

HIGHLIGHTS OF NEW “CHILD AND FAMILY SERVICES ACT”

Themes

The purpose of the proposed *Child and Family Services Act* is to provide for the protection and care of Yukon children.

The following themes are threaded throughout the draft bill:

1. Support for families and extended families to care for their children.
2. Support for parents to fulfill their parental role including periods when their children may not be living with them.
3. Inclusive, collaborative planning and decision making.
4. Recognition of the importance of culture and community in the lives of children and families.
5. Involvement of First Nations in planning and decision-making.
6. Interventions to start with the least intrusive approach based on an assessment of the situation.
7. The draft bill is written in clear, straightforward language using updated terminology- e.g. protective interventions rather than child in need of protection; cooperative planning processes rather than dispute resolution; continuous care rather than permanent care.
8. The draft bill is written in a manner that will enable planning and service delivery options to meet the unique needs of children and families.

Structure

It is proposed to structure the new legislation as follows:

1. A new Act called the *Child and Family Services Act* will be introduced.
2. The new Act will address Protection of Children and Adoption and will repeal and replace the outdated child protection and adoption provisions of the current *Children’s Act*.
3. The *Child and Family Services Act* will also contain new provisions dealing with: Support Services for Children and Families; Service Quality and Accountability; and Administration of Services.
4. The Hague Convention on the Civil Aspects of International Child Abduction, will be removed from the current *Children’s Act* and re-enacted in a separate and stand-alone piece of legislation. This is a lengthy international convention and other jurisdictions have enacted it in stand-alone legislation.
5. The remaining provisions of the current *Children’s Act* - which address Child Status and Establishment of Parentage and Custody, Access and Guardianship, will not be changed at this time, however, the *Act* will be renamed the “*Children’s Law Act*”.
6. In summary, the proposed legislation will consist of:
 - A new *Child and Family Services Act* (policy content described below)

- A new *Act* for the *Hague Convention on the Civil Aspects of International Child Abduction*
- Renaming the *Children's Act* as the *Children's Law Act*, with the existing provisions relating to parentage, custody, access and guardianship remaining in effect.

Child and Family Services Act

The draft bill begins with a Preamble that will provide some background commentary on the need for and the development of the *Act* and the influence of the United Nations Convention on the Rights of the Child on the writing of the *Act*.

Part 1: Introduction

Part 1 is introductory and contains Definitions, Guiding Principles, and Service Delivery Principles. A child is defined as a person under 19 years of age, removing the age eligibility gap between adult services and children's services. A section on the Best Interests of the Child provides the factors to be considered in determining the best interests of the child including a specific factor regarding the importance of protecting and preserving the First Nation culture of a child.

Current Act:

- *This format is new – Guiding Principles and Service Delivery Principles are not in the current Act.*
- *The current Act includes a statement about the best interests of the child, however it does not provide a detailed list of specific factors to consider in determining the best interests of a child. Some direction is provided in relation to custody, access and guardianship and care and custody orders.*

Part 2: Support Services for Families

This Part sets out new provisions aimed at promoting and strengthening families through supportive and voluntary services, including:

1. Cooperative planning processes such as a family conference, in planning for a child or for support services to be provided to a family.
2. Formal agreements to allow for the provision of family support services for in-home supports and for out-of-home care.
3. Special needs agreements to enable a child with special needs to be provided with out-of-home care without requiring a determination that the child is in need of protection. Parents would retain their role and responsibility for the child.
4. Provisions to encourage and facilitate placement of a child with extended family through the use of a formal support agreement.
5. Provisions enabling a family and a Director to enter into a voluntary care agreement to provide out-of-home care services for a child where there are concerns that the child cannot safely remain in the home.

6. Voluntary agreements for support services for youth between the ages of 16 and 19 who cannot live at home and where the issues can not be resolved with their parents.
7. Transitional support services for youth between 19 and 24 years of age who have been in the care of a Director and are making the transition to independent living.

Current Act:

- *Under Child Protection, sections 108 and 109 speak to the provision of family support services and the new Act will expand on these provisions.*
- *Youth in permanent care and custody are not eligible for additional services and supports past their 19th birthday.*
- *Youth can not receive services through child welfare where there are family problems.*
- *The current Act does not focus on youth as being the primary recipient of services.*
- *There are no provisions for supports for extended family to care for their relative's children.*

Part 3: Protection of Children

The provisions dealing with the protection of children have been completely rewritten. The draft bill includes:

1. The provision of supports and services to help maintain a child safely at home or to facilitate reunion.
2. Provisions that require working in cooperation with children and families to achieve agreement on plans and to reduce the use of the courts to make decisions, and where agreement on a plan cannot be achieved, the parent will have the ability to present their own plan to the judge to be considered in making an order.
3. Provisions to encourage the use of extended family in supporting parents in the care of their children and in providing care for a family member's children who cannot live at home either on a temporary basis or permanently.
4. Provisions for First Nations involvement in planning, service delivery and court proceedings.
5. Mandatory reporting of abuse and neglect.
6. Clarity regarding court processes and procedures.
7. More options for responding to circumstances where intervention is necessary (e.g. provision to order an adult who is causing a child to be in need of protective intervention to have no contact with that child).
8. Requirements for the court to determine that cooperative planning has happened, or has been tried or carefully considered, and the family's response to supports and services prior to making an order.
9. Expectations for timely decision-making and planning.

Current Act:

For Consultation Discussion Purposes

- *There is no mandatory reporting – there are mandatory reporting requirements for teachers and principals in the Education Act and for child care workers in the Child Care Act.*
- *There are no provisions for cooperative planning.*
- *Does not have a requirement for First Nations involvement in planning and caring for their members' children.*
- *The legislative direction on court procedures lacks clarity and is difficult to read and understand.*
- *There are no provisions for extended family involvement.*

Note:

The “First Nations and Child Welfare” policy within Family and Children’s Services (FCS) directs YG staff to notify the child’s First Nation at initial involvement with a family, and continue that involvement throughout the time that FCS is involved with the family. Progress with implementing this policy is reviewed at the bi-monthly meetings with the First Nations Health and Social Services Development Commission. While this is not a requirement in the current legislation, the policy has initiated the involvement of First Nations as a precursor to provisions that have been included in the draft bill.

It should also be noted that the draft bill has been reviewed to ensure compliance with *Access to Information and Protection of Privacy Act (ATIPP)* regarding the gathering and sharing of personal information. Where *ATIPP* does not adequately provide for the best interests of a child to be addressed, the draft bill provides additional authority for sharing information as well as specific conditions or limitations on such sharing.

Part 4: Children in Care

This Part addresses the rights of children in the care or custody of a Director and priorities regarding placement, including:

1. Listing the rights of children in care.
2. Outlining priorities for placement planning – first priority is extended family and for First Nations the second priority is to place a child with a family within the child’s cultural community.
3. Clearer direction for returning a child in care who has left their placement without permission.

Current Act:

- *There are no rights for children – the “best interests of the child” is the only consideration.*
- *Specifies placing a child within their own cultural background, but does not specify the priority of placing children with extended family.*

Note: Family and Children’s Services policy presently provides direction regarding the priority for placement of children with extended family. This policy has been acknowledged during consultations; however, it was recommended that this approach be formalized in legislation.

Part 5: Adoption

This Part updates the Adoption section to reflect current adoption practices in the Yukon and other Canadian jurisdictions. Improvements include:

1. Increased clarity around timelines and provision of consents to adoption.
2. Provisions for open adoption arrangements.
3. Provision to allow the court to recognize an adoption according to a First Nation's customs and grant an adoption order.
4. Use of cooperative planning in adoption planning.
5. Provisions for more open disclosure of adoption information.
6. Clarity regarding processes to adopt including step-parent and international adoptions.
7. Provisions for establishing a private adoption agency.

Current Act:

- *Was written prior to the practice of open arrangements in adoption and disclosure of adoption information to adult adoptees and birth parents.*
- *Does not contemplate involvement of First Nations in planning for the adoption of a First Nation child, nor for recognition of customary adoptions.*

Part 6: General and Procedural Matters

This Part establishes certain offences and court procedures.

1. The offences for contravening sections of the Act are described in a consolidated list set out in this Part.
2. This Part also addresses some general court procedures (e.g. evidence, proof of court documents).

Current Act:

- *The provisions under this heading have been carried forward to the new Act and the only change is the following:*
 - *Offences for contravening sections of the Act are spread throughout the current Act.*

Part 7: Administration of Services

1. Provides for the establishment of First Nation Service Authorities to deliver services under the *Act*.
2. Allows for the establishment of committees, including community-based committees, to act in an advisory, investigative or administrative capacity.
3. Defines the roles and responsibilities of the Minister and a Director.
4. Provides for delegation of a Director's duties or functions to any community group, agency or persons.

Current Act:

- *Defines the roles and responsibilities of the Minister and the Director.*
- *Allows for delegation only of parts of the Act to a community group or persons, however, there are no provisions that would allow for the delivery of services by a First Nation child welfare authority.*

Part 8: Service Quality and Accountability

This is a new section. The need for quality and accountable services was an important issue raised through the consultations. Accountability mechanisms will provide for openness, transparency and public confidence in the child welfare system.

This Part:

1. Includes procedures to review decisions of a Director and requires that these procedures will be known to the public.
2. Includes a provision for setting of minimum standards and regulations for all service providers.
3. Includes accountability provisions, such as annual reports.
4. Includes regular 5-year reviews of the operation of the *Act* by an advisory committee.
5. Provides for annual reviews of the case plan for each child in care and for participation of the family, extended family, First Nations and other key people in the review.

Current Act:

- *Requires an annual review of the plan for each child in care for one year.*
- *Provides for an Annual Report on services for the Minister.*

Children's Law Act

Status of Child and the Establishment of Parentage and Custody, Access and Guardianship

It is proposed that these portions of the current *Act* will remain unchanged for now but they will be set out in a stand-alone statute to be named the "*Children's Law Act*".

There is work underway on these topics across the country at both the federal and provincial levels because advances in assisted human reproductive technologies have caused the need to re-examine who can and should be considered a parent. The definition of parent is foundational to determining custody, access and guardianship. It is proposed that once the national work on these topics is completed, Yukon will move ahead with revisions to its legislation utilizing the information from these national initiatives as well as input gathered during the consultations.