



An Introduction to Child Protection In Newfoundland and Labrador

Public Legal Information Association of Newfoundland and Labrador



Public Legal Information Association of NL (PLIAN) is a non-profit organization dedicated to educating Newfoundlanders and Labradorians about the law. We provide public legal education and information services with the goal of increasing access to justice in the province.

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About This Guide

The purpose of this publication is to provide an overview of child protection proceedings. This guide includes frequently asked questions about child protection proceedings and a review of the process before, during, and after court procedures. Readers are encouraged to seek information that can help them better understand child protection proceedings.

For further information on child protection proceedings, please refer to the resources referenced throughout this guide. The Public Legal Information Association of Newfoundland and Labrador (PLIAN) also encourages anyone with legal inquiries about child protection matters to seek legal advice through a lawyer.

For general legal information or to receive a referral to a lawyer through PLIAN's Lawyer Referral Service, please contact PLIAN at info@publiclegalinfo.com or call 1-888-660-7788.





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Overview of Typical Child Protection Proceedings


- 
- CSSD begins working with parents/guardians

- 
- A *Safety Plan* or *Kinship Agreement* may be made
 - This will include conditions to help keep a child with their family

- 
- When *Safety Plans and Kinship Agreements Don't Work*:
 - CSSD will look to remove a child from their home and place them into their care

- 
- **Presentation Hearings:**
 - These happen when a child is removed from their home

- 
- **Presntation Hearing Purpose:**
 - To see if a child will return to their home; and
 - To see if a *Protective Intervention Hearing* is needed

- 
- When *Safety Plans and Kinship Agreements Don't Work*:
 - CSSD will look to remove a child and place them into their care, usually with a warrant



• **Protective Intervention Hearings:**

- These happen after a presentation hearing and while a child is in care of CSSD

• **Protective Intervention Hearings Purpose:**

- To see if a child is in need of protection

• **A Child In Need of Protection:**

- CSSD will continue to care for a child
- CSSD may then look for permanent custody to place a child for adoption

Note:

This is how many child protective proceedings proceed, but your case could be different.

Important Information on Child Protection Matters

Who Handles Child Protection Matters in Newfoundland and Labrador?

The Department of Children, Seniors and Social Development (CSSD) is the provincial government department in charge of handling child protection matters. This department has offices throughout the province to assist children and families in need.

What Does The Department of Children, Seniors and Social Development (CSSD) Do?

CSSD is responsible for administering the *Children, Youth, and Families Act*. CSSD is responsible for creating safety plans for children and youth in the province. As well, CSSD regulates placements and adoptions of children.

What are the Laws for Child Protection in Newfoundland and Labrador?

There are several laws in Newfoundland and Labrador that advocate for the ‘best interests’ of a child. However, the main law for CSSD is the *Children, Youth, and Families Act*. This law determines the process and procedure for children in need of protective intervention in the province.

The purpose of this act is to promote the safety and well-being of children and youth who need protective intervention. This is done by offering, where available and appropriate, services to maintain, support, and preserve the family where it is in the best interests of children and youth. This act can be found online here: <https://www.assembly.nl.ca/Legislation/sr/statutes/c12-3.htm#2>.

What Are the Best Interests of a Child According to the Children, Youth, and Families Act?

- Safety, health, and well-being;
- Physical, emotional, and developmental needs;
- Relationships with family, or significant persons to the child or youth;
- Opinion regarding their own care and custody and provision of protective services;
- Identity, and cultural and community connections;
- The preservation of Indigenous cultural identity (where applicable);
- The importance of stability and permanency of their care;

- The importance of family as the preferred place for care and upbringing; and
- Other relevant factors.

How Child Protection Matters Begin

What Happens When CSSD Is Concerned About the Safety and Well-being of a Child?

When CSSD is concerned about the safety and well-being of a child, they will first try to determine if a child is in danger. If a child is determined by CSSD to not be in danger, then often their investigation will end. If a child is at risk or in need of protection, CSSD can work with parents to develop a safety plan to keep children living with their parents or guardians.

What is a 'Safety Plan'?

A safety plan is developed to help parents and guardians ensure the best interests, safety, and well-being of a child or youth. Each safety plan is different and what is included in a plan will depend on the situation of the people involved.

A safety plan may include state that a parent or guardian not drink near their child(ren), not socialize with certain people, and allow CSSD to visit the family home unannounced to ensure the well-being of the children.

Safety plans are voluntary and must be agreed to between the parent(s) and/or guardian(s) of children.

What Happens If a Safety Plan is Not Followed?

If part of a safety plan, or if the entire safety plan is not followed, CSSD will investigate and determine if they need to remove a child from their parents or guardians. CSSD may sign a new safety plan with different terms with the parent(s)/guardian(s), or they may place a child in alternate or temporary custody.

If a new safety plan is not possible, or if a new safety plan is not followed, a 'kinship agreement' may be sought with another family member.

What's a 'Kinship Agreement'?

Kinship agreements are consensual agreements between the parents or guardians of a child and other family members, friends, or community representatives to take care of a child. If a kinship agreement is made, the person or persons who now are in charge of parenting the child will sign a new safety plan with CSSD.

What If a Kinship Agreement is Not Possible?

If it is not possible to sign a kinship agreement, or if the terms of a kinship agreement are not followed, CSSD will decide if a child needs protection. If CSSD determines a child needs protection, they have several options:

- CSSD may place a child in their care for immediate protection;
- CSSD may ask the courts for a 'telewarrant' outside of the court's normal functions to let them remove a child from a home;
- CSSD may apply in open court for a warrant to be able to let them remove a child from a home; or
- CSSD may apply to court for a declaration that a child is in need of protection, but the child will remain with the person in charge of parenting.

What Happens if CSSD Removes a Child from a Home Without a Warrant?

CSSD will apply to court as soon as practical to have a declaration that a child needs protection to authorize their placement in CSSD's care. This will result in what is called a '*Presentation Hearing*'.

What Happens if CSSD Places a Child in Their Care With a Warrant?

When children are placed in CSSD's care with a warrant, the next step in determining the protective needs of a child will result in what is called a '*Presentation Hearing*'. This is the same as if CSSD placed a child in their care without a warrant.

Who Cares for a Child Placed in CSSD's care?

Managers appointed under the Act by the Department of Children, Seniors and Social Development are in charge of caring for a child until a *Presentation Hearing* is held to determine who will be in charge of parenting a child.

Presentation Hearings

The format for Presentation Hearings is set out by section 31 of the *Children, Youth, and Families Act*. A Presentation Hearing differs from normal open court, as section 31 allows for judges to conduct these hearings in an informal manner. These hearings are private unless a judge orders otherwise.

Presentation Hearings are held in Supreme Court (Family Division) in the St. John's and Corner Brook areas, and at Provincial Court everywhere else in the province. Typically, Presentation Hearings last about one day. Depending on what needs to be addressed, a Presentation Hearing can last anywhere from an hour to several hours in length.

When Does a Presentation Hearing Take Place?

Presentation Hearings are supposed to take place within 10 days of a child being placed into care by CSSD. However, depending on the circumstances of any case, this may be delayed for several reasons. Delays may happen when an interpreter, translator, or other resource is needed to make sure everyone is heard in court fairly. It may also be done to allow the parent or guardian time to find a lawyer, or to ensure the best interests of a child depending on the circumstances. Any delays in holding a Presentation Hearing are at the discretion of a judge.

Who Testifies at Presentation Hearings?

Parents and guardians are not required to testify at Presentation Hearings, but they may choose to do so. Social workers will usually give evidence at Presentation Hearings to allow a judge to make their decision in a case.

What's the Purpose of a Presentation Hearing?

The purpose of a Presentation Hearing is to determine several things. Firstly, the presentation hearing will determine if a child was legally placed into the care of CSSD. This is done to determine if CSSD had the legal ability to place a child in their care. If CSSD had the legal ability to place a child in their care, the next step will be to determine if the CSSD Manager can proceed to what is called a Protective Intervention Hearing. If the Manager can proceed to a Protective Intervention Hearing then it must be determined who will take care of the child until the Protective Intervention Hearing happens.

If a child was not in danger then a judge can determine that a child was not legally placed into CSSD's care and they can be returned to their parents or guardians. For example, this can happen when a child is taken into care of CSSD without a warrant or where a child was mistakenly placed in CSSD's care. It may also happen where it was not in the best interests of the child to be placed in the care of CSSD.

What Can a Judge Order at a Presentation Hearing?

A judge can order that:

- An application for a *Protective Intervention Hearing* by CSSD be dismissed;
- A child be returned to a parent;
- A child remain under the temporary supervision of a CSSD Manager until a *Protective Intervention Hearing*;
- A child be placed under the temporary supervision of the parent other than the one that they were removed from;
- A child be placed in temporary care of a family member or person significantly close to the child under supervision of CSSD; or
- A child needs protective intervention.

A judge may also impose conditions on a parent or guardian. If conditions are imposed on one of these orders, they will be in the 'best interests' of a child. A judge, however, cannot make an order regarding the location of placement of a child.

What Happens if a Judge Orders a Protective Intervention Hearing Be Held?

A Protective Intervention Hearing is held when a judge declares that a child needs protection during a Presentation Hearing. If a child is not ordered to be returned to their parent/guardian, this will be the next step in determining whether CSSD may continue temporary or permanent care of a child.

Protective Intervention Hearings

A Protective Intervention Hearing is an opportunity for a judge to determine whether a child needs protective intervention. These hearings are more formal than Presentation Hearings, and typically last between 2-3 days. They can, however, be shorter or longer depending on the case. These hearings are private unless a judge orders otherwise.

When Does a Protective Intervention Hearing Take Place?

Protective Intervention Hearings are supposed to take place within 30 days of a child being placed in CSSD's care. However, similar to a Presentation Hearing, this will depend on the circumstances of a case. It can similarly be delayed for a variety of reasons at a judge's discretion.

Who Testifies at Protective Intervention Hearings?

Typically a parent or guardian will testify at a Protective Intervention Hearing along with social workers, and possibly family, friends, or community members. There is no requirement for any one person to testify and it will depend on each case.

What's the Purpose of a Protective Intervention Hearing?

The purpose of a Protective Intervention Hearing is to determine if a child is in need of protective intervention.

- If a child is determined not to be in need of protective intervention then the matter will be dismissed and the child returned to their parent/guardian.
- If a child is determined to be in need of protective intervention then a judge will have two options:
 - 1) The judge may order the child returned to their parent/guardian under a supervision order with various conditions specific to each case.
 - 2) Alternatively, a judge may order that the CSSD Manager will have temporary custody of a child.

What Is a Temporary Custody Order?

Temporary custody orders are limited orders that expire after a certain amount of time. These give a CSSD Manager or a social worker the right to make all decisions about a child during a specific period of time. This includes medical decisions, social decisions, and other matters in the day to day life of a child, but does not allow CSSD to place a child for adoption without the consent of the parent or guardian of a child immediately before the child was placed in CSSD's care.

How Long Does a Temporary Custody Order Last?

Each temporary custody order will depend on the circumstances of a given case. However, temporary custody orders have a maximum amount of time that they can last:

- Temporary custody orders can last up to 6 months for the first order involving a child.
- If a child is under 6 years of age when the order is made, the second order can only last up to 3 months.
- If a child is over 6 years of age when the order is made, the second order can last up to 6 months.

How Many Temporary Custody Orders Can There Be?

There can be up to 2 temporary custody orders in a child's life. However, under exceptional circumstances a judge may be able to order a third and final temporary custody order. However, third temporary custody orders are limited to the following amount of time they can last:

- If a child is under 6 years of age when the order is made, the second order can only last up to 3 months.
- If a child is over 6 years of age when the order is made, the second order can last up to 6 months.

Who Cares for a Child In-Between Temporary Custody Orders?

While a child is under the supervision of a CSSD Manager under an order for supervision, or is in the custody of a manager or another person under a temporary custody order, and an application for another order is filed but was not heard before the temporary custody order expired, the child remains under the care of a manager or the person granted temporary custody. This will apply until the application for another temporary custody or continuous custody order is heard.

Can CSSD Seek a Permanent Custody Order?

Yes, CSSD can, and sometimes applies to have what is called a *continuous custody order* over a child or youth. This usually happens when a temporary custody order expires.

What Is a Continuous Custody Order?

A continuous custody order allows CSSD to begin processing a child to place them for adoption with another family. If this happens, CSSD will no longer be involved in the protection of the child unless a future event with the new family requires their action.

Can Another Person Have a Continuous Custody Order Over My Child?

Yes, a judge is able to order at the conclusion of a Protective Intervention Hearing that parenting of a child be permanently transferred to another person other than the parent the child immediately resided with prior to being removed from care.

If another person is to have continuous parenting of a child, that person must consent to the permanent continuous parenting. As well, if the child is 12 years or older, the child must consent to the placement. Lastly, the child must have been living with the person who will have permanent parenting for at least 6 months prior to an application for continuous parenting.

When Does a Continuous Custody Order Expire?

Continuous custody orders expire and have no effect under the following circumstances:

- When a person is 18 years of age,
- When the person under custody marries someone;
- When permanent custody of the child transfer to another person; or
- When a court rescinds the order.

Return of a Child to their Parent

A child can be returned to their parent at any time to the parent they were removed from when the circumstances have changed and the CSSD Manager believes it is in the child's best interests. However, there is no guarantee that CSSD will return a child to their parent if they do not believe it is in the best interests of the child.

Can I Apply to Get My Children Back After a Continuous Custody Order?

Yes, you can apply to have a continuous custody order rescinded by a court. However, this requires "leave of the court". This means that you will need permission from a judge to have your application heard. There is no guarantee to have your matter heard by a judge.

Additionally, a continuous custody order can only be rescinded when the circumstances involving the parties to a continuous custody matter have changed significantly since when the continuous custody order was made. A continuous custody order cannot be rescinded if a child has been adopted or is about to be adopted by a prospective parent.

To apply to have a continuous custody order rescinded you must first determine which court you will have to apply to. This will likely be the same court that the continuous custody order was made in unless you or your child has moved to a different area of the province.

For applications within St. John's and Corner Brook areas you must file an originating application at the Supreme Court of Newfoundland and Labrador (Family Division). This form can be found online here: <https://court.nl.ca/supreme/family/forms/F4.03A%20-%20Originating%20Application.pdf>

For applications anywhere else in the province you will have to file a Form 1 Application at the Provincial Court nearest to you or your child. This form can be found online here: https://court.nl.ca/provincial/forms/family/Com_FORM1.pdf

Once your application has been filed with the appropriate court you, CSSD, and any other party to the continuous custody order will be notified of the date, time, and place of the hearing at least 10 days before the hearing.

What Happens if I am Given Permission to Have My Application to Have the Order Rescinded?

You will be notified at least 10 days before the hearing for your application takes place. If your child is 12 years or older they will also be notified at least 10 days before the hearing. Additionally, Indigenous representatives may be notified if the child is an Indigenous child. Indigenous representatives may also be notified if a child is believed to have Indigenous roots. This can happen where the heritage of a child is uncertain, such as when both parents of a child are not known. Additional people involved in the continuous custody application may also be notified if your application will proceed to court.

When Would a Judge Rescind a Continuous Custody Order?

A judge will only rescind a continuous custody order when they believe it is in the best interests of a child to rescind the order. This means that you must show the court that it is in the best interests of your child to have the order rescinded for your application to be approved.

Additional Resources

Below is a list of additional resources that you may find useful throughout your child protection proceedings. Please be advised that the contact information for some of these additional resources may change and may not be current.

Public Legal Information Info Line and Lawyer Referral Service

The Public Legal Information Association of Newfoundland and Labrador operates a free legal information line for general legal questions. This line can be contacted Monday to Friday 8:30 – 3:30 to receive general legal information. You can call this line at (709) 722-2643, or toll-free at 1-888-660-7788.

You can also ask for a lawyer referral to receive basic legal advice. Lawyers across Newfoundland and Labrador have registered with the Public Legal Information Association of Newfoundland and Labrador to provide basic legal advice at a preferred rate of a one time 30 minute consultation for \$40.00 (tax included). This fee is paid to the lawyer, and not The Public Legal Information Association of Newfoundland and Labrador. Please call (709) 722-2643, or toll-free at 1-888-660-7788 to receive a referral.

You can also e-mail info@pubiclegalinfo.com to ask your legal questions or receive a referral.

Department of Children, Seniors and Social Development

The Department of CSSD supports individuals, families and communities in Newfoundland and Labrador achieve improved health, social well-being, and reduced poverty for families in the province. As well, it ensures the protection of children, youth and adults from abuse or neglect.

For more information about the Department, please contact them at the information on the following page, or visit their website at <https://www.gov.nl.ca/cssd/>.

Contact:

Department of Children, Seniors and Social Development

P.O. BOX 8700

St. John's, NL, A1B 4J6

Tel: (709) 8279-0760

Fax: (709) 729-6382

Email: CSSDInfo@gov.nl.ca

Legal Aid NL

Legal Aid provides a range of legal services to low income individuals in Newfoundland and Labrador in the areas of family and criminal law, including child protection matters. For more information about Legal Aid, please visit: <https://www.legalaid.nl.ca/contact.html>.

For contact information to the Legal Aid office nearest to you, please visit:
<https://www.legalaid.nl.ca/contact.html>.

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