

Review of Child Welfare Legislation in Manitoba

Discussion Guide

December 2017



Message from the Minister of Families



Achieving better outcomes for our children and our youth is a priority for this government and for all Manitobans. When it comes to child welfare, we need to have fewer children and youth in care, fewer days in care, more lifelong connections, better co-ordination of services and greater public accountability. We also need to encourage stronger connections with families, communities and neighbourhoods and invite them to be partners in building and delivering solutions.

As the Minister of Families, I am pleased to invite you to participate in a review of The Child and Family Services Act, The Child and Family Services Authorities Act and associated regulations that guide Manitoba's child welfare system. Your responses will inform legislative improvements to ensure that the law supports and enables the system changes that are necessary to achieve better child and youth outcomes.

In the coming months, the Member of the Legislative Assembly (MLA) for Rossmere, Andrew Micklefield, will be chairing a Child Welfare Legislative Review Committee that will be made up of community leaders and child welfare experts. I am confident that this committee is well-positioned to hear input from a variety of stakeholders invested in improving child welfare outcomes. This committee will also invite dialogue with Indigenous organizations to explore opportunities for legislative change that will help improve outcomes for Indigenous children.

This discussion guide is designed to give members of the public an opportunity to provide feedback. I encourage you to read this guide and then complete the [online survey](#).

There will be a wide range of ideas on how Manitoba can improve the child welfare system. Your input is critical to this legislative review process and to ensuring that children and youth in Manitoba benefit from the sense of security and well-being that they deserve.

Thank you in advance for taking the time to participate.

Sincerely,

Scott Fielding
Minister of Families

Introduction to the Legislative Review Process: A Message from the Chair of the Child Welfare Legislative Review Committee



I am pleased to chair the Child Welfare Legislative Review Committee. Over the next few months, we will hold targeted consultations with stakeholders on ways to improve the legislation governing Manitoba's child welfare system in order to support a shift in practice towards better outcomes for children and youth. These critical adjustments will ensure that the law is modern, flexible and enabling of the outcomes identified in Manitoba's child welfare reform plan: community-based prevention, funding for results, more lifelong connections through reunification and permanence and fewer children and youth in care.

Our committee hopes to take advantage of the wealth of experience and expertise that exists within families, communities and other stakeholders in the child welfare system to identify areas for improvement in The Child and Family Services Act, The Child and Family Services Authorities Act and related regulations. This discussion guide introduces some key concepts, issues and questions for you to consider and seeks to focus your feedback and input on areas of potential improvement to the existing legislation.

We will review survey responses, which will help to inform legislative changes to promote better outcomes for children and youth. At the end of the process, a report will be written that provides recommendations for the Manitoba government to consider.

Throughout this discussion guide, questions form part of the [online survey](#). Your answers to the questions will help to inform our recommendations to the Minister of Families. We are open to new and concrete ideas on how the child welfare system can be improved, and we encourage you to click on the web links in this guide for more in-depth information about different aspects of the child welfare system. You can respond to some or all of the questions in this discussion guide. You can also give us your own specific ideas for consideration when completing the survey.

Sincerely,

Andrew Micklefield

Why is legislation about child welfare being reviewed?

Manitoba has the highest rate of children in care among the provinces. The latest figures show almost 11,000 young Manitobans in care. This number has been steadily rising over the years. Overall, the number of children and youth in care has nearly doubled in the past decade. This is a concerning trend that requires our collective attention.

The government has not held an overall review of child welfare legislation in the last 15 years. The time is right to identify what is working well and determine areas that require improvement.

The effects of too many children and youth in care are felt across our communities and our province. Children who grow up in care have significantly worse life outcomes as adults, compared to children who grow up in forever families. The data shows that too many children are entering care early in life and staying in care for far too long:

- Forty per cent of all children in care were zero to two years of age when they first came into care.
- Almost 60 per cent of children in care are permanent wards, meaning they are under the permanent guardianship of a Child and Family Services (CFS) agency and the guardianship rights of their parents have been terminated.
- Fifty-four per cent of all permanent wards are under the age of 10.

It is concerning that child and youth outcomes have deteriorated, despite an increase in funding for child welfare. Manitoba's annual child welfare budget has almost tripled in the last 12 years to a total of \$514 million. That includes funding

increases of \$20 million each year for the past four years. It costs approximately \$47,000 a year to offer supports to each child in care. Yet, Manitoba has seen an 85 per cent increase in the number of children in care over the last decade.

We know that in Manitoba, almost 90 per cent of all children in care are Indigenous. This significant overrepresentation in the CFS system has been strongly influenced by a legacy of assimilation policies that have created conditions of social exclusion, economic marginalization and cultural dislocation among Indigenous people. As noted in the final report of the Truth and Reconciliation Commission, the number of Indigenous children in care needs to be reduced.

It is important that we continue to act on the many outstanding reviews and reports that identify existing challenges, lessons learned and recommended reforms. This includes:

- reports from the Office of the Children's Advocate at www.childrensadvocate.mb.ca
- The Assembly of Manitoba Chiefs' [Bringing our Children Home Report](#) (2014)
- the [Keewaywin: Our Way Home – Manitoba First Nations Engagement](#) (2017)
- the [Metis Children and Families and the Child Welfare System Report](#) (2013)
- the [Legacy of Phoenix Sinclair: Achieving the Best for All Our Children](#) (2013)
- the Truth and Reconciliation Commission's [Calls to Action](#) (2015)

As we embark on this initiative, it is important to recognize that it is a shared responsibility among all levels of government, community leaders and Manitoba citizens to support healthy families and vibrant communities in which Manitoba children can be safe and thrive.

The Structure of Manitoba's Child and Family Services System

Introduction

In Manitoba, the child welfare system is called Child and Family Services (CFS). Its purpose is to protect children and youth and encourage family stability. The main aim of CFS is to safeguard children from abuse and neglect. In 2016/17, CFS agencies provided services to 9,841 families and 209 minor expectant parents. These services helped many children remain in their family home or be reunited with their families and be safe at home.

Children in care are defined as young Manitobans **under the age of 18** who are either:

- deemed to be in need of protection, as defined in the Child and Family Services Act
- voluntarily placed in care through an agreement between the parent or guardian and a CFS agency

There are a variety of reasons for determining that a child requires protection and needs to be placed in an alternate living situation. When a child's life, health or emotional well-being is put at risk by something a person does or fails to do, that child may be in need of protection.

Children and youth may also be taken in to care upon a parental request, due to situations like frequently running away, drugs and alcohol use, or legal trouble. In these situations, the parents make the request because they need help to keep their child safe.

In Manitoba, the CFS system is in place to ensure that families and communities provide for the safety and well-being of their children. A number of provincial laws are in place to accomplish this goal. The most important ones are The Child and Family Services Act and The Child and Family Services Authorities Act, as well as their accompanying regulations.

Together, these acts and regulations are referred to as Manitoba's child welfare legislation.

In accordance with child welfare legislation, the CFS system aims to:

- protect and ensure the safety of children
- strengthen families to enable children to have nurturing caregivers who provide opportunities to establish lifelong relationships
- engage communities to resolve issues that affect the safety and well-being of children

The Child and Family Services Authorities

The Child and Family Services Authorities (CFSA) Act, which was proclaimed in 2003, created four corporate entities called Child and Family Services (CFS) Authorities. They are:

- the First Nations of Northern Manitoba CFS Authority (Northern CFS Authority)
- the Southern First Nations Network of Care (Southern CFS Authority)
- the Metis CFS Authority
- the General CFS Authority

Three Indigenous CFS authorities were created as a result of the Aboriginal Justice Inquiry – Child Welfare Initiative (AJI-CWI). The AJI-CWI was an initiative designed to transition child protection and family support services to First Nations and Metis peoples, so they would have the ability and responsibility to provide these services to their communities throughout Manitoba.

When The Child and Family Services Authorities Act came into force in 2003, many powers, duties and responsibilities regarding child welfare were devolved or transferred from the provincial government to the four above-mentioned authorities. This means that the four authorities are responsible for the mandate, resources and performance of CFS agencies. The authorities ensure that CFS agencies comply with laws, regulations, policies and standards. CFS agencies provide direct services to children and families. Within the CFS system, some responsibilities remain a shared duty between the provincial government and the authorities. For

example, both the provincial government and the authorities have the responsibility to carry out investigations regarding the welfare of any child receiving CFS services.

When children or families need the services of a CFS agency, families can decide which CFS authority might best meet their needs, through the Authority Determination Protocol. Once a family chooses their preferred authority of service, the authority assigns a CFS agency to work directly with them. All four authorities have the responsibility to deliver mandated services throughout the province.

The Child and Family Services (CFS) Division: Government of Manitoba

[The CFS Division](#) is the government office in Manitoba that sets foundational or system wide standards, and provides funding for all the services that are delivered by CFS authorities and agencies (except for services provided within First Nation reserve communities, which are funded by the federal government).

The CFS Division also oversees the Child Abuse Registry. In addition, the division licenses residential care facilities for children (i.e., group homes or treatment centres for children who are experiencing adjustment problems and cannot function in a family setting).

Child and Family Services Agencies

There are a total of 24 CFS agencies operating throughout the province in urban, rural and northern communities. Eighteen of the twenty-four are Indigenous child welfare agencies. CFS agencies, which are overseen by CFS authorities, provide direct services to families and children. CFS workers, who are employed by CFS agencies, offer the following services:

- individual and family counselling
- parenting supports
- life skills training
- healing and cultural teachings
- emergency financial and material assistance
- investigation of allegations or evidence of child abuse or neglect
- emergency shelter services
- out of home placements for children
- permanency planning for children in care who cannot be reunited with their families
- temporary care of children, including foster care or residential care
- permanent adoption when children cannot be reunited with their families

Fourteen of the 24 CFS agencies are Designated Intake Agencies, which provide after hours and emergency intake services in various regions of the province. Designated Intake Agencies conduct initial intakes and brief investigations. If necessary, they transfer cases to the appropriate CFS agency and remain open in order for children and families to receiving ongoing services and supports.

Identifying legislative amendments to support systemic change

Manitoba is committed to improving outcomes for children by reducing the number of children who are brought into care, reducing the number of days children spend in care, providing better support for children and families involved with child welfare and engaging communities as an enhanced natural resource. Reforming the legislative framework that supports the delivery of child and family services in our province is key to achieving these critical objectives. Legislative reforms are a tool to drive the system changes that must be made for children and families whose lives are profoundly affected by our child welfare system.

All Manitobans have a stake in reforms to child and family services – the future of our most precious resource, our children, depends on it. This discussion guide identifies key areas for legislative changes to support critical reforms. Eight themes, or areas for change, are discussed in greater detail below. Please read this information carefully, as it will help you to think about and respond to the [SURVEY](#). By reading this document and filling out the survey, your voice will contribute to Manitoba’s new vision for child welfare.

NOTE: The survey questions are identified after explanatory information is provided for each theme or area for change. To respond to these questions, please fill out the survey after you have finished reading this document. The survey is accessible at: <https://forms.gov.mb.ca/ChildWelfareReform/>

Theme 1: Community Involvement

An important role of the CFS system is to work together with other systems and caring individuals to enhance the ability of families and communities to develop and sustain nurturing and safe environments for children and youth.

Many families who use supports from CFS agencies do not need protective services for their children. Instead, they require prevention services and early supports. Early intervention can prevent children from experiencing risk factors that may lead to mandatory CFS intervention should those risk factors threaten the safety or well-being of children. There is great value in helping families before risk factors become serious safety concerns.

Although parents have the primary responsibility to care for and protect their children, there is a wider role that extended family members and

communities play in promoting the safety and wellbeing of young Manitobans. Extended family members and communities can act as a source of strength and support for families who are struggling, and help to prevent the need for child protection intervention.

Outcomes for at-risk children can be improved when struggling families are supported by a community of people, including relatives. Parents and children also need the help of service providers and professionals outside of the child welfare system to address concerns such as parental mental health. However, Manitoba's child welfare legislation does not clearly identify how a family's support network and service providers outside of the child welfare system can be involved with supporting families and informing important child welfare decisions.

Questions

1. When a child and family are at risk of CFS intervention, but there is no immediate threat to the child's safety, should community members be engaged in planning decisions related to the child's safety and well being? *(Community members may include the child's extended family, formal service providers such as the child's teacher, child abuse committees, family group conferencing committees, grandmothers councils and other people who care about the child and family.)*
2. For reasons of safety, sometimes children are removed from their parents or guardians and placed into the care of a CFS agency. When this happens, should the legislation require that CFS agencies consult with and involve the child's extended family and community members before making significant decisions about the child?
3. In a 2014 report, the Assembly of Manitoba Chiefs (AMC) recommended that Grandmothers Councils be established to work with the CFS system. Do you think that the legislation should include a description of the role of Grandmothers Councils and Elders in the CFS system?
4. Should extended family or community members who assume legal guardianship of children be provided with financial and other supports?

Theme 2: When is a child in need of protection?

Manitobans want to know that children who are in need of protection from abuse or neglect get the help they need. [The Child and Family Services Act](#) provides guidance on when a child is in need of protection. For the purposes of that 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. The CFS Act includes illustrations of when a child might be in need of protection, such as when she or he:

- is without adequate care, supervision or control
- is in the care, custody, control or charge of a person
 - > who is unable or unwilling to provide adequate care, supervision or control of the child
 - > whose conduct endangers or might endanger the life, health or emotional well-being of the child
 - > 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
- is abused or is in danger of being abused, including where the child is likely to suffer harm or injury due to child pornography
- is beyond the control of a person who has the care, custody, control or charge of the child
- 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
- is subjected to aggression or sexual harassment that endangers the life, health or emotional well-being of the child
- being under the age of 12 years, is left unattended and without reasonable provision being made for the supervision and safety of the child
- is the subject, or is about to become the subject, of an unlawful adoption

Manitobans are required by law to report any instances where they believe a child may be in need of protection. Believing does not mean knowing for sure whether the child is at risk. If an honest judgement is made and a person thinks that a child may not be safe, either because of the child's behaviour or someone else's, they need to report it. Failure to make a report is a punishable offence. For more information, visit: www.gov.mb.ca/fs/childfam/child_protection_faq.html

In Manitoba, CFS agencies receive reports from members of the public and service providers about suspected abuse or neglect of a child. CFS agencies must take action when they receive a report of a child who may be in need of protection. This action normally consists of a face-to-face interview with the child, followed by a separate interview with the child's parent(s). After a CFS worker examines all of the information that is gathered, a decision is made about whether or not protective services are needed.

When children are believed to be in need of protection, they may be removed from their home. After a child has been apprehended by a CFS agency, a court process is necessary to transfer guardianship of the child to a CFS agency. Alternatively, children may be returned to the care of their parents, possibly with agency supervision and supports. Only the court can make a legal decision that a child is in need of protection and place the child in the care of a CFS agency on a temporary or permanent basis.

To place a child in care, the court must determine that the child is in need of protection. Currently, in Manitoba, this legal decision is made based on the information provided to the court by the CFS agency. Parents also have an opportunity to tell their side of the story to the court. Some jurisdictions (for example, the United Kingdom) are clearer in law about the evidence that must be presented to the court in child protection cases. This can be accomplished by providing greater guidance in the law for when child welfare workers should be determining that a child must be apprehended.

Questions

1. Does the definition of protection need to be made clearer in the legislation to ensure that children are only apprehended when absolutely necessary because of an immediate threat to the child's safety?
2. Should the legislation be changed to provide better guidance to assist agency workers in objectively deciding whether or not to apprehend a child?
3. When deciding on whether to issue an order of supervision, temporary or permanent order of guardianship, should the legislation require that the courts consider the extent to which CFS agencies have involved the child's extended family and community?

Theme 3: Culturally Sensitive Safety Assessments

When a child welfare worker receives a report that a child may be in need of protection, the worker needs to determine whether child welfare involvement is needed. Assessment tools are instrumental in supporting workers in determining whether a child is at risk and in need of protection. How an assessment tool is designed can significantly affect whether or not a child is apprehended and taken into care. Assessment tools that are not culturally sensitive can sometimes lead to problematic decisions and increase the likelihood for apprehensions when they may not be warranted.

Culturally-sensitive assessments consider the cultural context, values and strengths of families, while respecting human and child centred rights. CFS agencies should continuously assess and strengthen their cultural competency in order to recognize when families are not able to care for their children in a safe way. Ensuring that CFS agencies are well equipped to provide culturally-sensitive services can be supported through the assessment tools that they use.

Question

1. Does the law need to be changed to ensure that a culturally-sensitive risk assessment process is used by child welfare workers throughout the province (i.e., a common, culturally informed approach to defining and acting on prevention issues)?

Theme 4: Planning for a child who has come into care

When children are in need of protection, it is vital that CFS agencies find safe homes for them as quickly as possible. In many circumstances, children can be reunited with their parents, but in some cases, children are placed on a long-term basis in the homes of relatives or foster parents.

Reunification with family is the preferred outcome for children removed from their homes and placed in foster care. When children need to be removed from their families to ensure their safety, planning efforts are focused on returning them home as soon as is safely possible.

Unfortunately, some children cannot return home to live with their parents due to ongoing safety concerns. These children become permanent wards. For these children, living in a stable home environment is critical to their well-being. However, planning for a lifelong family to take care of the child often begins after a child has been in care for a long period of time.

To address this delay before developing a long-term plan (i.e., permanency plan), some jurisdictions require child welfare workers to develop two plans for a child immediately after apprehension. The first plan is focused on reunifying a child with his or her parents. The second plan is focused on what should be done if the child cannot be returned to the care of his or her parents. Sometimes, this is referred to as concurrent planning.

Concurrent planning means that the child welfare worker has a long term plan already in place if the first plan (i.e., returning the child to the care of his or her parents) does not work out at that time. This long-term plan for permanency could include supporting the child to leave care through adoption, or identifying a relative who would be able and willing to become the child's guardian. For some children, it means identifying a culturally-appropriate caregiver who can make a long-term commitment to care for them.

Questions

1. Should the legislation require that CFS agencies develop two plans: one to safely return the child to his or her parents or guardians and a second one for a community alternative plan for the child's longer-term care if reunification is not successful?
2. If you answered yes, do you think that the legislation should require both plans to be submitted to the court when the CFS agency is asking for a temporary or permanent order of guardianship?

Theme 5: Supports for youth transitioning out of care as they reach adulthood

Youth who are in care are supported by the CFS system until they are 18 years old. Those who are permanent wards are able to apply for extended supports until the age of 21. The Manitoba government provides support for some youth who are aging out of foster care.

This support is to assist youth with the transition to independence and may include financial

assistance for a young adult to remain living with their foster family while attending skills training or post-secondary education. As of March 30, 2017, 917 young adults aged 18-21 continued to receive assistance. CFS-related supports terminate when a young person reaches the age of 21.

Questions

1. Should conditions of eligibility for extended supports be prescribed in legislation? Examples include: a new age limit, a minimum number of years a youth would need to have been in care to qualify for supports, and expectations associated with the receipt of supports.
2. If present resources were made available, should extended supports for youth who are transitioning from the CFS system be developed and delivered by community partners and organizations who are aligned with the unique needs of young adults?

Theme 6: Youth rights

Currently, the CFS Act allows for the views of children age 12 and older to be considered in decision-making processes. Many child welfare workers work hard to ensure that teenagers are given the ability to voice their opinion about care decisions. Despite these efforts, young people may feel like they have little ability to influence the adults around them who have the power to make decisions about where they live and who they spend their time with.

Just like parents, CFS agencies need to be able to make decisions about children in care, even if those children are teenagers. But it is also very important for teenagers in care to feel heard and empowered at every opportunity. Once a youth in care reaches 18, he or she can make their own decisions. Until then, the CFS agency that has guardianship over them, can make decisions for that youth.

Questions

1. Should the CFS Act be amended to allow youth to have more say in decisions that affect them?
2. Should the CFS Act be amended to allow youth (age 16-18) to have the final say in planning for their transition to adulthood?

Theme 7: Accountability

Accountability enables Manitobans to ensure that government, CFS authorities and agencies, as well as other stakeholders, fulfill their responsibilities. In the CFS system, where decisions about the safety, permanency and well-being of children and families are being made every day, accountability is important.

Examples of accountability measures include:

- independent reviews of the CFS system
- special investigation reports written by the children’s advocate
- enhanced collection and sharing of data and performance measures
- clear contracts with funded entities
- relevant legislation, standards and policies

Accountability extends beyond data or evaluation to also recognize the value of communicating with and asking for feedback from stakeholders about service delivery or program activities, expectations and outcomes. Meaningful and effective accountability not only protects Manitobans who receive essential services, but also helps the system to identify better ways to function, inspire staff, and inform decision makers and funders.

As discussed in the introduction of this document, the four CFS authorities (three of them Indigenous and one non-Indigenous) are responsible for ensuring that their mandated CFS agencies are accountable for providing services in accordance with legislative, policy and funding requirements. The three Indigenous CFS authorities also have an important leadership role in supporting their mandated agencies to design and deliver services that meet the needs of the First Nations, Metis and Inuit children and families who receive their services.

Despite efforts to develop services that are culturally informed, while meeting the accountability expectations of Manitobans, some people believe that the current system is not meeting the needs of children and families. They may also be of the opinion that child welfare is not sufficiently responsive to the concerns of communities, including First Nations, Metis and Inuit communities in Manitoba.

Questions

1. Do you think that the structure of Manitoba’s CFS system is best designed to meet the needs of children and families who require child and family services?
2. Should the law be amended (changed) to achieve more accountability, consistency, community influence and better outcomes for children and families?
3. Should the legislation be changed to allow for enhanced Indigenous community control over the design and delivery of child and family services?

Theme 8: Confidentiality

The issue of confidentiality is important. Children and families involved with the CFS system have the right to have their privacy respected. But sometimes, there is a need to share personal information to protect or support children and youth. Information about children and their parents also needs to be shared when planning or providing services for the child.

A good balance between the need to share personal information about service recipients and the need to respect their privacy is required. Child welfare workers need to make decisions every day about what information to share and with whom. Information sharing should be informed by what is in the best interests of the child.

Under the current CFS act, personal CFS-related information cannot be shared with the public. This is to protect the privacy rights of children and their families.

Some people believe that there is too much emphasis on confidentiality and that a more open approach to sharing CFS information would lead to better public accountability. For others, protecting the privacy rights of children is more important than allowing for public disclosure of identifying information under the CFS act.

Questions

1. Should the law be amended to allow for more information sharing under certain circumstances?
2. Should the law be amended to allow for the public disclosure of identifying information of children and families involved with child welfare?
3. Can family consent, even if a child is in permanent care, be the basis for disclosure in certain circumstances?

Glossary

Abuse: an act or omission by 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
- sexual exploitation of the child with or without the child's consent

Child: a person under the age of 18 years and includes a youth unless specifically stated otherwise

Foster parent(s): adult(s) who provide a temporary home and everyday nurturing and support for children who have been removed from their homes. The individual(s) may be relatives or nonrelatives and are required to be licensed to provide care for foster children.

Legislative: related to laws or making them

Permanency planning: an effort to provide long-term continuity in a child's care, as an alternative to temporary foster care or facility placements

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Available in alternate formats upon request