

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'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 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.

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Highland Shores Children's Aid serves the counties of Hastings, Northumberland and Prince Edward.



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## Reporting Child Abuse and Neglect It's Your Duty



August 2018

Your Responsibilities Under The  
*Child, Youth and Family Services Act (CYFSA), 2017*

# Introduction

We all share a responsibility to protect children from harm – a responsibility that extends to those situations where children suffer abuse and neglect. Ontario's Child, Youth and Family Services Act (CYFSA) provides for protection for these children.

Section 125 of the Act states that members of the public, including professionals who work with children, must promptly report any suspicions that a child is, or may be, in need of protection to a Children's Aid Society. The Act defines the phrase "child in need of protection" and sets out what must be reported to a Children's Aid Society. This definition is set out in detail in this brochure. It includes physical, sexual and emotional abuse, neglect, and risk of harm.

This brochure explains the "duty to report" section of the Child, Youth and Family Services Act and answers common questions about your reporting responsibilities. It also reprints relevant portions of Section 125 for your convenience. It does not provide specific legal advice. Please consult a lawyer or Highland Shores Children's Aid about any specific situation.

## Who is a "child in need of protection"?

The Child, Youth and Family Services Act defines a child in need of protection as a child who is, or who appears to be, suffering from abuse and/or neglect. The Act clearly specifies how you can identify these children in Section 125(1).

## Who is responsible for reporting a child in need of protection?

Anyone who has reasonable grounds to suspect that a child is, or may be, in need of protection must promptly report the suspicion and the information upon which it

is based to a Children's Aid Society. Section 125(1) describes the specific circumstances that must be reported.

## What are "reasonable grounds" to suspect child abuse or neglect?

It is not necessary for you to be certain a child is, or may be, in need of protection to make a report to Highland Shores Children's Aid. "Reasonable grounds" refers to the information that an average person, exercising normal and honest judgment, would need in order to make a decision to report. If you are not sure, it is probably best to call the Society and ask to speak to a worker.

## What does the Act mean when it says a person has an "ongoing duty to report" child abuse or neglect?

Even if a report has already been made about a child, you must make a further report to the Society if there are additional reasonable grounds to suspect that the child is, or may be, in need of protection. [CYFSA s.125(2)]

## Can I rely on someone else to report?

No. You have to report directly to the Society. You must not rely on anyone else to report on your behalf. [CYFSA s.125(3)]

## Do professionals and officials have any special responsibilities to report?

Professionals and officials have the same duty as any other member of the public to report their suspicion that a child is in need of protection. However, the Act recognizes that people working closely with children have a special awareness of the signs of child abuse and neglect, and a particular responsibility to report their suspicions. Any professional or official who fails to report

a suspicion that a child is, or may be, in need of protection is liable on conviction to a fine of up to \$5,000, if they obtained the information on which that suspicion is based in the course of their professional or official duties. [CYFSA s.125(5)(8)(9)]

## Who does the Act consider a person who performs professional or official duties?

People who perform professional or official duties with respect to children include:

- health care professionals, including physicians, nurses, dentists, pharmacists and psychologists;
- teachers and school principals;
- social workers and family counselors;
- priests, rabbis and other clergy members;
- operators or employees of day nurseries;
- youth and recreation workers (not volunteers);
- peace officers and coroners;
- solicitors;
- service providers and employees of service providers; and
- any other person who performs professional or official duties with respect to a child.

These are examples only. A person not listed above who does work that involves children may still be considered to perform professional or official duties under the duty to report requirements of the Act.

If you are unsure whether you are considered to be a professional with the duty to report, ask the Society, or your local professional association or regulatory body. [CYFSA s.125(6)]

## What about professional confidentiality?

A professional must report that a child is, or may be, in need of protection, even when the information is otherwise confidential or privileged. This duty overrides the provisions of any other provincial statute, and specifically overrides any provisions that would otherwise prohibit someone from making a disclosure. Only solicitors may not divulge "privileged" information about their clients. [CYFSA s.125(10)(11)]

## Will I be protected from liability if I make a report?

The CYFSA provides that no action for making the report will be instituted against a person who makes a report unless the person acts maliciously or without reasonable grounds for the suspicion. [CYFSA s. 125(10)]

## What happens when I call Highland Shores Children's Aid?

Highland Shores Children's Aid will make a determination of the need for an investigation based on the information provided. Our workers have the responsibility and the authority to investigate allegations and to protect children. The workers may, as part of the investigation and plan to protect a child, involve the police and other community agencies. Emergency service is available 24 hours a day, seven days a week.

## What is the age of the children to whom the "duty to report" applies?

The duty to report applies to any child who is, or appears to be, under the age of 16 years old. It also applies to children subject to a child protection order who are 16 and 17 years old.

On January 1, 2018, Ontario raised the age of protection from 16 up to 18. A professional,

or member of the public, who is concerned that a 16 or 17 year old youth may be in need of protection may, but is not required to, make a report to a Society and the Society is required to assess the reported information. [CYFSA s.125(4)]

If the 16 or 17 year old is making plans to manage their safety and/or if a support network is in place to support the young person's safety planning, then professionals may opt not to report. If the young person does not want the professional to report, more discretion needs to be exercised based on the professional's relationship with the youth, the youth's capacity and the level of risk to the youth if Society intervention is not provided.

## Section 125(1) of the Child and Family Services Act

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 forthwith 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 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 developmentand 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