

# Guide to the Child and Family Services Act, March 2000 (CFSA)

College of Occupational Therapists of Ontario

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## Introduction

In March 2000 a number of amendments to the *Child and Family Services Act* (CFSA) came into effect. The purposes of the Act have been modified to ensure that the best interests, protection and well being of children are the paramount purpose. Under the previous Act, a practitioner only had to make a report when a child suffered abuse.

If a child was “merely” in need of protection from potential abuse, a mandatory report did not need to be made except in rare circumstances.

**There is now a single common duty to report when any healthcare professional or member of the public has reasonable grounds to suspect that a child (under the age of 16) has been abused or neglected, or is at risk of being abused or neglected.**

If you have reasonable grounds you have a legal obligation under the *Child and Family Services Act* to report that suspicion immediately and directly to the local Children's Aid Society (CAS). If you are unsure as to whether the matter is reportable, you should request a consultation with a CAS Intake Worker.

Even if you have already made a report concerning a child or a family, you are required to make a further report each time you have additional information to suspect actual or potential child abuse or neglect regarding that child or family.

If a situation is reported to you in confidence, you must advise the source that the law prevents you from keeping the information as a confidence and that you must report the matter to the CAS immediately.

Occupational therapists have always been accountable for reporting when a child has suffered abuse. This new piece of legislation adds legal obligations for occupational therapists to now report **suspicion** of child abuse or neglect to a Children's Aid Society. This is known as a mandatory report. It is important to be familiar with this guide and the fundamental elements that may affect your practice. Although members of the public, professional persons, and officials have the same duty to report a suspicion that a child is in need of protection, the Act recognizes that persons working closely with children will have a special awareness of the signs of child abuse and neglect, and, as a result, failure to report their suspicions is an offence for which they could be prosecuted.

## Overview of Child and Family Services Act, March 2000

Ontario's *Child and Family Services Act* (CFSA) provides for a broad range of services for families and children, including children who are or may be victims of child abuse or neglect. The paramount purpose of the Act is to promote the best interests, protection and well being of children. The Act states clearly that members of the public, including professionals, have an obligation to report promptly to a Children's Aid Society if they suspect that a child is or may be in need of protection.

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4 of your Resource Binder.



The Act defines the term "child in need of protection" to include a child in danger of physical, sexual or emotional abuse, neglect or risk of harm. The CFSA is explicit with regard to the definition. Section 72 (1) of the Act states: reasonable grounds for suspicion of any of the following require that person to immediately report the suspicion and the information on which it is based to the Children's Aid Society:

1. 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.
2. 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.
3. 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.
4. There is a risk that the child is likely to be sexually molested or sexually exploited as described in paragraph 3.
5. 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 or unable to consent to, the treatment.
6. 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.

7. The child has suffered emotional harm of the kind described in subparagraph i, ii, iii, iv or v of paragraph 6 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.
8. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph i, ii, iii, iv or v of paragraph 6 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.
9. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph i, ii, iii, iv or v of paragraph 6 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.
10. 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.
11. 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.
12. The child is less than 12 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 or unable to consent to, those services or treatment.
13. The child is less than 12 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.



## Duty to Report

Duty to Report has already been described as a mandatory obligation that must occur in a timely manner. Lack of familiarity with the process may cause initial hesitation. The following points are provided to assist with broad understanding of how a reporting process may likely unfold. Utilizing the CAS as a resource or support at the time the suspicion arises is encouraged. A report process will include:

- **Notifying your local Children's Aid Society (CAS) immediately.** Always call, even if you think the issue seems vague or not too serious. The CAS works on putting patterns of case files together. One piece of information alone might not seem sufficiently strong, however when it is combined with other data it may be significant. **Do not delegate the making of a report.**

If you are unsure as to whether a matter is reportable, or you are concerned about your personal safety, you may consult with a CAS Intake Worker. Describe the situation, as you know it, without disclosing the child's name. You may also choose not to disclose your own name. Ask whether the Intake Worker considers the situation eligible or not eligible for protection investigation and service. In some cases, the worker may need to consult with the supervisor to determine this.

- **Providing the CAS with demographic data** (name, age, gender, address, telephone number, who else is involved with the family, etc.) and information related to why you are suspicious of neglect or abuse. Specifics may include:
  - a complete description of the situation or incident as you know it
  - the nature of your suspicion and grounds for suspicion
  - the whereabouts of the child and siblings, if known
  - the alleged perpetrator's name and relationship to the child, if known
  - the full names and birth dates of child, parents/guardians, siblings, if known
  - your name
- **Informing the family that you are notifying CAS** and for what reasons. In some instances, you may find it necessary to advise the parents that you are making a report to the CAS. This is most appropriate in situations where your supportive relationship with the family would promote a constructive response to CAS involvement. However, if advising the family of your report may place the child at further risk, then it is not appropriate to do so. Always advise the CAS worker as to whether the family is aware of the referral. In addition, if the case goes to court it is likely that the name of the person reporting (i.e., your name) would come out at that time. Seek advice from CAS related to how to best manage the specific situation.

- **Documenting clearly** and precisely, all conversations and interactions in detail. This record may become part of a legal proceeding. If you are interested in knowing the outcome of the report, seek clarification of this process from the CAS directly. Rules of confidentiality may restrict what can be released.

### **How to Contact a Children's Aid Society**

Check the telephone directory for the office closest to you. In some communities, the Children's Aid Society is known as "Family and Children's Services". The emergency pages in most Ontario telephone directories have the number to call to report to a Children's Aid Society. The Ministry of Community and Social Services website ([www.gov.on.ca/CSS](http://www.gov.on.ca/CSS)) also provides easy access to this information. All Children's Aid Societies/Family and Children's Services have emergency service 24 hours a day, so you can call anytime.

### **Commonly Asked Questions Regarding the Child and Family Services Act**

#### **1. Who is responsible for reporting?**

All persons are expected to report suspicion of child abuse or neglect to a CAS. [CFSA s.72(5)]

#### **2. When is a professional expected to report?**

Any time you have reasonable grounds to suspect physical, sexual and emotional abuse, neglect or risk of harm as outlined in the CFSA, March 2000, you must make a direct report to a CAS. You must not rely on anyone else to report on your behalf. The duty to report is an ongoing obligation. If you have made a previous report about a child, and have additional reasonable grounds to suspect that a child is or may be in need of protection, you must make a further report to a CAS. [CFSA s.72(1)(2)(3)]

#### **3. What is meant by "reasonable grounds" to suspect?**

You do not need to be sure that a child is or may be in need of protection to make a report to a CAS. "Reasonable grounds" are what an average person would suspect, given his or her training, background and experience when exercising normal and honest judgment.

#### **4. What is the penalty for failure to report?**

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 under the CFSA. [CFSA s.72(4),(6.2)]5.

**5. Would the College consider a complaint about an OT in relation to his/her reporting obligations under this Act?**

The College is required by law to process all complaints received. Where better avenues exist to remedy the concern the College may suggest alternatives to a complainant. Should such an alternative not be desirable to the complainant, the complaint would proceed through a regular process of review, investigation, and decision. The Complaints Committee does, however, reserve the right to determine whether the issue is within its jurisdiction. Failure to report under the CFSA, pending no other OT practice-related concerns, may be viewed by the Committee as better managed under the CFSA and its process, than under the RHPA. Each case would need to be considered separately based on the facts.

**6. What about client confidentiality?**

The professional's duty to report overrides the provisions of any other provincial statute, specifically those provisions that would otherwise prohibit disclosure by the professional or official. You must report that a child is or may be in need of protection even when the information is supposed to be confidential or privileged. [CFSA s.72(7), (8)]

**7. What about protection from liability?**

If a civil action is brought against a person who made a report, that person will be protected unless he or she acted maliciously or without reasonable grounds for his or her suspicion. [CFSA s.72(7)]

**8. What are my follow-up responsibilities following submission of a report to a CAS?**

Once having made an official report to the CAS, you have no continuing follow-up obligations. Each CAS is, however, required by legislation to convene a Child Abuse Review Team to assess the child's circumstances. You may be asked to attend a meeting of the group to discuss your concerns leading to the report. Any information provided to the Review Team would remain private and confidential. If the case is very serious, you may be asked to provide evidence for the court regarding your findings.

**9. What should I do if I suspect that a child has suffered or is likely to suffer abuse or neglect?**

Notify your local CAS. Do not delegate reporting. Provide demographic information. Tell the family, if appropriate. Document clearly.

This guide summarizes the reporting responsibilities under Ontario's *Child and Family Services Act* as they relate to the practice of occupational therapy. *It is not meant to give specific legal advice.* Registrants are accountable for the practice they provide and are expected to adhere to the statutes and guidelines that are relevant to their practice. If you have questions about a given situation, you should consult a lawyer or the Children's Aid Society in your area.

**For More Information:**

Ministry of Community and Social Services Website:

<http://www.gov.on.ca/CSS/page/news/nr99-00/mar2700fs.html> or

<http://www.gov.on.ca/CSS/page/brochure/repchildab.html>

**Resources Consulted in the Development of This Guide:**

1. Ontario Hospital Association booklet *Child Protection: A Manual for Ontario Hospitals*.
2. College of Physicians and Surgeons of Ontario, *Members' Dialogue*, May/June 2000.
3. The Children's Aid Society of Ottawa-Carleton.

