Child Sexual Abuse Protocol

Guidelines and Procedures for a Coordinated Response to Child Sexual Abuse in Prince Edward Island
2013
Child Sexual Abuse Protocol

Guidelines and Procedures for a Coordinated Response to Child Sexual Abuse in Prince Edward Island

2013
Acknowledgments

The PEI Child Sexual Abuse Protocol Working Group would like to acknowledge with appreciation the following references which were of assistance in developing the PEI Child Sexual Abuse Protocol 2013:

- New Brunswick Child Victims of Abuse and Neglect Protocols, March 2005
- The British Columbia Handbook for Action on Child Abuse and Neglect, April 2007
- Yukon Inter-agency Agreement for the Investigation of Child Abuse, September 1998
- PEI Eastern School District: Protocol for Responding to Child Abuse
## Table of Contents

1.0 Protocol Endorsement ................................................................. 1

2.0 Introduction, Purpose and Guiding Principles

2.1 Introduction ................................................................. 3

2.2 Purpose ................................................................. 3

2.3 Guiding Principles .......................................................... 3

3.0 Mandatory Reporting

3.1 Legislative Duty to Report .................................................. 5

3.2 Relevant Sections of the *Child Protection Act* ........................................ 5

4.0 Definitions .................................................................. 7

5.0 Joint Protocol: Police and Child Protection Services: Child Sexual Abuse Investigations

5.1 Definitions .................................................................. 10

5.2 General .................................................................... 10

5.3 Investigation Process ...................................................... 11

5.4 Joint Investigation Interviews ........................................ 12

5.4.1 Child .................................................................... 13

5.4.2 Sibling(s)/other child(ren) ........................................ 14

5.5 Other Investigation Interviews ........................................ 14

5.5.1 Non-offending Parent/Guardian .................................. 14

5.5.2 Suspect .................................................................. 15

5.6 Immediate Protection of the Child .................................... 16

5.7 Assessment and Intervention Plan .................................... 16

6.0 Department of Environment, Labour and Justice

6.1 Introduction .................................................................. 18

6.2 Duty to Report ............................................................. 18

6.2.1 Legislative Duty to Report .......................................... 18

6.2.2 Mandatory Reporting of Child Abuse ....................... 18

6.3 Crown Attorney Guidelines ............................................. 19

6.3.1 Pre-interview Advice ................................................ 21

6.3.2 Police Duty to Consult .............................................. 21

6.3.3 Criminal and Civil Proceedings - based on the *Criminal Code* ........ 21

6.3.4 Criminal Proceedings – Pre-charge ............................ 22

6.3.4.1 Police Investigative Package to Crown .................. 22

6.3.4.2 Initiating Prosecutions ........................................ 22

6.3.4.3 Crown Attorney Duty to Review ......................... 22

6.3.4.4 Disagreement over Decision Whether to Proceed .... 23

6.3.4.5 Private Prosecutions .......................................... 23
6.3.4.6 Special Considerations in Charging Decisions Involving Children ................................................. 23
6.3.5 Criminal proceedings - Post-charge ................................................................. 24
  6.3.5.1 Accused’s Detention Prior to Trial ....................................................... 24
  6.3.5.2 Summary Conviction or Indictable Procedure ........................................ 25
  6.3.5.3 Obtaining a Court Date ................................................................. 25
  6.3.5.4 Pre-trial Preparation of a Child Witness .............................................. 25
  6.3.5.5 Victim/Witness Guidelines ............................................................. 25
  6.3.5.6 Disclosure ......................................................................................... 26
  6.3.5.7 Guidelines for Testimony of Children ................................................. 27
6.3.6 Sentencing
  6.3.6.1 Pre-sentence Report .................................................................................. 27
  6.3.6.2 Victim Impact Statement ....................................................................... 27
  6.3.6.3 Factors to Consider ............................................................................... 27
  6.3.6.4 Orders ................................................................................................. 28
6.3.7 Counselling .................................................................................................. 28
6.3.8 Compensation For Victims of Crime ............................................................ 29
6.3.9 Further References ......................................................................................... 29
6.4 Court Process in Cases Involving a Child Victim or Witness ......................... 29
  6.4.1 Exclusion of the Public ............................................................................... 29
  6.4.2 Ban on Publication ...................................................................................... 29
  6.4.3 Self-represented Accused ............................................................................ 29
  6.4.4 Video Recorded Evidence ......................................................................... 29
  6.4.5 Testimony of Children ............................................................................ 30
6.5 Community and Correctional Services ............................................................ 30
  6.5.1 Victim Services .......................................................................................... 30
    6.5.1.1 Intake/Case Assessment ................................................................. 31
    6.5.1.2 Court Support and Court Preparation ............................................. 31
    6.5.1.3 Victim Impact Statement Program ............................................... 32
    6.5.1.4 Sentencing Follow-up ...................................................................... 33
    6.5.1.5 Criminal Injuries Compensation ................................................... 33
    6.5.1.6 Assistance under the Victims of Family Violence Act ................. 34
  6.5.2 Community Programs - Probation Services and Youth Justice Services .... 34
    6.5.2.1 Pre-sentence Reports ........................................................................ 36
    6.5.2.2 Post-sentence Supervision Considerations ...................................... 37
    6.5.2.3 Failure to Comply ................................................................ .......... 38
  6.5.3 Adult and Youth Custody Programs ............................................................ 39
    6.5.3.1 Admission Procedures ...................................................................... 39
    6.5.3.2 Temporary Absence Program ......................................................... 39
    6.5.3.3 Offenders Escaping Custody or Posing a Threat ............................ 40
  6.5.4 Clinical Services .......................................................................................... 40
    6.5.4.1 Programs and Services .................................................................. 40
6.5.4.2 Intake/Case Assessment .................................................. 41
6.5.4.3 Offender Posing a Threat ................................................. 41

7.0 Education and Early Childhood System Protocols
7.1 Introduction ............................................................................. 42
7.2 Duty to Report .......................................................................... 42
    7.2.1 Legislative Duty to Report ................................................. 42
    7.2.2 Mandatory Reporting of Child Sexual Abuse ...................... 43
7.3 Possible Indicators of Child Sexual Abuse ................................. 44
7.4 What to do When a Disclosure Occurs ..................................... 44
7.5 Early Childhood Education Programs – Roles and Responsibilities .. 45
7.6 Education System – Roles and Responsibilities ........................ 46

8.0 Department of Health and Wellness and Health PEI
8.1 Background ............................................................................. 47
8.2 Duty to Report .......................................................................... 47
    8.2.1 Legislative Duty to Report ................................................. 47
    8.2.2 Mandatory Reporting of Child Sexual Abuse ...................... 48
    8.2.3 Duty to Provide Information Concerning Child Sexual Abuse .. 48
8.3 Mental Health and Addiction Services ....................................... 49

9.0 Investigations Involving Aboriginal Children
9.1 Children Ordinarily Resident on Reserve ................................. 50
9.2 Children Not Ordinarily Resident on Reserve ........................... 50

Appendix .......................................................................................... 51

Appendix A: Reference Material:
    A1 Children’s Sexual Behaviour – A Parent’s Guide ...................... 52
    A2 What Happens Now Series ................................................... 52
1.0 Protocol Endorsement

The issues associated with child sexual abuse do not recognize jurisdictional or professional boundaries and therefore demand a coordinated response. The Government, First Nations, and Police Agencies of Prince Edward Island are committed to an integrated team approach to intervening in cases of child sexual abuse. Our common goal is the protection of children.

Child sexual abuse constitutes a violation of the Criminal Code of Canada and/or renders the child in need of protection under the Prince Edward Island Child Protection Act R.S.P.E.I. Cap.C-5.1. The Government, First Nations, and Police Agencies of Prince Edward Island recognize the need for investigation and intervention under both pieces of legislation. Familial and non-familial abuse situations are included within this protocol.

The primary concern in any child sexual abuse investigation is the protection of the child. In determining the best course of action to protect the child, the best interests of the child shall be paramount. In determining the best interests of the child, the views of the child shall be obtained and considered, as developmentally appropriate. Each case must be assessed individually.

The Government, First Nations, and Police Agencies of Prince Edward Island agree that:

- The prevention of child sexual abuse is the collective responsibility of the entire community.
- Public education is an essential component of prevention of child sexual abuse.
- Effective response requires full cooperation and coordination of all segments of the community.
- Core personnel require specialized ongoing training and education.
- Child protection and police authorities will work as a team with immediacy and planned joint intervention.
- The risk of child sexual abusers re-offending remains high without appropriate treatment and/or monitoring.
- Attention must be given to the development of specialized crisis and treatment services for the child victim and non-offending family members.

To enhance and ensure this commitment to work cooperatively in addressing the problem of child sexual abuse, this Protocol replaces the September 1995 edition, and will be updated as required, to ensure it contains current information and best practices.
Carol Ann Duffy  
Deputy Minister of Community Services and Seniors

Dr. Michael Mayne  
Deputy Minister of Health and Wellness

Shauna Sullivan Curley, Q.C.  
Deputy Minister of Environment, Labour and Justice and Deputy Attorney General

Dr. Alex (Sandy) MacDonald  
Deputy Minister of Education and Early Childhood Development

Dr. Richard Wedge  
Interim CEO, Health PEI

Chief Superintendent, Craig Gibson  
Commanding Officer, I Division, RCMP

Chief Paul Smith  
Charlottetown Police Services

Chief David Poirier  
Summerside Police Service

Chief Lewie Sutherland  
Kensington Police Service

Greg Clayton  
Director, Facilities Management, University of Prince Edward Island

Chief Darlene Bernard  
Lennox Island First Nation

Chief Brian Francis  
Abegweit First Nation

February 14, 2013  
Date
2.0 Introduction, Purpose, and Guiding Principles

2.1 Introduction

The Child Sexual Abuse Protocol provides guidelines and procedures for a coordinated response to child sexual abuse in Prince Edward Island. The protocol is intended to provide assistance to a network of professionals including child protection workers, law enforcement, justice system personnel, child and youth care providers, school and early childhood personnel, the medical profession, mental health, addictions, and other health care providers. The overriding goal is the protection of children.

Children depend on others for their safety and well-being. They have a right to be protected from abuse and neglect. This model holds the belief that all members of society - families, communities and service providers - share responsibility for the safety and well being of Prince Edward Island children.

The model supports a system of intervention that:
• highlights the natural support system of child sexual abuse victims and their families that will achieve safety from abuse, healing from the effects of abuse, prevention of future abuse; and
• promotes a coordinated and collaborative approach to intervention.

2.2 Purpose

The purpose of the Child Sexual Abuse Protocol is to support an integrated, collaborative response to child sexual abuse by:
• providing information concerning identifying and reporting suspected child sexual abuse;
• providing an overview of relevant law and government policies, procedures and protocols;
• clarifying the roles and shared responsibilities of service providers;
• ensuring that responses to suspected child sexual abuse in Prince Edward Island are effective, consistent and sensitive to the needs of children.

2.3 Guiding Principles

A coordinated and sensitive approach to the issues associated with child sexual abuse requires a commitment to certain guiding principles. The principles that serve as the foundation for this protocol are:

1. The model of intervention should be child centered and family focused, in all of its aspects, with the child as the primary focus.

2. A child centered system will be sensitive and take into consideration the needs of the child, as expressed by the victim, non-offending parent(s)/guardian and/or a child advocate.

3. The safety of the child is a primary concern.
4. The system of intervention needs to be consistent, coordinated, cooperative and collaborative. The team approach to intervention ensures a holistic perspective of the situation and minimizes the likelihood of children and their families being negatively affected by the process.

5. Families are the primary care givers for their children and should be supported and empowered, whenever possible, to provide that care.

6. A child centered system will provide children with the opportunity to have an active voice in the intervention process.

7. The system of intervention will respect the rights of children and families; however, the rights of the child are of primary importance.

8. Intervention will be as unintrusive as practicable, while maintaining the safety of the child. Protection and safety of children are vital in the healing process, but must be handled with sensitivity and skill to ensure that further victimization of the child is minimized.

9. The system of intervention needs to be flexible, responsive to ongoing feedback, self-correcting, and allow for problem solving at all levels.

10. It is important that the child centered system use, to the fullest extent, the “natural resources” in a child’s life during the intervention and healing processes.

11. Intervention, within mandated authority, needs to be highly accountable at a service and system level.

12. Intervention will be based on the child’s strengths, and interveners will consider the best interests of the child as paramount.

13. Intervention acknowledges the importance of advocacy on behalf of the child and family.

14. Child sex offenders must be held accountable for their actions. The risk of re-offending remains high without appropriate assessment, treatment and/or monitoring.

15. Intervention should be sensitive to the need for the offender to receive treatment.
3.0 Mandatory Reporting

3.1 Legislative Duty to Report

Any person having knowledge, or reasonable grounds to suspect that a child is in need of protection must report, or cause to be reported, the circumstances to the Director of Child Protection or to a peace officer.

The person making the report of child sexual abuse is not required to determine who may have caused the suspected abuse, or whether there is sufficient evidence to warrant an investigation. However, the person making the report will be required to provide to the Director of Child Protection such additional information as is known or available to the person concerning the suspected abuse. The identity of the person who has made a report to the Director of Child Protection is protected by the Child Protection Act.

The Child Protection Act sets out the means by which and under what circumstances information can be disclosed.

3.2 Relevant Sections of the Child Protection Act, R.S.P.E.I., Cap. C-5.1

Mandatory reporting
10.(1) Notwithstanding any other Act, every person who has knowledge, or has reasonable grounds to suspect that a child is in need of protection shall
   (a) without delay, report or cause to be reported the circumstances to the Director, or to a peace officer who shall report the information to the Director; and
   (b) provide to the Director such additional information as is known or available to the person.

Confidential information
   (2) Subsection (1) applies notwithstanding the confidential nature of the information on which the report is based, but nothing in this section abrogates any solicitor-client privilege

Identity of person reporting
   (3) Subject to subsection (5), no person shall reveal or be compelled to reveal the identity of a person who has made a report to the Director pursuant to subsection (1).

Not liable to civil action
   (4) Subject to subsection (5), a person who makes a report or provides information pursuant to subsection (1) or who does anything to assist in an investigation carried out by the Director is not liable to any civil action in respect of providing such information or assistance.

False or misleading information
   (5) Subsections (3) and (4) do not apply where a person knowingly makes a report or provides information which is false or misleading.
Disclosure

The Child Protection Act provides for the sharing of information as follows:

7(2)(g) the information is required for the purposes of a criminal investigation, a criminal court proceeding following an investigation, or for an investigation under this Act;

Disclosure with consent

7(3) Subject to subsection (4), the Director may disclose identifying information with the written consent of the person who is the subject of the record.

Director may refuse disclosure

7(4) Subject to the regulations, the Director may refuse to disclose, or by editing or other means, limit disclosure of information if there are reasonable grounds to believe that revealing the information may

(a) result in physical or emotional harm to the requesting person or to another person; or
(b) lead to the identification of a person who made a report pursuant to section 10.

Director shall refuse disclosure

7(5) Notwithstanding any other provisions of this section, the Director shall refuse to disclose, or by editing, limit disclosure of information, where the disclosure

(a) may jeopardize a criminal investigation or an investigation under this Act; or
(b) is prohibited by law.
4.0 Definitions

(Note: References to Section numbers are from the PEI Child Protection Act, unless otherwise stated)

**Abuse**  1.(b) in relation to a child, means physical, mental, emotional or sexual exploitation, mistreatment or injury of the child.

**Age of Consent - Criminal Code of Canada**  
As set out in the Criminal Code of Canada, the age of consent refers to the age at which the criminal law recognizes the legal capacity of a young person to consent to sexual activity. Below this age, all sexual activity is prohibited unless the circumstances fit into one of the legislated exceptions set out below. Case law establishes that once the sexual purpose, nature of contact or invitation is established, potential criminal liability attaches when a young person is below the age of consent.

The age of consent is 18 years where the sexual activity involves exploitative activity, such as prostitution, pornography or where there is a relationship of trust, authority or dependency. For other sexual activity, the age of consent is 16 years of age. A minor ages 16 or 17 may have consensual sexual activities with any person they wish, whatever the age, as long as the minor is not in a situation of exploitation with this partner (as described in the first sentence of this paragraph).

When a young person is 12 to 14 years of age, there are no grounds for proceeding with a criminal charge if his or her sexual partner is:
(a) less than two years older; and
(b) not in a position of trust or authority towards the young person, is not a person whom the young person is in a relationship of dependency and is not in a relationship with the young person that is exploitative of him/her.*

When the young person is between 14 to 16 years of age, there are no grounds to proceed with a criminal charge if his or her sexual partner is:
(a) less than five years older than the young person; and
(b) not in a position of trust or authority towards the young person, is not a person with whom the young person is in a relationship of dependency and is not in a relationship with the young person that is exploitative of him/her; or
(c) married to the young person.

* As set out at section 153 of the Criminal Code, a judge may infer that a person that is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including:
(a) the age of the young person;
(b) the age difference between the person and the young person;
(c) the evolution of the relationship; and
(d) the degree of control or influence by the person over the young person.

**Child**  1.(h) means a person under the age of 18 years.
Child in need of protection (S. 9.): A child is in need of protection where

(a) the child has suffered physical harm inflicted by a parent;
(b) the child is at substantial risk of suffering physical harm inflicted by a parent;
(c) the child has suffered harm caused by
   (i) neglect of the child by a parent,
   (ii) failure of a parent to adequately supervise or protect the child, or
   (iii) failure of a parent to provide for the adequate supervision or protection of the child;
(d) the child is at substantial risk of suffering harm caused by
   (i) neglect of the child by a parent,
   (ii) failure of a parent to adequately supervise or protect the child, or
   (iii) failure of a parent to provide for the adequate supervision or protection of the child;
(e) the child has been sexually abused by a parent or by another person where the parent knew or ought to have known of the possibility of sexual abuse of the child and the parent failed to protect the child;
(f) the child is at substantial risk of sexual abuse by a parent or by another person where the parent knew or ought to have known of the possibility of sexual abuse of the child and the parent failed to protect the child;
(g) the child has been harmed as a result of being sexually exploited for the purpose of prostitution and the parent has failed or been unable to protect the child;
(h) the child is at substantial risk of being sexually exploited for the purpose of prostitution and the parent has failed or been unable to protect the child;
(i) the child has been harmed as a result of being exposed to or involved in the production of child pornography and the parent has failed or been unable to protect the child;
(j) the child is at substantial risk of being harmed as a result of being exposed to or involved in the production of child pornography and the parent has failed or been unable to protect the child;
(k) the child has suffered emotional harm inflicted by a parent, or by another person, where the parent knew or ought to have known that the other person was emotionally abusing the child and the parent failed to protect the child;
(l) the child is at substantial risk of suffering emotional harm cause by a parent, or by another person, where the parent knew or ought to have known that the other person was emotionally abusing the child and the parent failed to protect the child;
(m) the child has suffered physical or emotional harm caused by being exposed to domestic violence by or towards a parent;
(n) the child is at substantial risk of suffering physical or emotional harm caused by being exposed to domestic violence by or towards a parent;
(o) the child requires specific medical, psychological or psychiatric treatment to cure, prevent or ameliorate the effects of a physical or emotional condition or harm suffered, and the parent does not or refuses to, obtain treatment or is unavailable or unable to consent to treatment;
(p) the child suffers from a mental, emotional or developmental condition that, if not addressed, could seriously harm the child and the parent does not or refuses to obtain treatment or is unavailable or unable to consent to services or treatment to remedy or ameliorate the effects of the condition;
(q) the child has been abandoned, or the only parent of the child has died or is unavailable to take custody of the child, and adequate provisions have not been made for the care of the child;
(r) the child is in the custody of the Director or another person and the parent of the child refuses or is unable to resume custody of the child;
(s) the child is less that 12 years old, and the child, in the opinion of the Director,
   (i) may have killed or seriously injured another person,
(ii) poses a serious danger to another person, or
(iii) may have caused significant loss or damage to property, and the parent of the child does not obtain or in unwilling to consent to treatment for the child which may be necessary to prevent a recurrence of the incident or danger; or
(t) the past parenting by the parent has put a child at significant risk of harm within the meaning of this section.

Child Sexual Abuse: For the purposes of this protocol, child sexual abuse shall include any sexual activity in which the sexual integrity of a child is violated, for example; touching for a sexual purpose, exhibitionism, harassment, sexual exploitation, molestation, intercourse, luring, voyeurism, pornography, prostitution, beastiality, sexting, inciting a child to engage in sexual activity. This is not an exhaustive list of the sexual abuse which may occur to a child.

Criminal Responsibility: Section 13 of the Criminal Code of Canada provides as follows:

13) No person shall be convicted of an offence in respect of an act or omission on his part while that person was under the age of twelve years.
5.0 Joint Protocol: Police and Child Protection Services
Child Sexual Abuse Investigations

5.1 Definitions

For the purpose of this protocol, the following words have the following meaning:

Child: A “child” is defined as a person under the age of eighteen years.

Joint Interview: A joint interview refers to an interview conducted by a Child Protection Social Worker and a Police Officer who are trained in the area of child sexual abuse investigations.

Soft Room: A soft room is a room in which child interviews are conducted which is not contained within a police facility. The room should be comfortable, with as few distractions as possible. The room should contain comfortable seating, a small table, and arranged to allow video recording of all persons engaged in the interview.

5.2 General

Both the Police and the Child Protection Services may receive a report concerning an allegation of child sexual abuse.

The Police and Child Protection Social Workers have complimentary roles in responding to reports of suspected child sexual abuse. Both will respond with priority to protect children who are in immediate danger.

Upon Police receiving a report of child sexual abuse, they will, as soon as practicable, report to the Director of Child Protection. All child sexual abuse investigations are to be reviewed by a Police supervisor within 24 hours and every 7 days thereafter until the investigation is completed. A child sexual assault report received by Child Protection Services will be assessed to determine if it meets the criteria for investigation. Part of the assessment will be a collateral contact with the respective Police Agency. If determined to require an investigation, a risk assessment will be completed to determine the response time required to initiate the investigation. The response time will be based on the level of potential risk to the child, as well as the availability of evidence. Once determined, the Child Protection report will be assigned to a Child Protection Social Worker for investigation, indicating the response time for action as: immediate, 24 hour or 7 day (business days). The Child Protection Social Worker assessing the report will contact the Police within the same day to provide details about the report and indicate which Child Protection office will be assigned to complete the investigation.

When the Police and Child Protection become aware of a report of suspected child sexual abuse which is to be investigated, they shall discuss and plan for a joint interview.
The objectives of joint interviews are to: obtain evidence concerning the complaint, avoid repeat interviews, create an interview plan enabling the recording of information necessary for both the police and child protection investigations, and share relevant information to ensure that as much detailed information as possible is obtained during the interview.

Police and Child Protection Social Workers responsible for conducting child sexual abuse investigations should be trained in the area of child sexual abuse investigations and their respective roles and responsibilities. It is important that qualified interviewers have acquired:

- experience and formal training and/or education in interviewing children;
- education and/or training in the dynamics of child sexual abuse including an understanding of the profiles of the offender, the non-offending parent and the victim; and
- the ability to testify in court as to their qualifications and the interview process.

The protection of the child should be of primary concern to both Police and Child Protection Services. Pursuant to the Child Protection Act, the Director of Child Protection or designate must investigate all reports which cause the Director to suspect that a child may be in need of protection and, if necessary, take further action to protect the child.

Sexual abuse of a child is criminal activity. The purpose of police intervention is to determine if a criminal offence has occurred, the perpetrator of that offence, and if there are reasonable grounds to proceed with a criminal charge. As well, police need to determine if there should be an application for an Emergency Protection Order pursuant to the Victims of Family Violence Act.

5.3 Investigation Process

Investigation of suspected child sexual abuse is considered a high priority by Police and Child Protection Services, and both agree on the importance of working collaboratively to meet the requirements of both the Criminal Code and the Child Protection Act. Intervention should be rapid and planned from the receipt of the report of child sexual abuse.

When a collaborative approach is taken, the following factors are critical to a successful joint interview:

- sharing information with the objectives of protecting the child and obtaining as much detailed information as possible, relevant to the investigation;
- ensuring the coordination of agency roles in order to reduce trauma to the child and increase the effectiveness of the interview;
- developing coordinated case management strategies throughout the investigative process;
- advising of support available to the victim and/or the victim’s family, which will include information about Victim Services.
It should be noted that time frames for criminal investigations and child protection investigations may vary. It is important for individuals involved in the investigation to be cognizant and responsive to the restrictions imposed on each service. Child Protection Services, for example, is required to complete an investigation within 30 days. Pursuant to the Child Protection Act, the findings and conclusions of the investigation are to be communicated to the parent; and to the child, if over age 12 years.

5.4 Joint Investigation Interviews

Joint Police and Child Protection Services interviews will be conducted as soon as practicable upon receipt of the initial report of alleged child sexual abuse. If the alleged offender is not a parent, then the joint interview process remains the same; however, the Child Protection Social Worker will assess if the parent(s) caused the child to be in need of protection, ie. lack of supervision, inappropriate care givers, etc.

The Police and Child Protection Social Worker will jointly determine:

- who will act as the lead interviewer based on the skills and expertise of the interviewer in dealing with child sexual abuse victims. The interviewers should be prepared to testify in court as to his or her qualifications and procedures used during the interviews.
  N.B. The non-lead interviewer may ask questions if he/she believes it would be of benefit to the interview. During the interview, if the child appears more responsive to the non-lead interviewer, the lead should be changed;

- when the interview will take place, taking into account the response time indicated on the Child Protection risk assessment, age of the child, availability of evidence, and availability of Police and Social Worker personnel. It is important that the timing of the interview is based on best practice;

- the soft room location to be used. In exigent circumstances, the Child Protection Social Worker and Police will consult and reach consensus as to where the interview will be conducted;

- means by which the victim will be transported to the interview;

- other persons requiring notification of the interview, and who will be responsible for notification(s).

Police attending the interview should always be dressed in casual clothing and without their weapon.

Both the Police Investigator and the Child Protection Social Worker will review their records, and identify and disclose information that can be appropriately shared between the services, prior to the interview.
In most instances, the child is interviewed first. A determination will need to be made by the Police and Child Protection Services as to whether there will be a joint interview of other individuals and the sequence of those interviews.

When conducting joint interviews, Police shall be responsible for all aspects of operating the video recording equipment to include:

- ensuring that the interview is recorded on the video equipment hard drive;
- responsibility for the media (eg. DVD) to be used for providing a copy of the interview to participants;
- ensuring the identity of the person interviewed and date of the interview are clearly marked on the media being used;
- operating the video recording equipment;
- providing Child Protection Services with a file copy of the video recording of the interview; and
- ensuring all video recording equipment is turned off following the interview.

All notes made by the Police or the Child Protection Social Worker in the actual interview room, as well as any taken by professionals monitoring the interview, will be copied and provided to both the Police and Child Protection Social Worker.

5.4.1 Child

- If there are reasonable grounds to believe that evidence of sexual abuse may be obtained by a medical professional, a medical examination shall be arranged immediately.

- The child sexual abuse interview is to be located in the soft room, except in exigent circumstances as agreed upon by the Police and Child Protection Social Worker.

- Interviews with the child shall be video recorded, whenever practicable.

- Video recorded interviews should be conducted as soon as practicable after the alleged child sexual abuse has been reported.

- The purpose of the interview, as well as the respective roles of the Police and Child Protection Social Worker, will be explained to the child at the outset of the joint interview. The child shall be informed that the interview will be video recorded.

- The child is to be interviewed alone, however; in exceptional circumstances, where it is apparent that the interview will not be successful due to the child’s extreme level of discomfort, a parent or other supportive adult may be present. The accompanying person should be instructed to be a non-active participant. This person is to be acknowledged on the video recording with an explanation as to their role in the interview, and his/her image should be captured on the video recording during the interview.
- Age appropriate language should be used when interviewing a child. Any written statement from the child shall be verbatim.

- The interviewers will follow best practices in interviewing children. It should be video recorded whether the child can distinguish a truth from a lie, but not the meaning of telling a truth or a lie.

- The Police and Child Protection Social Worker should carry out an investigation even though a child may not reveal, or subsequently recant, his/her story. Such an event is not unusual, particularly in cases of child sexual abuse. It is for this reason that all written or recorded statements of the child are extremely important.

- Following the interview with the child, the team will discuss their respective investigation plan, with the safety of the child being paramount. A decision will be made regarding further interviews being conducted, jointly or separately. If separately, arrangements shall be made to enable relevant and discloseable information to be exchanged in a timely manner between services.

5.4.2 Sibling(s)/other child(ren)

Sibling(s)/other child(ren) should also be interviewed by the Police and Child Protection Social Worker when appropriate.

The purpose of these interviews is to determine if the sibling(s)/other child(ren):
- may also be a victim of abuse;
- has/have knowledge of other possible victims;
- can corroborate the victim’s account;
- may be at risk following the victim’s disclosure or in any subsequent family crisis.

The sibling(s)/other child(ren) in the home should be interviewed separately, and recorded. In the course of the interview, if it is determined that a sibling/other child is a victim, this protocol shall be followed, however, in the course of the interview, if it is determined that the sibling may be an offender, section 5.5.2 shall be followed.

5.5 Other Investigation Interviews

5.5.1 Non-Offending Parent/Guardian(s)

The non-offending parent/guardian(s) should be interviewed as soon as practicable after the child victim and his/her siblings. It is preferable for the interview(s) to occur before the child victim and his/her sibling(s)/other child(ren) discuss their interviews with the non-offending parent/guardian(s). These interviews will be separate interviews.
Purpose of the interview for Child Protection:

- determination of the non-offending parent/guardian’s prior knowledge of the abuse (ie. if the non-offending parent/guardian(s) had prior knowledge of the abuse or ought to have known the child was placed at risk);
- an assessment of the family’s functioning and family interrelationships;
- an assessment of the family’s ability to support the child victim as well as family relationships and patterns of behavior;
- an assessment of the non-offending parent/guardian’s relationship with the suspect, including spousal relationship, degree of dependence or autonomy, and the presence of violence or fear of the suspect;
- a determination of what resources will be required to assist the family in protecting the child and preparing for the events that follow disclosure;
- an assessment of the non-offending parent/guardian’s ability to provide for the on-going safety of the child.
- an assessment of the parent’s safety plan for the child.

Purpose of the interview for Police:

- to gather evidence related to the investigation to determine if a criminal offence has occurred and to identify the perpetrator of that offence.

5.5.2 Suspect

Initial contact with the suspect should occur after completing interviews with the child victim, sibling(s)/other child(ren) and non-offending parent(s). When possible, the suspect should not be provided with the opportunity to speak to the victim or other family members before being interviewed.

- It is a police function to investigate a criminal offence and to identify the suspect. It is the police role to interview the suspect alone. Faced with the statement of the child victim, it is not uncommon for the suspect to admit to the offence in the first interview.

- As soon as practicable after the interview, the Police will disclose to the Child Protection Social Worker relevant information obtained from the suspect that would aid in the Child Protection investigation.

- Threats, promises and/or inducements may affect the admissibility of statements received from the suspect. Therefore, it is important for the Child Protection Social Worker, if the suspect is spoken to, to ensure the words used by her/him do not affect the admissibility of a future
statement. Prior to the Police interview, all interaction with the suspect by the Child Protection Social Worker should be documented in as much detail as possible, including the actual words used, and be provided to the Police as soon as possible.

- In situations where it has been determined that child sexual abuse may have occurred, an assessment will be made as to the best interest of the child’s safety, as well as the safety of his/her sibling(s)/ other child(ren). A safety plan for the child and his/her siblings will be made, which will include consideration of the non-offending parents ability to protect the child. The alleged suspect may be asked to leave the home rather than the child being placed in an alternative placement or coming into the legal custody and guardianship of the Director of Child Protection.

5.6 Immediate Protection of the Child

Immediate action will be taken to ensure the alleged suspect has no unsupervised access to the child. Throughout the investigation, the Police and Child Protection Social Worker shall determine what, if any, means shall be taken to limit and/or deny access to the child/witness(es).

If parents are unable to develop a safety plan for the child, the Police and Child Protection will consider using the following means of intervention which may be appropriate in the circumstances:

The Police shall consider:
- an application to remand the accused in custody until he/she is dealt with according to law, pursuant to the *Criminal Code*, and an accompanying order to have no contact with the child and/or a witness, while on remand;
- issuing a Police Officer Undertaking, pursuant to the *Criminal Code*;
- applying to a Justice of the Peace/Judge for an undertaking, pursuant to the *Criminal Code*;
- applying for a Recognizance pursuant to Section 810 and/or 810.1 of the Criminal Code;
- applying for an Emergency Protection Order under the *Victims of Family Violence Act*.

The Child Protection Social Worker shall consider:
- voluntary agreement from the alleged suspect to have no contact with the child and to leave the child’s home, if the child is residing with the alleged suspect;
- Pursuant to the *Child Protection Act*, if a least intrusive plan is not considered in the best interest of the child, the Director of Child Protection may determine that a child may need to be placed into the legal custody and guardianship of the Director of Child Protection.

5.7 Assessment and Intervention Plan

In intra-familial situations, once all interviews are completed, including with the suspect, the Child Protection Social Worker will begin a psycho-social assessment of the family members and family functioning. The Child Protection Social Worker will identify a management plan for each case, which will include a decision around contact with the suspect.
The plan should take into account the needs of the victim and other family members; the services to be provided; criminal court or family court interventions; and the prognosis for treatment of the offender, the victim, and other family members. Where appropriate, the Child Protection Social Worker will ensure mental health and medical assessments are completed as part of the overall assessment. The Child Protection Social Worker will follow up with Victim Services to provide additional information if appropriate.
6.0 Department of Environment, Labour and Justice

6.1 Introduction

The Department of Environment, Labour and Justice contributes to the protection of society by providing leadership in the areas of legal and court services; law enforcement; public safety; crime prevention; and the delivery of community-based services and correctional programs, services and interventions to assist victims of crime, adult offenders and young persons as defined under the Youth Criminal Justice Act.

The following protocols emphasize a multidisciplinary approach by all professionals responsible for the investigation, prosecution, delivery, and coordination of services to sexually abused children and offenders.

Protocols for all professionals have been established and reference should be made to the various sections of this document to understand the roles and responsibilities of each profession.

6.2 Duty to Report

6.2.1 Legislative Duty to Report

The Child Protection Act Cap.C-5.1 states:

10. (1) Notwithstanding any other Act, every person who has knowledge, or has reasonable grounds to suspect that a child is in need of protection shall
   (a) without delay, report or cause to be reported the circumstances to the Director, or to a peace officer who shall report the information to the Director; and
   (b) provide to the Director such additional information as is known or available to the person.

Child abuse includes “physical, mental, emotional or sexual exploitation, mistreatment or injury of the child”. The criminal justice system must be involved in all investigations of sexual abuse, physical abuse and serious neglect whenever there are reasonable grounds to believe that a criminal offence has been committed by an offender of sufficient age to be prosecuted.

See Sections 3.0 (Mandatory Reporting) and 4.0 (Definitions) for other relevant information.

6.2.2 Mandatory Reporting of Child Abuse

The Child Protection Act requires mandatory reporting of suspected cases of child abuse to the Director of Child Protection or a peace officer and applies to everyone including criminal justice personnel. Failure of a professional to report a suspicion of child abuse is an offence under the Child Protection Act.
The identity of the person who has made a report to the Director of Child Protection is protected by the Child Protection Act.

The legislation makes it clear that the reporting obligation exists whether the information was acquired through the discharge of professional duties or within a confidential relationship, except for the privilege which attaches to the relationship between solicitor and client. Any professional person who fails to report suspected child abuse, having acquired the information in the discharge of his or her professional responsibilities, commits a summary conviction offence.

Justice personnel may, by virtue of their involvement in the administration of the criminal justice or family court systems, receive information which causes them to suspect that a child has been abused. It is possible that the information obtained includes the identity of the perpetrator. The alleged perpetrator may be a person who is unknown to the employee. However, the suspicion could also involve a colleague, coworker, friend or other associate.

The obligation to report is unrestricted by any pre-condition that the complaint be first reported within the respective departments or agencies, even if the perpetrator is alleged to be an employee of that department or agency.

Justice personnel who have information which causes them to suspect that a child has been abused or otherwise ill-treated must report unless, to their knowledge, a report has already been made concerning the incident. Prior to referral, personnel who report the incident should not attempt to make a subjective determination as to whether or not the allegation is true or false. Mere suspicion is the legal requirement for mandatory reporting.

6.3 Crown Attorney Guidelines

The following protocols have been prepared to assist Crown attorneys in responding to child sexual abuse prosecutions. Careful adherence to these protocols will help to ensure that practices and procedures are consistent and further traumatization to a child victim arising from the criminal justice system is minimized.

It is to be noted that these protocols are written from the perspective of the suspect being an adult. Should the suspect be, or have been, a youth aged twelve to less than eighteen years old at the time of the alleged offence, the provisions of the Youth Criminal Justice Act, S.C. 2002, c.1, will need to be considered. Specific attention must be directed to:

- the rules concerning taking a statement from a suspect young person;
- the applicability of extrajudicial measures;
- the appropriateness of applying for a medical or psychological assessment of the young person;
- the unique release and remand provisions which apply to young persons;
- the accessing, sharing, storing and destruction of young person’s records;
- the provisions concerning the availability of an adult sentence; and,
- the unique sentencing principles, objectives and options which are available to a Youth Criminal Court Judge.
Child sexual abuse cases, because of their complexity, are among the most difficult for our laws and courts to address in both criminal and civil contexts. There are often complex evidentiary, procedural and/or constitutional issues involved in child sexual abuse cases. An appropriate response requires skill and coordination by many professionals. These cases are very stressful for all concerned. Often the greatest challenges arise in intrafamilial cases, where the victim and the alleged offender have social, emotional, and economic ties. They have relationships that continue throughout the legal process and will exist when it is over.

The criminal law plays an important role in our society through the protection of the public and its application may result in the incarceration of offenders. The criminal justice process can also generate significant psychological benefits for victims by providing vindication or affirmation that they are not to blame. This is particularly true in cases of child sexual abuse where the victim must reveal intimate details of sexual activity that have allegedly occurred with a person in a position of trust or authority. The criminal justice system also has an important role in providing access to treatment for sex offenders who may deny their acts until being convicted of an offence.

No one system can by itself “solve” the problem of child sexual abuse. However, the use of the criminal justice system to its fullest extent must be an important part of the overall strategy for dealing with child sexual abuse.

The coordination and use of both social and legal interventions is important to minimize unnecessary interference with, or disruption of, the child victim, to help create a safe environment in which the child can recover, and to provide maximum opportunities for the control and treatment of the offender.

The issue of sexual abuse may also be dealt with as a civil matter in family court. In some cases there are simultaneous investigations or proceedings in relation to both child protection and criminal matters.

The following protocol has been developed to emphasize a multidisciplinary team approach focussing on the roles and responsibilities of Crown attorneys in the investigation and prosecution of child sexual abuse offenders. The multidisciplinary approach, when appropriate, usually commences with the joint interview of the child victim by the police and child protection services.

It is to be noted that in a child protection proceeding, the paramount consideration is the “best interests” of the child and the burden of proof is on a civil law balance of probabilities. Thus, evidence which would be inadmissible in criminal proceedings, may be admissible at a child protection proceeding, if relevant to the child’s “best interests”. As well, this criterion of the best interest of the child should be considered in all decisions relating to child sexual abuse.

These protocols have been developed to assist Crown attorneys to better respond to all situations of child sexual abuse including: intrafamilial, extrafamilial and institutional sexual abuse situations.
6.3.1 Pre-interview Advice

Both the Police and Child Protection Services are responsible for investigating cases of suspected child sexual abuse. Under normal circumstances, the initial interview of the child victim should be conducted jointly by a trained police officer and a trained Child Protection Social Worker. If advice is required pre-interview by a police officer, a Crown attorney should be contacted. If advice is required pre-interview by a Child Protection Social Worker, a Legal Services attorney should be consulted.

6.3.2 Police Duty to Consult

When an investigation is completed, and a determination has been made by the police to lay an Information, the police shall advise Child Protection Services, as soon as practicable, of this action. While it is recognized that the police have the right to lay an Information, the decision as to whether or not to proceed with the charge(s) set out in the Information rests with the Crown attorney as the agent of the Attorney General. Recognizing this relationship, police should, except in exceptional circumstances, review the file with a Crown attorney prior to an Information being sworn.

6.3.3 Criminal and Civil Proceedings - based on the *Criminal Code of Canada*

The Crown Attorney Division of the Department of Environment, Labour and Justice provides the services of Crown attorneys as agents of the Attorney General in the traditional function of prosecuting offences involving children as victims of crime under the *Criminal Code*. The Legal Services Division of the Department of Environment, Labour and Justice provides counsel to represent the Minister of Community Services and Seniors in cases involving protection of children under the *Child Protection Act*. Thus, legal services are provided by the Department for both the criminal and civil aspects of child sexual abuse.

In cases involving child sexual abuse within a family setting, both a criminal prosecution and a child protection proceeding may be taking place at or near the same time, i.e., the prosecution of the alleged offender in the criminal court and the child protection hearing in the family court. When such parallel proceedings have been instituted, the purpose of each hearing is different. The issue in a criminal prosecution is the determination of the guilt of the alleged offender. The focus of the child protection case is the welfare of the child victim.

In the criminal hearing, the accused is presumed innocent until proven guilty and the burden of proof is beyond a reasonable doubt. In the criminal context, the possibility that a disposition could result in a loss of liberty and freedom by incarceration requires that a high standard of proof be applied.

In the child protection hearing, the paramount consideration is the “best interests” of the child and the burden of proof is on a civil law balance of probabilities. Thus, evidence which would be inadmissible in criminal proceedings may be admissible at a child protection hearing, if relevant to the child’s “best interests”.
It is also to be noted that the investigation may also lead to an ex-parte application pursuant to the Victims of Family Violence Act, for an Emergency Protection Order by the victim, a police officer or a victim service worker.

6.3.4 Criminal Proceedings - Pre-charge

6.3.4.1 Police Investigation Package to Crown

Once an investigation is completed by the police, and criminal charges are anticipated, the investigating officer will prepare a fully detailed Crown Information Package to be submitted to the Crown attorney. The package will contain:

• a Crown Sheet
• a summary of the police investigation;
• a copy of the complainant’s statement;
• a copy of all witnesses’ statements;
• a copy of the accused’s statement, if any;
• any drawings, maps or photographs;
• a copy of expert reports;
• a list of any exhibits which will be needed at a trial.

In cases where a child’s statement has been recorded, a copy of the video recording will be provided to the Crown attorney for his or her use in assessing the evidence. If more than one video recorded interview has been conducted, copies of all interviews will be provided. In appropriate cases, a transcript of the interviews will also be provided upon request.

6.3.4.2 Initiating Prosecutions

The police are responsible for investigations, and Crown attorneys, as agents of the Attorney General, have no authority or right to exercise control over investigations. At the prosecution stage, the Crown attorney must evaluate the evidence and decide whether the material gathered during the course of the police investigation meets the Crown test to proceed with charges as set out in the Guide Book of Policies and Procedures for the Conduct of Prosecutions in Prince Edward Island, that being: is there a reasonable likelihood of conviction, and is it in the public interest to proceed with the prosecution.

6.3.4.3 Crown Attorney Duty to Review

The decision as to what evidence is legally admissible, whether the evidence is sufficient to prove a charge and what, if any, Charter matter is involved, are all legal issues requiring a decision by a lawyer. Crown attorneys must scrutinize all charges after they are laid by the police. In this regard, the major role of the Crown attorney is to determine whether a criminal offence is disclosed by the police investigation, whether a sufficient case is made out, and whether a prosecution is justified in the circumstances.
6.3.4.4 Disagreement Over Decision Whether to Proceed

It is the Crown attorney’s role to make the decision as to whether to proceed with a charge after it has been laid. The Crown attorney should consult with the investigating police officer before a final decision is made not to proceed with a charge. If there is strong disagreement with the investigating officer regarding the decision not to proceed, the issue should be resolved through discussion at successively more senior levels on both sides. If a complainant raises strong objection about a decision not to prosecute, the complainant should be advised to discuss the matter with the Crown Attorney in the presence of the investigating police officer and a Victim Services Worker, if appropriate.

In the case of strong disagreement by either the police or a complainant concerning a decision not to prosecute, further consultation will take place with a Senior Crown Attorney or the Director of Crown Attorneys, if the circumstances warrant.

6.3.4.5 Private Prosecutions

Whenever a private prosecution is commenced, the Crown attorney, as the Attorney General’s representative, shall consult with the police to determine what if any investigation they have undertaken or are taking in order to make a determination as to whether to allow the private prosecution to continue, or halt further proceedings.

6.3.4.6 Special Considerations in Charging Decisions Involving Children

In prosecutions of offences involving child victims, an assessment of a child’s ability to testify in a court of law will have to be made. By virtue of the dynamics of child abuse, the offence will most often take place in circumstances where there are no other independent witnesses and the child’s evidence may be the only means of proof.

At the pre-charging advice stage, the Crown attorney will need to rely on the advice of police and child protection investigators as to the child’s ability to give his or her version of events. Where a video recorded statement of the initial interview with the child is available, the viewing of the video record will be a helpful indicator of the weight and quality of the evidence. The Crown attorney may, in exceptional circumstances, need to conduct a personal interview with the child victim before advice can be provided to the police. If so, a police officer involved in the initial interview of the child should be in attendance, together with a Victim Services Worker, if appropriate.

The quality of the child’s evidence will depend on many factors including:
- the ability to testify on oath, solemn affirmation or promise to tell the truth;
- the ability to recall the details of the abuse and the surrounding circumstances;
- the ability to recall dates, times and places;
- the consistency of the child’s version of events, if repeated;
- the quality of the initial interview including the presence of prompting, coaching, inducements, pressure to disclose abuse, or the use of leading questions by the interviewer, and the presence of emotional and/or family support for the child victim.
It must be remembered that, in assessing the credibility of a child witness, the Supreme Court of Canada has clearly articulated that the standard of a reasonable adult is not necessarily appropriate when considering the issue of credibility in the context of a child witness.

6.3.5 Criminal Proceedings - Post-charge

6.3.5.1 Accused’s Detention Pending Trial

In cases where the police have detained the accused, the Crown attorney will need to determine if a “show cause” hearing is appropriate. Prior to conducting a show cause hearing, the Crown shall review the Show Cause Information Sheet, to ensure that he/she is in possession of all available relevant evidence to enable the Court to make an informed decision on the issue of the accused’s detention or release with appropriate conditions.

The detention of an accused in custody pending his/her trial is justified only on one or more of the following grounds:

- on the primary ground that, the detention is necessary to ensure his attendance in Court;
- on the secondary ground that, the detention is necessary for the protection or safety of the public having regard to all the circumstances including any substantial likelihood that the accused will, if he is released from custody, commit a criminal offence or interfere with the administration of justice.
- on the tertiary ground that, the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances.

If the accused is remanded into custody or the hearing is adjourned, the Crown attorney will need to determine if it would be appropriate to seek an order that the accused refrain from communicating directly or indirectly, with any victim, witness or other person identified in the order, except in accordance with any conditions specified in the order that the justice considers necessary.

In cases where the Crown Attorney determines that a remand into custody is not appropriate, the Crown attorney, in most cases, will agree to the release of the accused with appropriate no contact conditions requiring the accused to refrain from any contact or association with the child victim at his or her place of residence, employment and/or educational institution. A violation of this release condition should weigh heavily on the Crown’s determination as to whether to consent to the release of an accused if she/he is arrested prior to the matter being dealt with.

If there is an application to vary a condition of a police officer undertaking, the police, Victim Services, if appropriate, and the victim (and/or her/his parent/guardian) shall be consulted.
6.3.5.2 Summary Conviction or Indictable Procedure

Although a peace officer has the right to lay an Information, unless the *Criminal Code* provides otherwise, it is the Crown attorney’s responsibility to determine if the charge will proceed by summary conviction or by indictment. If the matter proceeds by indictment, the offender will then have the option to determine if she/he wishes to be tried by a Provincial Court Judge, a Supreme Court Judge without a jury or, a Supreme Court Judge with a jury. If either of the latter two options are chosen, the accused has the right to a preliminary inquiry. The Crown attorney must consider the best interest of the child victim in determining how the matter ought to proceed and as to whether the Crown’s right to have a preliminary inquiry should be waived.

6.3.5.3 Obtaining a Court Date

The Crown attorney will make every effort to obtain an early court date in order to alleviate as much stress on the child victim as possible, bearing in mind that a Victim Services Worker and/or the Crown attorney may wish to meet with the child prior to the court date.

6.3.5.4 Pre-Trial Preparation of a Child Witness

Prior to the child’s first court appearance, the Crown attorney, when practicable, will meet with the child to prepare the child to testify. Preparation of the child is necessary to ensure the quality of the oral evidence and to allay some of the child’s fears. The importance of pre-trial preparation is apparent when it is considered that the child may be the main witness and that most often there is no other corroborative evidence and it will be the first time the child has been to a courthouse.

- At times, these child witnesses have been overtly threatened with harm and are afraid of being hurt by the accused. Some have parents or caregivers who are not only failing to support the child, but are actively supporting the accused.

- Some children require substantial pre-trial therapy simply to overcome the traumatizing effects of fear, guilt and/or humiliation before they are able to testify.

- For some child witnesses, testifying may be a positive, empowering experience which can benefit them throughout their lives. The benefit is seen to be obtained through the public vindication inherent in the criminal justice process which lifts the burden of responsibility from the shoulders of the victim.

- Referral should be made to Victim Services to provide the child with the necessary pre-trial support. Community referrals may also be appropriate.

6.3.5.5 Victim/Witness Guidelines

Crown attorneys should, where practicable, interview all Crown witnesses prior to court hearings. Crown attorneys should ensure, to the greatest extent possible and when appropriate, utilizing Victim
Services, that victims and witnesses are kept informed of the status of the case. This includes advising them of the disposition of the case.

Crown attorneys should ensure:
- the victim’s concerns regarding the accused’s release pending trial or pending sentence are communicated to the Court;
- the victim’s concerns are ascertained and where appropriate are communicated to the Court through the use of a victim impact statement at the time of sentencing;
- the language needs of the victim, the victim’s family, and witnesses are communicated to a clerk of the court where the matter is to be heard, in order that appropriate arrangements may be made to respond to the language needs.

Specific protocols have been adopted for witnesses who have been victims of sexual assault, which include child witnesses:

- In all cases involving sexual assault, when a victim is required to testify at a trial, the Crown attorney should inquire as to whether a referral has been made to Victim Services.
- If a guilty plea is entered, when appropriate, the victim of sexual assault will be referred to a Victim Services Worker for the purpose of emotional support and the preparation of a victim impact statement at the sentencing stage, if not already referred.
- The Crown attorney will ensure that another appropriate adult is always present when a child witness is spoken to.

**6.3.5.6 Disclosure**

Crown attorneys have a duty to make timely disclosure, upon request, of all relevant information in their possession to the accused or counsel for the accused. Full disclosure is subject to the discretion of the Crown to withhold irrelevant or privileged information. Police must ensure that material that they believe ought not to be disclosed is appropriately brought to the attention of the Crown, particularly information which relates to *Personal Information Records* as defined in the *Criminal Code*.

There is no duty on Crown attorneys to provide to the defence, information not in the possession of the Crown or the police unless ordered to do so.

As part of disclosure requirements, the accused will be given an opportunity to view a copy of any video recorded interview of the child. No copy will be provided to be retained by the accused or defence counsel except by order of the court after an application is made by defence counsel or the defence counsel enters into an appropriate undertaking preventing the interview from passing into the possession of the accused.
6.3.5.7 Guidelines for Testimony of Children

A Crown Attorney shall make an application at the first available opportunity for an order directing that the identity of the complainant or any information that could disclose the identity of the complainant not be published in any document or broadcast in any way.

A Crown attorney will in every case examine as a first and most desirable option, the appropriateness of calling a child complainant to testify viva voce or live before the Court, without any protective aids or devices. However, if deemed appropriate, the Crown attorney will make an application to have a child witness testify outside the courtroom or behind a screen or other device.

A Crown attorney shall consider whether it is appropriate to make an application that the accused not personally cross examine a child witness and have the judge or justice appoint counsel to conduct the cross examination of a child witness.

A Crown attorney shall consider whether it is appropriate to make an application for an Order that a support person of the witness’ choice be permitted to be present and to be close to the witness while the witness testifies.

A Crown Attorney shall consider whether it is appropriate to make an application for the exclusion of all or any members of the public from the court room for all or part of the proceedings.

6.3.6 Sentencing

6.3.6.1 Pre-sentence Report

If a guilty plea is entered or there is a finding of guilt after a trial, the Crown attorney shall consider whether to recommend that a pre-sentence report be prepared for the consideration of the court as to the appropriate disposition. This would include exploring whether the accused would be agreeable to undergo a sexual deviancy evaluation.

6.3.6.2 Victim Impact Statement

The Crown attorney should ensure that the victim(s), was/were advised that a Victim Impact Statement could be submitted to the court describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

6.3.6.3 Factors to Consider

Recommendations for sentencing should include the following factors:

• the need for accountability;
• the seriousness of the offence;
• the criminal record of the offender;
• the desirability of deterring others;
the offender abused a person under the age of 18;
the previous sentences imposed by the courts for similar offences;
the offender in committing the offence abused a position of trust or authority in relation to the victim;
the effect of the offence on the child and the family;
the utility of a jail sentence;
the utility of long-term and supervised probation;
the possibility of a specific order for mandatory treatment;
the offender’s motivation for treatment.

In intrafamilial sexual abuse cases, these additional factors should be considered:
the safety of the child and the likelihood of reoccurrence;
the effect of the sentence on the rehabilitation of the family;
the emotional and psychological relationship between the offender and the victim;
the willingness of the offender to accept total responsibility for his actions.

6.3.6.4 Orders

At sentencing, the Crown attorney shall determine whether the following orders, pursuant to the relevant provisions of the Criminal Code, should be sought:
• a probation order
• a firearm prohibition
• a SOIRA order
• a DNA order
• a non-communication order with named individuals while a sentence of custody within an institution is being served
• a compensation order
• an order prohibiting the offender from:
  (a) attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, school ground, playground or community centre;
  (b) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years; or
  (c) using a computer system within the meaning of subsection 342.1(2) for the purpose of communicating with a person under the age of 16 years.

6.3.7  Counselling

In all cases of child abuse, Crown attorneys are encouraged to refer the victim and/or family members to Victim Services to assist them in obtaining counselling services.
6.3.8 Compensation for Victims of Crime

In all cases of child abuse, Crown attorneys should inform the victim and/or the parent/guardian of the existence and purpose of the *Victims of Crime Criminal Injuries Compensation Program* and to refer the victim and/or guardian to Victim Services for the purpose of an application.

6.3.9 Further References

Although this section represents a protocol for provincial Crown attorneys involved with child sexual assault prosecutions, reference should be made to the *Guide Book of Policies and Procedures for the Conduct of Prosecutions in Prince Edward Island*, for a more detailed overview of the role of the Crown attorney and the policies in place for all provincial prosecutions within the province.

6.4 Court Process in Cases Involving a Child Victim or Witness

6.4.1 Exclusion of the Public

The *Criminal Code* provides that proceedings against an accused must be held in open court. An exception may be made when the court is of the opinion that “in the interest of public morals, the maintenance of order or the proper administration of justice”, the public should be excluded for all or part of the proceedings. Due to the sensitivity of child sexual abuse cases, the public may be excluded from that portion of the trial or hearing that involves the testimony of the child witness.

6.4.2 Ban on Publication

In the prosecution of a sexual offence, the judge may make an order directing that the identity of the complainant or a witness, and any information that could disclose the identity of the complainant or witness not be published in any document or broadcast in any way.

The presiding judge is required under the *Criminal Code* to inform any witness under the age of eighteen of the right to such an order.

6.4.3 Self-represented Accused

The *Criminal Code* states that a judge shall, upon application of the Crown or witness, appoint counsel to conduct the cross-examination of witnesses under the age of 18 years in any proceedings in which the accused is self-represented, unless the judge is of the opinion that this would interfere with the proper administration of justice.

6.4.4 Video Recorded Evidence

The *Criminal Code* states that the video recorded evidence of a victim or witness who was under the age of 18 years at the time of the alleged offence is admissible in any proceedings if the video is made within a reasonable time after the alleged offence and the victim or witness adopts the contents of the video at trial,
unless the judge is of the opinion that admission of the video recording would interfere with the proper administration of justice.

6.4.5 Testimony of Children

The Criminal Code permits children under the age of 18 to testify with the assistance of testimonial aids which include:

- being accompanied by a support person;
- by means of video recording,
- by closed circuit television in a room outside the courtroom; or
- behind a screen in the courtroom;

unless the judge is of the opinion that the testimonial aid(s) would interfere with the proper administration of justice.

6.5 Community and Correctional Services

The mandate of the Community and Correctional Services Division is to enhance public safety by contributing to the rehabilitation of youth and adult offenders, and providing services to victims of crime. The Division provides community and custody programs, as well as support services to the courts and victims of crime. It also contributes to new initiatives involving victim issues, crime prevention, public education, research, policy and program development. The Division includes four Sections: Community Programs, Custody Programs, Victim Services and Clinical Services.

6.5.1 Victim Services

Victim Services provides a client-centred service for victims of crime, assisting clients throughout their involvement with the criminal justice process.

The services are free and confidential, and can be accessed whether the police have been contacted or not. Victims can be referred even if no charges are laid.

Support is offered through the investigation stage, court process, and following sentencing where there may be ongoing involvement with the corrections system (eg. probation, parole).

Services include:

- information about the status of the case and the criminal justice system;
- short term counselling and emotional support;
- court preparation and accompaniment for victims and other witnesses;
- help in preparing a victim impact statement;
- assistance under the Victims of Family Violence Act;
- risk assessment and safety planning;
- assistance with applications for Criminal Injury Compensation;
- information to help recover financial losses;
- assistance to register for information on incarcerated offenders (ie. release dates, date and outcome of parole hearing, attendance at hearings);
referrals to other support services.

The following protocols specifically address the delivery of services to victims of child sexual abuse and their families who may become involved in the criminal justice system:

**6.5.1.1 Intake/Case Assessment**

In cases of child sexual abuse, where a referral has been received by Victim Services, the Victim Services Worker will establish contact with the child and/or parent/guardian or person responsible for the child’s care, informing of available services and determining the level of assistance required.

When interviewing a victim of child sexual abuse and the parent/guardian, the Victim Services Worker will:

- explain the services available through Victim Services, as well as other services available in their local area;
- where appropriate and with the parent/guardian’s consent, interview the child alone;
- determine what services are required, discuss with and obtain parent/guardian consent;
- where appropriate, provide information to the child and/or parent/guardian on the effects of child sexual abuse and address the need for emotional support of the child throughout the criminal justice process;
- with the parent/guardian’s consent, make referrals for services to community agencies as appropriate;
- liaise with police and the Crown attorney, where appropriate, to keep the victim and parent/guardian informed on the status of the investigation and the status of any court processes;
- in cases of a youth victim (ages fifteen to seventeen), sharing of information will occur with the victim and/or the parent/guardian. Youth victims are encouraged to involve their parent/guardian but discretion is exercised to ensure respect for the youth’s privacy. In cases where the youth does not wish to have parental involvement, the worker will consult with the Manager prior to providing service.

**6.5.1.2 Court Support and Court Preparation**

The role of the Victim Services Worker in offering court support and court preparation is to:

- provide information concerning court procedures and the rights and responsibilities of complainants and witnesses who are compelled to testify in criminal proceedings;
- help alleviate fear through the provision of support;
- promote a safe environment throughout the court process.
In cases where the child is compelled to testify in criminal proceedings, the Victim Services Worker will:

- arrange to meet with the child and the parent/guardian prior to the first court appearance to determine the level of direct involvement required to assist the child’s participation in the process;
- respond to specific questions of the child and the parent/guardian;
- provide relevant information concerning the child’s rights, responsibilities and role as a court witness;
- utilizing child specific resource materials, explain the court process, role and responsibilities of court officials and familiarize the child with court room surroundings;
- liaise with the Crown attorney’s office and identify any special needs or circumstances of the child prior to or during the court proceedings;
- liaise with the Crown attorney’s office and/or Court Services to arrange for any testimonial aids identified for consideration;
- when the presence of a support person has been approved by the Court, inform the support person of his/her role, responsibilities and limitations in accordance with the Criminal Code;
- ensure that the child is accompanied during court proceedings;
- advise the parent/guardian and the child of the outcome of the court proceedings, including any court imposed conditions which may be applicable to the child’s safety, and responsibility with respect to any perceived violations (ie. breach of no contact order).

6.5.1.3 Victim Impact Statement Program

Victim Services is designated by Lieutenant Governor in Council as the program responsible for assisting victims to prepare and file a victim impact statement. A victim impact statement describes the harm done to, and/or loss suffered by, the victim of a criminal offence. If the child victim is incapable of making a statement, the parent/guardian or person responsible for the care or support of the child may prepare the statement on behalf of the child. In addition, in appropriate cases, the parent/guardian or person responsible for the care of the child may also make a victim impact statement as a secondary victim. The Court considers the statement after a finding of guilt and when determining the sentence of the offender.

Providing a victim impact statement is voluntary. However, once filed with the court, the victim impact statement becomes a matter of record and the author may be called upon to defend the content. A victim has the right to read the statement aloud in court.

A victim impact statement may also be considered at a Criminal Code Review Board Hearing for a person found not criminally responsible, as well as hearings of the Parole Board of Canada. Victim Impact Statements must be submitted in writing, and the victim has the right to appear in person to present the statement orally. Victim Services Workers will assist the victim and/or parent/guardian to file victim impact statements for consideration at scheduled hearings.
6.5.1.4 Sentencing Follow-up

The Victim Services Worker will:

- provide debriefing services to the child and/or the parent/guardian following any Court proceeding;
- advise the child and/or parent/guardian of the outcome of the sentencing hearing;
- in cases where an adult offender/young person is sentenced to a period of incarceration in a Provincial facility, forward a copy of the victim impact statement to the appropriate correctional facility;
- in cases where the adult offender/young person is sentenced to a period of incarceration prior to community supervision, provide input to the inmate visiting and telephone list for the purpose of ensuring that information is shared regarding any safety, security or legal obligations prohibiting contact with any specific individual.
- provide information to the victim and/or parent/guardian on how to register with the Parole Board of Canada, Correctional Services Canada or a Provincial Correctional Facility for information on the status of the offender, pending review dates, release dates and release conditions;
- where applicable, provide information on hearings of the Criminal Code Review Board and the Parole Board of Canada, along with subsequent hearing outcomes;
- Financial assistance from Justice Canada is available to attend hearings of the Parole Board of Canada. Information and assistance in applying for the Federal funding to attend these hearings is available from Victim Services.

6.5.1.5 Criminal Injuries Compensation

Criminal injuries compensation is the payment of money from public funds to compensate victims of crime for pain and suffering, and expenses resulting from injury or death caused by certain crimes.

A claim for criminal injuries compensation may arise in the event of injury or death by an act that occurred in Prince Edward Island, and that injury or death must have directly resulted from the commission of a criminal offence prescribed in the regulations under the Victims of Crime Act. The applicant need not be a resident of Prince Edward Island.

The term “injury” is specifically defined in the Victims of Crime Act to mean actual bodily harm, including emotional trauma or pregnancy resulting from sexual assault, and mental or nervous shock. It is not necessary that anyone be prosecuted or convicted for the crime, but an award may be delayed pending the outcome of the criminal process.

In addition to pain and suffering awards, examples of eligible expenses could include medical costs, dental expenses, lost wages, counselling costs, funeral costs in the case of a death, and support for a child born of a sexual assault.

Under the Victims of Crime Act, Victim Services is responsible for investigating claims for criminal injuries compensation. Victim Services staff also assist victims with preparing their applications and
gathering information to support their claims. Victim Services staff prepare a case analysis regarding each claim, and submit the documentation to the Legal Services Division for adjudication.

6.5.1.6 Assistance Under the Victims of Family Violence Act

The Victims of Family Violence Act is a provincial law which can provide immediate protection for victims of family violence. The Act includes provisions for Emergency Protection Orders which can remain in effect for up to 90 days, and Victim Assistance Orders which are a longer term remedy for non-emergency situations. Where a child is identified in an Emergency Protection Order or a Victim Assistance Order, the Registrar provides a copy to the Director of Child Protection.

Orders under the Victims of Family Violence Act provide a number of options, any of which can be ordered depending on the needs in each situation. Some of these options include: granting the victim or other family members exclusive occupation of the family home; removing an abusive person from the residence; awarding temporary custody of children from the relationship; having police assist with removal of personal belongings; restraining the abusive person from contacting the victim; granting possession of certain personal property; and restraining the abusive person from committing any further acts of family violence.

Situations of child sexual abuse within a family context could be eligible for assistance under the Victims of Family Violence Act.

Police officers and Victim Services Workers are designated under the act to make application for Emergency Protection Orders. Victim Services Workers can also assist with risk assessment and safety planning, and referrals for legal assistance.

6.5.2 Community Programs - Probation Services and Youth Justice Services

The Community Services Section is responsible for the planning, administration and delivery of the following community-based correctional programs and services:

- Adult Probation Services; and,
- Youth Justice Services:
  - The Alternative Residential Placement;
  - Community Youth Worker Program;
  - Youth Probation Services; and,
  - Youth Intervention Outreach Program

The Community Programs section is also involved in considering and developing alternatives to traditional justice approaches and assisting in community/public education, crime prevention and early intervention initiatives.

Adult Probation Services

Probation Services delivers the following province-wide, community-based correctional programs and services to clients and the adult criminal court:
• Supervision and enforcement of adult probation orders and conditional sentence orders.
• Case management based on a client’s assessed needs and specific requirements of the case (e.g., court orders), which may include referral to a variety of community-based services, including individual or group treatment/education programs, for example, alcohol and/or drug treatment programs; education programs; mental health services; anger management programs; life skills and employment preparation programs; parenting programs; the Turning Point Program; the Sexual Deviancy Assessment and Treatment Program; and a variety of other programs or services that address presenting problems and support the needs of a particular client and the conditions/requirements of his/her sentence or disposition.
• Investigation and preparation of pre-sentence reports.
• The development and management of alternative measures agreements for adult cases referred through Crown attorneys.
• Processing and management of adult cases under the provincial Fine Option Program.
• Ensuring appropriate action and follow-up in cases of default or non-compliance with court orders and/or alternative measures agreements.

Youth Justice Services
Youth Justice Services delivers the following province-wide community-based correctional programs and services for young people and the youth criminal justice courts:

Youth Justice Workers
Youth Justice Workers or youth probation officers provide case management and supervision to young persons and enforce court orders:
• Supervision and enforcement of youth probation orders;
• Case management based on a client’s assessed needs and specific requirements of the case (e.g., court orders), which may include referral to a variety of community-based services, for example, alcohol and/or drug treatment programs; education programs; mental health services; anger management programs; life skills and employment preparation programs; parenting programs; the Sexual Deviancy Assessment and Treatment Program; and a variety of other programs or services that address presenting problems; support the needs of a particular client and the conditions/requirements of his/her sentence or disposition;
• Investigation and preparation of pre-sentence and progress reports;
• The development and management of alternative measures agreements for youth cases referred through Crown attorneys;
• Supervision and management of deferred custody and supervision orders, and the community portion of custody and community supervision orders;
• Processing and management of youth cases under the Fine Option Program.

Youth Intervention Outreach Workers
Youth Intervention Outreach Workers provide a community-based intervention service by working directly with police agencies to assist with youth and family problems where the police have identified youth criminal behaviour or behaviour that places them at risk for potential conflict with the law.
Services can include one-on-one sessions with youth; group programming; and mediation and navigation/advocacy with other youth-serving agencies. The youth or parent, or both, can also be referred to other services, such as mental health and addictions. This is considered a proactive early intervention strategy. Referrals come from the police. Five positions are co-located within municipal police services in Charlottetown and Summerside, and with the RCMP in Queens County, Kings County and West Prince.

**Community Youth Workers**
Community Youth Workers provide consultation, case management and liaison support to Youth Justice Workers, other agencies and community organizations. Their primary role is to augment community supervision to high risk (mandated) youth and their families though one-to-one support and intervention. In addition, they initiate and facilitate preventative programs for youth and their families within schools and their communities. Community Youth Workers maintain Alternative Residential Placements and support the youth within these homes. They are actively involved in sustainable community development initiatives designed for youth at risk. Community Youth Workers are located in Montague/Souris, Charlottetown, Summerside and Alberton.

**Alternative Residential Placement (ARP) Program**
The ARP program consists of financial resources to contract with private homes across the province to provide residential resources for high risk/high need youth in need of safe, structured residential care outside, or as a complement to, their natural homes.

**Protocols - Probation Services and Youth Justice Services**
The following protocols relate to the delivery of community based correctional programs and services, including cases involving child sexual abuse:

**6.5.2.1 Pre-sentence Reports**
Probation Officers/Youth Justice Workers provide support to the court as requested to prepare background information on the accused person at the sentencing stage of Court proceedings.

When preparing Pre-sentence Reports, the Probation Officer/Youth Justice Worker will:
- Provide the court with information concerning treatment programs and the adult offender/young person’s motivation and willingness to participate;
- Consult with Victim Services to determine if a Victim Impact Statement has been/is being prepared and whether the victim and/or non-offending parent/guardian is agreeable to being interviewed by the Probation Officer/Youth Justice Worker;
- If applicable, appropriate and reasonably possible, the Probation Officer shall interview the victim(s) for the preparation of the Pre-sentence Report. In determining whether or not to contact a victim, the Probation Officer shall take into account:
  i) the nature of the offence;
  ii) the age, mental health, and physical well-being of the victim;
  iii) the willingness of the victim to be interviewed;
  iv) the input of Victim Services, where appropriate;
  v) the Victim Impact Statement and/or crown brief;
vi) the date on which the Victim Impact Statement was completed; and,

vii) any other relevant information.

- In cases where the Probation Officer/Youth Justice Worker determines that an interview with a child or youth victim is applicable and appropriate, the parent or guardian may accompany the child or youth.
- Ensure that the victim is made aware of the services provided by Victim Services and provide the victim with the phone number and address of the appropriate Victim Services office.

### 6.5.2.2 Post-sentence Supervision Considerations

Once a sentence has been imposed by the court, an adult offender/young person may be released to the community under the supervision of a Probation Officer/Youth Justice Worker through the imposition of various Court Orders, including:

- Probation Order (applies to both adult offenders and young person);
- Conditional Sentence Order (applies to adult offenders);
- Conditional Supervision Order (applies to young persons);
- Conditional Discharge Order (applies to young persons);
- Deferred Custody and Supervision Order (applies to young persons)

When an adult offender/young person convicted of child sexual abuse is released to the community under any of the above listed Court Orders (with a reporting condition), the Probation Officer/Youth Justice Worker will:

- Develop a case plan, based on the information gathered from all collateral sources and the assessment results of the Level of Service Inventory (LSI-R and/or YLS/CMI) and any other approved assessment tool;
- Apply the principles of STICS (Strategic Training in Community Supervision) which is based on a Risk/Need/Responsivity model to rehabilitation;
- Develop a reporting schedule with the adult offender/young person;
- During the initial meeting and periodically thereafter, review with the adult offender/young person the conditions of the Order emphasizing specific conditions restricting contact with the victim (where applicable) and the implications of violating the Order;
- Where a condition is included in the Order which has direct implications for the victim, provide written correspondence to victims. The correspondence shall include:
  i) Information regarding the terms and conditions which have direct implications for the victim of the supervision order. In the case of an adult offender, this may include a copy of the order of supervision;
  ii) The name, address and telephone number of the assigned Probation Officer/Youth Justice Worker for contact purposes.
• If there are reasonable grounds to believe that an offender poses a threat to a victim or his/her family, prompt notice is to be given to the victim or an appropriate law enforcement agency of any information that could be relevant to the safety or security of the victim and/or his or her family.

• Where there is a treatment condition, refer the adult offender/young person for assessment and admission into the appropriate treatment program. Appropriate consent forms are to be completed prior to referral;

• Ensure that the adult offender/young person is attending program sessions as required;

• As part of the case management process and where appropriate, the Probation Officer/Youth Justice Worker will provide guidance on how/where to access available community resources which offer family support/counselling services;

• In cases where the supervision follows a period of custody, information concerning behaviour and programs attended in custody will be obtained from the releasing facility;

• In cases where the adult offender/young person is sentenced to a period of custody prior to community supervision, provide input to the inmate/resident visiting and telephone list for the purpose of ensuring that information is shared regarding any safety, security or legal obligations prohibiting contact with any specific individual.

6.5.2.3 Failure to Comply

• In cases where an adult offender/young person who is under supervised Probation or a Conditional Discharge Order fails to comply with conditions of the Order, the Probation Officer/Youth Justice Worker may pursue possible breach charges, which may include consultation with the Crown attorney and/or may refer the matter to police for investigation, where appropriate;

• In the case of a Conditional Sentence Order, if the victim advises of contact by the adult offender (where such restriction exists), the Probation Officer shall take appropriate action in accordance with legal authority and departmental policy;

• In cases where a young person is under a Conditional Supervision Order, Deferred Custody and Supervision Order, Custody and Supervision Order (community portion), and the victim advises of contact by the young person where such restriction exist, the Youth Justice Worker will take appropriate action in accordance with the provisions of the Youth Criminal Justice Act and departmental policy.

6.5.3 Adult and Youth Custody Programs
The Custody Programs section is responsible for the planning, administration and delivery of correctional programs for adult and young offenders in three custodial facilities across the province. There are two adult facilities: Provincial Correctional Centre in Charlottetown and Prince Correctional Centre in Summerside. The PEI Youth Centre in Summerside (secure and open custody) is responsible for young offenders.

Program staff are responsible to provide intake; assessment; case management; security; rehabilitative programming and discharge planning for adult and young offenders serving custody sentences/dispositions; and police lock-ups, remands and other places of security by means of provincial or federal legislation and/or agreements. Internal programs include: academic, workshop, addictions, life skills, employment preparation, anger management, community service, family awareness programs and recreation.

### 6.5.3.1 Admission Procedures

Upon admission of an offender to a custody facility, the Admission Officer shall:

- Determine, where possible, the nature of the offence;
- Upon determination that the offence or alleged offence involves child sexual abuse, advise the Shift Supervisor of the circumstances so that any safety or compatibility issues within the institution can be addressed;
- Determine the relationship between the offender and the victim or alleged victim to ensure that appropriate precautions are taken to protect the child victim;
- Under no circumstances will offenders be permitted visits or telephone calls until the offender visitation and phone list has been verified with Probation Services and Victim Services, (with the exception of contact with an Attorney, Clergy, Probation or Parole Officer). Before approval, there shall be consideration to determine if there are safety, security, or legal obligations prohibiting contact with any specific individuals.
- Victims may make application for specific information related to an offender by completing a Victim Notification Request Form. The victim liaison of the institution or designate is responsible for contact with the Victim Services Worker or with the victim directly, and shall provide all relevant information in respect of the Victim Notification.

### 6.5.3.2 Temporary Absence Program

- The Temporary Absence Program allows for the escorted or unescorted temporary absence of offenders from a place of incarceration for medical, humanitarian, rehabilitative or employment reasons.
- Upon receipt of an application for the Temporary Absence Program, it is mandatory that contact be made by the Correctional Centre staff to applicable community contacts that may include: Probation Officers, Police Agencies, Parole Officers, family members or significant others, employers, Victim Services or any other sources of information that are seen as necessary for proper decision making.
- Any safety concerns or contact restrictions related to the victim will be considered as part of the decision making process, and included in the Temporary Absence certificate where applicable.
Prior to the approval of any unescorted leave, the terms and conditions of the leave which have direct implications for the victim shall be discussed with the victim by the victim liaison of the institution or a victim services worker, and the victims opinion regarding the leave shall be considered.

6.5.3.3 Offenders Escaping Custody or Posing a Threat

- When an offender escapes custody or is unlawfully-at-large, the Manager of the correctional facility or designate will immediately inform the Police and may request that the police advise the victim/parent/guardian.
- If there are reasonable grounds to believe that an offender poses a threat to a victim or his/her family, prompt notice is to be given to the victim or an appropriate law enforcement agency of any information that could be relevant to the safety or security of the victim and/or his or her family.

6.5.4 Clinical Services

The Clinical Services team is a provincial resource which provides assessment and treatment to offenders and high risk community members. The target populations serviced are high risk adults and youth involved in the justice system. Referrals for assessment are also accepted from other agencies, as are direct self-referrals for certain programs.

Programs assist, support, and treat individuals experiencing significant personal difficulties associated with criminal court interventions and behaviour associated with the presentation of high risk behaviour to self or others. The team also provides training, consultation, and case management support.

6.5.4.1 Programs and Services

The following programs and services are offered by the Clinical Services Team:

1. Assessment in the areas of:
   - sexual deviance;
   - intimate/domestic violence;
   - risk assessment;
   - family therapy; and
   - anger management.

2. Individual treatment in the areas of:
   - sexual deviance;
   - intimate/domestic violence;
   - anger management;
   - aboriginal issues casework;
   - motivational counselling; and
   - supportive counselling.

3. Group treatment programs, including:
   - male and female anger management;
• Turning Point Programs (domestic violence intervention);
• sexual deviance treatment;
• family therapy; and
• relapse prevention for adults who have committed a sexual offense.

6.5.4.2 Intake/Case Assessment

In cases of child sexual abuse, where a referral for the offender has been received by the Sexual Deviancy Program, the following information will be considered:
• the purpose of the referral (ie. assessment, treatment, follow-up);
• nature of the deviant sexual behaviour;
• contributing factors;
• what, if any, charges will be laid;
• status of court proceedings, court dates pending, sentence received, conditions of community supervision;
• any relevant information including agreed statement of facts, Pre-sentence Report, offender statement, victim’s statement, report of investigating officer, Child and Family Services Investigation Report, Victim Impact Statement, other assessments.

6.5.4.3 Offender Posing a Threat

If there are reasonable grounds to believe that an offender poses a threat to a victim or his/her family, prompt notice is to be given to the victim or an appropriate law enforcement agency of any information that could be relevant to the safety or security of the victim and/or his or her family.
7.0 Education and Early Childhood System Protocols

(Province of Education and Early Childhood Development, Provincial School System, Early Childhood Education Programs, John J. Sark Memorial School, Private Schools and Post Secondary Institutions)

7.1 Introduction

Schools and Early Childhood Education Programs play a significant role in the lives of children and their families. Often the school/program is seen by the child as a safe place, and in turn, the teachers/educators and staff are the adults a child may trust to disclose that sexual abuse may have occurred. School/program personnel can then play an essential role in protecting children and provide for their safety and well-being.

Protocols for other professionals who may respond in cases of child sexual abuse have been established and reference should be made to the various sections of this document to understand the roles and responsibilities of each profession.

7.2 Duty to Report

7.2.1 Legislative Duty to Report

Should a child disclose, or a staff person suspect, that child sexual abuse may have occurred, a legal obligation to report exists. Specifically:

Section 10. (1) of the Prince Edward Island Child Protection Act Cap.C-5.1 states:

"Notwithstanding any other Act, every person who has knowledge, or has reasonable grounds to suspect that a child is in need of protection shall
(a) without delay, report or cause to be reported the circumstances to the Director, or to a peace officer who shall report the information to the Director; and
(b) provide to the Director such additional information as is known or available to the person".

The identity of the person who has made a report to the Director of Child Protection is protected by the Child Protection Act.

The following sections of the School Act also apply:

77. (4) No person shall knowingly disclose to any person any information from a student record that identifies a student, unless the disclosure complies with the regulations and is...
(e) made to the Director of Child Protection for the purposes of an investigation under the
Child Protection Act R.S.P.E.I. 1988, Cap. C-5.1;
(f) made to a police or corrections agency;
(g) required by or under an enactment of the province or of Parliament; or
(h) required by a court order.

116. (1) A teacher or other school staff member who has reasonable and probable cause to
suspect that a student has been deserted, abandoned or abused shall forthwith report or cause to
be reported the matter to the Director of Child Protection in accordance with the Child Protection
Act.

(2) Nothing in this Act shall be construed to preclude the disclosure to the Director of Child
Protection or a child care worker of information indicative of child abuse or relevant to a report
of child abuse or to an investigation pursuant to the Child Protection Act 1993, c.35,
s.116;2000(2nd),c.3,s.62; 2010,c.28,s.41.

See Sections 3.0 (Mandatory Reporting) and 4.0 (Definitions) for other relevant information.

7.2.2 Mandatory Reporting of Child Sexual Abuse

The Child Protection Act requires mandatory reporting of suspected cases of child sexual abuse to
the Director of Child Protection or a peace officer and applies to everyone including school/program
personnel. Failure to report a suspicion of child abuse is an offence under the Child Protection Act.
The identity of the person who has made a report to the Director of Child Protection is protected by
the Child Protection Act.

The legislation makes it clear that the reporting obligation exists whether the information was
acquired through the discharge of professional duties or within a confidential relationship, except for
the privilege which attaches to the relationship between solicitor and client. Any professional person
who fails to report suspected child abuse, having acquired the information in the discharge of his or
her professional responsibilities, commits a summary conviction offence.

School/program personnel may, in the course of delivering services, receive information which
causes them to suspect that a child has been sexually abused. It is possible that the information
obtained includes the identity of the perpetrator. The alleged perpetrator may be a person who is
unknown to the employee. However, the suspicion could also involve a colleague, co-worker, friend
or other associate.
The obligation to report is unrestricted by any pre-condition that the complaint be first reported within the respective departments, services or agencies, even if the perpetrator is alleged to be an employee of that institution, service or agency.

School/program personnel who have information which causes them to suspect that a child has been sexually abused must report. Prior to referral, personnel who report the incident should not attempt to make a subjective determination as to whether or not the allegation is true or false. Mere suspicion is the legal requirement for mandatory reporting.

### 7.3 Possible Indicators of Child Sexual Abuse

Refer to Appendix A1 for reference material regarding possible indicators of child sexual abuse.

### 7.4 What to do When a Disclosure Occurs

All disclosures must be treated in the same way. It is important to remain calm and:

- support the child
- listen openly
- reassure the child, telling was the right thing to do
- document the conversation, using the child's own words
- maintain confidentiality
- report immediately

This can be a very stressful time for the adult to whom the child has disclosed and it is important not to:

- pass judgment
- become angry
- interpret what the child has said
- probe for details or ask leading questions
- interview the child
- assure the child you can make everything ok
7.5 Early Childhood Education Programs - Roles and Responsibilities

The Owner of the Early Childhood Program is responsible to ensure that all personnel have read and understand the "PEI Child Sexual Abuse Protocol" (2013), the Child Protection Manual: *A Protocol for Early Childhood Educators* (ECDA 2009), the *Child Protection Act* Cap.C-5.1 and the mandatory duty to report.

Each Early Childhood Program owner shall have current administrative processes and procedures for handling disclosures or suspicion of child abuse or neglect, and be aware of the "PEI Child Sexual Abuse Protocol" (2013), and the *Child Protection Act* Cap.C-5.1. Please note that this is broader than sexual abuse. Please refer to the Early Childhood Development Associations "Child Protection Manual: *A Protocol for Early Childhood Educators*" (2009).

The Directors are responsible to ensure all staff, including volunteers, are aware of the respective processes and procedures to be followed when a child discloses a possible incident of sexual abuse or this same adult has reason to suspect child sexual abuse may have occurred.

If it is necessary for the Child Protection Social Worker and/or the Police to interview the child at the Center, the Director will ensure a private area for this interview to take place. Any Child Protection Social Worker or Police Officer must show identification to the Director of the Center.

All staff, including volunteers, have the responsibility to report all disclosures or suspicions of child sexual abuse. It is important to note that consultation with any other person does not remove the individuals obligation to make a direct report. The identity of the person who has made a report to the Director of Child Protection is protected by the *Child Protection Act*.

Staff are responsible to keep a written record of the disclosure or suspicion. Should this record be shared with anyone else, such as the Centre Director, both the staff person and the Centre Director should sign the written record. This record will include the details provided by the child, or the reason for the suspicion of child sexual abuse, date of disclosure and date of writing the report, the name and age of the child, parent(s) names, home address of the child and phone number of each parent. Any disclosure, record of the disclosure, or suspicion of child sexual abuse leading to a report being made, must be kept confidential.

Each Early Childhood Program will have an administrative procedure for staff to follow.
7.6 Education System – Roles and Responsibilities

While this section is specific to Public, Private and Band Schools, Universities and Colleges may also have children enrolled. Under a circumstance where a child student attending a post secondary institution discloses that child sexual abuse has occurred, or is suspected, this section would apply. The Superintendent/post secondary lead is responsible to ensure that all board personnel are aware of the "PEI Child Sexual Abuse Protocol" (2013), and the Child Protection Act Cap.C-5.1

Each School Board, or Band will have current administrative processes and procedures for handling disclosures or suspicion of child sexual abuse or neglect. Please note that this is broader than sexual abuse.

The Principals are responsible to ensure all staff, teaching and non-teaching, including volunteers, are aware of the respective processes and procedures to be followed when a child discloses a possible incident of sexual abuse or this same adult has reason to suspect sexual abuse may have occurred.

If it is necessary for the Child Protection Social Worker and/or the Police to interview the student at the school, the Principal will ensure a private area for this interview to take place. Any Child Protection Social Worker or Police Officer must show identification to the school administration.

All staff, teaching and non-teaching, including volunteers, have the responsibility to report all disclosures or suspicions of sexual abuse. It is important to note that consultation with any other person does not remove the individuals obligation to make a direct report. The identity of the person who has made a report to the Director of Child Protection is protected by the Child Protection Act.

Staff are responsible to keep a written record of the disclosure or suspicion. Should this record be shared with anyone else, such as the Principal, both the staff person and the Principal should sign the written record. This record will include the details provided by the child, or the reason for the suspicion of sexual abuse, date of disclosure and date of writing the report, the name and age of the child, parent(s) names, home address of the child and phone number of each parent. Any disclosure, record of the disclosure, or suspicion of sexual abuse leading to a report being made, must be kept confidential.

Each school board or Band will have an administrative procedure for staff to follow.
8.0 Department of Health and Wellness and Health PEI

8.1 Background
The Department of Health and Wellness is managed by a departmental management committee comprised of the Deputy Minister and five senior directors. This group is responsible for providing overall management direction to the department and for overseeing long-term strategic planning.

The role of the department is to:

- provide leadership in maintaining and improving the health and well-being of citizens;
- provide leadership in innovation and continuous improvement and to provide specific high quality administration and regulatory services to the health system and Islanders;
- provide policy, program and operational leadership respecting the Island health care system; and
- provide horizontal leadership and coordination in the implementation of Government's Healthy Living Strategy.

Health PEI is responsible for the operation and delivery of all health services on Prince Edward Island. Given the broad range of services provided by Health PEI, it is highly probable that staff and physicians working in the various institutions, programs, and service areas will encounter situations in which child sexual abuse is suspected.

8.2 Duty to Report

8.2.1 Legislative Duty to Report

The Child Protection Act Cap.C-5.1 states:

10. (1) Notwithstanding any other Act, every person who has knowledge, or has reasonable grounds to suspect that a child is in need of protection shall

(a) without delay, report or cause to be reported the circumstances to the Director, or to a peace officer who shall report the information to the Director; and

(b) provide to the Director such additional information as is known or available to the person.

See Sections 3.0 (Mandatory Reporting) and 4.0 (Definitions) for other relevant information.
8.2.2 Mandatory Reporting of Child Sexual Abuse

The *Child Protection Act* requires mandatory reporting of suspected cases of child sexual abuse to the Director of Child Protection or a peace officer and applies to everyone including health care professionals and personnel. Failure to report a suspicion of child abuse is an offence under the *Child Protection Act*. The identity of the person who has made a report to the Director of Child Protection is protected by the *Child Protection Act*.

The legislation makes it clear that the reporting obligation exists whether the information was acquired through the discharge of professional duties or within a confidential relationship, except for the privilege which attaches to the relationship between solicitor and client. Any professional person who fails to report suspected child abuse, having acquired the information in the discharge of his or her professional responsibilities, commits a summary conviction offence.

Health Care professionals and personnel may, in the course of delivering services, receive information which causes them to suspect that a child has been sexually abused. It is possible that the information obtained includes the identity of the perpetrator. The alleged perpetrator may be a person who is unknown to the employee. However, the suspicion could also involve a colleague, co-worker, friend or other associate.

The obligation to report is unrestricted by any pre-condition that the complaint be first reported within the respective departments, services or agencies, even if the perpetrator is alleged to be an employee of that institution, service or agency.

Health Care professionals and personnel who have information which causes them to suspect that a child has been sexually abused must report. Prior to referral, personnel who report the incident should not attempt to make a subjective determination as to whether or not the allegation is true or false. Mere suspicion is the legal requirement for mandatory reporting.

8.2.3 Duty to Provide Information Concerning Child Sexual Abuse

In addition to the duty to report suspected child sexual abuse, there is also a duty to provide information that is known concerning the suspected abuse. That is, subsection 10(1)(b) of the *Child Protection Act*, provides as follows:

<table>
<thead>
<tr>
<th>10. (1) Notwithstanding any other Act, every person who has knowledge, or has reasonable grounds to suspect that a child is in need of protection shall</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) without delay, report or cause to be reported the circumstances to the Director, or to a peace officer who shall report the information to the Director; and</td>
</tr>
<tr>
<td>(b) provide to the Director such additional information as is known or available to the person.</td>
</tr>
</tbody>
</table>

Therefore, it is important to document in accordance with appropriate legislation and professional standards the following, if the child is being dealt with:

- observations or reports of the child's physical condition: note bruises, abrasions, etc;
• statements made by an accompanying adult on the possible causes of the child's condition. Record this and other statements in quotation marks along, with the speaker's identity;
• information volunteered by the child regarding his/her condition. Record this in quotation marks using the child's own words, and note that the information was volunteered;
• the description of the child's behaviour with parents and/or other adults whom the child encounters; note if there is a difference in response to specific individuals;
• any additional concerns about the child's safety;
• the date and time that Child Protection Services were notified and the time of response to the referral, if known.

If the person suspected of being involved in the suspected child abuse is being dealt with, it is important not to confront or to interrogate the individual as that is the role of the Police and the Child Protection Social Worker. Immediately following the encounter, notes should be made quoting as closely as possible, the exact words which were used by the person suspected of abusing a child.

8.3 Mental Health and Addictions Services

Mental Health and Addictions has a unified operational structure for the management and delivery of mental health and addictions care. Community Mental Health Services and Addictions share an Agreement for Service for treatment. As noted above, as health care professionals they are required to report actual or suspected child abuse. This requirement is communicated to clients at the onset of treatment in terms of limitations of confidentiality and a duty to report any disclosures of child abuse. Disclosures of past child sexual abuse by adult clients may also need to be reported if there is information indicating that the alleged perpetrator has current access to children.

Children's Community Mental Health Services are accessed through a provincial centralized intake system. Community Mental Health offices are located in Alberton, O'Leary, Summerside, Charlottetown, Montague and Souris. Community Mental Health provides a range of community-based services to individuals, groups, and families. Children and adolescents with mental, emotional, and behavioral disorders may also be victims of child abuse and neglect. Referrals for children include support and education to parents and other family members. Community Mental Health services are delivered by a variety of disciplines such as clinical Social Workers, Psychiatric Nurses, Psychologists, Occupational Therapists and Psychiatrists.

Addiction Services offers various treatment options to Prince Edward Islanders who are impacted by substance use and addiction to alcohol and other drugs and gambling. Services include: methadone maintenance treatment program; individual counseling for adults, youth and family; inpatient and outpatient withdrawal management; group rehab; youth day treatment programming; extended care facilities for men and women; overnight shelter unit for adult males; smoking cessation; acudetox, and aftercare groups. Services are delivered by Registered Nurses, Licensed Practical Nurses, Physicians, Counselors, Social Workers, and Addiction Workers. Referrals can be made by contacting Addiction Services offices in Alberton, Summerside, Mt. Herbert, Montague, and Souris.
9.0 **Investigations Involving Aboriginal Children**

In Canada, First Nations Bands and Tribal Councils have developed First Nations Child and Family Services Agencies to provide prevention and protection services. Some of these Agencies provide both prevention and protection services. On PEI, the Mi’kmaq Confederacy of PEI (MCPEI), as a Tribal Council, provides prevention services and protection support to First Nation children and families living on reserve; however, MCPEI does not provide child protection services.

9.1 **Children Ordinarily Resident On Reserve**

When investigating a Child Protection Report involving an Aboriginal child, the Child Protection Social Worker must notify the Designated Representative in accordance with the PEI *Child Protection Act*. The MCPEI Director of Child and Family Services is the Designated Representative for both PEI’s First Nations. If the child identifies with a Band that is not on PEI, notification will be made to the Designated Representative for their Band.

Notifying the Designated Representative can ensure that a child and his/her family have access to available supports and services. When the Designated Representative is notified of a Child Protection Services investigation regarding a child living on reserve, a Family Support Worker from the MCPEI Child and Family Services Program will be assigned to work directly with the child and the family to assist them through the investigation process. A family has the right to decline the assistance of the MCPEI Child and Family Services Program Family Support Worker. Regardless of whether or not a MCPEI Family Support Worker is involved, the Child Protection services will proceed and the Child Protection Social Worker must continue to follow the *Child Protection Act* in terms of notifying the Designated Representative.

9.2 **Children Not Ordinarily Resident On Reserve**

If an Aboriginal child lives off reserve and is the subject of a Child Protection investigation, the Child Protection Social Worker must follow the steps outlined in the *Child Protection Act* regarding notification to the appropriate Designated Representative. The Designated Representative may be involved in case planning or assisting with access to services for Aboriginal children and families living off reserve.
Appendix
Appendix A

Reference Material

A1


A2

*What Happens Now* is the title of a series of four booklets prepared by the Provincial Child Sexual Abuse Advisory Committee. The booklets provide information on child sexual abuse and what happens when child sexual abuse has been reported.

The booklets are available in English and French at www.gov.pe.ca/sss/csa and include the following titles:

- **What Happens Now: For Children**
- **What Happens Now: For Families**
- **What Happens Now: For family or friends or a person charged with a sexual offence against a child**
- **What Happens Now: For persons charged with a sexual offence involving a child**
- **Et maintenant? pour les familles des enfants victimes**
- **Et maintenant? pour les enfants**
- **Et maintenant? pour les personnes accusées d'abus sexuel d'un enfant**
- **Et maintenant? pour la famille ou les amis d'une personne accusée d'abus sexuel d'un enfant**