

Child and Family Services PROGRAM STANDARDS MANUAL	Section: 701	Effective: Oct 1/88 Revised: Sep 20/99	Page: 1
Subject: SERVICES TO YOUNG OFFENDERS			

This section covers coordination of services between agencies and the youth correctional system.

With the implementation of the *Young Offenders Act*, effective November 2, 1984, young persons are no longer placed in the care of child and family services agencies through a disposition of a youth court. The onus is on the youth correctional authorities to refer those children and families whom they deem require the services of an agency. On receiving a referral, an agency must decide on an appropriate course of action based on the circumstances of the case. Reports under section 18 of *The Child and Family Services Act* that a child may be in need of protection require an investigation in accordance with section 19 of the Act.

STANDARDS

701.1 Child in need of protection

Reports or referrals from the police, youth correctional authorities, the courts or legal counsel that a child may be in need of protection, including young persons up to 18 years of age, are investigated in accordance with section 18.4 of the Act and section 2 of the *Child Abuse Regulation* (Regulation 14/99).

701.2 Referral for other services

Referrals from the police, youth correctional authorities, the courts or legal counsel for services other than protective intervention, including work with families or placement of children, are responded to on the basis of the needs of the child and family consistent with normal agency practices.

701.3 Agency responses in writing

Agency responses to referrals from the police, youth correctional authorities, the courts or legal counsel, are confirmed in writing in accordance with provincial protocols (see Procedures, page 8).

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701.4 **Young persons in care**

Where a young person age 12 or more but under 18 years of age in the care of an agency, is charged with an offence or is involved in any proceedings under the *Young Offenders Act*, the supervising agency ensures there is parental involvement or, where parental involvement is not possible, acts as the parent in all matters including contact with the police, appearances in court, and placement of the young person on release from detention or following discharge from custody.

701.5 **Counsel for young persons in care**

A young person in the care of an agency is assigned counsel in accordance with provisions under the *Young Offenders Act*.

PROCEDURES

With the implementation of the *Young Offenders Act* effective November 2, 1984, it has become necessary to revise the protocols for co-ordination of services between the youth correctional authorities and child and family services agencies. These revised procedures are intended to:

- Clarify the role and responsibilities of child and family services agencies in respect to young persons who are subject to proceedings under the *Young Offenders Act*.
- Facilitate appropriate referrals of young persons to child and family services agencies by the youth correctional authorities.
- Enhance the involvement of child and family services agencies in advocating for young persons in their care who are subject to proceedings under the *Young Offenders Act*.

The Young Offenders Act

The *Young Offenders Act* is based on four key principles intended to strike a balance between the needs of young people and the interests of society. These principles are:

- Young people should be held responsible for their behavior but not always as accountable as adults.
- Society has a right to protection from illegal behavior and a responsibility to prevent criminal conduct by a young person.
- Young people have special needs because they are dependents at varying levels of development and maturity. They need guidance and assistance, as well as supervision, discipline, and control.
- Young people have the same rights as adults to due process of law and fair and equal treatment under the law.

Definitions

For purposes of these protocols and consistent with definitions and provisions under the *Young Offenders Act*, the following definitions apply:

agency means a child and family services agency mandated to provide services under *The Child and Family Services Act*.

child means a person who is or, in the absence of evidence to the contrary, appears to be under the age of 12 years and who, therefore, cannot be charged with an offence under the *Young Offenders Act*.

young person means a person who is or, in the absence of evidence to the contrary, appears to be:

- a) 12 years of age or more, but
- b) under 18 years of age

and includes any person subject to proceedings under the *Young Offenders Act*.

parent includes any person who is under a legal duty to provide for the young person, or any person who has, in law or in fact, the custody or control of the young person, **including an agency**, but excluding persons who have custody or control by reason of proceedings under the *Young Offenders Act*.

youth court means a court established or designated by Manitoba for the purposes of the *Young Offenders Act*.

provincial director means a person, a group or class of persons or a body appointed or designated by the province to perform any of the duties or functions of a provincial director under the *Young Offenders Act*.

youth correctional authorities include probation officers and staff at detention and custodial facilities for young persons.

alternative measures mean measures other than judicial proceedings used to deal with a young person who is alleged to have committed an offence.

detention means a place of temporary detention designated by the province for the purpose of detaining a young person who has been arrested and detained prior to the making of a disposition.

interim release refers to a situation where a young person has been charged with an offence and detained in custody, and the youth court has granted interim release (commonly known as bail) pending a disposition.

probation order means an order of the youth court placing a young person on probation for a specified period not exceeding two years and may include the condition that the young person reside in such place as the provincial director or his delegate may specify.

open custody means custody in any place or facility designated by the province as a place of open custody for the purposes of the *Young Offenders Act* and designed to provide continuous supervision.

secure custody means custody in any place or facility designated by the province for the secure containment or restraint of young persons. Currently in Manitoba the Agassiz Youth Centre and Doncaster Youth Centre are designated as places of secure custody.

Implications

In general, child and family services agencies are required to cooperate with the police, youth correctional authorities and counsel acting for young persons. Such cooperation should ensure that young persons and their families receive services in accordance with the intent and provisions of *The Child and Family Services Act*.

Particular attention, however, should be given to the implications of the *Young Offenders Act*. Some significant implications should be noted as follows:

1. A young person cannot be placed into care of an agency through a disposition under the *Young Offenders Act* as was the case under The Juvenile Delinquents Act. The intent and provisions of *The Child and Family Services Act* apply with respect to referrals of young persons.
2. A child under 12 years of age, who is involved in criminal activity or breaches of the law, cannot be dealt with under the *Young Offenders Act*. Where appropriate, such children may be referred by the police for intervention by an agency.
3. Where a young person subject to proceedings under the *Young Offenders Act* is in the care of an agency, the agency may receive notice and has a right to appear in court and be heard with respect to the young person:

- a) who is arrested and detained in custody;
- b) in respect of whom a summons or an appearance notice is issued; or
- c) who is released on giving promises to appear or on entering into a recognizance.

Notice is also required to be given with respect to reviews of dispositions by the youth court or by a review board.

4. A young person may be released from detention by a youth court judge and placed in the care of a responsible person if the young person is willing to be placed and the responsible person undertakes, in writing, to take care of and be responsible for the attendance of that young person in court when required. Young persons who are wards of an agency may be released into the care of that agency under these conditions.
5. A young person has the right to retain and instruct counsel without delay at any stage of the proceedings against him/her. For young persons in care under *The Child and Family Services Act*, an agency may be asked or may decide to arrange counsel.
6. Where a parent does not attend proceedings before a youth court in respect of a young person, the court may, if in its opinion the presence of the parent is necessary or in the best interest of the young person, by order in writing, require the parent to attend at any stage of the proceedings.
7. A parent of a young person has a right to be present with respect to proceedings under the *Young Offenders Act*. These provisions allow agencies to be present in court concerning young persons in their care.
8. The record of a case concerning a young person who is in the care of an agency shall, during the course of the proceedings or during the term of any disposition, be made available on request to an agency by the youth correctional authorities and the agency may be given any information contained in the record or a copy of any part of the record subject to the destruction of such records under the provisions of the *Young Offenders Act*.
9. If an agency desires information from the court records concerning a young person who is not in care, the agency may apply to the youth court to exercise its discretion to release information to any person whom the judge deems to have valid interest.

Co-ordination of services

The focus and concern of child and family services must be in the best interests of the child. Agencies are expected to respond promptly to reports or referrals of children or young persons brought to their attention by the police, the youth court, youth correctional authorities or counsel.

1. Reporting child in need of protection

Anyone who in the course of his/her professional or official duties, has reason to suspect that a child or young person may be in need of protection, immediately reports the information to an agency in accordance with subsection 18(1) of *The Child and Family Services Act*. Any report is promptly investigated by the agency and appropriate action taken to ensure the safety of the child or young person.

2. Referrals for services

A young person subject to proceedings under the *Young Offenders Act* may be referred to an agency where, in the opinion of the police, youth court, youth correctional authorities or counsel acting on his or her behalf, the young person is believed to be in need of services and where the young person and his/her family are prepared to accept such services voluntarily.

3. Agency responsibilities

On receiving a report or referral of a young person, the agency reviews the case and takes such action as may be required to protect the child or assist the family.

4. Referrals from youth court

Where a custodial disposition is not warranted or where the needs of a young person and the community would be better served, a youth court judge may request a referral be made by a probation officer to an agency.

5. **Probation orders**

Where the youth court sentences a young person to supervised probation with the condition that he/she reside where directed by the provincial director, a probation officer refers that young person to an agency if he or she appears to require the services of the child and family services system. Decisions to bring the young person into care must be based on *The Child and Family Services Act*.

6. **Open or secure custody**

If a young person has been committed to open or secure custody and the youth correctional authorities believe he/she may require the services of an agency after discharge, consultation with and, where appropriate, referral to an agency should occur as early as possible, so that the young person will have the same opportunity for early release as others. A youth who makes good progress, may earn early release upon completing two-thirds of the committal.

7. **Referrals in writing**

On referring a young person to an agency the youth correctional authorities, whenever appropriate, forward a written report or request **within one week** of the original contact indicating:

- name, date of birth, and present whereabouts of the young person;
- name and address of parents or guardians of the young person;
- reason for the report or referral;
- prior involvement of other agencies if known;
- pertinent attitudes and concerns of the young person and his/her parents; and
- comments on the need for joint planning and cooperation including a case conference, if indicated.

8. **Response in writing**

An agency, on receiving a report or referral concerning a young person and on completion of an investigation or review of the case, provides written information to the police, youth court, youth correctional authorities or counsel as to the results of the review and any course of action taken or to be taken. Written responses should be forwarded within time constraints such as court hearing dates and, in any event, **no later than three weeks** following the receipt of a report or referral.

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Lawyers

Any youth may apply for Legal Aid services. Eligibility is ordinarily based on two factors:

- a) **Type of offence:** Legal Aid appoints counsel on any indictable offence. Summary conviction offences are covered only if the youth is liable to be committed to open or secure custody;
- b) **Finances:** Legal Aid has eligibility guidelines which change annually. The resources of the youth's family may be considered.

Youth in the care of an agency apply to Legal Aid in the usual way. The only difference from other youth is that the agency is billed for the legal services provided by Legal Aid.

Overriding **all** of the aforementioned is the right of judges in the Youth Court to appoint counsel (section 11 of the *Young Offenders Act*).

It is also possible for the agency, with the consent of the young person, to hire a lawyer for that person on a private basis.

Disagreements

A child and family services worker who disagrees with an action taken by the youth correctional authorities, should consult with his/her supervisor. If indicated, the matter should then be reviewed with supervisory staff in the youth correctional system with a view to clarifying or resolving the disagreement. If the issue cannot be resolved to the joint satisfaction of all parties, or if there is a need to clarify policy, the matter should be referred to the Director of Child and Family Services to bring to the attention of the youth correctional authorities.