



Reporting Child Abuse and Neglect: It's Your Duty

Your responsibilities under
the *Child, Youth and Family
Services Act, 2017*

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The *Child, Youth and Family Services Act, 2017* (CYFSA) recognizes that each of us has a responsibility for the welfare of children.

Introduction

We all share a responsibility to protect children from harm. This includes situations where children are abused or neglected in their own homes. Ontario's *Child, Youth and Family Services Act, 2017* (CYFSA) provides for protection for these children.

Section 125 of the CYFSA states that the public, including professionals who work with children, must promptly report any suspicions that a child is, or may be, in need of protection to a children's aid society (society). The CYFSA defines the phrase "child in need of protection" and explains what must be reported to a society. It includes physical, sexual and emotional abuse, neglect, and risk of harm.

This brochure explains the "duty to report" section of the CYFSA and answers common questions about your reporting responsibilities. It also includes relevant portions of Section 125 for your reference. It does not provide specific legal advice. Please consult a lawyer or a society about any specific situation.

Who is a "child in need of protection"?

The CYFSA defines a child in need of protection and clearly specifies how you can identify these children in Section 125 (1). (See pages 8 to 11). [CYFSA s.125 (1)] This includes a child who is or may be suffering from abuse or neglect.

Who is responsible for reporting a child in need of protection?

Anyone who has reasonable grounds to suspect that a child is, or may be, in need of protection must promptly report the suspicion and the information upon which it is based to a society. Section 125 (1) describes the specific circumstances that must be reported (See pages 8 to 11). [CYFSA s.125 (1)]

What are "reasonable grounds" to suspect child abuse or neglect?

It is not necessary for you to be certain a child is, or may be, in need of protection to make a report to a society. "Reasonable grounds" refers to the information that an average person, using normal and honest judgment, would need in order to decide to report.

What is the age of the children to whom the "duty to report" applies?

The duty to report applies to any child who is, or appears to be, under the age of 16 years.

On January 1, 2018, Ontario raised the age of protection from 16 to 18. A professional, or member of the public, who is concerned that a 16- or 17- year-old is, or may be, in need of protection may, but is not required to, make a report to a society and the society is required to assess the reported information. [CYFSA, s. 125(4)]

What does an “ongoing duty to report” child abuse or neglect mean?

Even if you know a report has already been made about a child who is under 16, you must make a further report to the society if there are additional reasonable grounds to suspect that the child is, or may be, in need of protection. [CYFSA s.125 (2)]

Can I rely on someone else to report?

No. You must report directly to a society. You must not rely on anyone else to report on your behalf. [CYFSA s.125 (3)]

Do professionals and officials have any special responsibilities to report?

Professionals and officials have the same duty as the rest of the public to report their suspicion that a child is, or may be, in need of protection. However, the CYFSA recognizes that people working closely with children have a special awareness of the signs of child abuse and neglect, and a particular responsibility to report their suspicions. Any professional or official who fails to report a suspicion is liable on conviction to a fine of up to \$5,000, if they obtained the information in the course of their professional or official duties. Reporting is not mandatory in the case of 16- and 17- year-olds and the offence/ penalty provisions don't apply. [CYFSA s.125 (5), (8), (9)]

Who does the CYFSA consider a person who performs professional or official duties?

- health care professionals, including physicians, nurses, dentists, pharmacists and psychologists
- teachers and school principals
- social workers and family counsellors
- religious officials
- operators or employees of a child care centre or home child care agency
- youth and recreation workers (not volunteers)
- peace officers and coroners
- child and youth service providers and employees of these service providers
- any other person who performs professional or official duties with respect to a child

In addition to the professionals and officials outlined above, directors, officers or employees of a corporation also have a legislated duty to report if they have knowledge that a child who is under 16 is, or may be, in need of protection. [CYFSA s. 125 (8)]

These are examples only. If you are unsure whether you fall into any of these categories, ask your local society, or the legal counsel for your professional association, regulatory body, or organization. [CYFSA s.125 (6)]

What about professional confidentiality?

A professional must report that a child is, or may be, in need of protection, even when the information is otherwise confidential or privileged. This duty overrides any other provincial statutes, including the Personal Health Information Protection Act, 2004, and specifically overrides any provisions that would otherwise prohibit someone from making a disclosure. Only lawyers may not divulge "privileged" information about their clients. [CYFSA s.125 (10), (11)]

Will I be protected from liability if I make a report?

The CYFSA provides that no action for making the report will be instituted against a person who makes a report unless the person acts maliciously or without reasonable grounds for the suspicion. [CYFSA s.125 (10)]

What happens when I call a society?

The society will investigate the information. The society has the responsibility and authority to investigate allegations and to protect children. The society may involve the police and other community agencies. All societies provide emergency service 24 hours a day, seven days a week.

Consistent with the best interests, protection and well-being of children, services from a society will take the following into consideration:

- respect for a child's need for continuity of care and for stable relationships within a family and cultural environment;
- the physical, emotional, spiritual, mental and developmental needs and differences among children;
- a child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression;
- a child's cultural and linguistic needs;
- the goal of achieving permanent plans for children in accordance with their best interests; and,
- the participation of a child, the child's parents and relatives and the members of the child's extended family and community, where appropriate. [CYFSA s.1 (2)]

How do I contact a society or get more information?

You can find your local society in your local telephone listings or, where available, by dialing 411. In some communities, the society is known as "family and children's services" or "child and family services".

You can also find information about all of Ontario's societies at oacas.org, the website of the Ontario Association of Children's Aid Societies.

Anyone who has a reasonable suspicion that a child is, or may be, in need of protection must contact a society immediately.

If you think the matter is urgent and you cannot reach the society, call your local police.

Section 125 (1) of the *Child, Youth and Family Services Act, 2017*

Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following, the person shall immediately report the suspicion and the information on which it is based to a society:

1. The child has suffered physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
 - i. failure to adequately care for, provide for, supervise or protect the child, or
 - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
2. There is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
 - i. failure to adequately care for, provide for, supervise or protect the child, or
 - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
3. The child has been sexually abused or sexually exploited by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual abuse or sexual exploitation and fails to protect the child.
4. There is a risk that the child is likely to be sexually abused or sexually exploited as described in paragraph 3.
- 4.1 The child has been sexually exploited as a result of being subjected to child

sex trafficking.

- 4.2 There is a risk that the child is likely to be sexually exploited as a result of being subjected to child sex trafficking.
5. The child requires treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, the treatment on the child's behalf.
6. The child has suffered emotional harm, demonstrated by serious,
 - i. anxiety,
 - ii. depression,
 - iii. withdrawal,
 - iv. self-destructive or aggressive behaviour, or
 - v. delayed development,and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
7. The child has suffered emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the harm.

8. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
9. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to prevent the harm.
10. The child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.
11. The child's parent has died or is unavailable to exercise custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody.
12. The child is younger than 12 and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment.
13. The child is younger than 12 and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately.

If someone has reasonable grounds to suspect that a child under 16 is, or may be, in need of protection, they must make a report directly to a society. A report may be made regarding 16- and 17- year-olds if you are concerned that they are, or may be, in need of protection.