

# If Your Child Is Taken

## Your Rights As a Parent



This brochure explains about child protection law. It tells you what you can do if the Director of Child Protection removes your child from your home, or plans to remove your child. It describes what happens at court, and where you can get the help you need.

### What the law says

BC law says that the Director of Child Protection (the director) has to investigate all reports of children who may be in danger. If the director believes that your child isn't safe, the law says the director must do something about it.

- A child protection worker (social worker), who works for the director, may remove (take) your child from your home if necessary.
- If the child protection worker removes your child from your home, your child stays in care (often in a foster home) until the director or a judge decides it's safe to return your child to you.
- The director (or someone who works for the director) must deliver a **Report to Court** (a written report presented in court) within seven days from when your child is removed. The report explains why the child protection worker removed your child.
- You have a right to tell the judge what you want for your child.



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## What you can do

### Talk to a lawyer as soon as possible

- If the director removes your child from your home or you think this may happen, get a lawyer right away. A lawyer can help you work out an agreement with the director for your child's care, explain papers you're asked to sign, and go to court for you.
- If you can't pay a lawyer, Legal Aid may pay for one for you. See "How to contact Legal Aid" on page 4.

### Ask for access

If the director removes your child from your home, immediately ask for access (visits) so that you can spend time with your child in foster care. Access is very important for you and your child.

- Ask the child protection worker who removes your child about access to your child.
- If the child protection worker doesn't give you access, ask the judge when you first go to court.

### Get more information

- Read Legal Services Society's publication [\*Parents' Rights, Kids' Rights: A Parent's Guide to Child Protection Law in BC\*](#).
- Find an **advocate** (someone who knows about certain issues and laws and helps people) in your community. The advocate can help you with information and support.
- Get a copy of the director's **Report to Court** and all other papers about your child's removal from your home. Have these papers available when you speak with a lawyer or an advocate.

### Work out an agreement

Any time after an investigation begins, you can work out an agreement with the director for your child's care.

You can use one of these options:

- **Meeting with the child protection worker** — where you discuss with the investigating child protection worker the changes you will make that would allow your child to remain at home
- **Family group conference** — a meeting where you and other family members come together to make a plan for your child's care
- **Traditional decision making** — where you follow community or cultural traditions to solve your family problems if your child is Aboriginal
- **Mediation** — a meeting with everyone involved where a **mediator** (neutral person with special training) helps you to solve problems and to make a plan for your child's care

### Go to every court appearance

It's important to go to every court hearing and case conference to hear what is being said about you and your child. This will show the judge that you care about your child. You'll also be able to tell the judge what you want for your child.

- A **court hearing** is a hearing in front of a judge in court. You may ask the judge to **adjourn** (postpone) the hearing if you haven't had a chance to get a lawyer.
- A **case conference** is a less formal meeting with a judge at the courthouse.

### What happens when you go to court

You need to have a lawyer when you go to court. The issues are complicated, and you want to make sure the judge hears your side of the case.

If the director removes your child from your home, there are two stages in the child protection court process:

- **Presentation stage**
- **Protection stage**

## Presentation stage

The director's Report to Court must say:

- why the director removed your child from your home,
- what other options the director considered first, and
- what the director's plan is for your child.

When this report is presented to the court (within seven days from when your child is removed), the **presentation hearing** begins.

The director must tell you the date, time, and place of this hearing as soon as possible. If you go to the presentation hearing, the director must give you a copy of the Report to Court.

### At the presentation hearing

After the director presents the Report to Court, the judge might make an order to send your child back to live with you without supervision. The court process then ends for you and your child.

Or the judge can make an **interim (temporary) order**. The interim order (see below) says how your child will be looked after temporarily, until the court decides about your child's care at the protection stage.

### Interim orders

At the presentation hearing, the judge can make:

- an **interim supervision order** to send your child back to live with you under the director's supervision;
- an **interim supervision order** to place your child to live with someone else (often a relative or a family friend) under the director's supervision; or
- an **interim custody order** to put your child in the director's care (foster care).

If you aren't in court for the presentation hearing, the judge must make the interim order based only on the Report to Court.

If you're in court and don't agree with the interim order that the director asks for in the Report to Court, the judge may want you and the director to give evidence before making the order.

Hearing evidence takes time and usually must happen at a later date. If the interim order says your child won't be sent back to live with you, it may also say when you can see your child. The law says the judge should make an order for access if you request visits with your child.

## Protection stage

Within 45 days from when the judge makes the interim order, the **protection hearing** must start.

Ten days before the protection hearing starts, the director must give you a copy of the application for the kind of order the director wants the judge to make. The application must also have a **plan of care** that says how the director wants your child to be looked after.

It's important that you go to the protection hearing. If you're there, you can say if you agree or disagree with the order the director wants.

- If you agree with the order being asked for, the judge will make the order and the protection hearing ends.
- If you disagree with the order being asked for, the judge will schedule a case conference.

### At the case conference

A **case conference** is a meeting of the director, the child's parents, and their lawyers. If your child is Aboriginal, a representative of your Aboriginal community may also be there.

- A judge will lead the case conference and try to settle the problem without hearing evidence.
- Everyone will sit around a table and be asked to talk about what they want for your child.

If the case conference doesn't settle matters, the protection hearing will be scheduled for a later date in court.

## At the protection hearing

Witnesses will be called at the protection hearing. After the witnesses give evidence, the judge must first decide if your child needed protection when he or she was removed from your home.

- If the judge decides your child didn't need protection, the judge will order that your child must be returned to you.
- If the judge decides your child needs protection, the judge will make a **temporary order**.

The judge decides the **term** (for how long) the order will be. The term can be for up to six months.

### Temporary orders

At the protection hearing, the judge can make:

- a **temporary supervision order** to send your child back to live with you under the director's supervision (for up to six months),
- a **temporary supervision order** to place your child to live with someone else under the director's supervision (for up to six months), or
- a **temporary custody order** to put your child in the director's care (foster care for up to six months).

In the rare case when there's a serious problem that can't be fixed within the time the court allows, the judge might make a **continuing custody order**. This means your child will stay in the director's care (foster care) for an indefinite length of time.

If you disagree with the judge's order, talk to your lawyer right away. There are time limits to appeal so it's important for you to act quickly.

## How to contact Legal Aid

### Call Centre

604-408-2172 (Greater Vancouver)

1-866-577-2525 (call no charge, elsewhere in BC)

### Legal Aid website

[legaid.bc.ca](http://legaid.bc.ca)

### For more information about child protection/removal

[familylaw.lss.bc.ca](http://familylaw.lss.bc.ca)

(click Your legal issue, then Child protection/removal)

You'll find *Parents' Rights, Kids' Rights: A Parent's Guide to Child Protection Law in BC* and other publications about child protection and removal.

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This publication explains the law in general. It's not intended to give you legal advice on your particular problem.

