

REPORTING OF CHILD PROTECTION AND CHILD ABUSE HANDBOOK
<http://www.pacca.mb.ca/products.html>

Laws, Principals and Values Guiding Intervention in Child Abuse

Guiding Legislation

The Child and Family Services Act (The CFS act) is the legislative authority for child welfare in Manitoba. Its fundamental guiding principle is that the safety and well-being of children are paramount. The intent of the act is to ensure that appropriate steps are taken to protect children who may be in need of protection. For more information, go to www.gov.mb.ca/laws/statutes/ccsm/c080e.php

The Criminal Code of Canada (the code) is also critical in ensuring the safety and well-being of children. The code provides police and law enforcement officers, as well as the criminal justice system, with the legal authority to enforce criminal law as it applies to the protection of all children, especially victims of child abuse. The code provides the basis for criminal offences, investigative procedures, the collection of evidence and prosecution and sanctions for offenders. For more information, go to www.laws.justice.gc.ca/en/C-46/

Key Principles of Child Protection and Child Abuse

The key principles underlying and guiding all services to children and families in Manitoba are detailed in the Declaration of Principles under the CFS act.

Declaration of Principles (The Child and Family Services Act)

1. The safety, security and well-being of children and their best interests are fundamental responsibilities of society.
2. The family is the basic unit of society and its well-being should be supported and preserved.
3. The family is the basic source of care, nurture and acculturation of children and parents have the primary responsibility to ensure the well-being of their children.
4. Families and children have the right to the least interference with their affairs to the extent compatible with the best interests of children and the responsibilities of society.
5. Children have a right to a continuous family environment in which they can flourish.
6. Families and children are entitled to be informed of their rights and to participate in the decisions affecting those rights.
7. Families are entitled to receive preventive and supportive services directed to preserving the family unit.

8. Families are entitled to services which represent their cultural and linguistic heritage.
9. Decisions to place children should be based on the best interests of the child and not on the basis of the family's financial status.
10. Communities have a responsibility to promote the best interests of their children and families and have the right to participate in services to their families and children.
11. Indian bands are entitled to the provision of child and family services in a manner that respects their unique status as Aboriginal people.

Parents and guardians have a fundamental right and responsibility to raise their children as they see appropriate and society presumes that parents will act in their children's best interests. **When caregivers are unable and/or unwilling to protect** their children from harm and meet their basic needs in terms of safety, security and well-being, society has a responsibility to intervene to protect the health and welfare of each child.

Implicit in these principles is the **importance of accountability** for the provision of services to prevent child abuse and protect children. Service providers, especially those who are mandated to protect children, are accountable for what they do and/or fail to do.

Values

The Key principles relating to child protection shape the basic values underlying the community and professional responses to child abuse and neglect.

- **The need for prevention programs** to strengthen families and reduce the likelihood of child abuse. While there is no single known cause of child abuse, researchers have noted that some potential factors contributing to child abuse may be:
 - teen parenting
 - lack of knowledge of childhood development
 - unrealistic expectations
 - unemployment
 - parents who were abused as children
 - poor housing conditions
 - sudden changes in family circumstances
 - domestic and community violence
 - substance abuse
 - mental illness
 - poor family and neighbourhood supports
- **No one agency, organization or profession has all the knowledge, skills, or resources to handle child abuse and neglect services alone.** The responsibility to protect children must be shared among service providers and the community-at-large. While child and family service agencies, law enforcement

agencies and the courts have primary mandates and legal responsibilities to respond to reported cases of child abuse, other service providers working with children and families have key roles to play. A community-based and interdisciplinary response is critical to addressing this complex social problem.

- **Most parents want to be good parents** and have the strength, skills and capacity, when properly supported, to care for their children and keep them safe.
- **When parents (or caregivers) are unable or unwilling to fulfill their responsibilities** to provide adequate care, custody and control to keep children safe and secure, child and family services agencies have the mandate and responsibility to intervene. Reasonable efforts must be taken to keep children safe, and wherever possible, to keep them with their immediate and/or extended family.
- **All service providers, agencies and communities must demonstrate a basic respect for the innate worth and dignity of the person** when helping families protect children. Child protection and social services should be child-centered and family-focused, mobilizing the inner strengths of the family and the external resources of the community.
- **First Nations and Indian bands along with Métis and Inuit communities are entitled to the provision of child and family services in a manner that respects their unique status as First Nations, Métis and Inuit people.**
- **Services should be designed to meet the individual needs of each family and be sensitive to their cultural beliefs and customs within the context of Canadian and Manitoba laws.**

If you think a child under 18 years of age is being abused, you have the legal duty to report your concern to your local child and family services (CFS) agency.

For a list of CFS designated intake agencies, go to www.manitoba.ca/intakeagencies or page 51 of the Reporting of Child Protection and Child Abuse Handbook <http://www.pacca.mb.ca/products.html>

If you do not know the number of your local CFS agency, or if it is after working hours, you can call the province –wide intake and emergency, after-hours child and family services line toll free at **1-866-345-9241** .

If you think the child is in immediate danger, call 911 or your local police station.

***Remember:
A child is anyone under
18 years of age.***

CHILD ABUSE – LEGAL DEFINITIONS AND RECOGNIZED FORMS OF CHILD ABUSE

Child Abuse – Legal Definitions

To respond effectively to a child in need of protection, **service providers should have a basic understanding of the legal definitions and appropriate action to ensure the safety and well-being of children.** Statutory definitions determine minimum standards for the care and protection of children. They serve as important guidelines for service providers to determine the nature of the situation and the circumstances under which an intervention is required.

Under section 17(1) of *The Child and Family Services Act*, a child is in need of protection, where “the life, health or emotional well-being of the child is endangered by the act or omission of a person.” Subsection 17(2) of the act outlines specific examples where a child ought to be considered in need of protection. The following list can help service providers identify circumstances in which children are in need of protection. Any one or a combination of these situations can lead to the preliminary determination that a child is or may be at risk.

Illustrations of a child in need of protection

A child is in need of protection when she/he:

- (a) is without adequate care, supervision or control
- (b) is in the care, custody, control, or charge of a person
 - (i) who is unable or unwilling to provide adequate care, supervision or control of the child, or
 - (ii) whose conduct endangers or might endanger the life, health or emotional well-being of the child, or
 - (iii) who neglects or refuses to provide or obtain proper medical or other remedial care or treatment necessary for the health or well-being of the child or who refuses to permit such care or treatment to be provided to the child when the care or treatment is recommended by a duly qualified medical practitioner
- (c) is abused or is in danger of being abused, including where the child is likely to suffer harm or injury due to child pornography
- (d) is beyond the control of a person who has the care, custody, control or charge of the child
- (e) is likely to suffer harm or injury due to the behaviour, condition, domestic environment or associations of the child or of a person having care, custody, control or charge of the child
- (f) is subjected to aggression or sexual harassment that endangers the life, health, or emotional well-being of the child
- (g) is, being under the age of 12 years, left unattended and without reasonable provision being made for the supervision and safety of the child; or
- (h) is the subject, or is about to become the subject of an unlawful adoption under *The Adoption Act*, or of a sale under section 84.

Under section one of *The Child and Family Services Act*, **abuse** means an act or omission by any person where the act or omission results in:

- (a) physical injury to the child
- (b) emotional disability of a permanent nature in the child or is likely to result in such a disability, or
- (c) sexual exploitation of the child with or without the child's consent.

The definition of child abuse has been expanded **to include any person and is not limited to parents and/or persons having care, custody, control or charge of children**. It is the primary mandate and responsibility of CFS agencies to investigate reports within the family or the extended family system. Cases of child abuse involving third parties such as strangers, however, are investigated only by the police unless there are circumstances surrounding the alleged incident(s) that generate protection concerns.

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The Three Recognized Forms of Child Abuse

Child abuse is a serious problem that knows no social, economic, religious, cultural, racial or ethnic barriers. Knowing about the various forms of child abuse is critical to ensuring the safety and well-being of children. The CFS act points to three recognized forms of child abuse:

- physical abuse
- emotional abuse defined as an emotional disability of a permanent nature
- sexual abuse including sexual exploitation

Physical Abuse

Physical abuse can be a **deliberate or intentional assault or act** by a person that results in, or is likely to result in, physical injury or harm to a child. It can be the outcome of physical punishment, including spanking. The injury may be the result of a single incident or a pattern of episodes and can range in severity from soft tissue injury, bruising, burns, welts, or bite marks to major bone fractures, skull injuries and, in extreme situations, the death of the child.

An act of omission (ex: where there is a failure to act or intervene when a child is being abused) can also constitute a form of abuse, especially if the lack of action results in the child continuing to be abused or neglected. It is also important to note that any **physical punishment** which results, intentionally or unintentionally, in injury or tissue damage to a child is considered physical abuse and may result in a criminal charge.

Punishment resulting in an injury is reportable to a CFS agency. Increasingly, countries around the world are prohibiting physical punishment of children. Research clearly demonstrates that physical punishment is associated with an increased risk for negative outcomes, including increased aggression, antisocial behaviour, mental health issues and physical injury. Section 43 of *The Criminal Code of Canada* states that a parent is “justified in using force of correction...if the force does not exceed what is reasonable under the circumstances.” The Supreme Court of Canada has noted seven criteria to distinguish between reasonable and abusive corrective force with children. Physical punishment of children is deemed reasonable if:

- it is administered by a parent (teachers are not permitted to use corporal punishment)
- the child is between the ages of two and 12, inclusive
- the child is capable of learning from correction
- it constitutes minor corrective force of a transitory and trifling nature
- it does not involve the use of objects or blows or slaps to the head
- it is used for “educative or corrective purpose” and does not stem from a caregiver’s frustration, loss of temper, or abusive personality
- it is not degrading, inhuman, or harmful

Children exploited in the sex trade are not prostitutes or criminals. They are victims of abuse.

In Manitoba, foster parents or service providers working in residential care facilities are not allowed to inflict any form of physical punishment towards children in care.

Service providers can communicate to parents and guardians that physical punishment as a form of discipline is ineffective and associated with negative outcomes. They can also provide information on constructive ways of responding to parent-child conflict and help parents to understand and communicate with their children more effectively.

Sexual abuse, including sexual exploitation is when a child is used for the sexual gratification of another person **with or without the child’s consent**. Typically, most sexual abuse reports involve situations where a child is abused within the immediate or extended family system. However, a child may be sexually abused and exploited by others outside the family, including a known adult, peer or stranger. The perpetrator may be either the same or the opposite sex as the victim. Young children and children with disabilities are especially vulnerable to sexual abuse, as they may not have the language or knowledge to understand or tell others that they are being abused. Boys are as susceptible to sexual abuse as girls, but appear to be far more reluctant to disclose their situation. In addition, children living on the street are at high risk of experiencing sexual exploitation. Children exploited in the sex trade are not prostitutes or criminals. They are victims of abuse.

- Sexual abuse includes:
- touching or an invitation to touch for sexual purposes

- oral, anal or genital penile penetration or intercourse
- anal or genital digital or other forms of penetration
- genital contact or touching without penetration
- fondling of a child's breasts, buttocks, or other body parts
- indecent exposure or deliberate exposure of the child to sexual activity
- or material
- sexual acts involved in organized or ritual abuse
- any acts that are used for sexual gratification

Sexual exploitation is a form of sexual abuse that occurs when a child becomes engaged in sexual activities as a result of coercion or manipulation, in exchange for money, drugs, food, shelter or other considerations. Sexual exploitation can involve:

- performing sexual acts in exchange for the basic necessities of life (ex: survival sex)
- involvement in sexually explicit activity for entertainment
- involvement with escort or massage parlour services
- appearing in pornographic images

Child pornography constitutes a pervasive form of sexual exploitation. When children are involved in child pornography they continue to be further victimized since the pornographic representations (ex: photographs, films, videos) can be distributed through the Internet or cell phones. All children under 18 years of age must be protected from sexual exploitation and pornography. **In Manitoba, it is mandatory to report all forms of child pornography.**

Section 1 of *The Child and Family Services Act* defines child pornography as:

- (a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,
 - (i) that shows a child engaged in, or depicted as engaged in, explicit sexual activity, or
 - (ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ of a child or the anal region of a child,
- (b) any written material, visual representation or audio recording that advocates or counsels sexual activity with a child that would be an offence under The Criminal Code (Canada);
- (c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a child that would be an offence under The Criminal Code (Canada), or
- (d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a child that would be an offence under The Criminal Code (Canada).

For more information about prevention programs related to child abuse, visit the Kids In the Know Program offered by the Canadian Centre for Child Protection:

www.kidsintheknow.ca/app/en/

If you have come across an image of child pornography, you need to make an online report to www.cybertip.ca. If you know a child under 18 years of age who has been (or is) involved in child pornography or other forms of sexual exploitation, you have the legal duty to report the incident to your local child and family services (CFS) agency. If you think the child is in immediate danger, call 911 or your local police.

Age of Consent in Canada

The age of consent refers to the age at which a young person can legally consent to sexual activity. All sexual activity without consent, regardless of age, is a criminal offence. As stipulated in *The Criminal Code of Canada*, **the age of consent for sexual activity is 16 years**. This means, for example, that if a 55-year old adult became sexually engaged with a 15-year old, that adult would no longer have a defence that the teenager consented to that activity. The age of consent applies to all forms of sexual activity, ranging from sexual touching, to kissing, to sexual intercourse.

The age of consent is 18 years where the sexual activity exploits the young person

– when it involves prostitution, pornography or occurs in a relationship of authority, trust or dependence (ex: with a teacher, coach or baby sitter). Sexual activity can also be considered exploitative based on the nature and circumstances of the relationship, such as the young person's age, the age difference between the young person and their partner, how the relationship developed (quickly, secretly, over the Internet) and how the partner may have controlled or influenced the young person.

The Criminal Code provides a close-in-age or peer group exception to the age of consent. This exception permits 14 and 15 year olds to engage in sexual activity with a partner who is less than five years older than they are, and with whom there is no relationship of trust, authority or dependency or any other exploitation of the young person. If the partner is five years or older than the 14 or 15 year old, any sexual activity will be considered a criminal offence unless it occurs after they are married to each other. There is also a close-in-age exception for 12 and 13 year olds. This means that a 12 or 13 year old can consent to sexual activity with another young person who is less than two years older and with whom there is no relationship of trust, authority or dependency or other form of exploitation of the young person. The Criminal Code protects 16 and 17 year olds against sexual exploitation. As well, 16 and 17 year olds cannot consent to sexual activity that involves prostitution or pornography, or any form of sexual exploitation.

The Compliant Victim

Survivors of child sexual abuse often find it difficult to place the blame for their abuse where it really lies: on the shoulders of the perpetrator. The offender may be a person that the child loves, such as a parent or a family member. The offender may also be a person that the child's parent loves, such as a step-parent. The abuser may twist

aspects of the abuse so that the child is made to feel at fault or somehow complicit in the abuse. The child may be told that the abuse is their fault. The abuser may mask the abuse as punishment, entwine the abuse together with expressions of love and affection, or even manipulate the child to initiate incidents of abuse. A child cannot truly understand the power play and the control that the perpetrator has in these situations and will often take that self-blame and internalize it. This can lead to feelings of worthlessness, guilt, depression, self-hatred, inability to self-care and risky behaviours. Offenders have a special ability to identify and exploit children's vulnerabilities. For example, younger or compromised children are especially vulnerable as they do not have the language or knowledge to understand or tell others what is happening.

Children who rely on the offender for care, love, affection or other things will also be vulnerable to the demands of the abuser.

Offenders use a range of strategies to engage the child in a relationship where the abuse can happen and to desensitize the child to sexual abuse and exploitation. This is sometimes called the grooming process. Grooming usually begins with subtle behaviours that do not appear to be inappropriate, and that may in fact indicate that the adult (offender) is very good with children. Understanding the many ways in which abusers target their victim and groom them for the sexual abuse can be one step towards placing the blame where it belongs and releasing it from the shoulders of the child. Some grooming strategies include:

- **Gaining trust:** The offender may take steps to gain the trust of the child's parent or guardian, to gain access to the child. The perpetrator will also begin to spend more time with the child, listening to them, treating them as special, or giving them compliments, presents or favours.
- **Isolation/secretcy:** The offender will isolate the child from their siblings and protective parent(s) or caregiver(s). The favouritism shown to the victim often promotes alienation from siblings. Statements like, "Mom wouldn't understand how special we are together" and "Ours is a special love that others wouldn't understand" contribute to a climate of secrecy.
- **Testing the child's boundaries:** A process of desensitization is used to test the child's resistance and engage them in the abuse. Offenders may use touching as a game or introduce sexual touching as accidental. They may blur the boundaries of ordinary affection so the child confuses this with the abuse. This often occurs around the child's daily activities (ex: dressing or bathing). The perpetrator will try to gain compliance of the victim by assuring the child of the rightness of what they are doing through statements such as: "This is a way we can show we love each other...I am teaching you...It's not doing any harm." Throughout the process of engaging the child in the abuse, the offender is evaluating whether the child has been groomed sufficiently (ex: whether they will keep compliant and maintain secrets about the abuse). For more information, please go to:

www.pandys.org/index.html

Examples of Concerning Adult Behaviour

The following are examples of behaviours by adults towards children that may be of concern. Not all of these behaviours necessarily constitute an attempt to be sexually gratified by a child. However, these actions with loose, permeable boundaries must be addressed for the safety of children. It is important to watch for any of the following behaviours (pay attention to the frequency, intensity and any combinations of behaviours):

- deliberately walking in on a child who is changing or using the washroom
- asking or having a child watch the adult change or use the washroom
- 'accidentally' touching genitalia
- activities that involve the removal of clothing (massage, swimming, etc.)
- wrestling or roughhousing
- telling a child sexually explicit jokes
- teasing a child about breast or genital development
- discussing sexually explicit information while pretending to teach a child sex education
- bathing a child or showering with a child
- showing the child sexually explicit images or pornography
- looking at or taking pictures of children in underwear, bathing suits, dancewear, etc.
- making sexual comments or sharing inappropriate stories of sexual activity
- using physical restraint
- For more information, please go to: commit2kids.ca/app/en/home. Commit to Kids is a program that can be tailored to your organization to further enhance child safety.

Emotional Abuse and Child Neglect

Emotional abuse has long been one of the most difficult forms of abuse to define and recognize. Most often it is not limited to one single act but is associated with a pattern of serious, ongoing, negative attacks on a child's self-esteem. Emotional abuse, which can be as damaging as physical abuse, can range from:

- persistent rejection
- humiliation
- belittling and denigration
- rigid and/or unrealistic expectations accompanied by threats if not met
- threatening or perpetuating violence against a child's loved ones or objects
- witnessing domestic violence
- ridiculing for showing normal emotions
- threats
- insults
- scapegoating
- verbal attacks and put-downs
-

Generally, emotional abuse involves acts or omissions by people in contact with a child that are likely to have serious, negative emotional impacts. Emotional abuse may occur separately from, or along with, other forms of abuse. **In Manitoba, to constitute child abuse, there needs to be evidence that the impact of the emotional abuse on the child is of a potentially permanent nature.**

While suspected emotional abuse may not require police intervention or medical examination, a CFS agency may need to collaborate with the police, medical facilities and others in gathering evidence to establish a serious and persistent pattern of abuse likely to cause emotional disability of a significant nature. **Child neglect** is the failure of a child's primary caregiver to provide adequate food, clothing, shelter, supervision, and/or medical care. Child neglect involves an act of omission by a parent or guardian, resulting in (or likely to result in) harm or imminent risk of harm to a child.

Mandatory Child Abuse Reporting Protocol for School Staff

Note: This protocol is to be used in conjunction with the information outlined earlier in this handbook.

Roles and Responsibilities

School staff, due to their access to children, are in a unique position to identify and report suspected child abuse. The term school staff refers to all employees and volunteers within the school setting (ex: teachers, educational assistants, volunteers, guidance counsellors, principals, janitors, nurses, bus drivers, librarians, speech therapists, coaches and so on). Child abuse can be a difficult topic to address. However, actions must be taken to ensure that children's health, safety and overall best interests are taken into consideration. There are higher expectations for professionals in their obligation to report children who are abused and/or in need of protection.

According to *The Child and Family Services Act* (the CFS act), abuse means an act or omission of any person, where the act or omission results in:

- physical injury to the child,
- emotional disability of a permanent nature in the child or is likely to result in such a disability, or sexual exploitation of the child with or without the child's consent.

Child neglect is the failure of a child's primary caregiver to provide adequate food, clothing, shelter, supervision and/or medical care. Child neglect involves an act of omission by a parent or guardian, resulting in (or likely to result in) harm or imminent risk of harm to a child.

For children with disabilities, the usual risk factors for child abuse (ex: dependence and vulnerability) are intensified. **If you work with a child with a disability, you need to be aware of the factors that increase the risk of abuse among children with**

disabilities, as well as the unique challenges that can prevent or limit children with disabilities from disclosing experiences of abuse. For more information, refer to Section 12 of this handbook titled *Increased Risk of Abuse and Important Considerations for Children with Disabilities*. Staff working in schools should be familiar with the types and indicators of child abuse. Please refer to Section 6 of this handbook that provides a review of the types and indicators of child abuse.

<http://www.pacca.mb.ca/products.html>