

Preparing for Apprehension Hearing

The Child Protection Worker must apply to the court for an Apprehension Order confirming the apprehension of the child if he or she remains in the care of the Director of Child and Family Services for more than 72 hours after the apprehension.

The application for confirming the apprehension must be filed with the court within four (4) days after the apprehension.

The apprehension hearing must occur within 14 days of the apprehension.

REFERENCE

NWT Child and Family Services Act, sections 12 .1, 12. 2, 12.3, 12.6

PURPOSE

- To ensure the Child Protection Worker is prepared for court and is able to proceed in a timely and efficient manner.

PROCEDURE

1. Review the decision to apply to court for an Apprehension Order to ensure that it is the right decision for the child and family.
2. Gather written information from investigation details, case notes, emails, and other correspondence.
3. Determine the date the matter can be heard in court.
4. Contact the Clerk of the Territorial Court to arrange a court date.
5. Complete an *Originating Notice court document* for the first court appearance and a *Notion of Motion court document* for subsequent appearances as well as the *Affidavit court document*. Upon completion, provide the documents to the Supervisor for review and approval.
6. Sign the *Originating Notice* or *Notion of Motion* as well as the *Affidavit* court documents and commission or notarize the *Affidavit* court document.
7. File the *Originating Notice* or *Notice of Motion* and *Affidavit* court documents with the Territorial Court within four (4) calendar days after the apprehension. The apprehension hearing must occur within nine (9) calendar days of filing for an Apprehension Order.

8. Serve the court documents to the following people with four (4) calendar days' notice before the court date:

- Court – Originating Notice / Notice of Motion and Affidavit
- Parent(s) and/or Guardians(s) – Originating Notice / Notice of Motion and Affidavit
- Person(s) having actual care of the child at the time of the apprehension - Originating Notice / Notice of Motion and Affidavit
- Child over 12 years of age - Originating Notice / Notice of Motion and Affidavit
- Applicable Aboriginal organization – Originating Notice / Notice of Motion

During this process, it's important to encourage the above noted people to speak with legal counsel to represent their interests. Failure to provide adequate notice may result in a delay in the court proceedings. Furthermore, it's important to inform the applicable Aboriginal organization of their right to be present and to present evidence as well as to represent their members at the Apprehension Hearing.

9. Complete the *Affidavit(s) of Service* and/or *Affidavit(s) of Attempted Service court documents*.

10. Prepare a draft Order if it is expected that the apprehension will be confirmed by the court.

11. Present the apprehension matter to the Judge on the court date as per the *Apprehension Hearing Presentation Outline tool*.

12. Consult with the Supervisor to determine if there is a need to retain legal counsel when the parent(s), guardian(s), person(s) having actual care of the child at the time of the apprehension and the child over 12 years of age disagree that a protection concern exists.

13. Provide legal counsel with all legal documentation as soon as possible as per the *Obtaining Legal Counsel standard*.

14. Attend court with the retained legal counsel.

15. Draft an Order (if not already completed), to be reviewed by all parties involved if the matter is settled by the court granting the Order or withdrawing the application.

16. Provide a copy of the Order to the Judge who made the Order for signature.

17. Provide certified copies of the Apprehension Order to the following people:

- Parent(s) and/or Guardian(s)

- Person having actual care of the child at the time of apprehension
- Child over 12 years of age
- Legal counsel(s)

Notes:

Continue to attempt to establish a Plan of Care Committee while preparing for the apprehension hearing. If the child protection concerns can be addressed through a Plan of Care Committee and the Plan of Care Agreement is signed prior to the Apprehension Hearing, the application will no longer meet the conditions of *Child and Family Services Act* section 12.4.(1) “**Two Part Test**”. If a Plan of Care Agreement is signed prior to the Apprehension Hearing, request the **withdrawal** of the application at the Apprehension Hearing and return the child to his or her parent(s) and/or guardian(s).

If the court determines that **both**, the child was in need of protection at the time of the apprehension **and** at the time of the Apprehension Hearing, the court will make an order **confirming** the apprehension. This Order will remain in effect for 45 days.

If a Plan of Care Agreement is signed after the court granted an Order, bring the matter back to court to request that the Order be **discharged**.

If the court determines that the grounds in the *Child and Family Services Act* section 12.4. (1) “**Two Part Test**” are not met, it will **dismiss** the application. The child must be immediately returned to his or her parent(s) and/or guardian(s).

The court may **adjourn** an Apprehension Hearing as long as it does not extend 45 days past the date of the apprehension.

FORMS

- None

TOOLS

- Determining the Court Date
- Apprehension Hearing Presentation Outline
- Apprehension Hearing Process Flowchart
- Applicable Aboriginal Organizations - 2015

COURT DOCUMENTS

- Originating Notice Application for an Apprehension Order - example
- Notice of Motion Application for an Apprehension Order
- Affidavit used with an application for an Apprehension Order
- Affidavit of Service

- Affidavit of Attempted Service
- Removal Order
- Adjournment Order
- Apprehension Order
- Apprehension Order - example

Effective Date:
April 1, 2016

Director of Child and Family Services

