

If the judgement was made by a Judge (not an associate judge) you have 21 days from the day the order was given to appeal the judge's decision to the court of appeal

Can I terminate a permanent order for guardianship? If a permanent order has been issued, the parents of the child can apply to the court to terminate the permanent order.

Protection Hearings

Within 4 days of a child being apprehended by a Child and Family Services agency, the agency must request a hearing from the court. This hearing will decide if the child needs protection. When the agency makes this request for a hearing, they have to state on what conditions they will allow access to the parents or guardians of the child in the time before the hearing is held.

Do parents have the right to be notified of a protection hearing? Yes. Agencies must provide notice of the protection hearing at least two days before the hearing.

Agencies must provide notice to:

*The parents or guardians of the child; the child, if they are 12 years or older; if the child is indigenous, the Indigenous service provider who serves their community.

*If the child was not living with their parents or guardians, the agency must also notify the person who was looking after the child.

Do parents have a right to legal counsel? Parents or guardians have a right to legal representation. A judge or associate judge must notify parents/guardians of this right before a hearing. If you can't afford a lawyer, you can apply for Legal Aid if you meet their income requirements. Legal Aid Duty Counsel is available at court to discuss matters with you and assist you in deciding whether to apply for Legal Aid.

What happens at court? Initial Hearing: The first hearing you attend will be before an associate judge. The associate judge will set a date for a hearing before an Intake Judge. They can also order that the agency needs to provide you with the reasons why they apprehended your child.

The Associate Judge also decides if a lawyer is needed for any child 12 years or older.

Intake Judge: Before there is a trial, you go through an Intake Judge. The parents/guardians and agency must present their case to the judge to determine if a trial is needed.

Pre-Trial: If the judge determines that a trial is needed, a pre-trial conference will be held to make sure everything and everyone is ready for trial.

Trial: Both the parents/guardians and the agency will present their arguments and evidence to a judge. A judge will then determine if the child needs protection and the appropriate steps to ensure the child's safety.

If the child is 12 years and older, they are allowed to participate in the hearing and may have access to their own legal representation.

If you do not show up for these court dates, a decision can be made without you.

Legal Assistance

Legal Aid Manitoba: Offers legal help to low-income persons. Address: 4th Floor, 287 Broadway, Winnipeg, MB

Call: 204-985-8500 or Toll-Free: 1-800-261-2960

CLEA Law Phone-In and Lawyer Referral Program: Provides general legal information via telephone. They can also refer you to a lawyer if appropriate.

Call: 204-943-2305 or Toll-Free 1-800-262-8800 (from outside Winnipeg only).

Legal Help Centre: Legal information and referrals. Drop-in clinics are held on Tuesdays and Thursdays from 1:00-4:00.

**Address: 202-393 Portage Avenue, Winnipeg, MB
Call: 204-258-3096**



Thrive
Community Support Circle

406 Edmonton Street

Navigating Child and Family Services

Information on Court Procedures

Prepared for
Thrive Community Support Circle
By Pro Bono Students Canada



Disclaimer: This document does not contain legal advice. This document was prepared with the assistance of PBSC law student volunteers. PBSC students are not lawyers, and they are not authorized to provide legal advice. If you require legal advice, please consult with a lawyer.

Temporary Orders

If a judge believes that a child needs protection, they can issue what is called a temporary order. A temporary order can be issued after a hearing to determine if a child is in need of protection.

There are three common kinds of orders:

*A order that your child be **returned to you**. However, the child will still be under the supervision of the agency. This is called a Supervision Order and means the child is not in care.

*An order that your **child be placed in the care of someone**, other than the agency, who the judge thinks is the best person to take care of your child. This person could be a relative or close family friend. This is called an **Alternate Placement Order** and gives guardianship to non-parent but not an agency.

*An order that the **agency be appointed the temporary guardian of your child**.

When this happens, the agency will usually try to find somebody to care for your child. This can be a relative, a family friend, or a foster parent approved by the agency. A **temporary order** means, that for a period of time the agency will be the guardian of the child. A court can order that the agency is the temporary guardian of a child for a maximum of two years. A judge can extend this order (which means that an agency can be the Temporary guardian of your child for more than Two years). However, to do this, a new hearing must be held.

Can I appeal a temporary order? You have 21 days from the day the order was issued to appeal an associate judge's decision to the King's Bench Manitoba (Family Division). If the judgement was made by a judge (not an associate judge) you have 21 days from the day the order was issued to appeal the judge's decision to the Court of Appeal.

When a temporary order is in force, you can make an application to the court, asking the judge to hold another hearing to determine if the child would still **be in need of** protection if they were to return to the care of their parents or guardian.

If the court makes an order that places my child with someone else, including a foster parent, can I still see my child? When the court makes an order that places your child with someone else, you must be given "reasonable access" to them.

If you and the agency cannot agree on what access is reasonable, you can apply to the court for a hearing. In this hearing, the court will decide what kind of access is appropriate. The agency must prove that any limitation on your access to your child is reasonable.

Can CFS enter my home? It has been interpreted by the Supreme Court of Canada that Child and Family services does not need a warrant to enter your home if they are acting on the information that a child may be "in need of protection". During the time in your home, you are still protected against illegal search and seizure. If the child is returned to you under a Supervision Order, the Agency may enter your home during the time-period that the supervision order is in place.

Voluntary Placement Agreements

Definition: An agreement between an agency and the parents/guardians of the child to place the child in a safe home, without giving up guardianship of the child.

Timeline: Generally, this agreement can be renewed every 12 months and cannot last more than 24 months.

It can be renewed annually if the child:

*Has an intellectual disability;

*Suffers from a chronic illness or disability, and treatment cannot be provided while living at home; or

*Is 14 years or older and is unmanageable.

Termination: The agreement can be ended at any time using a prescribed form. If the care taker of the child moves out of the province without the agency's approval, the agency can end the agreement immediately.

Permanent Order

A permanent order gives the agency permanent guardianship of a child. This means that all your parental rights are terminated, and the agency has the right to put the child up for adoption. The agency also has the complete authority to decide if the parents/guardians can have access to their child.

What can I do if I'm not happy with the amount of time I'm allowed to spend with my child? If you are unhappy with the access the agency is willing to grant you, you can apply to the court. A hearing will be held, and the court will decide what kind of access is appropriate.

Changes to the Order: Either the parents or guardians, or the agency can make an application to the judge to ask for a variation of the current order. The judge may grant this if there has been a change in circumstances since the last order was made, or if the access that you currently have is not in the "best interests of the child". You cannot make an application if the child has been placed for adoption.

Can I appeal a court order? You have 21 days from the day the order was given to appeal an associate judge's decision to the King's Bench Manitoba (Family Division).