



Child, Youth and Family Services Act, 2017 (CYFSA)

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Introduction

The Ontario *Child, Youth and Family Services Act* (CYFSA), 2017 came into effect on April 30, 2018; replacing the *Child and Family Services Act, 1990*.

This document summarizes certain reporting responsibilities under the CYFSA as they relate to the practice of occupational therapy. This document is intended to provide an overview of the duty to report incidents where a child is or may be in need of protection, highlight the responsibilities of occupational therapists (OTs) relating to this reporting requirement and indicate where an OT can obtain further information.

Overview of the *Child, Youth and Family Services Act, 2017*

The CYFSA directs provision of 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 clearly states that members of the public, including professionals, have an obligation to report immediately to the Children's Aid Society (CAS) if they suspect that a child is or may be in need of protection. Section 2 of the CYFSA defines "child" as a person younger than 18 ("enfant").

Although members of the public, professional persons and officials have the same duty to report that a child is or may be in need of protection, the Act recognizes that persons performing professional or official duties with respect to children, including regulated health professionals, have a special awareness of the signs of child abuse, neglect and other situations in which a child may be in need of protection.

The Act defines the term "child in need of protection" to include a child, who is or who appears to be in danger of physical, sexual or emotional abuse, neglect or risk of harm when caused by the person having charge of the child or caused by this person's failure to act or adequately care for or obtain treatment in respect of such circumstances or events .¹

If a child is 15 years or younger and there are reasonable grounds to suspect the child is in need of protection, an OT **must** make a report to the CAS. For youths aged 16 or 17 where there is reasonable suspicion to believe there may be need for protection, OTs should contact the CAS to discuss management of the situation, as the CAS is required to assess the reported information [CYFSA, s 125(4)].

¹ See subsection 74(2) of Part V of the CYFSA <https://www.ontario.ca/laws/statute/17c14> for the complete definition.

Part V, of the CYFSA outlines the circumstances in which the duty to report a child in need of protection arises:

Section 125 (1): Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following, the person shall immediately report the suspicion and the information on which it is based to a 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 abused 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 abuse or sexual exploitation and fails to protect the child.
4. There is a risk that the child is likely to be sexually abused or sexually exploited as described in paragraph 3.
5. The child requires 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 the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the Health Care Consent Act, 1996, refuses or is unavailable or unable to consent to, the treatment on the child's behalf.
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 6 i, ii, iii, iv or v and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the Health Care Consent Act, 1996, refuses or is unavailable or unable to consent to, 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 6 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.
9. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the Health Care Consent Act, 1996, refuses or is unavailable or unable to consent to, 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 the treatment or access to the treatment, or where the child is incapable of consenting to the treatment under the Health Care Consent Act, 1996, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.
11. The child's parent has died or is unavailable to exercise 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 younger than 12 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 services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the Health Care Consent Act, 1996, refuses or is unavailable or unable to consent to treatment.
13. The child is younger than 12 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 adequately².

Key Provisions of the Act

The following two areas are highlighted as they apply to occupational therapy practice:

Duty to Report

If an OT has reasonable grounds³ to suspect that a child is in need of protection, as defined above, an

² ***Note: It is recommended that OTs read Section 125 in its entirety: <https://www.ontario.ca/laws/statute/17c14>
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OT has a legal duty to report the information immediately and directly to the CAS. If an OT is unsure as to whether the matter is reportable, they should contact CAS for consultation. For an OT, this means that they must report to the CAS where the OT has reasonable grounds to suspect, in relation to all children aged 15 or younger, one of the circumstances in section 125 of the CYFSA exists. While reporting in relation to youths aged 16 or 17 is not mandatory, OTs should contact the CAS to discuss management of the situation, as the CAS is required to assess the reported information.

If an OT has already made a report concerning a child or a family, there is an *ongoing duty to report* each time they have additional reasonable grounds. **Even if the OT is aware that other health care professionals have made a report to CAS, there is still a duty to report that the OT must personally make.** [CYFSA, s 125(3)]

An OT's duty to report that a child may be in need of protection is most important and overrides confidentiality of personal health information as outlined in the *Personal Health Information Protection Act, 2004* (PHIPA) and the College Standards for Consent. The OT must report that a child is or may be in need of protection even if there is a request to keep the information confidential.

An OT's failure to report their suspicion is an offence that could result in prosecution if the information was learned in the course of their professional or official duties. [CYFSA, ss 125(5) & (6)]. The obligation also extends to the leadership of an organization (e.g. director, officer or employee of a corporation) to ensure the OT has carried out their obligations regarding duty to report a child in need of protection. [CYFSA s.125 (8)].

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 penalty of up to \$5,000.00 under the CYFSA. [CYFSA s.125 (9)].

Process for Reporting

The following points are provided to assist OTs in obtaining a broader understanding of how the reporting process may unfold. Utilizing the CAS as a resource or support at the time the suspicion arises is encouraged. If an OT is unsure as to whether a matter is reportable, they should consult with CAS and describe the situation without disclosing the child's name. CAS will determine the appropriate next steps.

When making the actual report, the OT must:

Step 1: Notify the local CAS immediately. Personally, make the report to the CAS and not delegate this function to someone else.

Step 2: Provide the CAS with as much information as possible, if known, specifics may include:

³ "Reasonable grounds" refers to the information that an average person, using normal and honest judgement, would need in order to decide to report. (Service Ontario: Reporting Child Abuse and Neglect, It's Your Duty). http://www.children.gov.on.ca/htdocs/English/documents/childrensaidd/reportingchildabuseandneglect_EN.pdf

- a complete description of the situation or incident;
- the nature 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 ages of child/children, parents/guardians, siblings, and contact information if known;

Step 3: Document clearly and precisely all conversations and interactions in detail. This record may become part of a legal proceeding.

Step 4: Comply with any organizational policies or procedures.

Common Questions Regarding the *Child, Youth and Family Services Act, 2017*

1. What is meant by reasonable grounds to suspect that a child is in need of protection?

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

2. 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 penalty of up to \$5,000.00 under the CYFSA. [CYFSA s.125 (9)].

The obligation also extends to the leadership of an organization (e.g. director, officer or employee of a corporation) to ensure the OT has carried out their obligations regarding duty to report a child in need of protection. [CYFSA s.125 (8)].

3. Would the College consider a complaint or report about an OT in relation to failure to exercise reporting obligations under this Act?

Yes. If the College receives information that an OT may have failed to report a child in need of protection to the CAS, as required by the CYFSA, the College would investigate and depending on the facts and circumstances discovered, may take action in accordance with the *Regulated Health Professions Act, 1991*(RHPA), the *Occupational Therapy Act, 1991* and the regulations thereunder. You can visit the College website to learn more about the College's complaints and reports process or contact 416.214.1177 or 1.800.890.6570 and ask to speak with Investigations and Resolutions or email investigations@coto.org.

4. What about client confidentiality?

An OT's duty to report that a child may be in need of protection is most important and overrides the PHIPA and the College Standards for Consent. The OT must report that a child is or may be in need of protection even if there is a request by any person to keep the information confidential. [CYFSA ss.125(10), & (11)]

5. What about protection from liability?

The CYFSA provides that no civil action may be brought against an OT for making a report unless the OT acted maliciously or without reasonable grounds for his or her suspicion. [CYFSA ss.125 (10), & (11)]

6. What are my ongoing responsibilities following submission of a report to the CAS?

Following a report, if an OT has additional reasonable grounds to suspect the child is in need of protection, they must contact the CAS. [CYFSA, s. 125(2)]

7. How do I contact the CAS?

- Check the CAS website for the office closest to you. In some communities, the Children's Aid Society is known as *Family and Children's Services*. <http://www.oacas.org/childrens-aid-child-protection/locate-a-childrens-aid-society/>
- All Children's Aid Societies/Family and Children's Services are available 24 hours a day.

For More Information

1. *Child, Youth and Family Services Act*, S.O. 2017, C.14, Sched. 1
2. Ministry of Children, Community and Social Services Website:
<http://www.children.gov.on.ca/htdocs/English/index.aspx>

Resources

Service Ontario. *Reporting Child Abuse and Neglect, It's your Duty: Your responsibilities under the Child, Youth and Family Services Act*. Ministry of Children, Community and Social Services Internet [July 26/18] available at:
http://www.children.gov.on.ca/htdocs/English/documents/childrensaid/reportingchildabuseandneglect_EN.pdf

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