



An Act Respecting First Nations, Inuit and Metis children, youth and Families

TO: All Chiefs, PTOs, Tribal Councils, AFN Staff
FROM: AFN Social Development Secretariat
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New federal child welfare legislation, *An Act Respecting First Nations, Inuit and Metis children youth and families*, is coming into force on **January 1, 2020**.

This legislation will bring significant positive changes to First Nations Child and Family Services, while affirming the inherent right and jurisdiction of First Nations in the area of child and family services.

The information sheet attached is intended to provide information and answer critical questions you will need to know on day one of the legislation coming into force **January 1, 2020**.

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AN ACT RESPECTING FIRST NATIONS, INUIT AND MÉTIS CHILDREN, YOUTH AND FAMILIES

WHAT YOU NEED TO KNOW DAY ONE

When does C-92 and First Nations laws come into effect?

An Act respecting First Nations, Inuit and Métis children, youth and families (the Act) comes into effect on January 1, 2020. Starting January 1, 2020, a First Nations Governing Body can notify Canada that a law has been enacted, and/or of their request to negotiate a coordination agreement. First Nations laws will come into effect when they are passed.

Inherent rights

First Nations laws come into effect when passed and inherent rights mean that First Nations must drive the process and act according to the self-determined choices of the rights and titleholders who are members of the First Nation. This Act did not establish those rights, merely affirmed these inherent rights to make law, policy and decisions for First Nations children and families according to First Nations laws, traditions, practices, customs and values.

Is there more to be done?

With all laws, there are changes that will be required as the law applies, and issues arise. In the case of the Act, a major challenge is funding; the funding principles in the preamble and section 20 of the Act are weaker than what were proposed by First Nations Chiefs and many others. Ongoing efforts to push for strong fiscal support, policy and law changes will continue and should be coordinated and strategic.

If First Nations have cases in the system, what can they do?

1. Continue to advocate for the children and families directly with their authority as Chiefs.
2. Take the Act to social workers, lawyers and courts and point to it as a basis for a major shift, and indicate the expectation for families to remain together with support.
3. Point out the provisions of the Act that gives a First Nations governing body standing as a **PARTY** in the case or the right to make **REPRESENTATIONS** in Court on cases involving their children and families. Encourage grandparents, parents and relations to attend and stand up for their children and families.



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WHAT YOU NEED TO KNOW DAY ONE

Notice and First Nations' rights to be kept informed

The *Act* strengthens the obligation to keep First Nations and families informed about decisions related to their children and families. Section 12(1) of the *Act* articulates that the parent, care provider/guardian, First Nation and governing body of a First Nations child must be informed of decisions regarding the child before any significant actions are taken.

Asking for reassessment of cases decided before the *Act* came into force

The *Act* allows for ongoing reconsideration of a child's placement. A child or children may have been placed under the provincial system in foster care and may need to be reconsidered under the *Act*. This key provision in Section 16 (3), with an emphasis on family unity, calls for reassessment of placements of children in care, and to (re) consider the appropriateness of placing a child with a parent or other adult member of the child's family.

Standing as a party in a child welfare matter

Section 13(a) and (b) of the *Act* expands who can be a full party in a child welfare matter relating to a First Nations child. The Chief of the First Nation where the child concerned is from is permitted to participate under provincial law; the *Act* expands participation to include parents and care providers (a person who cares for the child day-to-day, in accordance with the First Nation's practices, including a grandparent, aunt, etc.) as parties and their right to make representations, and also includes the

First Nations governing body's right to make representations. Section 9 of the *Act* protects against discrimination, including confirming that families must have the right to have their views considered without discrimination in the case of their child or children.

Standing as a "party" means the right to be a full part of the entire process, to be heard throughout and speak directly to the Court. Making "representations" means having the right to speak in court about the child and their circumstances, to

advocate for the rights of children and families to stay together, and to address concerns with the handling of the child's case or process.

Transition provisions of the *Act*, including Section 33, provide some discretion, but must emphasize the best interests of the child is for the parents, family, kinship and community to be involved to keep families together and ensure they receive services they require in their families and communities.