



Type of law:  
**FAMILY LAW**

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A 2015 Alberta Guide to the Law

# CHILD WELFARE



Student Legal Services  
of Edmonton

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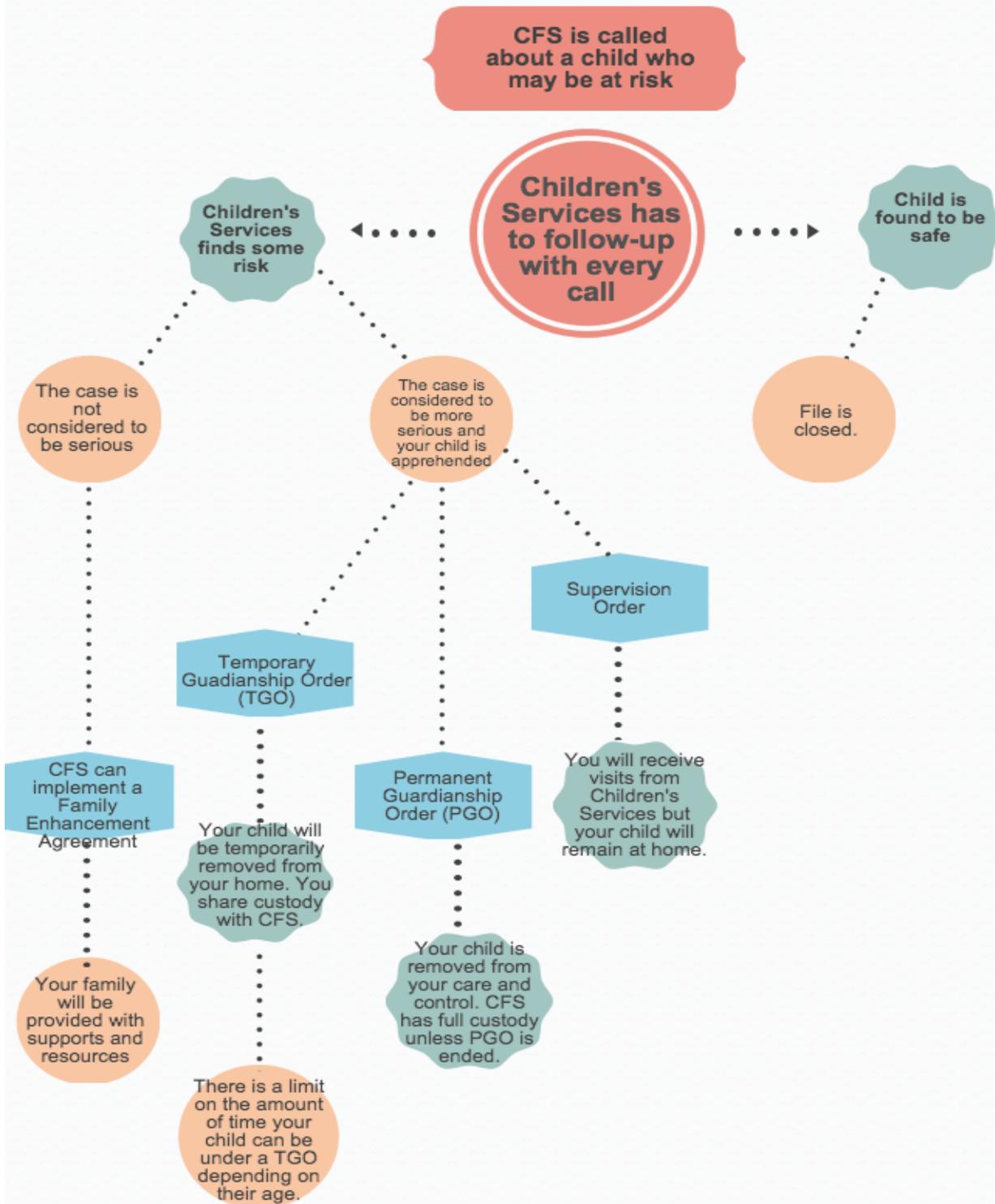
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# Someone called Children and Family Services (CFS) about my family

What's next?



# CHILD WELFARE

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# CHILD WELFARE

## INTRODUCTION

### 1. What is the *Child, Youth and Family Enhancement Act*?

The *Child, Youth and Family Enhancement Act* (the Act) is the law that deals with child welfare, and includes things such as intervention services and adoption. The Act directs the actions of Child and Family Services workers, and explains the rights of the parents, guardians, and children that are involved.



Intervention services are used when there is a reasonable and probable belief that a child is in need of intervention. Where a child is in need of intervention, every effort will be made to support the family and allow the child to remain in the home. Sometimes, however, a court may find that a child's best interests would be better served if they were placed in the custody of the director. At this point, the director has the opportunity to either enter into an agreement with the guardian, or to apply to the Court for a court order for guardianship.

➔ **Please note that parents have the right to have a lawyer represent them in child protection matters. If you are dealing with a matter covered by the *Child, Youth and Family Enhancement Act* you should speak to a lawyer immediately.**

### Important Definitions

**Child:** Any person under the age of 18.



**Assessments:** Reports made to the Ministry of Child and Family Services regarding the safety and security of a child. The director also makes the decision about whether a child is in need of intervention, and makes the appropriate application to the Court.

 **Guardian:** The person who is responsible for the care, maintenance, and well-being of the child. Typically, a child's guardian(s) are the mother and/or the father. However, any other individual may be appointed a child's guardian by way of a Court order or agreement. For example: grandparents, aunts/uncles, or non-relatives.

**Intervention:** Types of services that will, or could be, provided to a child whose survival, security, and development are found to not be protected by his/her guardian. For example: supervision, removal from home and placement in care, or adoption.

## GENERAL INFORMATION

### What do I have to do if I see a child that I think is in an unsafe situation?

If you have a reason to believe that a child is unsafe, you have a responsibility to report the situation to Children and Family Services.

According to the Act (**Section 4(1)**), any individual that has reasonable and probable grounds to believe that a child is in need of intervention **should** report that information to a director.

**Section 4(6)** Any person that fails to report a child in need of intervention is guilty of an offence and may be found liable to a fine of not more than \$2000 and/or imprisoned for a term of not more than 6 months. [If they have reasonable and probable grounds to believe it is needed]



**Section 4(4)** In almost all situations, an individual who reports a potential child in need of intervention is free from the possibility of legal action. Even individuals who gain information in confidence, where the breach of that confidence would typically be a criminal offence, are free from any legal action when reporting child welfare issues. However, if a report is made maliciously or without grounds, then that individual could face legal action.

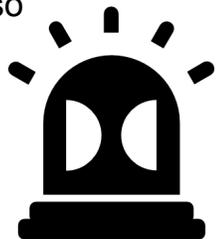
You can call the Child Abuse Hotline at 1-800-387-KIDS or the Edmonton Police Service at 780-423-4567 or 911 if you believe it is an emergency.



### What happens when someone has called Child and Family Services on my family?

When Children's Services gets a phone call (from anyone) regarding the safety, health, or development of a child they are required to follow up and look into the situation, This can result in a few different things:

- They don't find that there is any risk to the child and they close the file. This **ends** your contact with Children's Services.
- They find that there is a minimal risk and that your family needs supports. This can lead to a **Family Enhancement Agreement** which recognizes that there is some risk to the child and that the family needs some support but does not require apprehending your child.
  - o These will usually only last for 3 months, but they can be extended.
  - o This will **continue** your relationship with Children's Services but also allows your child to remain in her care.
- If the investigation shows that the child is at significant risk, Children's Services can intervene and apprehend the child. This would occur for more serious cases and could mean that your child is removed from your care for an extended period of time.



## When will Children's Services intervene with my children?

**Section 1(2)**- A child is considered to be in need of intervention when there are reasonable and probable grounds to believe that the survival, security or development of the child is endangered due to one or more of the following:

- The child has been abandoned or lost;
- The guardian of the child is dead and the child has no other guardian;
- The child is neglected by his/her guardian;
  - i. Neglect can include, but is not limited to: inability or unwillingness to provide their basic needs, provide necessary access to medical or surgical treatment, or adequate care or supervision.
- The child has been, or there is a substantial risk that the child will be, physically injured or sexually abused;
  - ii. Physical injury includes, but is not limited to: cuts, bruises, or fractures that result from a non-accidental application of force.
  - iii. Sexual abuse includes, but is not limited to: inappropriate touching and conduct and includes prostitution related activities.
- The child has been emotionally injured by his/her guardian;
  - iv. Emotional injury includes, but is not limited to: rejection, neglect, lack of attention, or exposure to domestic violence.
- The child has been subjected to cruel and unusual treatment or punishment by the guardian; and/or
- The guardian of the child is unable or unwilling to protect the child from physical, sexual or emotional abuse, cruel and unusual treatment or punishment, (this can include the child being around an individual that has substance abuse problems).



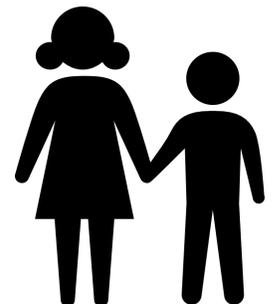
## What will a Court consider when deciding what will happen with my child?

The Court's first priority is to ensure that the **child's best interests** are protected/served by the intervention. In order to do so, the Court will compare the benefits and risks to the child if they remain with their present guardian, or if they are apprehended and move into the custody and care of the director.

The Court will consider whether the child:

- Is a valued member of their family,
- Has stable and permanent relationships,
- Has access to educational resources and health care, and
- Lives in a safe, nurturing environment.

A child who is able to express an opinion on matters affecting them must have counsel appointed for the child and will have their opinion considered when decisions are made about their care. This will generally



apply to older children. This is generally for children over the age of 12 but under 18, children may still have counsel appointed as their representative even if their opinion is considered to hold less weight.

## **What kind of Order can a Court put in place about my child?**

1. Apprehension Order
2. Supervision Order
3. Temporary Guardianship Order (TGO)
4. Permanent Guardianship Order (PGO)
5. Secure Services Order

### **1. Apprehension Order**

An apprehension order allows the director to take the child from the custody/home of their guardian where there are reasons that a child is in need of intervention. An apprehension order can also be granted if a child that was in the director's custody has either left or been removed without the director's consent. After a child has been apprehended, the director has full custody of the child until the child is legally returned to their guardian, or there has been an application made to the Court for a change.

### **2. Supervision Order**



In some situations, the Court may decide that a child should be returned to the custody of their guardian, but that more supervision and protective service is needed for the survival, security and development of the child. Typically, a supervision order will consist of planned visits by a social worker in the home of the child and their guardian for a period of not more than 6 months.

A supervision order will often have terms and conditions that must be followed by the department, the guardian and/or any other person residing with the child. An example of one such term is: "The Court orders the child's guardian to attend Alcoholics Anonymous meetings three times a week for three months."

### **3. Temporary Guardianship Order (TGO)**

The Court may grant a Temporary Guardianship Order (TGO) if the Court determines that a child is in need of intervention and that the child is at risk if they stay in the custody of their current guardian.

A TGO is granted when:

- The Court believes that the child will be returned within a reasonable time to the custody of their guardian, or
- Because the child is 16 years of age or older and may be able to live independently.

- In the case of a TGO, the director becomes a joint guardian of the child. While the child is under the TGO, the guardian or any other person living in the residence of the child may be required by the Court to submit to a parenting or psychological assessment before the child can be returned.



Generally, a TGO can only last for a total of **6 months if the child is under 6 years old or 12 months if the child is 6 years of age or older.**

These time periods can be extended by the Court if there are good reasons for doing so.

#### 4. Permanent Guardianship Order



When the Court finds that the survival, security and development of a child will not be protected well enough by their guardian, the Court will grant a permanent guardianship order (PGO). A PGO differs from a TGO because it is granted in situations where the Court has determined that the possibility of the child being returned to the custody of their guardian within a reasonable time is unlikely. Under a PGO, the director becomes the sole guardian of the child. **Arguing against a PGO after it is ordered is very difficult.** Disputes must be done through an application for appeal in the Court of Queen's Bench or judicial review. Parents can appeal up to the 13 months after a PGO has been granted to terminate the order.

**This is very complicated law and you should speak to a lawyer if you are dealing with a permanent guardianship order.**

#### 5. Secure Services Order

A Secure Services Order gives the director the authority to confine a child in a Secure Services Facility for a period of not more than 5 days.

A Court will grant a Secure Services Order when it is satisfied that the child is in a condition that presents an immediate danger, where confinement is necessary to stabilize and assess the child, and where less serious solutions are not available. This means that this is usually a last resort and a Court will not decide to use a Secure Services Facility unless they have no other choice.

If the director determines that more than 5 days is required to stabilize the child, or to assess the child and prepare a plan for services (after the first 5 days), they may apply for a further period of not more than 5 days. A Secure Services Order can only be 20 days in total.



A child could be subject to a Secure Services Order if he/she is:

- In the custody of a director;
- Subject to a Supervision Order, Temporary Guardianship Order or Permanent Guardianship Order; or
- Subject to a Family Enhancement Agreement under section 8 of the Act.

If the child is subject to a Supervision Order, a custody agreement under section 9 of the Act, or a Family Enhancement Agreement under section 8 of this Act the director must have the written consent of the child's guardian before applying for a Secure Services Order.

### **What can I do if I disagree with a Court Order about my child?**

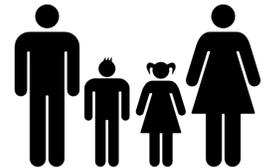
If you do not agree with a decision made about my child, you do have the option to appeal the decision, this could lead to a different result but it is difficult to do and is always taking a risk.

Prior to any appeal or administrative review it is **highly recommended that you speak to a lawyer to determine whether your circumstances are right for an appeal or review.**

Any order made under this Act can be appealed to the Court of Queen's Bench within **30 days** of the order being made or renewed.

Several different people can appeal the Court's decision:

- A guardian (other than a director)
- The guardian of the child immediately prior to the issuing of the order
- The child if he/she is 12 years of age or older
- The child if he/she is subject to a Secure Services Order.



An administrative review of an order under this act is also possible within **30 days** of the order. This is done without the department and usually lawyers are not involved in this process.

### **FREQUENTLY ASKED QUESTIONS**

#### **1. My child was apprehended and was not returned within 2 days, what happens now?**

If your child is not returned to you within 2 days of being apprehended, then the director must make an application to the Court within 10 days for:

- A Supervision Order,
- A Temporary or Permanent Guardianship Order/Initial Custody, or
- An Order returning your child to your care.

If a director applies for a Temporary or Permanent Guardianship Order, the director must also apply for an Order for custody of the child until the application for the Temporary or Permanent Guardianship Order is dealt with. The application for initial custody must be dealt with within 42 days.

**\*You should consult with a lawyer IMMEDIATELY regarding the specific circumstances of your child's apprehension.** The number for the nearest Legal Aid Society of Alberta office should be written on your notice of apprehension.\* 780-427-7575

**2. My child was apprehended, but the director did not have an apprehension order. Was the director still allowed to apprehend him/her?**



If the director had reasonable and probable grounds to believe that your child's life or health would be seriously or imminently endangered by the amount of time it would take to obtain an apprehension Order, they can apprehend him/her without an Order.

The director also has the ability to enter and search your place of residence or other premises for the child if there are grounds that your child will be found there.

**You should consult with a lawyer IMMEDIATELY regarding the specific circumstances of your child's apprehension.**

**3. I breached a condition of my Supervision Order, what happens now?**

If you have failed to comply with the terms written in the Supervision Order:

- The director may change any terms of the Supervision Order so that it is more appropriate for your family's situation.
- The director can also seek more serious means of intervention by apprehending the child.
- If an apprehension occurs the director may apply for a Temporary or Permanent Guardianship Order.

**4. My child is subject to a Supervision Order (or a Temporary Guardianship Order). What happens now?**

If you do not agree with an Order and want the Court to change it you can appeal. Any Order made under the Act can be appealed to the Court of Queen's Bench within **30 days** of the order being made or renewed.

Either you or your child, if he/she is 12 years of age or older, can apply to the Court to have the order reviewed. **You can only have the order reviewed once.** The director, however, can apply to the Court for a review at any time during the period of the order.

The Court, upon review of the Order, will take several matters into consideration such as the following:

- Whether the circumstances which led to the Order have changed;
- Whether the intervention ordered has been provided to the child or to the child's family;
- Whether the director's plan for the care of the child has been followed (if such a plan was developed); and
- Whether a guardian, other than the director, has followed the order.





The Court, upon review, has the ability to either keep, change, or end the current order, or to make a new order under a different section of the Act. If there isn't an agreement on what is appropriate, it will usually end up going to trial.

**5. My child is under a Temporary Guardianship Order. Can I see him/her?**

Potentially. The Court will decide whether or not you can visit your child. The social worker will decide if there are any conditions placed on the visitation, for example that the visits are supervised by a specific person. However, if you are unable to reach an agreement, you can make an application to the Court for access. If your child is 12 years of age or older, the Court may also ask them what they would like to do.

Other people can apply for access as well. The director, your child if he/she is 12 years of age or older or any other person with whom your child has had a significant relationship can also make an application for access (for example: grandparents).

**6. My child is under a temporary guardianship order. How long does it remain in effect?**

A TGO remains in effect until one of four things happen:

Whether the circumstances which caused the Order to be made have changed;

- The Order expires or is ended by the Court;
- A private guardianship Order is made in respect of the child;
- Your child turns 18-years-old; or
- Your child gets married.



The **total** period of time your child can remain in custody under a TGO is:

- 6 months, if he/she is under the age of 6, or
- 9 months, if he/she is 6 years of age or over.
- However, you should be aware that a TGO can be **extended** for the first time for 6 months or less.

**7. My child is subject to a Permanent Guardianship Order. Can I still see him/her?**

Potentially. However, decisions about whether or not you can see your child is also up to the Court to decide. To be able to see your child, you should first meet with your social worker to try to come to an agreement.



However, if you are unable to reach an agreement, you can make an application to the Court for access. The Court can talk to your child, if he/she is 12 years of age or older, to see if he/she consents to the access.

Also, when the Court is considering access in PGO cases, it will determine whether

access will, or could, interfere with any potential adoption. If the Court does decide that access could interfere with an adoption, it has the authority to deny access and stop you from seeing your child.

Other people can also apply for access. The director, your child if he/she is 12 years of age or older or any other person with whom your child has had a significant relationship can also make an application for access.

**8. My child is subject to a Permanent Guardianship Order. Is there a possibility he/she will ever be returned into my custody?**

A possibility still exists that you could become your child's guardian again. If the director is satisfied that your child should be returned to your custody, he/she must make an application to the Court to end the PGO, parents can also revisit the order and make an application. If you were your child's guardian immediately before the PGO was made, then you automatically become guardian again when the order is ended, unless the Court says that it will be someone else.

**9. My child is subject to a Permanent Guardianship Order. How long is it in effect?**

A PGO remains in effect until one of five circumstances occurs:

- The order is ended by the Court;
- A Private Guardianship Order is made in regards to your child;
- An adoption Order is made in regards to your child;
- Your child turns 18 years old; or
- Your child gets married.



**10. The director is making an application to the Court to have either a Temporary Guardianship Order, or Permanent Guardianship Order granted. During the application process, will my child be allowed to live with me?**

If the director is making an application to the Court for either a TGO or a PGO, they must also make an application for custody of your child until a decision is reached by the Court. The Court can order one of two things:

- Your child be placed in the custody of the director; or
- Your child can be returned to you until the TGO or PGO application has been dealt with.



If the Court awards custody to the director, it will likely include whether or not you will be able to visit your child.

If custody is awarded to the director, they must meet with you and your family to

develop a plan outlining the services that will be provided to you to assist in the return of your child, and an alternative permanent placement for your child. This plan must be developed within 42 days of the application for the TGO or PGO being made.

### 11. How do I get my child’s Secure Services Order reviewed?

You (if you are a guardian), your child, or a director can apply to the Court for a review of the Order.

- A director can make an application at anytime during the period of the order, or renewal of the Order.
- You and your child, however, can make an application to the Court only once during the period of the order and once during the renewal of the order.
- The hearing should be heard no more than 3 days after the application is made to the Court.
- If someone other than you makes the application, you will be notified at least 1 day before the application is heard.

**YOU SHOULD CONSULT WITH A LAWYER IMMEDIATELY REGARDING THE SPECIFIC CIRCUMSTANCES OF YOUR ISSUE REGARDING THE *Child, Youth and Family Enhancement Act***



### WHO CAN I CALL FOR MORE HELP OR INFORMATION?

#### Reporting Abuse

Child Abuse Hotline ..... 1-800-387-KIDS

Edmonton Police Service

**Emergency**.....911

Information.....780-421-3333

Complaints.....780-423-4567

[www.police.edmonton.ab.ca](http://www.police.edmonton.ab.ca)

#### Legal Resources

Alberta Courts Website.....[www.albertacourts.ab.ca](http://www.albertacourts.ab.ca)

Edmonton Community Legal Centre ([www.eclc.ca](http://www.eclc.ca)).....780-702-1725

Free legal information and presentations on family law topics.

- Legal Aid Society of Alberta ([www.legalaid.ab.ca](http://www.legalaid.ab.ca)) .....780-427-7575  
 Free legal information.  
 Lawyers who may represent you for a reduced rate.
- Lawyer Referral Service.....1-800-661-1095  
[www.lawsocietyalberta.com/publicservices/lawyerreferralservice.cfm](http://www.lawsocietyalberta.com/publicservices/lawyerreferralservice.cfm)  
 Referrals to up to 3 lawyers that may be able to help you.
- Province of Alberta Family and Youth Court (Edmonton).....780-427-2743
- Student Legal Services of Edmonton ([www.slsedmonton.com](http://www.slsedmonton.com)).....780-492-2226  
 Law students able to provide free legal information and assistance
- Elizabeth Fry Society.....780-422-4775  
 Court workers explain court procedure and terminology, provide legal referrals, and offer practical assistance and support to those appearing in court
- Native Counselling Services ..... 780-451-4002  
 Court workers provide information on the nature of the criminal charge, rights, and court procedure. Assistance and support with the necessary documents, Legal Aid applications, and other help.

## **Government Resources**

- Edmonton Region Child and Family Services .....  
 Plans and delivers a range of services to family and children in the Edmonton area.  
<http://humanservices.alberta.ca/services-near-you/edmonton-and-area-child-and-family-services.html>
- Children's Services Crisis Unit (Edmonton)..... (day) 780-422-2001  
 ..... (evening) 780-427-3390  
 ..... toll-free 1-800-638-0715
- Local Child Welfare Office - listed in the directory under the Government of Alberta
- Government of Alberta ..... 310-0000  
[www.gov.ab.ca](http://www.gov.ab.ca)

## **Counselling Resources**

- Sexual Assault Centre of Edmonton.....780-423-4102  
Confidential support for anyone experiencing sexual violence or supporting someone  
affected  
by sexual violence.
- Kids Help Phone.....1-800-668-6868  
Confidential and free phone or web counseling for anyone under 20 years old.  
[www.kidshelpphone.ca](http://www.kidshelpphone.ca)
- Aboriginal Consulting Services Association of Alberta.....780-448-0378  
Teaching circles for children who witness abuse.