

Child Protection Protocol
A Coordinated Response in Eastern Ontario

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EXECUTIVE SUMMARY

“CHILD PROTECTION PROTOCOL: A CO-ORDINATED RESPONSE IN EASTERN ONTARIO” has been developed to serve as both a protocol and guideline for professionals involved in the investigation of child protection allegations. The Protocol guides professionals through the various phases of the investigation beginning at the identification of children who may be in need of protection, on to the initial report to CAS, and through the entire criminal and child welfare investigative processes. In addition, the Protocol addresses access to treatment resources, the criminal prosecution, the child protection Court process and ultimately to therapeutic follow-up and prevention.

This protocol is essentially a stated agreement amongst the professional organizations that interface with youth and children in the community. The Protocol takes into account the various pieces of legislation under which police, educators, CAS and other service providers operate. The goal is to develop and maintain an understandable and consistent process to respond to children who may be deemed to be in need of protection.

The Protocol is based on the premise that the most effective social response to the problem of child abuse and neglect is multi-disciplinary in nature. The preferred mode at the investigative phase is a ‘Team’ approach, comprised of police officers and child protection workers. Joint investigations blend the skills and expertise of each discipline. The team approach seeks to determine what has happened to the child and how to implement an appropriate course of coordinated action with the aim to protect the child provide treatment to the child and family and to deter offenders. An effective response depends on each discipline working as a team, understanding each other’s roles and mandates and ensuring that these roles complement one another. The prime objective of this approach is to ensure the safety and protection of the child.

The saying *“It takes a whole village to raise a child”* is especially true when it comes to child protection. The identification and support of children who may be in need of protection can only be done well when the whole community takes responsibility for their children. According to the US Advisory Board on Child Abuse (1995), more children under four years of age die from child abuse than from motor vehicle accidents, fires, drownings, suffocations, chokings or falls.

A strong community takes ownership for the process that ensures that all children can grow up in safe and healthy environments. This protocol reinforces the notion that in Eastern Ontario, we are that kind of community.

INTRODUCTORY SECTION

DECLARATION OF COMMITMENT

This Protocol entitled, “Child Protection: A Co-ordinated Response Protocol in Eastern Ontario”, has been developed and endorsed by the following organizations:

- **Crown Attorney’s Office**
- **Police Services** – Brockville, Carleton Place/Perth, Cornwall, Gananoque, Prescott, Smith Falls
- **Ontario Provincial Police (OPP)** – All OPP detachments reporting to Eastern Headquarters
- **Children’s Aid Societies (CAS or Family & Children’s Services - FCS)** for: Lanark County, Leeds-Grenville Counties, Stormont, Dundas and Glengarry Counties, & Prescott-Russell Counties.
- **School Boards** – The Upper Canada District School Board, The Catholic District School Board of Eastern Ontario, French Public, French Catholic
- **Area Hospitals**
- **Children’s Mental Health Centres**
- **Child Care Settings Sector**
- **Women’s Shelters**
- **Developmental Services Sector**
- **Private Operated Group homes**

INTRODUCTION

The Purpose of the Protocol is to:

- Assist in the greater safety and protection of children;
- Ensure a consistent approach across the jurisdiction in the way police, CAS and all service providers respond to children who may be in need of protection;
- Provide guidelines for all community professionals to clarify roles, responsibilities, and the 'duty to report' all suspicions of child abuse or neglect.
- Clarify the expectations re: roles, responsibilities and communication lines of professionals in child protection investigations
- Provide guidelines to support components of the revised Risk Assessment Model for Child Protection in Ontario;
- Provide direction on the components outlined in the Police Services manual;
- Facilitate appropriate sharing and disclosure of information;
- Encourage adaptive and responsive partnerships within the community to enhance the safety and well being of children in the community;

The model needs to ensure that the fulfillment of all mandated requirements for all investigations involving children is facilitated by:

- Providing for appropriate sharing and disclosure of information;
- Emphasizing the importance of joint consultation;
- Emphasizing the importance of teamwork
- Respecting requirements of both the criminal and child protection systems
- Serving as a basis of review for current police/CAS protocols;
- Ensuring consistency with the Ontario Major Case Management Model manual where the offense is of a nature which would warrant Major Case Management;
- Contributing to the overall integrity of the justice system.

STATEMENT OF PRINCIPLES

The Child & Family Services Act (CFSA) mandates that the paramount purpose of any child protection investigation is to promote the best interests, protection and well-being of the child. This protocol is based on the following principles:

- i) The primary objective of any intervention is to protect and support the child, and to stop the abuse or neglect.
- ii) The investigative and legal processes must be done in such a way as to minimize the emotional trauma for the child.
- iii) Abuse of a child is an unacceptable act, which should be prosecuted when warranted.
- iv) Most children are capable of being credible reporters of events. All allegations of child abuse and neglect must be taken very seriously and be thoroughly investigated.
- v) A prompt and thorough investigation is important for the immediate protection of a child suspected of being a victim of abuse or neglect.
- vi) The number of interviews with the child should be kept to a minimum whenever possible to reduce stress for the child.
- vii) In joint or parallel criminal and child protection investigations, police and the CAS will provide mutual disclosure of information relevant to the investigation.
- viii) Investigations are enhanced by interviewers with specialized knowledge and skills in conducting investigative interviews with children, child development and forensic interview techniques.
- ix) Investigations must be unbiased. The investigative process must be to determine whether or not abuse or neglect has happened, rather than to actively set out to prove that it has.
- x) An effective response requires the full cooperation and coordination of all agencies, individuals and organizations involved with the child.
- xi) The need for support and the development of an appropriate treatment plan to engage services for the child, his/her family and the offender must be assessed on each case.
- xii) Making the 'state' the parent is not the primary objective of child protection interventions.
- xiii) Strengthening the family to protect and support the child can be the most effective way to stop the abuse or neglect, prevent false recantation and ameliorate the effect of the abuse/neglect on the child.
- xiv) Early detection and prevention provide the ultimate keys to ending the cycle of child abuse & neglect and their destructive consequences.

DEFINITIONS OF TERMS:

ABANDONMENT – CC Definition “abandon” or “expose” includes:

- (a) a willful omission to take charge of a child by a person who is under a legal duty to do so, and
- (b) dealing with a child in a manner that is likely to leave that child exposed to risk without protection.

The Criminal Code also provides a definition of failure to provide the necessities of life CC Section 215. The CFSA reference is in Section 37(2)(l).

ABUSE

- **Abuse or Harm by a Third Party** – refers to incidents of physical and/or sexual abuse between a child and someone outside the child’s family who is not in a position of trust or authority nor can be defined as ‘a person in charge of a child’.
- **Emotional Abuse or Harm** ...a child’s psychological development is compromised as demonstrated by serious anxiety; depression; withdrawal; self-destructive or aggressive behaviour or delayed development. Witnessing family violence is one form of emotional abuse. (see Eligibility Spectrum for additional details)
- **Extrafamilial Abuse or Harm** – refers to incidents of physical &/or sexual abuse between a child and someone known to the child in a caregiving role but outside the child’s family e.g. family friend, teacher, volunteer. The person may be in a position of trust or authority over the child, and as a result the case falls under the auspices of the CFSA. (See next page for details under ‘A Person in Charge of a Child’).
- **Historical Abuse** – When allegations are made about a child under the age of 16 of past (historical) abuse, CAS/Police will respond. In allegations of past physical harm which suggest a current risk that other children may be harmed due to the alleged offender still being ‘in charge of the child’, the CAS will be involved with police. Where there are no other children at potential risk and the youth is over 16 years of age, the CAS is not mandated to investigate, however, may assist in the interviews if requested by police.
- **Intrafamilial Abuse or Harm** – refers to incidents of physical &/or sexual abuse between a child and a family member e.g. daughter/father; grandchild/grandparent; niece/uncle; step-son/step-mother.
- **Physical Abuse or Harm** ...is any act resulting in physical harm to a child which could be a violation of the Criminal Code or could place a child in need of protection as defined in the CFSA s.37(2) (see Eligibility Spectrum for additional details). Criminal Code charges relative to physical abuse includes assault, assault causing bodily harm, assault with a weapon, aggravated assault.

- **Sexual Abuse or Harm** ...is any sexual intercourse, sexual molestation, incest (vaginal intercourse within a blood relationship), exhibitionism, sexual interference or other acts that may render the child to be in need of protection as defined in the CFSA s. 37(2). See appendix XIII for list of criminal code offenses relating to sexual abuse.

AGE OF CONSENT – No one under 14 years of age can consent to sexual activity except if the other person is within two years of their birthdate. Consent is not a viable criminal defense, regardless of age if the alleged offender is in a position of trust or authority over the child.

A PERSON IN CHARGE OF A CHILD - The CFSA prohibits anyone having charge of a child from inflicting abuse on that child or permitting that child to suffer abuse by failing to care and provide for or supervise and protect the child adequately. To be considered a person in charge of the child, one need not be a parent or person exercising parental rights, but may also be anyone having direct responsibility for caring for a child. The determination of whether or not a person is in charge of the child will depend on the facts of each situation. Examples of persons who may fall into this category could include babysitters, teachers, social workers, Big Brothers/Sisters, foster parents, recreation workers etc. The CFSA does not mandate Children's Aid Societies to intervene when the abuse or neglect is inflicted by a person not in charge of a child unless the person who is 'in charge of the child' by omission, allows the child to be abused or neglected.

APPREHENSION - The legal removal of a child from the care of his/her parent(s) or person(s) in charge of the child. Under the CFSA, child protection staff can apply for a warrant to apprehend children. Where a child protection worker believes on reasonable and probable grounds that a child is in need of protection **and** there would be a risk to the child's health or safety to bring the matter on for a hearing or to apply for a warrant, the worker may without a warrant, bring the child to a place of safety. (CFSA Section 40 7.) Police officers may also apprehend in certain circumstances (see CFSA Section 40.)

BURDEN OF PROOF - The test or burden of proof in a criminal matter is 'beyond a reasonable doubt'. This is an extremely high test to meet in a Court of law. This contrasts to the Child Protection burden of proof which is 'on the balance of probabilities' which essentially means it is more likely to have occurred than not.

CHILD – A child is generally understood to be any person under eighteen years of age. However, the focus of this Protocol is on the CFSA definition i.e. a child who may be in need of protection is under sixteen years of age. This Protocol is also meant to include reports from individuals who are now sixteen years of age or over, where there is indication that another child may now be at risk of abuse or neglect by the same alleged offender. CAS would also be involved in an investigation when a youth that is over 16, but under 18 years of age, is in care, and the child is the subject of an order under Part III of the CFSA. In these situations whether the child was the alleged victim or alleged offender, the CAS would be acting as a parent.

CHILD ABUSE REGISTER – The Child abuse Register is a centralized provincial register that contains the names of all offenders whose abuse of a child (by acts of omission or

commission) has been verified (on the 'balance of probabilities) by a Children's Aid Society. CAS's are the only organizations that can access the register either to officially place an offender's name on the record or to determine if an alleged offender has been placed on the register previously. When the 'Comprehensive' Child Protection Information System (provincial Child Protection database) has been implemented, the Register will become redundant.

CHILD ABUSE REVIEW TEAM – C.A.R.T.

A Child Abuse and Review Team (CART) as outlined in Section 73 of the CFSA, is comprised of community professionals qualified to perform medical, psychological, developmental, educational or social assessment and at least one legally qualified medical practitioner. The role and mandate of a Child Abuse Review Committee is to review cases where a child has or may be suffering abuse as referred to it by a CAS and to recommend to the Society how the child may be protected. Where a child is in care as a result of being in need of protection, the Society will not return a child to the care of the person who had charge of the child until the case has been referred to the CART or the Court has terminated the order placing the child in the Society's care.

As outlined in the Solicitor General Guidelines, where a Child Abuse Review Team (CART) meets in a community, the police service must be involved in the committee (at a minimum in every child abuse and neglect case where there is a history of domestic violence or a firearm is known to be in the home).

CHILD AS OFFENDER - If the alleged offender is a child over the age of 12 and under the age of 18, police are involved in the investigation as charges could be laid under the Criminal Code. The child/youth would fall under the provisions of the YOA. If the alleged abuser is under 12 years of age, the investigation falls under the auspices of the CFSA Section 37(2) as no criminal charges can be laid. The police may be contacted in these situations and may choose to participate.

CHILD IN NEED OF PROTECTION - This is the legal definition which mandates Children's Aid Societies, on behalf of the state, to intervene with families so that children at risk can be protected. See **Appendix # 1** for the verbatim definition from the **Child and Family Services Act** - Section 37(2) or Section 72(1).

CONTINUITY OF EXHIBITS – The necessity of providing the whereabouts and integrity of items of evidence.

C.P.I.C. – Canadian Police Information Centre

CRIMINAL NEGLIGENCE- *Criminal Code definition* .

- (1) - Everyone is criminally negligent who
 - (a) in doing anything, or
 - (b) in omitting to do anything that is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons.

DOMESTIC/FAMILY VIOLENCE – refers to incidents usually involving **violence against women** where children can be at significant risk of physical, sexual and emotional harm.

Children witnessed violence against their mothers in almost 40 per cent of violent marriages (Violence Against Women Survey 1993, Canadian Centre for Justice Statistics). It is believed that 50% of men who frequently assault their wives also frequently abuse their children. Offenders sometimes intentionally injure or intimidate children in an effort to control their adult partners. Children can also suffer injury – either intentionally or accidentally - during attacks on their mothers. Assaults on younger children may occur while the mother is holding the child. Injuries to older children often occur when an adolescent attempts to intervene in violent episodes (Carter & Schechter, 1997). The offender may focus so much attention on controlling and abusing his partner that he neglects or prevents the mother from adequately caring for the child. A study of children exposed to woman abuse has shown that the levels of emotional and behavioural problems displayed by children who witness woman abuse are comparable to those of children who are themselves physically abused (Jaffe, Wolfe, Wilson and Sluszczyk, 1985).

MAJOR CASE/THRESHOLD CASE - The following major case occurrences are deemed to be Threshold Offences and shall be assigned to a primary investigator who shall undertake the investigation:

- a) Homicides as defined in subsection 222 (4), Criminal Code of Canada, and attempts;
- b) Sexual assaults and attempts (for the purpose of this standard, is deemed to include sexual interference, sexual exploitation and invitation to sexual touching) in which one or more of the following factors are believed to exist;
 - The occurrence involves an offence in section 272 (carries, uses, or threatens to use a weapon/imitation; bodily harm; party to the offence) or 273 (wounds, maims, disfigures or endangers life) of the Criminal Code of Canada;
 - The offender is unknown;
 - The offender is known to have been or suspected to have been previously involved in a similar offence;
 - Multiple victims within a single offence;
 - Multiple sexual acts;
 - The use of restraints, bondage, disguise(s) by the offender;
 - The use of photographic, video, or audio equipment to record the offence;
 - The removal of a personal item(s) of the victim from the scene by the offender (e.g., driver's license or article of clothing as a souvenir);
 - Scripting (i.e., the offender forces the victim to recite words/phrases or engage in prompted dialogue);
 - The use of a con or ruse by the offender to lure the victim including the use of the internet, chat lines or dating services;
 - The commission of any other offence in conjunction with the sexual assault (e.g. criminal harassment, forcible confinement, administration of a noxious substance or suspected administration of a noxious substance intended to incapacitate); The victim is under the age of 14 years and offender is a person in a position of trust or authority or is a person with whom the victim is in a relationship of dependency;
 - Torture;
 - Penetration, including oral, vaginal or anal;

- c) Missing person occurrences, where the circumstances indicate a strong possibility of foul play;
- d) Occurrences suspected to be homicide involving found human remains;
- e) Occurrences involving non-familial abductions and attempts, and;
- f) Any major case that is linked to another major case within the same or another jurisdiction.

NEGLECT - Neglect can be either active (intentional withholding of basic necessities or care) or passive (not providing basic necessities and care because of lack of experience, information or ability). The term neglect includes the failure to protect a child; inappropriate child care arrangements; lack of medical care; unfit physical living conditions; poor general care; lack of supervision; failure to provide the necessities of life such as food, clothing, shelter and abandonment. The 'pattern of neglect' as defined in the CFSA tends to be a condition in which the child lives, rather than a single incident so clusters of these indicators or behaviours are usually seen. The presence or absence of one or more of these is not definitive of neglect. Whenever a professional has a doubt about the specific situation, a consultation with CAS staff may be helpful in clarifying whether the case meets the threshold for an investigation under the CFSA and Eligibility Spectrum (Appendix XII).

'PLACE OF SAFETY' A 'Place of Safety' as described in the CFSA Section 37(1), is defined as "...a foster home, a hospital, and a place or one of a class of places designated as such by a Director under subsection 17 (2) of Part I (Flexible Services). It does not include a place of secure custody as defined in Part IV (Young Offenders) or a place of secure temporary detention as defined in Part IV". Once a child is placed in a designated 'Place of Safety', the child is legally 'in care'. Homes that could be designated as a 'Place of Safety' for a child would include:

- relatives
- neighbours
- friends of the family
- non-custodial parents

'Places of Safety' are by nature and intent of the legislation, short-term measures intended to control a child being in an unsafe situation temporarily, and is not intended to provide long-term 'in-care' status.

RESTRAINING ORDER – (Under the CFSA, Section 80– 1) Where the Court finds that a child is in need of protection, the Court may, instead of or in addition to making an order for supervision, make an order in the child's best interests restraining or prohibiting a person's access to or contact with the child, and may include in the order such directions as the Court considers appropriate for implementing the order and protecting the child.

RISK ASSESSMENT MODEL

The MCSS has prescribed that all CAS's utilize the same process when investigating and assessing the level of risk to children. The Risk Assessment Model includes three specific

tools that are used by staff to enhance the consistency of response across the province. These three tools are:

- **Eligibility Spectrum**

The Eligibility Spectrum is the tool that is mandated by MCSS to determine which potential child welfare cases are eligible to receive child protection services at the point of referral. The Spectrum is broken into 10 sections, of which the first five are grounded in the protection section of the CFSA.

- **Safety Assessment Tool**

This tool is used to determine if the child is in immediate need of safety at the time of the first face-to-face contact.

- **Risk Assessment Tool**

The process that a Child Protection worker utilizes to estimate the level of risk of future harm to children in the family, usually completed within 30 days of the referral and every six months as long as the file remains open.

SEXUAL ASSAULT KIT - A standardized kit prepared by the Centre of Forensic Sciences under the auspices of the Ministry of the Solicitor General to determine whether sexual assault has occurred.

SUDDEN INFANT DEATH (SIDS) - *From the Ontario Child Mortality Task Force*

SIDS is defined as: the sudden death of an infant under one year of age which remains unexplained after the performance of a complete post mortem investigation, including autopsy, an examination of the scene of death and review of the case history

SUDDEN UNEXPLAINED DEATH (SUD) - *From the Ontario Child Mortality Task Force*

SUD – This classification applies to children under the age of one where the SIDS diagnosis does not apply but where no apparent cause of death can be ascertained. For example, an infant with healed fractures which did not contribute to the cause of death but which raises suspicion would be classified as a SUD death.

'TEAM' – Unless otherwise identified, 'Team' refers to the Police/CAS investigative team responsible for the joint or parallel criminal and child protection investigations.

VOLUNTARY CARE AGREEMENT – This is a mechanism to admit a child into the care of a society on a voluntary basis for a specified period of time without Court involvement. Time in care counts towards the maximum time a child can be in CAS care until a Crown Wardship Application must be filed (Maximum two years for children over the age of six and one year for children under the age of six).

WARDSHIP – Society or Temporary – This refers to the child's legal status whereby the child is deemed to be a ward of the province for the period of time indicated on the Court order. CAS's assume many parental responsibilities while this order is in effect. Again the maximum time limit is one year for children under the age of six and two years for those over six years of age.

WARDSHIP – Crown or Permanent – This refers to the child’s legal status whereby the child is deemed a permanent ward of the province until they reach the age of eighteen. Children are legally free to be adopted under this order only when there are no orders for access to the natural family.

CHILD ABUSE/NEGLECT INDICATORS

When a child has suffered abuse or neglect, physical or behavioural signs or symptoms are frequently found. The following indicators are intended to assist in the recognition or identification of a child who may be in need of protection. This list is not all-inclusive and should only be used as a guideline. While physical or sexual abuse can relate to a specific incident or event, emotional abuse and neglect tend to relate to a 'condition'.

In either case, the **presence of one or more of these indicators does not necessarily mean** that the child has been abused or neglected. In many situations, the indicators tend to be seen in clusters. Many of the behavioural indicators **can also be signs of a child under stress** from other emotionally difficult situations children are placed in e.g. a contentious custody dispute between parents, a gravely ill family member at home, etc.

Possible Indicators of Physical Abuse

- Unexplained or inadequately explained injury, abrasions, bruises, burns, contusions, haematomas, infections or other marks, swelling, or tenderness on the body.
- Unexplained loss of patches of hair.
- Human bite marks.
- Cigarette or cigar burns.
- Reluctance, avoidance or distress at having to explain an injury.
- No apparent medical attention for an injury that would reasonably seem to require such.
- Evidence of repeated injury or denial or minimization of injury.
- Fearful of physical contact.
- Frequent absences from school or childcare setting without reasonable cause.

Possible Indicators of Sexual Abuse

- Sexually transmitted disease.
- Pregnancy.
- Difficulty walking or sitting.
- Pain or itching in genital area.
- Sophisticated sexual knowledge beyond the normal expectations for the child's age.
- Sexually explicit art work or bizarre sexual content in school work.
- Seductive behaviour.
- Unwillingness to change clothing for physical education class.
- Prostitution.
- Suicidal/self-harming behaviours or gestures.
- Running behaviour.
- Substance abuse.

Possible Indicators of Emotional Abuse

- Presents noticeable mood or personality alteration e.g. once talkative, now quiet.
- An extreme lack of confidence or severe depression.
- A non-medical failure to thrive.

- Reports frequent nightmares or other sleep disorders.
- Sudden deterioration in school performance.
- Withdrawal from peers.
- Emotionally flat; withdrawn or preoccupied.
- Can be overly compliant & passive or alternatively very defiant and angry.
- Reverts to more infantile behaviour or alternatively tries to act adult-like.

Possible Indicators of a Pattern of Neglect

- Early arrival and late departure from school or programs.
- Evidence of chronically poor hygiene.
- Shows a lack of routine medical or dental care.
- Inadequately clothed for the season.
- Lunches are regularly inadequate or “forgotten”.
- Consistently appears fatigued- falls asleep in class etc.
- Gravitates to strangers.
- Evidence of a lack of appropriate supervision given the age of the child.

Possible Indicators for Children who Witness Family Violence

- Significant change in school performance/behaviour, coping skills deteriorate.
- Uncharacteristically, homework not done, missing assignments and books.
- Overachieving, excessively compliant, constant approval seeking OR alternatively, becomes more defiant in class and aggressive with other students.
- Frequently overtired, cries more readily, constant sadness and lowered self-esteem.
- Somatic complaints (tummy aches, non-specific pains).
- Defiance to authority figures, particularly women teachers.
- Difficulty concentrating, daydreaming, spends more time alone.
- High absenteeism with a wide variety of excuses OR alternatively, first to arrive at school and last to leave.
- Eating disturbances e.g. under or over eating, hoarding food etc.
- Takes on responsibility beyond his/her normal age expectations.
- Excessive separation anxiety, attachment difficulties.

Whenever a professional or community collateral is in doubt of whether the indicators they have observed warrants a formal child protection referral, they are encouraged to consult with CAS and or police.

Police and CAS realize that behavioural indicators are not necessarily conclusive evidence of abuse or neglect. At the beginning of an investigation, alternative hypothesis for the behaviours are considered so that other avenues are pursued in the investigative process. These indicators can be important for CAS during the course of the process of verifying whether the child is in need of protection.

ROLES AND RESPONSIBILITIES IN CHILD PROTECTION

1. ROLE & MANDATE OF POLICE SERVICES

Police are responsible:

- To investigate alleged violations of the Criminal Code and other provincial statutes with regard to complaints of physical abuse, sexual abuse and neglect.
- To protect the public and ensure the safety and security of all persons and property.
- To comply with and uphold the Police Services Act
- To treat victims of crime with respect and have an understanding of their needs.
- To gather forensic evidence, liaise with the Crown Attorney and apprehend the person responsible for the crime.

Police officers have the same professional 'duty to report' any suspicion that a child may be in need of protection to the appropriate Children's Aid Society under the CFSA 72(1) as all other professionals in the community.

Where a Child Abuse Review Team (CART) meets in a community, the police service must be involved in the committee at a minimum in every child abuse and neglect case where there is a history of domestic violence or a firearm known to be in the home. (Solicitor General Guidelines)

All Police investigations that involve threshold offenses as set out in the Major Case management manual, must comply with the guidelines set out in that manual.

Police Services are funded by the Municipality they serve and operate under the direction of the Ministry of the Solicitor General in Ontario. Ontario Provincial Police are funded through the Ministry of the Solicitor General in Ontario.

2. ROLE & MANDATE OF THE CROWN ATTORNEY

The Crown Attorney is responsible for the prosecution of all criminal matters involving children.

The Attorney General of Ontario funds the local Crown Attorney's offices.

3. ROLE AND MANDATE OF COMMUNITY PROFESSIONALS

Police and CAS have the **legally mandated** responsibility **to investigate** allegations of abuse and neglect. Educators, medical staff, mental health service providers and other community partners all have an important part to play in the protection of children by **identifying, reporting, treating and providing services** to the identified children and youth. It is the intent that the procedures described here will assist professionals by identifying their legal responsibilities and providing information regarding what they should expect in the process of a child protection investigation.

At the point of intake some service providers clearly explain to their clients, that they have a professional duty to report to CAS any situation where a child may be in need of protection. Giving clients this information in advance, avoids situations where clients can later feel the service provider has violated their confidentiality if they must refer a child protection concern to the CAS.

4. ROLE & MANDATE OF CHILDREN'S AID SOCIETIES

The Child and Family Services Act (CFSA), amended on March 31, 2000 mandate the Children's Aid Societies (CAS) of Ontario (alternately known as Family and Children's Services or 'FCS' in some jurisdictions). The paramount purpose of the CFSA is to promote the best interests, protection and well being of children.

The CAS is mandated to investigate all child protection allegations that meet the requirements set out in Section 37(2) of the CFSA. Where the report meets eligibility requirements, the child protection worker will then undertake a full investigation which will take into consideration a range of factors including the risk to the child, the capacity of the parents to safely care for their children, any strengths which might mitigate the risk and capacity limitations.

Throughout the child protection investigation, the child protection worker generally takes the lead role in ensuring the safety of the child and coordinating appropriate services to the child and family.

The CAS is mandated to work with the child in the home wherever possible to ensure that the child receives reasonable standards of parental care as set out in the CFSA Section 37(2). The CAS is also mandated to apprehend and bring into 'Care' children who are in need of protection. Where there are reasonable and probable grounds to believe that there is no course of action available other than bringing the child to a place of safety that would adequately protect the child. In these cases, the CAS must bring an application within five days before the Unified Court to show cause why the child was initially brought into care and why the child should remain in care. Grounds that a judge uses in determining whether a child is in need of protection are found in Section 37(2) and repeated in Section 72(1), the duty to report section of the CFSA (*see Appendix 1*)

Every Child Protection investigation conducted by CAS staff must comply with the MCSS Standards for the Investigation of Child Protection Allegations. These standards incorporate the Risk Assessment Model for Child Protection in Ontario.

The CAS is also funded to recruit, develop and utilize community foster home placements to match the needs of children who are brought into 'care'. Additionally, the CAS is mandated to provide adoption services for those children who are made Crown Wards without access to any family member.

Funding for services provided by Children's Aid Societies comes primarily from the Ontario Ministry of Community and Social Services (MCSS).

PROCEDURES SECTION

REPORTING GUIDELINES

1. DUTY TO REPORT UNDER THE CFSA – see also, the MCSS ‘Duty to Report’ Pamphlet

The CFSA recognizes that every citizen has a responsibility for the welfare of children. It states clearly that members of the public, including professionals who work with children, have an obligation to report **forthwith**, to a Children’s Aid Society if they have ****”reasonable grounds” to suspect that a child is or may be in need of protection.**

Where a child is suspected to be in need of protection, professionals who work with children, must report even if it involves confidential information. In regards to confidentiality, the **CFSA supercedes all other common laws or statutory privileges** (except for the solicitor-client relationship).

For purposes of child protection under the C.F.S.A., a child is a person who is under sixteen years of age. Youth who are sixteen years of age or older but under age eighteen are included only if they are currently the subject of an order under Part 3 of the CFSA (a ward or under a Supervision Order).

- The person who has the **reasonable grounds to suspect** that a child is or may be in need of protection must make the report directly to a Children’s Aid Society and not rely on anyone else to report on his or her behalf. This allows the Protection worker to gather pertinent details of the allegations from the first hand observer and prevent any unnecessary delay on the commencement of the investigation.
- There is also an **ongoing** obligation to report. If a person has made a previous report about a child, and has **additional reasonable grounds to suspect** that a child is or may be in need of protection, that person must make a further report to a Children’s Aid Society. This ensures that critical information subsequent to the initial referral is not overlooked in any decisions made in relation to the safety and well being of the child. It is often assumed that CAS is aware of this secondary information by virtue of their involvement with the family. Results of several inquests into the deaths of children reveals that this is not always the case.
- **Protection from liability** (Section 72-7) is built into the CFSA for those person’s who make a report unless he or she acted maliciously or without reasonable grounds for his or her suspicion. It should be noted that, if a professional fails in their duty to report, a civil suit could be launched by the victim at some point in the future if subsequent abuse or neglect arises as a result of the failure to report.
- Under Section 72(4) of the CFSA, any professional or official who fails to report a suspicion that a child is or **may be in need of protection**, where the information on which that suspicion is based was obtained in the course of his or her professional or official duties, is liable on conviction to a fine of up to \$1,000.

- **It is not the role of any professional, other than the Police and the CAS worker, to conduct the investigation.** As soon as a professional has reasonable and probable grounds to believe that a child may be in need of protection, there are adequate grounds to refer to the CAS. Additional probing or questioning of the child will only serve to compromise the ensuing investigative process.
- **See Reporting Procedures & Flowchart – Appendix #2**
- ** “Reasonable Grounds” have been interpreted to mean what an average person, given his or her training, background and experience, exercising normal and honest judgement would have reason to suspect. CAS’s can be contacted whenever the referral person is unclear whether their concerns would meet the threshold for an investigation. Non-identifying information can be given but once the situation meets the threshold for investigation, the referral source is obligated to give the relevant identifying information.

2. CONFIDENTIALITY OF REPORTING

Normally, the Children’s Aid Society will withhold the name of the reporting individual. Under the CFSA Part (8), once proclaimed, the individual or family has the right to review their file upon request. In these cases, the CAS will ‘white-out’ the referral source and other third party information prior to the client reviewing the file. However, the reporter’s name cannot be kept confidential where their evidence is required for the police investigation or if the case enters either the criminal or child protection Court process.

3. FEEDBACK TO THE REFERRAL SOURCE

The CAS worker can only acknowledge the interest of the referral source. The referral source should be informed that pertinent information may be shared if written consent is given by the client, otherwise, it is prohibited by the CFSA. Wherever it is in the child’s best interests, the referral source and CAS will request that the family sign consent forms so that information can be shared that will assist the child in their day-to-day life for instance, at school or in treatment.

4. RECEIPT OF REPORTS

All referrals received by the CAS where the referral is clearly **intrafamilial** (within the family) or where there are reasonable grounds to believe the parents or caregivers for the child failed to protect the child, will be investigated according to the **MCSS Risk Assessment Model for Child Protection in Ontario (RAM)**. This involves amongst other things, contacting the police on all abuse or neglect matters that may potentially involve a criminal charge. Where there is an allegation of **domestic violence** where children may be at risk of physical or emotional harm or otherwise in need of protection, police and CAS will contact each other immediately to develop a plan for the investigation.

In third party **matters** where the alleged offender has not been in a caretaking role or in a position of authority over a child (e.g. a child is sexually assaulted by a stranger on the way home from school), the matter will be referred to the police who have primary responsibility for the investigation. If the police, parents or child requests CAS involvement, the CAS will

assist whenever possible. These cases will be investigated as non-protection cases and are not subject to the requirements of the RAM.

5. RESPONDING TO THE INITIAL REPORT FROM THE COMMUNITY

In all cases coded '**Extremely Severe**' under the **MCSS Eligibility Spectrum** (generally, all sexual abuse as well as physical abuse allegations with some injury), the CAS worker must interview the child as soon as possible and **no later than 12 hours** after the referral has been received. Any deviation from this standard 12-hour response needs to be documented and should reflect issues related to the best interests of the child.

All other reports that are coded 'Moderately Severe' have a 7-day response time for CAS's. At the time of the call to police, the CAS will clearly communicate the timelines they must follow to ensure that an officer can be scheduled within that timeframe.

The initial response to an **anonymous complaint** will be the same as with any other complaint. However, the complainant's wish for anonymity may hamper the effectiveness of the response to the report as it would be impossible to follow-up with the referral source.

Where there is a **safety concern** for workers or other professionals involved in the referral or investigation, the police need to be apprised of that concern so that a reasonable safety plan can be established.

6. POLICE/CAS - RECIPROCAL REPORTING AND JOINT INVESTIGATIONS

The reciprocal reporting of alleged "child in need of protection" cases between the CAS and the police at the outset is fundamental to the success of the Protocol strategy. This allows the two systems to come together early in the process to plan their respective roles and interventions. CAS have an emergency duty service available 24 hours a day so all serious cases can be addressed after regular office hours. This service can be accessed through the after hours telephone answering service and this should be the mode of referral for all urgent matters. FAX, e-mail or postal referrals are not seen until the morning of the next working day so should not be utilized for cases requiring an immediate response.

The preliminary planning stage prior to contact with any alleged victims or abusers is where the decision is made in regards to the type of investigation that will be initiated (joint police/CAS, or separate & concurrent). It is important for CAS to establish where the abuse is alleged to have happened in order to relay the information to the police service or detachment in that specific jurisdiction. (See *Appendix VIII* for the list of Police jurisdictions).

The more collaboration and communication between police and CAS throughout all facets of the investigation, the more likely a successful outcome for the child and family. If police and CAS do not work together effectively, the outcome of the investigation can be jeopardized and there could be increased stress for the child and family.

Joint investigations are the preferred mode of investigation when allegations are received which indicate that one or more of the following circumstances are present:

- i) There are serious injuries, bruises, lacerations or scars related to the current allegation/complaint;
- ii) The injury or condition requires medical treatment;
- iii) An object has been used to inflict injury;
- iv) There is reliable information to suggest that the alleged incident is not isolated or that a pattern of abuse may exist;
- v) There is a previous history of verified abuse to this child, to other children in the family or to any other family member;
- vi) An explanation of the injury/condition is not compatible with the physical findings;
- vii) There are injuries, bruises, lacerations or scars unrelated to the current report;
- viii) The injury/condition is not consistent with any known chronology or offered explanation of events;
- ix) The death of a child occurs under suspicious circumstances;
- x) Any allegation of sexual abuse where the accused is in charge of a child or is in a position of trust.

In some sexual abuse cases where the accused does not have charge of the child nor is in a position of trust, there still may be a role for CAS to be involved. Factors that need to be considered in determining the role of the CAS would include:

- i) There are other apparent protection concerns within the family of the victim (e.g. insufficient supervision, parent not believing the child, previous history with CAS, parent unwilling to pursue the child's treatment needs);
- ii) Protection concerns within the network of the alleged offender i.e. other children potentially at risk
- iii) A potential caregiving relationship between the alleged offender and the victim e.g. neighbour, babysitter
- iv) Disclosure occurring on a case already open to CAS
- v) Alleged offender is under the age of sixteen

7. POLICE/CAS COMMUNICATION

Timely and clear communication between police and CAS is imperative throughout all investigations. This begins at the point of referral where police and CAS immediately inform each other of the referral and begin the process of assessing roles and responsibilities. This joint planning process continues throughout the investigation including the interview stage and follow-up stages. Due to the uniqueness of each investigation, it is important for the investigators to keep each other updated when any decisions are made or interventions planned that could impact on the other's primary mandated requirements i.e. criminal or child protection.

8. PAST CONDUCT RECORDS CHECK

The CAS will check their internal files on all protection referrals. In addition, the provincial Fast-Track system will be checked within 24 hours of the initial referral and the Child Abuse Register within 72 hours (on abuse referrals) to ascertain if there is a previous history of abuse or neglect in Ontario (or if the parties have been subject to an inter-provincial alert).

Police will check their internal files (either in their in-house information system or Ontario Police Technology & Information Co-operative – O.P.T.I.C.) as well as CPIC (Canadian Police Information Computer) or other internal databases.

INTERVIEW STAGE

1. THE INVESTIGATION – (See also the Police/CAS Investigative Procedures in Appendix IV)

- Police are responsible primarily for the criminal investigation.
- CAS is responsible for the child protection investigation.
- Both are responsible to carry out the investigation in a manner that promotes the best interests, protection and well being of the child. Where there are potential conflicting demands between the criminal and child protection issues involved, the best interests, safety and well being of the child should guide the decision-making process.

Wherever possible, interviews of children will be kept to a minimum number. This is best accomplished via a 'joint' investigation, meaning that police and CAS jointly interview the child(ren) involved and work closely together throughout the course of the investigation.

The CAS is constrained to the following timelines in terms of the first interview with the child: For all **Extremely Severe** cases (as per the Eligibility Spectrum) the maximum time line is 12 hours for the first face to face contact with the child; for all **Moderately Severe** cases, the maximum timeline is seven days. These timelines can create some logistical problems in developing a joint schedule particularly when police and CAS staff often work different shifts. Every reasonable effort will be made by police and CAS to coordinate the most effective timing of the interviews of the alleged victims.

Where the nature of the case involves interviewing one child who is the alleged victim, setting up the response times for the interview is most efficiently done simply by way of telephone communication between the police officer and the CAS worker. At the other end of the continuum, where it is alleged that there are multiple alleged victims or offenders, it may be important to schedule an emergency case conference meeting with the various workers, supervisors and police personnel in attendance.

The initial investigative plan will be developed jointly. It includes the following components:

- Who will be on the joint investigative team
- How quickly the investigation will commence
- Where the initial interviews will take place
- The sequence of the interviews of victims or possible victims, suspects and witnesses
- Who will be involved in the interviews
- Who will lead the interview(s)
- How the statements will be recorded
- Determining the various lines of communication

2. INTERVIEW OF THE CHILD BY CAS ONLY

At the point of referral, some cases may code as eligible for CAS services under the Eligibility Spectrum, but may not involve an allegation of criminal behaviour that would necessitate police involvement. For example, situations involving a push or shove

between parent and youth, excessive spanking or slap on the face. In cases involving referrals where there may be the distinct possibility that a criminal act has been committed or omitted, the CAS will inform the police of the referral, and a decision will be made by police on whether they need to attend at that point. In some cases, the decision will be that CAS will interview the child on their own and report back to police only if the child discloses information of a criminal nature. If during the course of the intervention, it becomes evident that there may in fact be grounds to lay a criminal charge, it is imperative that the CAS worker contact police immediately so that the criminal investigation can be initiated at that juncture.

In those cases where the CAS is going alone to investigate other child protection allegations where it is assessed that there may be a degree of risk of harm to CAS staff, police assistance may be requested by CAS. This could include families where there is a history of being hostile or violent or other individuals in the home with a record of assaults etc.

3. JOINT INTERVIEW OF THE CHILD/REN

The interview of the child/ren will take place in a setting, which first and foremost meets the immediate needs and best interests of the child. Some factors to consider in determining the location include: where the interview can take place with privacy and without interruption; where the child will feel safest to disclose the truth; and where the alleged abuse took place. For school-aged children, the school often provides the most appropriate setting. This is particularly relevant where the investigation involves an alleged intrafamilial offender. Children naturally would not feel comfortable disclosing in the home where the abuse occurred.

Where the situation warrants and where possible, the child should be given the option of having a support person present. Support persons who are present for the interview should be informed of how the interview will proceed so that they do not participate directly in the investigative interview with the child unless asked by the Police/CAS team. They should be informed that they might be required to attend and to testify in criminal Court.

Prior to the interview commencing, the police and CAS worker will determine who will take the lead in the interview. The decision as to who should lead the interview should be based on such issues as the level of skill or expertise in forensic interviewing techniques, knowledge of child development, and the ability to build rapport with the individual child.

Video-Taping Statements – “Where circumstances make it feasible interviews will be recorded on video tape.” The intent of this process is to capture the disclosure in its true form as well as the questions asked to elicit information by the investigators. This can reduce the number of interviews the child will have and the tape can be introduced at trial. Children should not be apprehended to facilitate videotaping technology, rather, the technology should be made portable so that the child can be taped in the setting that is least intrusive for them.

Where there are language barriers involved in completing the investigation, the services of a qualified interpreter will be sought. Some Police services keep lists of interpreters for

those languages most commonly spoken in their respective jurisdictions. In intrafamilial cases, family should not be used to translate. In all cases it is imperative to determine that there is no link between the translator and the suspect.

The interviewers should use language consistent with the developmental capacity of the child. The preferred interview model is that of **Dr. David Raskin** (*Statement Validity Assessment*) which is the best practice model taught by OACAS and OPC. This is a forensic interview model which assists interviewers in structuring their investigative interview to gather information and reduce contamination factors.

In all interviews, it is imperative that the interviewers maintain an objective and neutral stance. When interviewing young children, there is always the potential for suggestibility to occur if questions become leading in any manner. As the article "*Avoidable and Unavoidable Mistakes in Child Protection Work*" by **Eileen Munroe** points out, professionals should view their original assessment as only one of several potential hypotheses until all the facts and avenues for investigation are complete. There are ample cases across the country and internationally such as Martensville and Deerham that illustrate the need to develop and pursue alternative hypotheses at the outset and throughout every investigation.

Police and child protection worker(s) must use the utmost discretion if there is a need to view and assess any physical injury to the child taking into account the age and sex of the child/youth. It is not recommended that police/CAS ask the child/youth to remove or shift any article of clothing that could leave the child/youth feeling uncomfortable. When in doubt, the child should be seen by a medical practitioner.

4. IMMEDIATE PROTECTION OF THE CHILD

Where it is necessary to keep the alleged offender and the child(ren) apart (and where the non-offending parent is supportive of the child) every effort shall be made to remove the alleged offender from that home rather than the child. Methods to have the alleged offender leave the home may include:

- Voluntary agreement by the alleged offender to leave;
- Laying a criminal charge with a "non communication" order as a condition of release. The Team will discuss the most effective release conditions to protect the child. Once the conditions have been ordered, the Police Officer will inform the child, the non-offending parent(s) and the CAS worker of the conditions of release .
- Initiating a protection hearing under the Child and Family Services Act with an interim order under Section 51 requesting non-residence of the alleged offender with the victim or under Section 80 for a Restraining order (once the child has been found to be in need of protection.)
- Other civil orders i.e. Family Court Orders.

In many cases involving domestic violence, the various women's shelters in the area offer short-term residential services and counselling for mother's and their children may be the most appropriate resource.

Where the above is not possible, removal of the child from the home may be appropriate for a period of time. Under the CFSA (S.40-7), a police officer or a Child Protection Worker can apprehend a child without a warrant if they believe on reasonable and probable grounds that, **(a)** a child is in need of protection; and **(b)** there would be a substantial risk to the child's health and safety during the time necessary to bring the matter on for a hearing or to obtain a warrant. In other circumstances, the CAS will usually seek a warrant under section 40.

5. ASSESSMENT OF RISK TO THE OTHER CHILDREN IN THE HOME

The Risk Assessment Model now clearly delineates that all children who may be in need of protection must be interviewed. This means that children who reside with the alleged victim or alleged offender and not just the child subject to the report, must also be interviewed by the CAS unless there are no reasonable and probable grounds to proceed. The CAS worker must complete a Safety Assessment form including each child involved after the first face-to-face interview/contact with the child(ren).

In situations involving intrafamilial allegations where the level of severity is coded as 'Extremely Severe' and possibly 'Moderately Severe', the investigative team will interview all the children first and notify the parents or caregivers immediately afterwards (unless after the initial interview has been completed it is determined that there are no reasonable and probable grounds to believe that the child is in need of protection). If there is no evidence to suspect that the other children residing in the home or with the alleged offender would be more at risk by informing the parents ahead of time, the parents will be notified by CAS of the initial interview, the need to interview the other children and their permission will be requested.

6. THE PROCESS OF DISCLOSING AND RECANTATION

The following is a paraphrased excerpt from the Metropolitan Toronto Sexual Abuse Protocol – (Sorenson and Snow – 1991)

For sexual abuse allegations in particular, it is important to think of disclosure as a "process" rather than a single event and thus to allow enough time and resources to carry out a number of progressive interviews if necessary. In a study of 630 cases of child sexual abuse involving children ranging in age from three to seventeen years, the majority initially denied the abuse (Sorenson and Snow, 1991). When disclosure was made, it was generally done as a process rather than a single event, with definable phases and characteristics. Disclosure, once it came, was either "active" (where the child/youth gave a detailed, coherent account of the abuse) or "tentative" (where the child/adolescent moved through a number of steps before actually disclosing).

The steps involved in a "tentative" disclosure included the process of:

- Forgetting;
- Distancing;
- Minimizing;
- Dissociating; and,
- Discounting.

The time frame for disclosing in this study (whether active or tentative) varied from situation to situation, with some happening in a single interview and others taking several months. Additionally, whether the disclosure was “active” or “tentative”, it was often initially denied. In fact, in 75% of cases where abuse was eventually confirmed (through guilty pleas, convictions and/or medical evidence) the victims initially denied that abuse had occurred; and of those who recanted after initially disclosing, 93% later reconfirmed the abuse.

A further finding in the study relates to age and disclosure: The authors found that preschool children were more likely to disclose accidentally, while adolescents were more likely to disclose purposefully.

7. POST-INTERVIEW CONSULTATION/COMMUNICATION

As soon as possible after each joint interview, the interviewers should discuss the content and process of the interview to assist in planning the most appropriate next steps in the investigation. Discussions would include the possibility of laying criminal charges, the possibility of removing the child(ren) from the home or pursuing the matter under the CFSA, the need for additional interviews, the need for medical examinations, the need for a referral to treatment resources etc. Throughout the investigation, child protection workers will consult with their supervisor as per the RAM and agency policies and police officers will consult with their superiors and the Crown as per policy.

8. MEDICAL EXAMINATION OF THE CHILD

The welfare of the child is the primary consideration in all decisions surrounding medical intervention.

Where the child has suffered some medical trauma as a result of abuse or neglect, the child should be seen immediately by a physician in order to treat and document the injuries. Immediate medical attention is warranted where:

- The child has medical symptoms warranting immediate medical assessment, such as severe physical injury as a result of abuse or neglect and the child is at substantial risk;
- The nature of the alleged abuse may have resulted in internal injuries not visible;
- There is a disclosure that sexual contact with genitalia occurred within 24 hours and the possibility of securing forensic evidence exists; or
- Waiting for a physical examination at a later date would result in injuries no longer being visible for assessment or documentation.

The new Consent to Treatment legislation enforces the rights of children to deny receiving treatment if the attending physician deems that they are competent to understand: the nature of the illness or injury; the nature of the treatment; the possible consequences for not receiving treatment; and the possible risks, or side effects of the treatment.

Where it is deemed that a medical examination is necessary, the investigative Team shall attempt to locate parents to obtain parental consent to the examination and have them attend the hospital. Where parental consent is not obtained, the child will be apprehended,

with a warrant where feasible. The child should be taken to the emergency department of the nearest hospital. It is in the interests of the child that the physician be experienced in the area of child abuse, so that the child can receive the necessary evaluation and care, and so that the physician's opinion can be recognized as expert. In more complex medical or psychosocial cases, the police/CAS worker should also consider an emergency referral to the Child Protection team at CHEO.

In cases of alleged sexual abuse where there is a suspicion or disclosure that genital contact has occurred within the previous 72 hours, an immediate medical examination, preferably at CHEO, is warranted. Where the 72 hour period has lapsed, forensic evidence is unlikely and there are no specific medical concerns, the team shall refer on a planned basis with the CHEO Child Protection team.

In all cases of alleged abuse, the Team will:

- advise the examining physician that abuse is suspected, and that a full examination and written report documenting the physical and emotional condition of the child is required.
- request a skeletal survey by X-ray, or a bone scan, as considered medically appropriate, where a young child has been or is believed to have been seriously abused, or where head injuries are suspected
- whenever possible, photographs should be taken to document visible injuries.
- request further assessment for internal injuries as indicated by signs and symptoms and at the decision of the physician, obtain precise details of the evidence of injury/neglect found in medical examination, as well as the cause of the injury, in the opinion of the examining physician. Document the information as well as the physician's name and the date. Request a copy of the medical report from the physician as supporting documentation for the file.
- The physician should be advised that they might be required to give evidence in Court.

Hotel Dieu in Kingston can also be accessed for pediatric medical examinations.

If a child/youth refuses a medical examination, every effort should be made to encourage the child to proceed. If this fails, and the physician decides that there is no compelling medical necessity, any child or youth that refuses to be examined and is deemed to have the capacity to consent (Consent to Treatment Act) cannot be forced to have an examination.

9. CONSENT TO TREATMENT – THE 'HEALTH CARE CONSENT ACT'

"Treatment" is defined as anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment or plan of treatment but does not include an act or procedure that is excluded from the definition of the Health Care Consent Act.

The **Health Care Consent Act**, does not set any minimum age at which a person, including a child, who is capable, can consent to his or her own treatment. Consent is required for any treatment except treatment provided in certain emergency situations. The consent must:

- Relate to the treatment being proposed;
- Be informed;
- Be voluntary; and
- Not have been obtained through misrepresentation or fraud.

The health practitioner who proposes a treatment is responsible for determining if the patient has the capacity to consent to the treatment. The test for the capacity to consent to treatment is whether the person is mentally capable with respect to the proposed treatment. In determining the child's capacity to consent, the health practitioner verifies if the child **understands**: the nature of the illness/injury; the nature of the treatment; and appreciates the reasonably foreseeable consequences of a decision or lack of a decision to consent to treatment including possible risks and side effects of the treatment & the consequences of no treatment.

Step One: If a child of any age is capable with respect to a proposed treatment, then the child consents or refuses to consent to that specific treatment at that point in time, on his or her own behalf.

Step Two: If the child is incapable with respect to the treatment, then the health practitioner advises the child they can make an application to the Consent and Capacity Board or "rights advisor" or a substitute decision maker who can consent or refuse to consent to the treatment on behalf of the child. The child can appeal to the Rights tribunal if this happens.

Step Three: If the child is incompetent (for that decision) and the Tribunal rules that the child should receive treatment, then the parents are asked to give consent to treatment for their child.

Step Four: If the child is incompetent and the parents refuse treatment, the CAS can be called to apply for an 'In Need of Protection' finding so that a judge can make the final determination on consent for the treatment.

If however, at any stage the child is found to be competent, then the 'In Need of Protection' finding stands but the child's rights revert back to Step 1.

There are exceptions, however, for the necessity to obtain consent, the most common being where a child who is incapable requires emergency treatment (as defined in the HCCAct) and the delay required to obtain a consent or refusal on the child's behalf will prolong the suffering that the child is apparently experiencing or will put the child at risk of sustaining serious bodily harm.

Reference: *A Manual for Ontario Hospitals: Identifying and Managing Child Abuse and Neglect, April 2000 pgs. 83-87*

10. INTERVIEW OF THE NON-OFFENDING OR ALTERNATE CAREGIVER

In all cases, the plan to interview the non-offending parent should be discussed and coordinated by the team. In most cases, this will be led by the CAS as the critical piece is usually determining the capacity of this parent or caregiver to protect the child from further

harm given the incident or condition being investigated or assessed. In cases where criminal charges are possible, Police will be involved in the initial interview with the non-offending parent whenever this is practical. Where this is not possible due to logistics i.e. arrest of the offender, Police will be given this information by CAS as soon as possible after it is received when this person could be a witness in the criminal proceedings.

11. INTERVIEW OF THE ALLEGED OFFENDER

The police take responsibility for interviewing the alleged offender whenever it is reasonable to believe that criminal charges could be laid. Initial contact with the alleged offender shall occur as soon as possible, in a manner determined by the Police officer. Where a child resides with the alleged offender or there is a question of access to the child, the alleged offender should be seen by police immediately. **Prior to the police interview, the CAS worker will avoid discussions with the alleged abuser.** Child Protection workers are considered persons in authority. In any discussions with the alleged abuser following the police interview, the worker should make it clear that the information provided will be shared with police.

In dealing with the alleged offender, the Team must consider the need to provide immediate protection for the child and for any other children potentially at risk from the alleged offender. The Police Officer will keep the CAS worker fully informed of the progress of the criminal investigation in regards to the alleged offender as it relates to the alleged incident with the child or any other child.

Under the requirements of the Child Protection Standards, the CAS must inform the alleged offender and the family of the victim of the outcome of the child protection investigation within 14 days of its completion.

12. DISCLOSURE AND ACCESS TO RECORDS

The police have a duty to provide the Crown with all relevant information that they have gathered in their investigation. This includes both inculpatory and exculpatory information and even relevant information that is not intended to be used by police or Crown. The Crown then has duty to disclose this to the accused. The Crown may decide not to disclose what is clearly irrelevant information or information that it claims to be privileged. This decision is subject to review by the trial Judge. The Crown may also delay the disclosure of information in order to protect an ongoing investigation. Otherwise, the Crown must make disclosure to the accused in a timely fashion. See Regina v. Stichcombe (1991), 68 C.C.C. (3d) 1 (S.C.C.).

Where there is a joint investigation by the CAS and the police the investigative notes of the worker regarding that specific investigation are subject to disclosure. As is any other information that deals directly with the current investigation. The worker should forward the notes/information to the investigating officer as soon as reasonably possible. In situations involving a reasonable potential of contact that could put the child at further risk, the address of the child's placement will be whited out. There may be cases where children have had previous contact with the CAS. In these cases, the child's or families' CAS file at large is not generally subject to disclosure. If there is ever any doubt on issue of the disclosure or non-disclosure of information then a Crown should be consulted.

With the exception of records made during the joint investigation itself (as discussed above), CAS records, in the criminal Courts, are governed by s. 278.1 of the Criminal Code. This section is applicable only where the accused is charged with a sexual offence. If the charge is one of physical abuse the principals are set out in the decision of Regina v. O'Connor (1995), 103 C.C.C. (3d) 1. These principles are similar in nature to section 278 (discussed below) but are not as onerous on the accused.

Section 278.1 protects personal information for which there is a reasonable expectation of privacy (e.g. medical, psychiatric, counselling, education, child welfare records and records that are subject to privacy protections under another statute). These records are only attainable by the accused through a Court application. The onus is on the accused to convince the Court why the record should be disclosed. During the application itself the record remains private.

When a child or youth is brought to a hospital for a medical examination subsequent to an apprehension by the Children's Aid Society (with or without a warrant), the CAS has assumed parental rights to seek the medical and to obtain the medical records for that examination. Each hospital will have a procedure to ensure that the CAS worker notifies the hospital staff of the legal status of the child in relation to the CFSA in order to release that information. The hospital can only release medical records to police if a warrant has been obtained.

Note to Service Providers and Assessors: Even *when a document is stamped 'Confidential' when the matter is before the Courts, there is still a duty to disclose this information to defense.*

13. COURT-ORDERED ACCESS TO RECORDS UNDER THE CFSA (SECTION 74)

Where a CAS believes that there are reasonable grounds to believe there is documentary evidence held at another organization related to an allegation that a child is, or may be, in need of protection, the CAS can now make a motion or seek a warrant or telewarrant for access to a "record" or part of a "record" (recorded information, regardless of physical form or characteristics). This can take place either during the course of an investigation or when the matter is before the Courts.

When a child is a Ward of a Children's Aid Society or in the 'care and custody' of the Society, the Society is in effect, the parent of the child and any records pertaining to the child should be released as if to any other parent.

14. COLLECTION AND PRESERVATION OF EVIDENCE

The rules of evidence in legislation and case law dictate what evidence is admissible in Court. Investigators must be conscious of these rules when gathering evidence in order to ensure that all evidence against the accused is admissible in Court and that the victim is protected through the Court process.

Police take a lead role and responsibility for the collection and preservation of evidence relevant to the criminal investigation. Police will keep the original video tapes of all joint interviews, photographs, and forensic and medical evidence including the exhibits from a Sexual Assault Evidence Kit to ensure continuity. The police shall retain ownership of the original audio or videotapes, preserve and destroy it according to their policy regarding the preservation and destruction of evidence. Only an unused tape in a shrink wrapped package should be utilized for taping. The police will be responsible for the continuity of the tape from the time that all criminal proceedings are initiated until their conclusion. Upon request by the CAS, the police will provide a copy of the tape or transcript if available.

15. LAYING CRIMINAL CHARGES

The decision to lay criminal charges is the responsibility of the police after consideration of all the circumstances and evidence. Victims will be advised by police about how the process will unfold. Many of the relevant charges with respect to child protection can be found within Part VI of the Criminal Code, "Offenses Against the Person and Reputation". Whenever there is a question as to the appropriateness of charges in a specific instance, the police shall consult with a member of the Crown Attorney's office before making the final decision.

A Crown Attorney should be assigned to the case at the earliest opportunity and should remain with the case until its conclusion.

When charges are laid and the accused is to be released, it is important that the police consider appropriate release conditions. Depending on the nature of the case and the child protection proceedings, it may be beneficial to consult with CAS regarding the alleged offenders access to the alleged child or other children. These conditions should reflect a strong concern for the safety of the victim and contemplate the possibility that other children may be at risk. Police will advise the victim, the CAS and the victim's guardian of the release conditions.

In cases where there are parallel Court proceedings and the offender is subject to restrictions under bail, the criminal matter supercedes the conditions of the Child Protection Court order when it comes to access by the offender to the child or family.

16. SUPPORT TO THE CHILD AND FAMILY

The responsibility to provide or coordinate continuing support to the child and family is usually assumed by the child protection worker. Each community has an array of services that can be accessed to assist the child and family. Please see the Appendix for the listing of services based on the identified needs of the client that are available throughout our communities.

17. ASSESSMENT AND CASE MANAGEMENT

Each case requires an individual assessment and case management plan. However, there are some basic strategies and issues that should be considered in the development

of every plan. The reaction of the child, the family, the alleged offender and the outcome and effect of the Court proceedings all can be influenced by the Team's intervention. The CAS worker's assessment of the child and family includes the initial Safety Assessment at first contact, the Risk Assessment and Risk Analysis (generally at 30 days), and the resultant Service Plan are processes that are required under the Risk Assessment Model.

The service plan should take into account the need for a primary support person for the child and should incorporate the results of the initial interviews, the treatment needs of the child and family, the outcomes expected to be achieved to keep the child (ren) safe, the manner and extent of the two separate Court processes and support through the Court processes.

18. RE-INTEGRATION OF THE FAMILY

Wherever it is in the best interests of the child/youth, the active, long-term goal will be reunification with all or some of their family. This may take the place over an extended period of time, but experience shows that the vast majority of children/youth, eventually return to their primary families despite the level of abuse or neglect they have experienced. The more that can be done with the child/youth and the family together in unraveling the dysfunction that led to the abusive or neglectful relationship before they move home, the more successful the outcome in this generation and the following ones will be.

Ongoing counselling, supervised access and Court orders that support a realistic and proactive level of reunification are the main mechanisms available to accomplish the 'best interests' of the individual child.

COURT PROCEEDINGS

CHILD PROTECTION PROCEEDINGS

The CAS generally initiates Child protection proceedings after consultation with counsel when other lesser disruptive or restrictive alternatives to protect the child are not viable. The decision to commence child protection proceedings is separate from the decision to proceed with criminal charges. The determination of whether a child 'is in need of protection' and the 'best interests' of the child is made by CAS and their counsel, are decisions that are independent of the criminal process.

When a Child Protection matter is contested in Court, the Society must meet a two stage or bifurcated test:

1. Is the child in need of protection as defined in 37(2) and if so, then, and only then is the next test considered;
2. What course of action is in the child's best interests. 37 (3).

In all cases of intra-familial abuse and neglect, serious consideration must be given to the need for child protection proceedings to be initiated. A decision by CAS not to proceed does not preclude a third party application being made by a concerned individual or family member.

Where necessary, CAS counsel will request that independent counsel from the Children's Lawyer's Office represent the child/youth.

In joint, or separate and concurrent investigations, the CAS worker shall keep the police officer informed as to the progress of the case in Child Protection Court to ensure coordination with the criminal process.

CRIMINAL COURT PROCEEDINGS

It may be beneficial for the police to consult the Crown before laying of criminal charges in order to get a legal opinion as to whether there is a reasonable prospect of obtaining a conviction. As well, the Crown can advise the police on the appropriate charges to be laid and on any legal issue that arises during the course of the investigation. Where appropriate, the CAS may be consulted in this process. The police make the final decision as to the laying of charges. It is the Crown's decision as to whether and how the matter will be prosecuted.

Any child witness in a case involving an alleged sexual offence or a physical assault where the accused is in a position of trust should be video taped. An audiotape is not a good substitute.

The police shall interview any accused in cases involving allegations of sexual or physical abuse of a child. It is highly desirable that such interviews be conducted on videotape. The provision of any caution or the Right to Counsel should be recorded on the tape as well.

Upon the arrest of the accused, the police shall notify the Crown as soon as possible and provide the Crown with a "bail brief" in order for the Crown to prepare for a bail hearing. If an accused is released from custody with conditions, the police shall advise the victim and their guardian as to the nature of the conditions and provide them with a copy where appropriate.

The police shall request that the child (or their guardian on the child's behalf) provide a victim impact statement that the Crown may use on sentencing. The decision as to whether to provide a victim impact statement resides with the victim. The victim impact statement is subject to disclosure. It can usually be introduced in Court as an exhibit and will assist the Court in coming to a just sentence. On rare occasions an accused may exercise their right to cross-examine the child (or guardian) on the victim impact statement.

At the earliest opportunity a Crown will be assigned the prosecution and every effort will be made to maintain the same Crown throughout the prosecution.

It is the responsibility of the Crown to meet with the child and prepare the child to testify in Court. The investigation officer (and where appropriate the CAS worker) shall be present for any such preparation meetings. Where possible, there will be a victim/witness person present.

Where appropriate, the Crown will make application to the Court to allow the child to testify by way of closed circuit television, behind a screen, or by adopting the contents of a previous statement recorded on video tape.

In most cases involving child victims it will be appropriate for the Crown to apply to the Court for an order banning the publication of the child's name.

DISPOSITION IN CRIMINAL COURT

The Crown Attorney should consult with the Police-CAS Team and any other support person for the child as to the availability of assessment reports or expert witnesses to show the effect of the offence on the child and family.

Recommendations for sentence should take into consideration at least the following factors:

- The seriousness of the offence;
- The need for accountability;
- Any prior related offences;
- The desirability of deterring others;
- The effect of the offence on the child and family;
- The desirability of a jail sentence;
- The necessity for a specific order for mandatory treatment;
- The offender's motivation for treatment;
- The possibility of implementing a work-release program;
- The utility of long-term probation;

Mitigating factors could include:

- A guilty plea at the earliest opportunity;
- Willingness of the offender to enter into and continue with treatment; and
- Willingness of the offender to acknowledge responsibility to the child for what occurred, and to absolve the child of any guilt.

Whenever possible, the suggested disposition should include a plan of treatment for the offender.

FAMILY COURT PROCESS

Frequently in cases that are being investigated by police and CAS for child protection concerns, the matter may also be proceeding in Family Court in regards to parental disputes over custody, access and maintenance issues. This can complicate the matter in terms of the investigation and motivation to report, however, all allegations must be responded to according to the protocol. In fact, research has shown that the allegations made in situations involving custody/access have approximately the same level of substantiation after investigation as all other cases.

In matters of custody, the Child Protection proceeding generally takes precedence over the Family Court matters. Counsel for CAS generally coordinates the legal process with counsel for the respective parents in these matters.

SERVICES TO VICTIMS

1. VICTIM BILL OF RIGHTS

The Victim Bill of Rights (Bill 23) was proclaimed on June 11, 1996. This document outlines the principles that relate to all victims of crime. It states that all justice system officials should treat victims with Courtesy, compassion and respect for their personal dignity and privacy. It also indicates that victims should have access to information about:

- Available services and remedies to their issues or concerns around the process.
- Compensation for victims of crime act.
- Protection available to victims to prevent unlawful intimidation.
- The progress of the investigation.
- Charges laid and/or reasons why no charges were laid.
- Court procedures.
- Dates and locations of significant proceedings.
- Outcomes of significant proceedings including appeals.
- Pretrial arrangements (i.e. a plea that may be entered by the accused at the trial).
- The interim release.

Sentencing

- Disposition made (i.e. an accused found unfit to stand trial/or not criminally responsible).
- The right to provide Court with Victim Impact Statements.

In addition, the victim has the right to be notified, upon request:

- When the convicted person applies for TAP (Temporary Absence Program), or any impending release.
- Any escape from custody.
- If the accused is unfit to stand trial, any hearing by the Review Board.
- Review Board directing the absolute or conditional discharge of the accused.

If the victim of sexual assault should request, and wherever possible, they should be interviewed during the investigation only by police officers and officials of the same gender as the victim.

Victim's property that is in the custody of police/Courts should be returned promptly, when no longer needed for the purposes of the justice system.

2. VICTIM SERVICES

Currently, there is not consistency between jurisdictions in the types of programmes and services provided across the province. The local Crown Attorney's office as well as the local police service or detachments, children's mental health, the local shelter or CAS can be contacted to determine which services are available in the specific region.

For instance, in Lanark County the Ministry of the Attorney General has a Victim/Witness Assistance Programme (VWAP) in place. VWAP is a service designed to assist those who are involved in a criminal case either because they are victims of crime or because they have been called as witnesses to testify in the case. The service is available to victims and witnesses upon the decision to proceed with a criminal charge.

If a VWAP programme exists, it is not the role of the VWAP staff to discuss evidence with the victim or witness. If the victim/witness wishes to discuss the evidence, the victim/witness will be referred to the Investigating Police Officer or to the Crown Attorney.

These programmes provide the following services:

- Court orientation and preparation such as on-site Court accompaniment, Court tours, separate waiting areas in Court, explaining the role of the Crown, Court, Defense Counsel and explaining terms such as oath-taking, exclusion of witnesses, “beyond a reasonable doubt” etc.
- Information pertaining to case status.
- Assistance in responding to concerns of the victim throughout the criminal proceedings
- Contact with the victim throughout the criminal proceedings if requested by the victim
- Ensure that victims are receiving the support services they require
- Ensure that the services provided to the victim are coordinated and appropriate
- Information and assistance in completing Victim Impact Statements
- Applications and assisting with Criminal Injuries Compensation Board applications
- Act as a liaison with Police and Crown Attorneys, domestic and sexual assault services and the Children’s Aid Society as indicated
- In the case of a child victim, will assess the child’s need for testimonial aids and will advocate accordingly on the child’s behalf
- Follow-up services such as informing the victim/witness of the outcome of the case, providing a copy of the Court order, referral services to the Victim Support Line etc.

3. VICTIM IMPACT STATEMENTS

The purpose of a Victim Impact Statement is to assist the Court in determining the most appropriate sentence. It is a voluntary process that describes the harm done to the victim or the loss suffered as a result of the crime. The statement takes the form of a written document, is prepared by the victim and filed with the Court. It is subject to disclosure and cross examination. Depending on the jurisdiction, there may be assistance in formatting the content of the statement available from staff with VWAP, VCARS (Victim Crisis and Referral Service) or other professional staff, for instance, in Shelters for Women.

4. SAFETY PLANS FOR VICTIMS AND PUBLIC SAFETY

Police have a number of mechanisms at various points in the criminal process to attempt to keep the public safe from offenders who may re-offend.

- Prior to or post Conviction – Section 810.1, the Fear of Sexual Offence section can be used when there is a high risk to re-offend.
- After Charges are laid – Conditions of release can specify undertakings that would serve to keep the alleged victims or the general public safe from the alleged offender. These conditions must be related to the alleged crime and could include such things as curfews; abstinence from alcohol; no communication with the alleged victim or family.
- After Criminal Conviction – Where the offender is at high risk to re-offend, the police may make an application for a Dangerous Offender designation (Section 752). Other alternatives available would include the Power to Delay Parole (Section 741.2) and a Prohibition Order (Section 161) which could include conditions such as: staying away from designated areas where persons under 14 years are or can be reasonably expected to be, not obtaining volunteer or paid employment in a position of trust or authority with respect to a person under 14 years etc.

INVESTIGATIONS IN EDUCATIONAL, CHILD CARE , & RESIDENTIAL SETTINGS

1. REFERRALS FROM SCHOOLS AND CHILD CARE SETTINGS

Schools and Child Care Settings are two of the most significant referral sources for identifying children who may be at risk of abuse or neglect.

In these settings, students who believe that they have been abused or neglected should be encouraged to contact a trusted teacher, vice-principal, principal or any other professional support staff.

Where a report or disclosure regarding a child who may be in need of protection originates from the school or child care setting and where the parent or caregiver having charge of the child has allegedly abused, neglected or otherwise allowed the child to be in need of protection, the school or child care professional will call the CAS without first contacting the parents.

Given the contentious nature of the reporting process, many school board procedures historically had the teacher reporting their suspicion to the principal who then relayed the referral to CAS. This was believed to deflect some of the potential negative repercussions away from teachers. The new reporting requirements under the CFSA no longer sanction this process. The CFSA now clearly states that the professional who has the reasonable grounds to report, must be directly involved in reporting to the CAS. The verbal report may be followed by a written report. See Appendix XIV for an example of the detail that could be provided in a written report.

One option available to the various school boards that are signatories to this process may be to develop a strategy whereby teachers can still seek the counsel or advice of the principal. The teacher or staff member, in a conference call with the principal, may then 'forthwith' contact the CAS to make the report. Since time is often very crucial in responding to referrals and the Act specifies "the person shall report forthwith the suspicion and the information on which it is based to a society"; **the teacher or other staff member must not unduly wait for the Principal's consultation to report.**

Whatever process is used, it is crucial that the referral is received as soon as possible in the day so that police and CAS resources can be coordinated and the investigation commenced before the child returns to the care of the alleged abuser or non-protective caregiver.

The referral source or another trusted professional should try to remain involved with the student as a support person but should not engage in any further information gathering or questioning. This is essential to reduce contamination of evidence and to preserve the integrity of the investigation.

2. INVESTIGATIONS ON SCHOOL PREMISES AND CHILD CARE FACILITIES

In order to safeguard the privacy and dignity of the child, the Police-CAS team will exercise extreme sensitivity when determining how and when a child will be interviewed at a school/child care facility.

The following situations would warrant interviewing a child on school or child care setting:

- Where a disclosure is made at school or child care;
- Where the disclosure is made outside the setting but the CAS &/or police determines that it is the most appropriate place to interview the child;
- Where subsequent to the initial investigation, CAS or police need access to the child at school or child care setting as a continuation of the investigative process.

With Prior Parental Consent (usually extrafamilial offender)

Determining access to the child at school is ultimately the responsibility of the school principal or child care program director. After the referral is made, the Principal/Director will not contact the parents without further consultation with the Police/CAS investigators. Where the Police/CAS team does not object to the presence of a parent at the interview of the child at school, the Team should seek prior parental consent to the interview, encourage the parent to attend, and give the Principal/Director sufficient advance notice of the planned time to visit and of the parent's consent to the interview.

Without Prior Parental Consent (usually intrafamilial offender or parent who failed to protect by omission)

Where the Team has determined that the best interests of the child require that an interview take place without the prior knowledge of and in the absence of the parents, the Principal/Director will permit an interview to take place without prior parental consent, if he/she is of the view that his/her discretion should be exercised in that way. Any justification for not immediately informing parent(s) of a report of a child suspected to be in need of protection is based upon the intentions of avoiding or preventing further harm to the child. If the principal should deny access to the child, the police/CAS team should contact the Area Superintendent. Only in exceptional circumstances should apprehension of the child be considered for the purposes of interviewing.

Where the police/CAS determine that it would be in the best interest of the child to conduct an interview without the prior knowledge of and in the absence of the parent(s), the Police/CAS team will contact the school/child care setting and:

- Discuss the situation with the Principal/Director including information that a child protection investigation has been initiated;
- Inform the Principal/Director that the Team intends to interview the child without prior knowledge of the parent(s); and in their opinion, it would serve the interest of the child to interview in that setting;
- Request an appropriate location for the interview within the school that would best meet the needs of the child;

- Advise staff against conducting any further interview/investigation pertaining to any suspicions or disclosures arising out of the complaint to avoid any possible leading or contamination of evidence.
- Undertake to inform the parent(s) or guardian as soon as reasonably possible.

Where possible, the Team will arrive at the school/child care setting together, identify themselves to the Principal/Director and coordinate how and where the interview will take place. Whenever possible, the interview should take place on site where the child is more likely to feel safe.

Where the situation warrants and wherever possible, the child should be given the option of having a support person present. Often this will be the child's teacher, the child's teaching assistant or volunteer. Support persons who are present for the interview should be informed of how the interview will proceed so that they do not lead the child. They should be informed that they might be required to attend and to testify in Criminal Court. Wherever possible, access to and the use of portable video equipment in the school setting is the preferred practice model.

3. STUDENT TO STUDENT THREATS AT SCHOOL

When it is alleged that a student has made a threat against another student, it should be reported to the police as soon as possible according to the Safe Schools Guidelines. The police will investigate if it is determined that a threat exists. Once police have been contacted, it is their role to interview all parties. Other professionals should defer interviewing the alleged offenders or victims until the police have completed their investigation. The police will respect the guidelines established by the respective School Board for interviewing children/youth in the school setting.

Where the child is under twelve years of age, the YOA precludes any criminal charges being laid. Where the child's behaviour may indicate there is a child in need of protection, the CAS should be contacted to assess the situation under the provisions of the CFSA.

4. INVESTIGATIONS IN RESIDENTIAL SETTINGS

a) Group Home Settings

Child Protection investigations involving children or youth who reside in either private or publicly operated group home settings will proceed in the same fashion as other investigations. Allegations of child abuse in residential care settings by staff including facilities such as private schools, children's mental health facilities and private group homes will be investigated by the police and "Local" CAS where the facility is located, unless there are reasons to believe there would be a conflict of interest in such a case. In the event that an allegation concerns a child placed outside of the jurisdiction of the 'parent' CAS (the CAS with wardship status on the child), the parent CAS will be informed of the allegation and a determination made as to their level of involvement in the investigation and plans for supporting the child.

The local Society shall investigate to determine whether the child is, or has been abused, to ensure the safety of the child, and to determine whether other children are in need of

protection. This applies to all children who are in a residential setting, not just those children who are in the care of the Society. If there are other children/youth placed in the group home, even though they are not involved in the allegations, who are Wards of other CAS's, those CAS's will be contacted who will contact the natural parents and probation officers as appropriate to the legal status of the child. Where the child is not a ward of the CAS, the custodial parent or probation officer will be contacted directly.

The Ministry of Community and Social Services must be advised of the alleged abuse of children in a foster home, group home, institution, or contracted resource under the jurisdiction of the Ministry of Community and Social Services. Serious Occurrence reports will be filed with the local MCSS area office that licenses the home by the local Society and other Societies will report to their area office if it is different than the local MCSS.

The manual “Preferred Practices for Investigating Allegations of Child Abuse in Residential Care Settings” by the now defunct ‘Institute for the Prevention of Child Abuse’ provides a solid guideline for navigating the special circumstances involved in these complex investigations.

b) Investigations in Active CAS Foster Home Settings

Investigations are conducted as legislated by the Criminal Code and Police Standards, the Family and Children's Services Act, the Risk Assessment Model and this Protocol. Investigations of abuse allegations against foster parents are essentially dealt with in the same manner as other child protection investigations with some variations due to the special nature of the role and relationship between the CAS and the foster home.

While the CAS is committed to providing assistance and support to foster parents wherever feasible, when allegations are made against a foster parent, the CAS's primary Child Protection mandate overrides all other roles. In these situations, CAS's are obligated to act first and foremost on the behalf of children. Several CAS's have developed a foster parent support program wherein another foster parent assumes the role of the primary support person for the foster home. This person is contacted when an allegation has been made about a particular home and is involved from the onset as a support person to the foster home.

Procedure for Investigating

Each CAS has internal policies and procedures for these investigations that should be made available to police at the outset of the investigation.

The Role of the Foster Parent Support Person

1. To represent the foster parents who are the subject of an investigation (if prior permission has been granted by the foster parents in question) at CAS Case Conferences or Risk Management Meetings that have been called to deal with child protection investigations in a particular foster home.
2. To consult with the foster parents and provide appropriate support and feedback to them. However, feedback cannot interfere with the investigation by police and CAS.

3. To maintain confidentiality. Despite the fact that the Resource Worker and the Foster Parent Support person are not part of the investigative team, disclosures received in the course of providing support must be reported immediately to the investigative team whenever they meet the criteria for 'duty to report' under the CFSA.
4. To listen to and support the foster parents as they work through any issues at hand.
5. To be available to attend meetings with the foster parents and the Agency and to support the foster parents throughout the investigation and the resolution process.
6. To identify and clarify the problem and to develop a problem-solving strategy towards resolution with the foster parents and the Agency.
7. To suggest to the foster parents, actions or steps that are necessary to resolve issues within the Agency.
8. To be primarily responsible to the foster parent and the Foster Parent Association.
9. To ensure that the Agency is adhering to policies and procedures related to the issues at hand as set out in the Foster Care Agreement.
10. To be involved with the foster parents as long as they require.

c) Investigation of Alleged Abuse in a Former Foster Home

When information is received by a CAS concerning abuse in a former foster home, police should be contacted. All relevant information concerning the allegation should be gathered at the point of Intake. This would include witness statements, police reports, or documentation of complaints.

Direct contact with the alleged victim should be made and efforts should be made to establish what occurred and whether other children were involved. Previous foster care, child care and family service records should be searched to establish whether other possible victims may exist and whether they can be identified. The team will determine which other potential victims are appropriate and reasonable to interview. Once located, they are asked about their experiences in the foster home without being given specific information concerning the allegation.

In the interest of justice, the CAS should make all efforts to assist the police and the Crown in any investigation and/or prosecution to ensure that full information including dates of placement, etc. are available both to the Crown and the Defense. Consents to release information are required in the absence of a Search Warrant for the specific information.

This matter would not be dealt with as a child protection investigation unless there are still children under the age of 16 who may be residing and at risk while in the alleged offenders care.

SPECIAL INVESTIGATIONS

1. SEXUAL ABUSE INVESTIGATIONS

The process for joint investigations involving sexual abuse allegations follows the same path as other abuse investigations. However, given the nature of the assaults and the dynamics involved in sexual abuse where the offender is known to the child, it is advised that staff involved in these investigations are well-trained in this specific area. The Investigation of Sexual Offences Against Children (ISOAC) training course for Ontario is facilitated by police and child protection trainers for police and child protection staff. Wherever possible, officers and staff who have completed this training should be assigned to these cases.

2. INVESTIGATIONS INVOLVING SPECIAL NEEDS CHILDREN

Abuse and neglect against children with disabilities often goes unreported and uninvestigated. Research has demonstrated that children with disabilities are much more likely to be abused than other children (Gil, 1970), (Cross, Kaye & Ratnofsky, 1993). Children with developmental delays are particularly vulnerable to become victims of sexual abuse (Griffiths et al, 1994) as a result of certain risk factors. These risk factors include isolation, poor assertiveness skills, compliant behaviour and dependency upon others. Individuals with developmental delays also have a tendency to develop certain personality traits which places them at higher risk. These traits include: positive or negative reaction tendency, different reinforcer hierarchy, outer directedness and lower self esteem or self concept. These unique traits need to be understood and taken into consideration when interviewing these individuals.

Disability can directly affect the balance of power in a relationship or an interpersonal interaction. A child may be unable to escape a situation if mobility is impaired. A child may be unable to recognize or report an abusive situation depending on the nature and severity of their disability. In addition, residential placement or the level of extrafamilial professional involvement may disrupt attachment and bonding between parents and children.

One key in interviewing and assessing statements is to view their statements in the context of their developmental rather than chronological age. The individual's learning profile, ability structure and communication patterns can all influence the interview process. Areas such as memory, attention, thinking skills, communication, and higher order cognition need to be considered in order to communicate effectively. Interview techniques may need to be modified to accommodate for the individual's cognitive and developmental challenges. Visual cues may be necessary to complement verbal communication due to these specific details. It is important in these cases to obtain as much information about the victim's abilities and their day to day life as possible. This may provide avenues to consider in generating alternative hypothesis, as some persons with disabilities have to endure more invasive procedures i.e. assisted bathing, catheterization or enemas.

The investigation of allegations in these situations should generally follow the outlined process in this protocol. The main area where this may or may not diverge is the use of

bridge persons or interpreters who may have special communication or relationships with the child. It would also be useful to consult with local professionals in the developmental services field in regard to understanding developmental delays in general and the needs of the specific individual.

Another tragic outcome of violence in the family system is that approximately 12% of children who are abused incur some permanent disability. Research figures suggest that 10-20% of all children with disabilities are disabled through violence.

The awareness of all community professionals about the special vulnerability many of these children experience is crucial to identifying and intervening effectively.

3. INVESTIGATIONS REQUIRING INTERPRETERS/TRANSLATORS

All investigations will be conducted in the most culturally sensitive manner possible. During the course of an investigation, whenever it is evident that the services of an interpreter is required, the team will coordinate these services. Several organizations, such as hospitals, ministerial associations, volunteer bureaus as well as police and CAS's, have lists of people who speak various languages within their community. The team will make the decision on whom to utilize based on the level of need and potential legal ramifications. Due to the dynamics involved and the highly charged emotional nature of child protection investigations, family members should not be involved as interpreters.

4. INVESTIGATIONS INVOLVING POTENTIAL CONFLICTS OF INTEREST

Every CAS is obligated to ensure that allegations of abuse or neglect within their jurisdiction are investigated according to MCSS Standards and Guidelines. In some instances where there could be a real or perceived conflict of interest or clouding of objectivity when the alleged offender has a relationship with a particular Society, that Society can enlist the assistance of another CAS to investigate on their behalf. The following are groups of people with whom Children's Aid Societies often have either reporting, financial, professional or personal relationships which are most often cited as involving real or potential conflict of interest:

- **Employees of the C.A.S.**
- **Family members of employees** where the family member/relative lives in the area served by the same CAS. This can include a mother, father, children, siblings, in-laws, aunt, uncle, cousins or grandparents.
- **CAS Board Members**
- **Volunteers for CAS** who provide services to the CAS or clients of the CAS
- Persons who are in a position of authority regarding the Society such as the **Program Supervisor, Area Manager or other MCSS employee** who has decision making responsibilities related to the Society; **Criminal or Family Court judges**; Police personnel who would ordinarily conduct child protection investigations with CAS staff etc.

Other circumstances, which may also warrant requesting another CAS to carry out the investigation, include situations where the following parties have had allegations made against them:

- **Foster Parents**

- **Adoptive Parents**
- **Residential resources providing services to children**
- Any other circumstance where it may be perceived that the CAS is too close to the situation to be completely objective.
- See the CAS *Eastern Zone Interagency Protocol (revised in 2001)* for further details.

When police are the ones who receive the initial complaint and it is ascertained that the allegation involves a CAS staff person, the staff sergeant on duty or his/her superior will immediately contact the respective CAS Executive Director or designate in that jurisdiction. The CAS Director will use the Eastern Zone CAS protocol for Sensitive Investigations to determine if the allegation meets the threshold to refer the investigation to another CAS.

Where the jurisdiction involves another CAS/Police protocol, the investigating staff will be made aware of the police/CAS protocol of the referring Society. Every effort will be made by the referring Society to ensure that the investigating staff is provided with full co-operation in carrying out the requested investigation. Every effort will be made to eliminate the possibility of interference in the investigative process. The referring Society will be responsible for any personnel or other related issues regarding the alleged offender who is an employee, Board member, etc.

Any information obtained from the investigative process becomes the property of the referring Society for whatever purposes deemed necessary. The original file will become the property of the referring Society. The investigating Society will make and keep on file, an exact duplicate of the original file.

Where the allegations involve an **employee of a school or child care setting** as the alleged abuser, the Police/CAS team should first contact the Director of Education, Child Care Program Director or their designate and advise them of the circumstances surrounding the allegations. In such cases, the school or child care officials should be cautioned not to advise or interview the alleged abuser until after consultation with police.

Where the allegations involve another **professional service provider**, the Executive Director or designate of the organization will be contacted when the alleged offender is known to be in a position of authority at the time of the investigation. The Executive Director will consult with police and CAS before determining how they will respond with the employee to ensure the organization can keep children safe from any possible harm until the investigation has been completed.

Law Enforcement Officials – The Ontario Provincial Police and the various municipal Police Services have policies and procedures in place to delineate roles, responsibilities and guidelines for investigations where a police officer or other law enforcement official is the subject of a child protection investigation. Within the OPP, in the event of an allegation made against a police officer, the complaint is to be referred to the detachment commander who reports to the regional commander who decides on the appropriate bureau to conduct the investigation. In Municipal Police Services, the complaint shall be made to the Chief of Police.

5. INVESTIGATIONS INVOLVING MULTIPLE VICTIMS

Because of their complex nature, these cases are extremely complicated to investigate and require well-defined roles and clear communication. As they involve more than one victim, the coordination and timing of the criminal and child protection investigations is crucial to an effective outcome. One experience in Eastern Ontario, Project Jericho has been very well documented via funding from the Family Violence Prevention Division of Health Canada, 1995. "From Crisis to Coordination – an Integrated Community Response to a Multi-victim Child Sexual Abuse Crisis" offers some guidance to communities, service providers, investigators and child welfare agencies who are confronted with this kind of challenge.

6. INVESTIGATIONS INVOLVING CHILDREN IN CARE AS THE ALLEGED OFFENDER

Youth in the care of the CAS who are alleged to be an offender against another child or youth should not be interviewed by their assigned worker at the CAS. This places an unreasonable onus on the alleged young offender to ascertain whether the worker is in fact investigating as a person in authority (hence, the need to be cautioned and informed of their rights before giving an inculpatory statement) or as their support person. Police will take the lead in these interviews in these matters to ensure that roles and responsibilities are clearly defined. This kind of situation is clearly different than when a youth spontaneously discloses to their worker.

7. INVESTIGATIONS INVOLVING THE DEATH OF A CHILD

Police need to take into account the statutory responsibilities of a Children's Aid Society when investigating a homicide or suspicious death of a child (Solicitor General's Guidelines). In particular, cases where there are surviving children in the home, should be reported forthwith to the CAS.

The CAS must inform the Coroner whenever a child dies who was receiving a service from the CAS (including a child who dies within twelve months of receiving a service). In addition the CAS must immediately forward a Serious Occurrence Report to the MCSS (*Reference the MCSS Joint Directive: Child Death Reporting and Review effective October 1, 2000, for details*).

PROTOCOL IMPLEMENTATION AND TRAINING

1. INITIAL TRAINING

On approval of the Protocol, each of the signatories will take responsibility to ensure that their respective staff who may be assigned to child protection investigations are adequately trained on the protocol. The committee recommends that developing joint training sessions would be an efficient way of ensuring the content of the protocol is presented consistently and an effective way to enhance working relationships between the front-line and management staff who will make the protocol work for children. For practical reasons, these joint sessions may be done in specific geographic areas.

2. NEW HIRE ORIENTATION

Each organization will take responsibility to ensure that new staff who will be assigned to child protection investigations will be apprised of the protocol in their orientation period. Prior to assuming their investigative role, Police and CAS will ensure that new recruits will be adequately oriented to the Protocol before undertaking the lead in any investigation.

3. COMMUNITY TRAINING

Each community will develop a process or mechanism to regularly update community professionals about the protocol. This may be done in a specific session for those organizations who are regularly impacted by the protocol or as part of broader community presentations. To present a consistent and united voice, it is recommended that each community make an effort to ensure that wherever possible, the presentations are done jointly by Police/CAS/Educators etc.

4. REVIEW AND EVALUATION OF THE PROTOCOL

- It is recommended that a sub-committee comprised of members of the signatories to this protocol be established to monitor the implementation of the protocol. In addition, this committee will review the further development and refinement of the Protocol to ensure it incorporates new legislative or administrative changes.
- This committee will meet annually with a full review of the document slated every three years.

5. QUESTIONS AND ANSWER SECTION

Some Commonly Asked Questions:

Q. Do shelter workers have to call the CAS/F&CS to report every child who enters the shelter?

A. No, only where there is suspicion that a child may be in need of protection according to the definitions in the CFSA. See Appendix I.

Q. I am a professional who works with children and a child comes to me and discloses that they are being abused at home. After I report to the CAS, to what extent should I pursue further discussion/investigation with the child?

A. The fact that they child or youth disclosed to you likely means that you are a trusted and meaningful adult in their life. It is crucial at the point of disclosure to first and foremost take a supportive, but not interrogative stance until the police/CAS team arrive. Saying such things as “It was right for you tell to me” or Once you have determined called the CAS/police team, unless the child spontaneously discloses, it is important not to probe or discuss the particulars of the situation with the child as that can contaminate the evidence required in both the child protection and criminal Court processes. At the same time, the last thing we want to do is to give the message to the child that they should not have disclosed at all to you or that you think less of them for doing so, so remaining with the child and helping them feel comfortable until the investigators arrive is an important role for you to have.

Q. If a child who is 13 consents to engaging in a sexual act with someone who is 17 years of age, should this matter be referred to police or CAS?

A. Yes, consent is not an issue when the youth/child is under the age of 14 and the alleged offender is more than two years older.

Q. What if my 15 year old daughter has a 30 year old boyfriend? Can he be charged with statutory rape or other offenses?

A. Charges can only be laid if there are issues of dependency in relation to that person. A 14-year-old can consent to share their body with whomever they want except where that person is in a position of trust or authority.

Q. What can the CAS legally report back to the person who makes a referral that a child may be in need of protection?

A. Without written consents, the CAS is restricted to thanking the person for their referral. Wherever possible, CAS will seek consents where it would be in the child’s best interests to do so.

Q. Can the service provider request that the police/CAS team interview the child away from their facility?

A. The location of the interview should always be determined by what is in the best interests of the child. In most cases, the child will feel safest in an environment they know. In addition, taking the child off-site would involve the legal apprehension of the child which may delay the capacity of the team to interview the child in a timely manner. The CAS/police team will make every effort not to interfere with the service providers regular program and to interview the child in the most discrete manner possible.

6. ACKNOWLEDGEMENTS / REFERENCES

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- ❑ Child Abuse Protocol. Stormont, Dundas and Glengarry, 1988.
- ❑ Child Abuse Protocol – Ottawa Carleton. 1989.
- ❑ Child Abuse Investigation A Coordinated Response in the United Counties of Leeds & Grenville.
- ❑ CHILD AND FAMILY SERVICES ACT. Revised March 31, 2000
- ❑ Child Sexual Abuse, Canadian Principals Association
- ❑ If Your Child is Abused, Ron Ensom, CHEO, 1994.
- ❑ From Crisis to Coordination – an Integrated Community Response to a Multi-victim Child Sexual Abuse Crisis Family Violence Prevention Division of Health Canada, 1995.
- ❑ Lanark, Leeds & Grenville Health Unit Survey of Services for Children
- ❑ Prescott-Russell – Protocole – Enquetes de mauvais traitements sur un enfant forces Policeries/Societe di L'Aide a L'Enfance
- ❑ Lanark County Police Protocol for Sexual Assault
- ❑ Child Abuse Protocol: A Handbook for Teachers. Lanark, Leeds and Grenville Roman Catholic School Board.
- ❑ Manual for Ontario Hospitals: Identifying and Managing Child Abuse and Neglect, April 2000
- ❑ Metro Toronto Child Physical Abuse Protocol, December, 1995.
- ❑ Metro Toronto Child Sexual Abuse Protocol, Third Edition, March 1995.
- ❑ MCSS - Reporting Child Abuse and Neglect pamphlet. Queen's Printer for Ontario, 2000.
- ❑ MCSS Joint Directive: Child Death Reporting and Review effective October 1, 2000.
- ❑ MCSS Risk Assessment Model for Ontario, Revised 2000 .
- ❑ Policing Standards Manual – Solicitor General (2000)
- ❑ Preferred Practices for Investigating Allegations of Child Abuse in Residential Care Settings, I.P.C.A. 1990.
- ❑ Protocol for the Provision of Child Welfare Services between Children's Aid Societies, revised December, 2000.
- ❑ Protocol for Suspected Child Abuse. The Leeds and Grenville County Board of Education, 1990.
- ❑ Violence Against Women Prevention: A protocol for School-based Services and Interventions for Child Witnesses, January 27, 1999.

APPENDICES:

- I. Definition of a Child in Need of Protection CFSA 37(2);**
- II. Reporting Procedures – Under Age 16**
- III. Reporting Procedures – Over Age 16**
- IV. Stages in a Child Protection Investigation**
- V. Child Protection vs. Criminal Proceedings**
- VI. Non-Leading Interview Questions**
- VII. Table from VAW Protocol page 4 & 5 on Services**
- VIII. Geographic Jurisdiction for Police**
- IX. Geographic Jurisdiction for Children’s Aid Societies**
- X. List of Professional Service Providers**
- XI. List of Medical Service Providers**
- XII. Eligibility Spectrum for Child Protection**
- XIII. Some Potential Criminal Charges Related to Bill C-15**
- XIV. Child Protection Reporting Form**

APPENDIX I

Definition of a Child in Need of Protection under Section 37 (2) & 72(1) of the Child & Family Services Act (CFSA)

A child is in need of protection where,

- (a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person's,
 - (i) failure to adequately care for, provide for, supervise or protect the child, or
 - (ii) pattern of neglect in caring for, providing for, supervising or protecting the child;

- (b) there is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
 - (i) failure to adequately care for, provide for, supervise or protect the child, or
 - (ii) pattern of neglect in caring for, providing for, supervising or protecting the child;

- (c) the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;

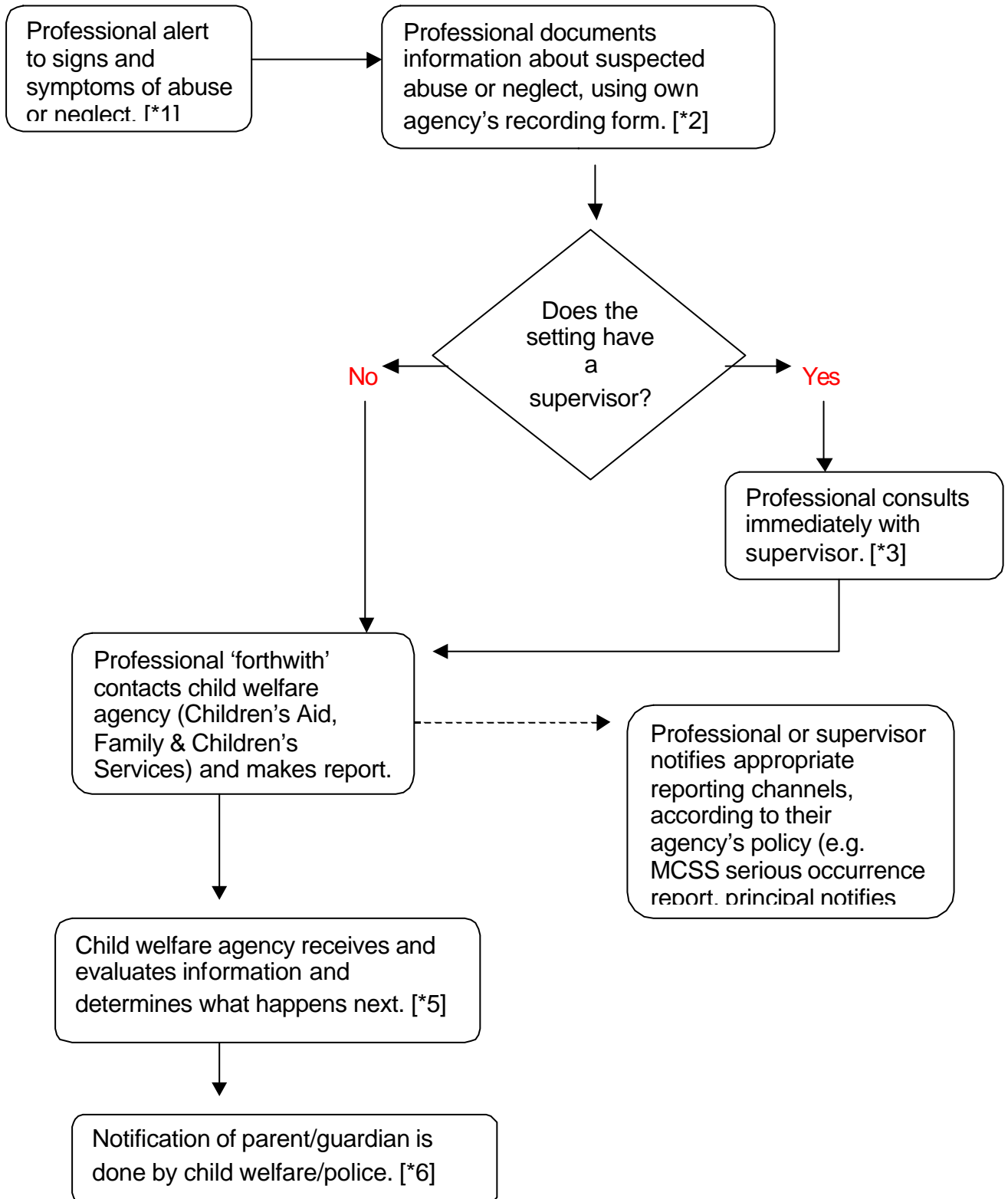
- (d) there is a risk that the child is likely to be sexually molested or sexually exploited as described in clause (c);

- (e) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable to consent to, the treatment;

- (f) the child has suffered emotional harm, demonstrated by serious,
 - (i) anxiety,
 - (ii) depression,
 - (iii) withdrawal,
 - (iv) self-destructive or aggressive behaviour, or
 - (v) delayed development,and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;
 - (f.1) the child has suffered emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

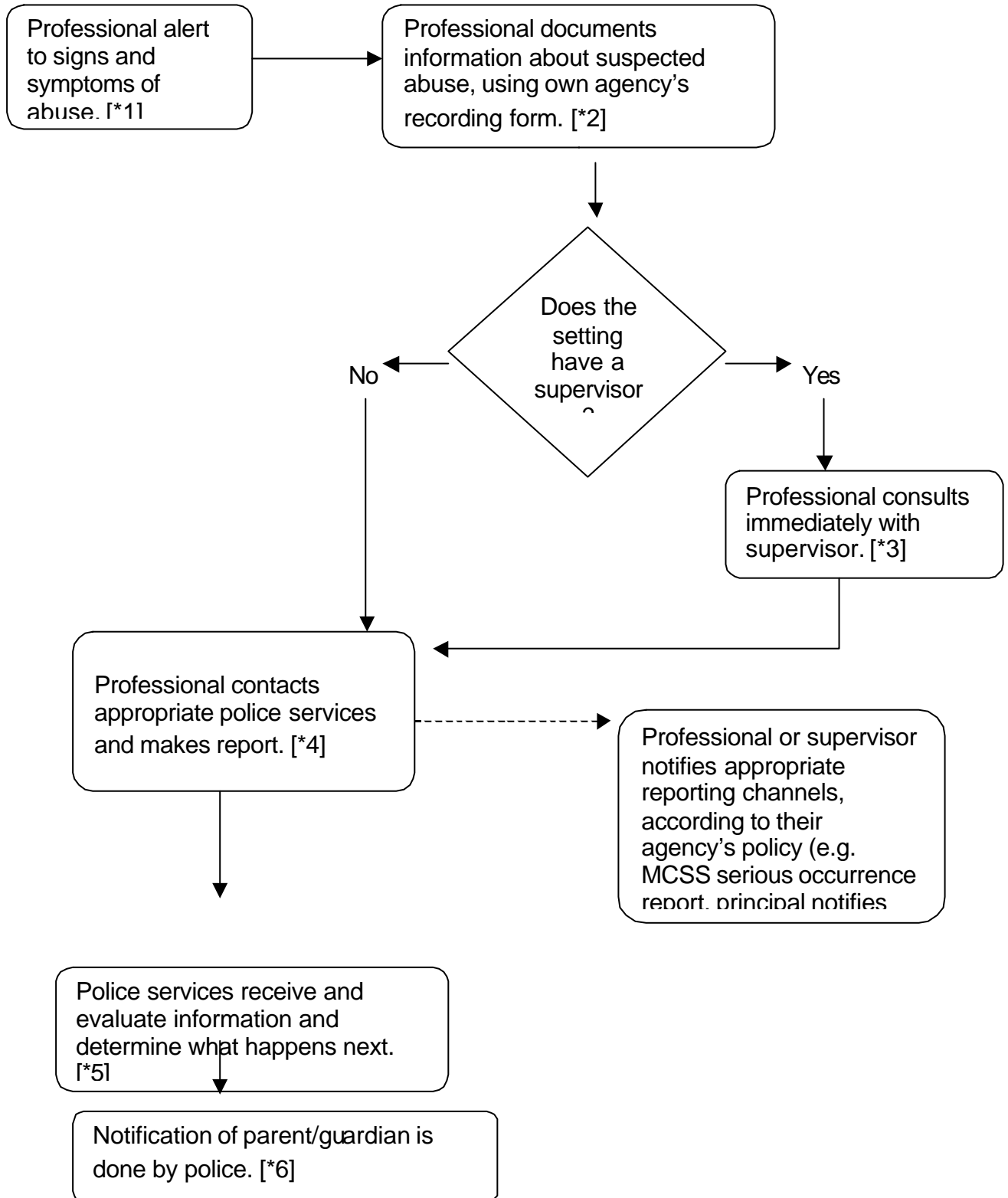
- (g) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv), or (v) resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;
(g.1) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv), or (v) and that the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm;
- (h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition;
- (i) the child has been abandoned, the child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody;
- (j) the child is less than twelve years old and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable to consent to, those services or treatment;
- (k) the child is less than twelve years old and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately; or
- (l) the child's parent is unable to care for the child and the child is brought before the Court with the parent's consent and, where the child is twelve years of age or older, with the child's consent to be dealt with under this Part. R.S.O. 1990, c. C.11, s.37(2); 1999, c. 2, s.9.

**APPENDIX II
CHILD ABUSE AND NEGLECT REPORTING PROCEDURES FOR CHILDREN AND
YOUTH (UNDER AGE 16)**



- *1 See Child Abuse/Neglect Indicators in the protocol (Section 5).
- *2 All agencies should have a simple recording form that is used to record the information that will be conveyed to child welfare and to document the report to child welfare. This form should not be used to prompt staff to *investigate* abuse or neglect but simply to provide a record of their concerns.
- *3 This consultation is to inform supervisors or administrators that the staff member is reporting suspected child abuse or neglect. In all cases, *the staff member* who has reason to suspect child abuse or neglect must be the individual to make the report, not the supervisor. All supervisory staff (including those acting temporarily as supervisors) should have training in the protocol for reporting suspected child abuse or neglect.
- *4 The individual suspecting abuse or neglect must convey this information to their local child welfare agency *themselves* as soon as abuse or neglect is suspected. [If the reporting individual is with the child (e.g. a teacher in a school or daycare), they may remain with the child until child welfare/police staff arrive.]
- *5 The child welfare agency will receive the information and make a determination of the action to be taken. If police are to be involved in an investigation, the child welfare worker will notify the appropriate police detachment. Because of the nature of an investigation, it is often not possible to provide information to the reporting individual about the status of an investigation; professionals should not expect to be informed of the outcome of this process.
- *6 Conveying information to the child's parent or guardian is the responsibility of child welfare or the police. Individuals who have reported suspected abuse to child welfare should not convey this information to parents unless instructed to do so by child welfare or police.

**APPENDIX III
CHILD ABUSE REPORTING PROCEDURES FOR YOUTH (OVER AGE 16)**



- *1 See Child Abuse/Neglect Indicators in the protocol (Section 5).
- *2 All agencies should have a simple recording form that is used to record the information that will be conveyed to the police and to document the report to the police. This form should not be used to prompt staff to *investigate* abuse or neglect but simply to provide a record of their concerns.
- *3 This consultation is to inform supervisors or administrators that the staff member is reporting suspected child abuse. In all cases, *the staff member* who has reason to suspect child abuse must be the individual to make the report, not the supervisor. All supervisory staff (including those acting temporarily as supervisors) should have training in the protocol for reporting suspected child abuse.
- *4 The individual suspecting abuse must convey this information to the appropriate police services *themselves* as soon as abuse or neglect is suspected. [If the reporting individual is with the youth (e.g. a teacher in a school), they may remain with the youth until police arrive.]
- *5 The police will receive the information and make a determination of the action to be taken. Because of the nature of an investigation, it is often not possible to provide information to the reporting individual about the status of an investigation; professionals should not expect to be informed of the outcome of this process.
- *6 Conveying information to the child's parent or guardian is the responsibility of the police. Individuals who have reported suspected abuse should not convey this information to parents unless instructed to do so by the police.

APPENDIX IV

Stages in a Child Protection Investigation

1. REPORTING STAGE

'Professional has reasonable grounds to believe a child may be in need of protection'

- All Professionals Must Directly Report to the Children's Aid Society

2. RECEIPT OF REFERRAL STAGE

Police and CAS Notify each other of the Referral, Check Internal Records, & Consult re the Type of Investigation Warranted and to Coordinate the Initial Planning Steps in the Investigation.

- **Joint Police/CAS Investigation** – Police & CAS interview the victims together. This is the preferred mode in all cases where the person in charge of the child is alleged to have committed a crime against a child
- **Separate and Concurrent Police & CAS Investigation** – Police and CAS do not interview jointly but communicate closely throughout the investigation
- **Police Only** - Child abused by a third party who was not 'In Charge' of the child & there are no protection issues (lack of supervision etc.)
- **CAS Only** – Alleged offender under twelve years of age

3. INTERVIEW STAGE

Police Role	Joint Police/CAS Role	CAS Role
<ul style="list-style-type: none"> • Interview of alleged offender 	<ul style="list-style-type: none"> • All alleged victims and other children potentially at risk interviewed jointly by Police/CAS Team (within 12 hours) • Interview of non-offending parent or alternate caregiver • Medical Examination where necessary • Collateral Interviews 	<ul style="list-style-type: none"> • Decision re: intervention required to immediately protect the child • Potential placement of child • Support of the child and family

4. CASE MANAGEMENT STAGE

Police Role	Joint Police/CAS Role	CAS Role
<ul style="list-style-type: none"> • Determine if charges will be laid (consult with Crown where appropriate) 	<ul style="list-style-type: none"> • Develop a joint case management plan re: support/treatment for child; support to family; highlighting the need for ongoing communication 	<ul style="list-style-type: none"> • Complete assessment of capacity of family to protect the child & assess risk of future harm

5. LEGAL STAGE

Police Role	Joint Police/CAS Role	CAS Role
Criminal Court Process <ul style="list-style-type: none"> • Establish conditions of bail (consult with CAS re: conditions to protect child) • Maintain evidence for criminal Court 	<ul style="list-style-type: none"> • Police and CAS may be required to testify/provide documentation for both Court processes 	Child Protection Proceedings <ul style="list-style-type: none"> • Upon apprehension, first Court appearance must occur within 5 days

6. FOLLOW-UP STAGE

Police Role	Joint Police/CAS Role	CAS Role
	<ul style="list-style-type: none"> • Facilitate referrals for treatment for victims, other family members & offender if necessary. • Work with community on primary and tertiary prevention strategies 	

APPENDIX V

CRIMINAL PROCEEDINGS VS. CHILD PROTECTION PROCEEDINGS

**CHARGES UNDER THE CRIMINAL CODE OR PROCEEDINGS
UNDER THE CHILD AND FAMILY SERVICES ACT**

Preference should always be given to proceeding under the Criminal Code whenever possible. In determining which alternative is in the best interests of the child, there are certain features of each of the Court proceedings, which should be considered. They are:

CHILD PROTECTION PROCEEDINGS	CRIMINAL COURT PROCEEDINGS
The proceedings are held "in camera". Section 45	<i>The Crown Attorney may request a ban on publication</i>
The child has the right to legal representation from the Children's Lawyer office	<i>The Crown Attorney prosecutes the case. Victims and witnesses are generally not represented by counsel.</i>
The Court has the power to order an assessment which involves both the child and his/her family after an "In Need of Protection" finding.	<i>For sentencing purposes, assessment information may be available to the Crown from the CAS if consents are signed.</i>
A no access, supervision or restraining order against the offender is possible after an INOP finding Sec 37(2)	<i>The Court has control over the offender's access to the victim from bail proceedings to sentencing</i>
Disposition does not result in a Criminal record	<i>Disposition results in a Criminal record</i>
Sentencing options include a fine; imprisonment-maximum penalty is two years; or both of the above. More importantly, it could result in the loss of child or access to child or a Supervision order.	<i>Sentencing options include: a fine; a maximum of three years probation; imprisonment – maximum penalties, depending on the charge are 6 months, 10 years, 14 years and life; any combination of two of the above.</i>
Generally, there is no historical limitation.	<i>Generally, there is no historical limitation.</i>
The alleged offender cannot be arrested or detained and prohibited access or restraining orders cannot be made until the Court hears the matter. However, the child can be apprehended if they are in immediate need of protection.	<i>The alleged offender can be arrested and held for, or released on a "no contract" condition of bail</i>
Court disposition provides a means by which to continue to be involved with the child and family after the event has occurred	<i>Court disposition does not provide such means. The Court's influence is solely over the accused, by way of probation order</i>

APPENDIX VI

Non-Leading Interview Questions (for Police and CAS only)

The following are examples of leading and non-leading questions that are aimed at the same issue

1. The question must not contain the answer ...	
LEADING	NON-LEADING
Did it happen at your house? Was your mom there? Did he tell you not to tell anyone?	Where did it happen? Who was there? What was said to you?
2. Must not contain a choice of answers ...	
LEADING	NON-LEADING
Was he wearing pants or shorts? Were you sitting up or lying down? Were you scared, angry or sad?	Tell me what he looked like? Where were you in the room? How did you feel?
3. Must not name the suspected offender before the child has identified the person.	
LEADING	NON-LEADING
Was it your Dad who touched you? Did your babysitter tell you to keep it a secret? We've been told you are having a problem with your uncle.	Who touched you? Has anyone asked you to keep a secret? Do you know why we are talking to you?
4. Must not contain explicit details of the alleged offense...	
LEADING	NON-LEADING
Did he make you rub his penis up & down? Did white stuff come out of his penis? Which finger did he use to hurt you?	What did he do next? Then what happened? What was it that hurt you?
5. Must not contain the interviewer's assumptions.	
LEADING	NON-LEADING
We are going to ask you some questions about what happened to you? What kind of car did you go in? Where was the bed in your room? Tell me about your Mom's house.	Do you know why we are talking to you? How did you get there? Can you tell me what was in the room? Tell me about where your Mom lives.

Nancy Frederick, Project Manager - Standards of Social Work Practice

APPENDIX VII

Approaching Children Whom You Suspect May Be Abused, Neglected or Who May be Witnessing Abuse At Home

Adapted from the Leeds & Grenville Violence Against Women Prevention: A Protocol for School-based Services & Interventions for Child witnesses 1999.

The Professional's Responsibility:

Remember... IT IS NOT YOUR RESPONSIBILITY to **conduct an investigation** to determine whether a child is in need of protection or to make a determination as to the safety of the child. However, at times, it is necessary to clarify what you have observed and whether the information you have gives you 'reasonable grounds' to suspect that a child may be in need of protection. The following suggestions should only be used to the point where you can establish **reasonable grounds to suspect** a child may be in need of protection. As soon as you reach that threshold, under Section 72 of the CFSA, you have a statutory obligation to report immediately to the local FCS/CAS.

Younger children tend to disclose accidentally and older children intentionally. Remember, children usually disclose to, or around, people they trust. You may be one of the few people they can trust at that point in time in their life.

Know your own feelings around the abuse or neglect and the potential impact it may have on the child. If you feel anger, disgust or repulsion about what may be happening to them and show it, it can impact on their sense of shame, fear or trust. Be patient, non-judgmental and objective.

Avoid asking questions that can be answered with a Yes/No

- "Is everything okay at home?" is a yes/no question. A cautious child will be able to deflect your concern with a quick "yes".
- TRY "Tell me a little about why you seem so sad (upset, worried, jumpy...) today". If s/he is ready, they may give a longer response that clarifies their behaviour.

Share your reflection about how he or she seems to be feeling.

- Your observations as an adult will help children learn about their feelings.

TRY:

- a) "Sometimes it can be hard to concentrate if you're feeling upset or worried about something, can you tell about anything that might be making you feel upset or worried today"?
- b) "When I look at (or read) your work, it seems to me like you are saying that you feel worried or upset about some things? Can you tell me a little about that?"

Let the child know you want to help.

TRY: a) "I really care about what happens to you."

- b) "I'd like to help you sort out any problems or worries that you have because I want you to feel better & I want you to be safe."

IF A CHILD DISCLOSES:

Let them know that help is available. Let them know what the next steps are.

"I will call a Social worker at the CAS and they will come to speak to you about what has been happening."

Ask about any fears that the child might have.

TRY: a) "What is your biggest worry about someone finding out about what you've told me?"

b) "How do you think mom/dad/mom's boyfriend...would react if they knew that you told me what is upsetting you?"

Explain to the child, in an age appropriate way, why violence in the home is wrong.

TRY:

a) "Everyone in your house deserves to be safe."

b) "It is not your fault, you are not to blame."

c) "No one deserves to be hurt, your mom, your brothers and sisters do not deserve to be hurt."

d) "People can help to make your house a safer place for everyone."

Ask what and who might help the child feel supported right now, and in the future.

TRY:

a) "If you had two wishes to make things better for your family, what might they be?"

b) "How could your mom help you right now with your worries?"

c) "How could the school help you right now with your worries?"

d) "Sometimes kids like to talk to someone who is outside their family when they are sad, mad or worried, how about you-would you like that?"

BE SURE TO DO THE FOLLOWING:

- Tell the child you believe her/him.
- Assure the child by saying " You did the right thing to tell about this worry. **NO ONE SHOULD BE ABUSED!**"
- Reassure her/him that "this is not your fault. You didn't do anything wrong. You are the child; they are the adults. Adults are supposed to keep children safe."
- Explain that he/she is not alone, that some other children may have the same worries and feelings.
- If appropriate, tell the child's mother about the local shelter for abused women, and give her the phone number for her to call.

APPENDIX VIII

Geographic Jurisdiction for Police

Police Services/Detachments are responsible for crimes committed within their jurisdiction.

For **CAS**, 'territorial jurisdiction' is determined where the child 'normally resides'.

- In some cases, the child may reside in one CAS jurisdiction but have access to a parent or other family members in another CAS jurisdiction. In these cases, early consultation between the respective CAS's and police is imperative. (Please see the Eastern Zone CAS protocol for situations involving families where more than one family member is or has been in another jurisdiction)
- See "Protocol for the Provision of Child Welfare Services Between Children's Aid Societies" – December 1997 for details.

POLICE SERVICES			
CITY / TOWN SERVICE	COUNTY & AREA COVERED	PHONE	FAX
Brockville	City of Brockville	342-0127	<i>342-0452</i>
Carleton Place	Town of Carleton Place	257-2323	<i>257-8847</i>
Cornwall	City of Cornwall	932-2110	<i>932-0121</i>
Gananoque	Town of Gananoque	382-4422	<i>382-7167</i>
Perth	Town of Perth	267-3131	<i>267-7060</i>
Prescott	Town of Prescott	925-4252	<i>925-4884</i>
Smiths Falls	Town of Smiths Falls	283-4141	<i>283-1253</i>

OPP DETACHMENTS

CITY / TOWN SERVICE	COUNTY & AREA COVERED	PHONE	FAX
Headquarters	Eastern District	1-888-310-1122	
Lanark County		1-800-267-8919	
Leeds County	Including all Leeds townships plus Athens, Westport & Brockville	Brockville detachment 345-1790 Gananoque Detachment 382-2195 Rideau Lakes detachment	345-3202
Lanark County	Lanark County, town of Almonte	1-800-267-8919 267-2626	
Grenville County	including: all townships + Prescott Kemptville & Cardinal	Prescott detach. 925-4221 North Grenville detach. 258-3441	925-1115
Prescott-Russell	Casselman, Rockland, Hawkesbury	Casselman detach: 764-5415 Rockland detach. 446-5124 Hawkesbury detach: 632-2729	
Upper Canada	Alexandria, Maxville, Winchester, Long Sault, Lancaster		

APPENDIX IX

CHILD PROTECTION AGENCIES BY JURISDICTION
Signatories to this Protocol

Child Protection Resources in Lanark County:

Lanark County Children's Aid Society
POB 37 (Sunset Blvd)
Perth Ontario K7H 3E2
Phone: (613) 264-1500
FAX: (613) 264-0067

Child Protection Resources in Stormont, Dundas and Glengarry Counties:

Stormont, Dundas and Glengarry Children's Aid Society
27 Rue York Street (POB 983)
Cornwall, Ontario K6H 5V1
Phone: (613) 933-2292
FAX (613) 933-6767

Child Protection Resources in Prescott/Russell Counties:

Prescott-Russell Services to Children and Adults
173 Main Street (POB 248)
Plantagenet, Ontario KOB 1L0
Phone: (613) 673-5148 1-800-675-6168
FAX: (613) 673-4800

Child Protection Resources in the counties of Leeds and Grenville:

Leeds-Grenville Family and Children's Services
438 Laurier Boulevard
Brockville, Ontario K6V 6C5
Phone: (613) 498-2100
FAX: (613) 498-2108

APPENDIX X
List of Service Providers

Resource	Services Provided	Phone	FAX
Baldwin House Cornwall			
Child & Youth Wellness Centre	Children's Mental Health – for Leeds/Grenville County	498-4884	498-2402
Developmental Services	Services for Developmentally delayed adults and children	345-1290	345-1394
Interlude House	Shelter for abused women and their children 24 hour crisis line, Counselling, Outreach programs	632-1131 1-800-267- 4101	
Lanark, Leeds & Grenville Health Unit	Healthy Babies program	345-5685	1-800-660- 5853
Lanark County Interval House	Shelter for abused women and their children 24 hour crisis line, Counselling, Outreach programs	1-800-267- 7946	
Legal Aid Ontario	Assignment of Legal Counsel for those who qualify	342-5421	342-8720
Leeds & Grenville Interval House	Shelter for abused women and their children 24 hour crisis line, Counselling, Outreach programs	342-4724	
Naomi House Winchester	Shelter for abused women and their children 24 hour crisis line, Counselling, Outreach programs		
Open Doors Sampson House	Children's Mental Health – for Lanark County Children's Mental Health - Adolescent Residential Placement - Lanark, Leeds & Grenville	283-8260	283-8757
Sexual Assault Centre of Leeds & Grenville (BGH)	<ul style="list-style-type: none"> • Crisis & Short term counselling for women, children & men. • Group support, workshops, and resource library. 	345-3881 (24 hour crisis Lines 345-4288 or 1-800-567- 7415)	
Victim Witness Program – Lanark	•	264-8387	

APPENDIX XIList of Medical Resources Available *(current to March 2001)*

Resource	Contact or Service Provided	Phone	FAX
Almonte General Hospital	Emergency Department has an on call physician 24 hours	256-2500	256-4889
Brockville General Hospital	Emergency Department has an on call physician 24 hours	345-5645	345-2529
Carleton Place and District Memorial Hospital	Emergency Department has an on call physician 24 hours	253-0733	253-3479
CHEO	Child & Youth Protection Service Emergency Service Historical Sexual Abuse Clinic (Assessment)	737-2677	738-4834
Hawkesbury General Hospital	Emergency Department has an on call physician 24 hours	632-1111	
Kemptville District Hospital	Emergency Department has an on call physician 24 hours	258-3425	258-7853
Perth & Smith Falls Hospital	Emergency Department has an on call physician 24 hours	267-1500	
Perth & Smith Falls Hospital	Emergency Department has an on call physician 24 hours	283-2300	
Regional Coroner's Office	Kingston – Dr. Benoit Bouchard	531-5737	531-5738

**APPENDIX XII
CHILD PROTECTION ELIGIBILITY SPECTRUM**

ELIGIBILITY SPECTRUM DESCRIPTORS		LEVEL OF SEVERITY				
Section	Scale	Extremely	Moderately		Minimal	Not
1. Physical/ Sexual Harm by Commission	1. Physical Punishment &/or Maltreatment	A B C D E	F G H I J		KL	M
	2. Cruel/Inappropriate Treatment	A	B	I	C	D
	3. Abusive Sexual Activity	A B C D E	F G H I	N	JK	L
	4. Threat of Harm	A	B C	T	D	E
2. Harm by Omission	1. Inadequate Supervision	A	B	E	C	D
	2. Neglect of Child's Basic Needs	A	B	R	C	D
	3. Caregiver Response to Child's Physical Health	A B	C	V	D	E
	4. Caregiver Response to Child's Mental, Emotional Developmental Condition	A	B	E N	C	D
	5. Caregiver Response to Child under 12 Who Has Committed a Serious Act	A	B	T I	C	D
3. Emotional Harm	1. Caregiver Response to Child's Emotional Harm or Risk of Emotional Harm	A	B	O N	C	D
	2. Adult Conflict	A B	C D		E	F
4. Abandonment/ Separation	1. Orphaned/Abandoned Child	A B	C	L	DE	F
	2. Caregiver-Child Conflict/Child Behaviour	A	B	I	C	D
5. Caregiver Capacity	1. Caregiver Has History of Abusing/Neglecting	A B C	D	N	E	F
	2. Caregiver Inability to Protect	A B	C	E	D	E
	3. Caregiver with Problem	A	B		C	D
	4. Caregiving Skills	A	B		C	D
		ONILN				
Section	Scale	Unranked Choices				
6. Request for Counselling	1.	A,B,C,D,E,F				
7. Request for Adoption Services	1. Adoption 2. Adoption Disclosure	Adoption: A,B,C,D,E,F,G Adoption Disclosure: A,B,C,D				
8. Foster Care Services	1.	A,B,C,D,E,F				
9. Volunteer Services	1.	A,B,C,D				
10. Request for Assistance	1.	A,B,C,D,E,F,G,H,I,J,K				

APPENDIX XIII
Some Potential Criminal Charges Related to Bill C-15
 APPLICABLE CRIMINAL CHARGES FOR PHYSICAL AND SEXUAL ABUSE,
 INCLUDING CHILD PORNOGRAPHY

<u>OFFENCE</u>	<u>SECTION IN THE CRIMINAL CODE</u>
Sexual Interference (child under 14)	s. 151
Invitation to Sexual Touching (child under 14)	s. 152
Sexual Exploitation (victim between 14 & 17)	s. 153(1)
Incest	s. 155(1)
Bestiality (person under 14 present)	s. 160(1)(2)(3)
Child Pornography	s. 163.1(2)(3)(4)
Parent or Guardian Procuring Sexual Activity (Involving child under 14)	s. 170
Exposure (involving child under 14)	s. 173(2)
Sexual Assault	s. 271
Sexual Assault with a Weapon, Treats to Third Party or Causing Bodily Harm	s. 272(1)
Aggravated Sexual Assault	s. 273

CONSENT—NO DEFENCE CRIMINAL CODE OF CANADA s. 150.1.

- (1) Where an accused is charged with an offence under section 151 or 152 or subsection 153(1), 160(3) or 173(2) or is charged with an offence under section 271, 272 or 273 in respect of a complainant under the age of fourteen years, it is not a defense that the complainant consented to the activity that forms the subject-matter of the charge.
- (2) Notwithstanding subsection (1), where an accused is charged with an offence under section 151 or 152, subsection 172(2) or section 271 in respect of a complainant who is twelve years of age or more but under the age of fourteen years, it is not a defense that the complainant consented to the activity that forms the subject-matter of the charge unless the accused
 - a) Is twelve years of age or more but under the age of sixteen years;
 - b) Is less than two years older than the complainant; and
 - c) Is neither in a position of trust or authority towards the complainant nor is a person with whom the complainant is in a relationship of dependency.
- (3) No person aged twelve or thirteen years shall be tried for an offence under section 151 or 152 or subsection 173(2) unless the person is in a position of trust or authority towards the complainant or is a person with whom the complainant is in a relationship of dependency.
- (4) It is not a defense to a charge under section 151 or 152, subsection 160(3) or 173(2), or section 271, 272, or 273 that the accused believed that the complainant was fourteen years of age or more at the time the offence is alleged to have been

committed unless the accused took all reasonable steps to ascertain the age of the complainant.

- (5) It is not a defense to a charge under section 153, 159, 170, 171, or 172 or subsection 212(2) or (4) that the accused believed that the complainant was eighteen years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.

MEANING OF "CONSENT" 273.1 (1) Subject to subsection (2) and subsection 265(3), "consent," means, for the purposes of sections 271, 272 and 273, the voluntary agreement of the complainant to engage in the sexual activity in question.

Where no consent obtained -- s. 273.1(2)

- (2) No consent is obtained, for the purposes of sections 271, 272 and 273, where
- (a) The agreement is expressed by the words or conduct of a person other than the complainant;
 - (b) The complainant is incapable of consenting to the activity;
 - (c) The accused induces the complainant to engage in the activity by abusing a position of trust, power or authority;
 - (d) The complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
 - (e) The complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

Subsection (2) not limiting -- s. 273.1(3)

- (3) Nothing in subsection (2) shall be construed as limiting the circumstance in which no consent is obtained;

WHERE BELIEF IN CONSENT NOT A DEFENCE Criminal Code of Canada 273.2 It is not a defense to a charge under section 271, 272 or 273 that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge, where

- a) The accused belief arose from the accused
 - i) Self-induced intoxication, or
 - ii) Recklessness or willful blindness; or

The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting.

Appendix XIV
Optional/Sample reporting form for Service Providers

Child Protection Reporting Form

Referral Source - Report Made by:

Date & Time of verbal Referral:

Contact Person at CAS/FCS:

Child Referred

Name	
Age/DOB	
Address	
Telephone	
Lives with	
Parents/Guardians	
Other Children in the Home (Names & Ages if available)	•
Alleged Offender	
Disclosure and Explanation of Incident/Condition by the child – include dates, possible witnesses etc. •	
What led you to be suspicious that the child may be in need of protection? •	
Description & location of noted injuries: (Include hand/finger marks; bruising; bites; burns; welts; scrapes; scratches; swelling; cuts; other.)	
Type of Injury	Location of Injury on Body
Date form Completed & forwarded to CAS/FCS:	