

CHILD AND FAMILY SERVICES ACT

<http://web2.gov.mb.ca/laws/statutes/ccsm/c080e.php>

Child in need of protection

17(1) For purposes of this 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.

Illustrations of child in need

17(2) Without restricting the generality of subsection (1), a child is in need of protection where the child

- (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) being under the age of 12 years, is 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.

Reporting a child in need of protection

18(1) Subject to subsection (1.1), where a person has information that leads the person reasonably to believe that a child is or might be in need of protection as provided in section 17, the person shall forthwith report the information to an agency or to a parent or guardian of the child.

Reporting child pornography

[18\(1.0.1\)](#) In addition to the duty to report under subsection (1), a person who reasonably believes that a representation, material or recording is, or might be, child pornography shall promptly report the information to a reporting entity.

Seeking out child pornography not required or authorized

[18\(1.0.2\)](#) Nothing in this section requires or authorizes a person to seek out child pornography.

Reporting to agency only

[18\(1.1\)](#) Where a person under subsection (1)

- (a) does not know the identity of the parent or guardian of the child;
- (b) has information that leads the person reasonably to believe that the parent or guardian
 - (i) is responsible for causing the child to be in need of protection, or
 - (ii) is unable or unwilling to provide adequate protection to the child in the circumstances; or
- (c) has information that leads the person reasonably to believe that the child is or might be suffering abuse by a parent or guardian of the child or by a person having care, custody, control or charge of the child;

subsection (1) does not apply and the person shall forthwith report the information to an agency.

Duty to report

[18\(2\)](#) Notwithstanding the provisions of any other Act, subsections (1) and (1.0.1) apply even where the person has acquired the information through the discharge of professional duties or within a confidential relationship, but nothing in this subsection abrogates any privilege that may exist because of the relationship between a solicitor and the solicitor's client.

Protection of informant

[18.1\(1\)](#) No action lies against a person for providing information in good faith and in compliance with section 18.

Identity of informant

[18.1\(2\)](#) Except as required in the course of judicial proceedings, or with the written consent of the informant, no person shall disclose

- (a) the identity of an informant under subsection 18(1) or (1.1)
 - (i) to the family of the child reported to be in need of protection, or
 - (ii) to the person who is believed to have caused the child to be in need of protection; or
- (b) the identity of an informant under subsection 18(1.0.1) to the person who possessed or accessed the representation, material or recording that is or might be child pornography.

Retaliation against informant prohibited

[18.1\(3\)](#) No person shall dismiss, suspend, demote, discipline, harass, interfere with or otherwise disadvantage an informant under section 18.

Reports regarding professionals, etc.

[18.2\(1\)](#) Where the director has reasonable grounds to believe that a person has caused a child to be in need of protection or has failed to report information in accordance with section 18, the director may report the matter to the body or person that governs the professional status of the person or certifies, licenses, or otherwise authorizes or permits the person to carry on his or her work or occupation.

Requirement to investigate

[18.2\(2\)](#) A body or person who receives a report under subsection (1) shall

- (a) investigate the matter to determine whether any professional status review or disciplinary proceedings should be commenced against the person; and
- (b) on conclusion of the investigation and any proceedings, advise the director of the determination under clause (a), the reasons for the determination, and, if applicable, the results of any professional status review or disciplinary proceedings.

Offences

[18.3](#) Where a person,

- (a) through an act or omission of the person, causes a child to be a child in need of protection as provided in section 17;
- (b) fails to report information as required under section 18;
- (c) discloses the identity of an informant in contravention of subsection 18.1(2); or
- (d) dismisses, suspends, demotes, disciplines, harasses, interferes with or otherwise disadvantages an informant in contravention of subsection 18.1(3);

the person is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000. or imprisonment for a term of not more than 24 months, or both.

Agency to investigate

[18.4\(1\)](#) Where an agency receives information that causes the agency to suspect that a child is in need of protection, the agency shall immediately investigate the matter and where, upon investigation, the agency concludes that the child is in need of protection, the agency shall take such further steps as are required by this Act or are prescribed by regulation or as the agency considers necessary for protection of the child.

Police to provide information

[18.4\(1.1\)](#) An agency may request from a peace officer, and the peace officer shall provide, any information in the officer's possession or control that the agency reasonably believes is relevant to an investigation under subsection (1).

Report of conclusion

[18.4\(2\)](#) Subject to subsection (3), where an agency concludes, after an investigation under subsection (1), that a child is in need of protection, the agency shall report its conclusion

- (a) to the parent or guardian of the child;
- (b) where there is no parent or guardian of the child, a person having full-time custody or charge of the child;
- (c) to the person, if any, who is identified by the investigation as the person who caused the child to be in need of protection;
- (d) in the case of a person under clause (c) whose employment
 - (i) involves the care, custody, control or charge of children, or
 - (ii) permits unsupervised access to children,to the employer or the manager or supervisor at the place of employment;
- (e) where the child attends school, to the principal of the school or the superintendent of the school division in which the school is located;
- (f) to the child where, in the opinion of the agency, the child is capable of understanding the information and disclosure to the child is in the best interests of the child; and
- (g) to the person who reported the information that gave rise to the investigation, except where disclosure is not in the best interests of the child.

Report of conclusion where child not in need of protection

[18.4\(2.1\)](#) Subject to subsection (3), where an agency concludes, after an investigation under subsection (1), that a child is not in need of protection, the agency shall report its conclusion

- (a) to the parent or guardian of the child;
- (b) where there is no parent or guardian of the child, a person having full-time custody or charge of the child;
- (c) to the person, if any, who is identified by the investigation as the person who was alleged to have caused the child to be in need of protection;
- (d) to the child where, in the opinion of the agency, the child is capable of understanding the information and disclosure to the child is in the best interests of the child; and
- (e) to the person who reported the information that gave rise to the investigation, except where disclosure is not in the best interests of the child.

Restrictions on disclosure

[18.4\(3\)](#) An agency shall not report its conclusion under subsection (2) or (2.1) where a criminal investigation into the matter is pending and the peace officer in charge of the investigation requests the agency not to report its conclusion because it would jeopardize the investigation.

Peace officer to report charges

[18.4\(4\)](#) Where a peace officer lays an information charging a person with an offence under the *Criminal Code* or under this Act and

- (a) the offence

- (i) is based on an alleged act or omission by the accused person in relation to a child,
or
 - (ii) is in relation to child pornography; and
- (b) the employment of the accused person
- (i) involves the care, custody, control or charge of children, or
 - (ii) permits unsupervised access to children;

the peace officer shall immediately advise the employer, or, if the identity of the employer is not known or the employer cannot be promptly reached, the manager or supervisor at the place of employment, that the accused person has been charged.

Reference to child abuse committee

[18.5](#) Where an agency receives information that causes it to believe that a child is or might be abused, the agency shall, in addition to carrying out its duties under subsection 18.4(1), refer the matter to its child abuse committee established under subsection 19(1).

Director to investigate

[18.6](#) Where an agency receives information that a child was or might have been abused by a person who provides work for or services to the agency or to a child care facility or other place where a child has been placed by the agency, the agency shall, in addition to carrying out its duties under subsection 18.4(1) and section 18.5, immediately report the matter to the director and the director shall investigate the matter and take such further steps as are required by this Act, prescribed by regulation, or as the director considers necessary.

Action by reporting entity re child pornography report

[18.7\(1\)](#) If, after reviewing a report made under subsection 18(1.0.1), the reporting entity reasonably believes that the representation, material or recording is or might be child pornography, it shall take action to protect a child by reporting the matter to a child and family services agency or a law enforcement agency, or to both as necessary, and take any further action as may be set out in the regulations.

Annual report by reporting entity

[18.7\(2\)](#) A reporting entity must prepare an annual report with respect to its activities and actions taken under this Part, and the minister must table a copy of it in the Legislative Assembly within 15 days after receiving it, if the Assembly is sitting or, if it is not, within 15 days after the next sitting begins.