

**FAMILY CROWN SERVICES OPERATIONAL MANUAL**

PRELIMINARY COURT APPEARANCES	New	Office of the Attorney General / Family Crown Services	Policy 24
Policy Title	New or Amended	Division / Branch / Section	Policy #

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**PRELIMINARY COURT APPEARANCES**

**1. Introduction**

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When a child is apprehended Family Crown Counsel will appear before the court to transfer the custody, care and control of the child to the Minister of Social Development. On rare occasions the parents will consent and the custody, care and control of the child will be transferred to the Minister of Social Development. However, in most cases the parents will oppose or will not be present and Family Crown Counsel will ask the court for an interim order to be in effect until the next court appearance.

Family Crown Counsel will reappear in court until a final order is granted. Where a respondent fails to appear after being duly served with notice of a hearing, Family Crown Counsel may request a final order with respect to that respondent. Where the respondent can reasonably be served, Family Crown Counsel shall indicate to the court that a copy of the order will be served upon the respondent, along with a copy of Rule 38.07 of the *Rules of Court*.

**2. Interim Order**

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An interim order is a temporary court order that insures the security of a child prior to the issuance of a final order.

**3. Protective care hearing**

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Subsection 32(1) of the *Family Services Act* sets out the circumstances wherein the security or development of a child may be in danger:

- (a) the child is left unattended for an unreasonable length of time and no reasonable provision for the care, supervision or control of the child is made;
- (b) the child is abandoned, deserted or lost;
- (c) the child is a runaway, as defined in subsection 31(6);
- (d) the parent of the child requests the emergency placement of the child; or
- (e) the security or development of the child is otherwise seriously and substantially in danger for any reason.

Pursuant to subsection 51(1) of the *Family Services Act*, where the Minister places a child under protective care, the Minister shall immediately advise the parent of the child stating the action taken and giving reasons for the action taken, wherever possible, and within five days after placing the child under protective care shall:

- (a) release the child from protective care;
- (b) enter into an agreement with the parent of the child that specifies what is and what is not to be done to ensure that the security or development of the child is adequately protected and release the child from protective care, subject to and in accordance with the agreement; or
- (c) apply for an order regarding the child.

Pursuant to subsection 51(6) of the *Family Services Act*, a protective care hearing must be held no later than 7 days after a child or and adult is placed under protective care. The purpose of the hearing shall be to assess the basis upon which the child or the adult was placed under protective care.

A protective care hearing is a summary proceeding and shall be conducted in accordance with subsection 51(7) of the *Family Services Act*, and as expeditiously as possible having regard to the circumstances of the case. At the conclusion of an interim hearing, section 51(7)(a) provides that if the court is satisfied that the Minister had reasonable grounds for placing the child under protective care and that the child should remain in the protective care of the Minister, the court may make an interim order to that effect and shall set a time and place for a hearing of the application. See Decision of Madam Justice Bélanger-Richard in *New Brunswick (Social Development) v S.M.*, 2019 NBQB 95.

### **3. Hearsay in protective care hearing**

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Hearsay is admissible evidence for the purpose of a protective care hearing insofar as it meets the requirements of sub-rule 39.01(4) of the *Rules of Court*.

### **4. Related documents**

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*Practice Memorandum # 7* issued by Chief Justice David D. Smith March 2017  
*Family Services Act*, S.N.B. 1980, c. F-2.2