required to be disclosed under section 11 .

(5) The minister may enter into an agreement with the Nunatsiavut Government with respect to the access to or disclosure of information under this Act.

[2010 cC-12.2 s74; 2015 cA-1.2 s123](#)

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Internal review

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75. (1) The minister shall appoint a person to perform an internal review of a matter referred to in subsection (2).

(2) A person who requests information under section 71 and who is not given the information requested may apply to a person appointed under subsection (1) for an internal review of the refusal to give that information.

(3) An application under subsection (2) shall be made in writing no later than 30 days after the person is notified that he or she will not be given the information requested.

(4) An internal review shall be performed within 30 days of the receipt of the written application, and the results of an internal review shall be provided to the person who requested the review, in writing, within 5 business days of being decided.

(5) An appeal lies from the decision of the person conducting the internal review to a judge of the Trial Division.

[2010 cC-12.2 s75](#)

PART IX OFFENCES AGAINST CHILDREN

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General offence

76. A person who by commission or omission wilfully contributes to a child being a child in need of protective intervention is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment.

[2010 cC-12.2 s76](#)

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Contributing to an offence

77. A person who sells, gives or causes to come into the possession of a child

- (a) a drug which is or, in quantity, may be, harmful to the child;
- (b) an obscene book or other printed material, copies or written obscene matter;
- (c) an obscene picture, photograph, or pornographic material, model or pornographic material available through electronic means; or
- (d) another obscene object,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 6 months, or to both a fine and imprisonment.

[2010 cC-12.2 s77](#)

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Offence to remove a child or youth from manager

78. A person shall not remove or attempt to remove a child or youth, or entice a child or youth to leave, the care or custody of a manager, or harbour a child who has left the care or custody of the manager.

[2010 cC-12.2 s78](#)

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[Back to Top](#)**Liability for an offence**

79. Unless specifically stated otherwise, a person who

- (a) fails to comply with or otherwise contravenes a provision of this Act or the regulations for which a penalty has not been specifically provided; or
- (b) fails to comply with an order made under section 17 or 18 of this Act,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 months or to both a fine and imprisonment.

[2010 cC-12.2 s79](#)**PART X
ACCOUNTABILITY PROVISIONS**[Back to Top](#)**Statutory review**

80. (1) The minister shall, every 5 years, conduct a review of this Act and the principles on which it is based and consider the areas which may be improved.

- (2) A review conducted under subsection (1) shall include public consultations.

[2010 cC-12.2 s80](#)[Back to Top](#)**Monitoring plans for children in care or custody**

81. There shall be a process to regularly monitor plans for children who are under the supervision or in the custody of a manager.

[2010 cC-12.2 s81](#)[Back to Top](#)**Appeals**

82. An appeal lies from a decision of a judge under this Act to

- (a) the Trial Division where the order, decision or judgment under appeal was made by a Provincial Court judge; or
- (b) the Court of Appeal where the order, decision or judgment under appeal was made by a judge of the Trial Division,

and the provisions of the *Judicature Act* and the applicable rules of court shall govern the proceedings on the appeal.

[2010 cC-12.2 s82](#)**PART XI
REGULATIONS**[Back to Top](#)**Regulations**

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83. The minister may make regulations to give effect to the purpose of this Act.

[2010 cC-12.2 s83](#)

**PART XII
TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS,
REPEAL AND COMMENCEMENT**

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Transitional provisions

84. (1) Where a director appointed under the *Child, Youth and Family Services Act* has entered into an agreement, the agreement, on the coming into force of this Act, shall be considered to have been entered into by the manager having responsibility under this Act.

(2) Where a child or youth was under the supervision or in the care or custody of a director appointed under the *Child, Youth and Family Services Act* under an order made under the *Child, Youth and Family Services Act*, the manager having responsibility for the area in which the child or youth ordinarily resides shall on the coming into force of this Act have supervision, care or custody of that child or youth.

(3) An order made and a proceeding commenced under the *Child, Youth and Family Services Act* shall, on the coming into force of this Act, be considered to be an order made and a proceeding commenced under this Act.

[2010 cC-12.2 s84](#)

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Consequential amendments

85. (1) Paragraph 2(o.1) of the *Adoption Act* is repealed.

(2) Section 2 of the *Adoption Act* is amended by adding immediately after paragraph (p) the following:

(p.1) "manager" means a manager appointed under the *Children and Youth Care and Protection Act* ;

(3) Subsection 10(3) of the *Adoption Act* is repealed and the following substituted:

(3) Where a child is in the continuous custody of a manager, the only consents required for the adoption of that child are those of the manager, and of the child, where that child is 12 years of age or older.

(4) The *Adoption Act* is amended by deleting the words "director of child, youth and family services" wherever they occur and substituting the word "manager".

(5) Subparagraphs 2(d)(iv) and (v) of the *Child Care Services Act* are repealed and the following substituted:

(iv) the child's foster parent as defined in the *Children and Youth Care and Protection Act*, or

(v) a person employed by the parent, guardian, relative or foster parent referred to in subparagraphs (i) to (iv) to care for the child in the child's home;

(6) Section 27 of the *Children's Law Act* is repealed and the following substituted:

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Application to court

27. (1) A parent of a child, or other party, as specified in paragraphs 69(4)(b) to (d), may apply to a court for an order respecting custody of or access to the child or determining an aspect of the incidents of custody of the child.

(2) Notwithstanding subsection (1), an application respecting custody of or access to a child may not be made under this Act where the child is the subject of an order for continuous custody under the *Children and Youth Care and Protection Act*.

(7) Subsection 40(1) of the *Children's Law Act* is amended by deleting the words "a director of child, youth and family services under the *Child, Youth and Family Services Act* " and substituting the words "a manager appointed under the *Children and Youth Care and Protection Act*".

(8) Subsection 40(2) of the *Children's Law Act* is repealed and the following substituted:

(2) A court shall not direct a person or a manager appointed under the *Children and Youth Care and Protection Act* to supervise custody or access as mentioned in subsection (1) unless the person or manager has consented to act as supervisor.

(9) Subsection 40(3) of the *Children's Law Act* is amended by deleting the words "A director of child, youth and family services under the *Child, Youth and Family Services Act* " and substituting the words "A manager appointed under the *Children and Youth Care and Protection Act*".

(10) Subsection 69(1) of the *Family Law Act* is amended by deleting the words "a director of child, youth and family services under the *Child, Youth and Family Services Act* " and substituting the words "a manager appointed under the *Children and Youth Care and Protection Act*".

(11) Paragraph 4(2)(f) of the *Public Trustee Act, 2009* is repealed and the following substituted:

(f) act as guardian of the estate of a minor who is in the continuous custody of a manager under the *Children and Youth Care and Protection Act* ;

(12) Paragraph 5(e) of the *Access to Information Regulations* is repealed and the following substituted:

(e) sections 69 to 74 of the *Children and Youth Care and Protection Act* ;

[2010 cC-12.2 s85](#)

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Repeal

86. (1) The *Child, Youth and Family Services Act* is repealed.

(2) Sections 9 to 15 of *An Act to Amend the Adoption Act, the Child Care Services Act, the Child, Youth and Family Services Act and the Regional Health Authorities Regulations* , SNL2009 c26, are repealed.

[2010 cC-12.2 s86](#)

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Commencement

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87. This Act or a Part, section or subsection, paragraph or subparagraph of this Act comes into force on a day or days to be proclaimed by the Lieutenant-Governor in Council. (In force - Jun. 30/11)

[2010 cC-12.2 s87](#)

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