



Introductory  
to the **Guide**  
New York City  
**Family Court**





# Introductory Guide to the New York City Family Court

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## Foreword

The Family Court of the State of New York was created as a specialized court to handle cases involving children and families. Family Court judges hear a range of legal issues, including child abuse and neglect (child protection), adoption, child custody and visitation, domestic violence, guardianship, juvenile delinquency, paternity, persons in need of supervision (PINS), and child support. Under the leadership of the State's Chief Judge, Judith S. Kaye, and the New York City Family Court's Administrative Judge, Joseph M. Lauria, the Family Court attempts to respond to both the legal and social service needs of families. Today's family courthouses contain numerous services to assist families, such as childcare centers, mediation programs, and legal assistance programs.

The Family Court can be a confusing place for people unfamiliar with the court process and the legal issues their problems present. In light of this fact, the information contained in this Guide is meant to help people understand how the court works and some of the legal terms and issues that relate to family law cases. The Guide was originally compiled in 1997 by the Committee on Children and the Law of the Association of the Bar of the City of New York. In 2006, the Association's Committee on the Family Court and Family Law updated, revised, and expanded it.

Thanks are due to all the current members of the Committee on the Family Court and Family Law for their contributions to this most recent edition of the Guide. Specific recognition is owed to the Honorable Gerald Lebovits, who chaired the subcommittee that spearheaded the completion of this project, along with subcommittee members Honorable Susan Danoff, Beth Harrow, and Child Support Magistrate Diego Santiago. In addition, we thank Committee members Erica Duncan, Christine Gottlieb, Shira Galinsky, Karen Fisher Gutheil, Rebecca L. Mendel; student members Rosanna M. Kreychman and Maryam Sadiq. We also thank Michael Williams, the Assistant Deputy Chief Clerk for the Family Court's Office of the Self Represented in Kings County, and Judge Lauria for their thoughtful comments.

**Judith D. Moran**

Chair of the Committee on the Family Court and Family Law  
The Association of the Bar of the City of New York

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## Introduction

The Family Court of the State of New York has the authority to decide cases affecting the lives of children and families. The court has a wide range of powers to fit the needs of the people who come before it.

The Family Court Act gives the Family Court power to hear certain types of cases. Each case filed is given its own identifying number, called a “docket number.”

The docket number begins with a letter that identifies the type of case filed:

- A: Adoption
- AC: Adoption Pre-Certification
- AS: Judicial Surrender
- B: Permanent Termination of Parental Rights
- D: Juvenile Delinquency
- E: Designated Felony
- F: Child or Spousal Support
- G: Guardianship
- K: Foster Care Review
- L: Voluntary Foster Care Approval
- M: Marriage Application
- N: Neglect
- NA: Neglect/Abuse
- O: Family offense (order of protection)
- P: Paternity
- S: PINS (Person in Need of Supervision)
- U: Interstate support
- V: Visitation and Custody of Children



In New York City, each of the five boroughs has its own Family Court. Generally, a case may be filed for free in the county where one of the parties lives.

The Office of the Self-Represented helps those who represent themselves to prepare and file court papers, including petitions and motions. The Office of the Self-Represented will give legal information but not legal advice.

Judges preside over most Family Court hearings (trials). Support Magistrates hear child or spousal support and paternity cases. Court Attorney Referees hear custody, visitation, and foster-care cases. Judicial Hearing Officers (JHOs) hear some adoption and voluntary-placement foster-care cases. There are no juries in Family Court.

The Family Court is usually open to the public and the people directly involved in a particular case, also known as “the parties.” The judge or support magistrate presiding over each case may exclude the public from the courtroom, if the case involves private issues that would embarrass or harm families and children or for security reasons.

Each Family Court in New York City is open all day from Monday through Friday, except on holidays. At lunchtime (usually from 1:00 p.m. to 2:00 p.m. or 2:15 p.m.), the hearing rooms in each courthouse close for a lunch recess, but each building remains open to the public. Information about each courthouse’s hours of operation may be obtained by calling the individual courthouse or [www.nycourts.gov](http://www.nycourts.gov) or [www.courthelp.gov](http://www.courthelp.gov).

Night Court is available on Tuesdays, Wednesdays, and Thursdays in Bronx, Kings (Brooklyn), and Queens Counties for cases involving family offenses (violence), custody, visitation, guardianship, and support. Night Court is planned for New York and Richmond counties in spring 2006.

Persons scheduled to appear in court are expected to arrive at the courthouse on time. If a party is absent when the case is ready to be heard, the judge or support magistrates may begin and decide the case in that person’s absence, or may dismiss it. Parties should understand that even if they arrive early, they might be required to spend a long period of time at the courthouse because Family Court calendars are very busy.

The Family Courts in Bronx, Kings, New York (Manhattan), Queens, and Richmond (Staten Island) Counties have Childcare Centers, where children from six weeks to the age of 12 may stay while their parents or caregivers are in the courtroom. These Childcare Centers have experienced staff to take care of children while a case is being heard in court.



After a case has been completed and a final decision has been made, each party has the right to appeal the judge's or court attorney referee's decision. An appeal is a request for the court to take another look at the case. A support magistrate's decisions are appealed first by filing an "objection" with the Family Court judge. The judge reviews the support magistrate's decision, and then the judge's decision may be appealed to the Appellate Division. An appeal may result in a decision being "affirmed" (left as is), "modified" (changed somewhat), or "reversed" (changed entirely).

The general public is not allowed to look at the court records of Family Court cases. The court may, however, let someone see the records if appropriate. Only people directly involved in a case, including the lawyers, are entitled to get a copy of a court order and other documents in the court file. They may wait in the courtroom or just outside the courtroom to get the order, or they may request a copy at the Record Room of the courthouse where the case was heard. Proof of identity is required to see or obtain copies of court records. A party is better off being represented by a lawyer when appearing in Family Court than appearing without one. For many types of Family Court cases, as explained in this Guide, a party is entitled to have a court-appointed lawyer. In these cases, the party does not pay for the lawyer; the lawyer is paid with government funds. A party whose income is below a certain level (which varies with family size and other things) might be able to get help from a legal aid or legal services office. People who have cases should inquire about that in the Family Court clerk's office. A party not entitled to have a free lawyer should consider hiring one. One way to find a lawyer is to call the Legal Referral Service, a service of this bar association, at 212-626-7373 (in Spanish, 212-626-7374).



## Who's Who in the Courtroom

**JUDGES:** A judge is in charge of the hearing (trial). Judges listen to witnesses, examine evidence, and then decide whether the case has been proven.

**SUPPORT MAGISTRATES:** A support magistrate hears support cases (petitions seeking monetary support for a child or spouse) and paternity cases (petitions to declare someone to be the child's father).

**COURT ATTORNEY REFEREES:** Court attorney referees hear and issue orders in custody, visitation, and foster-care cases.

**PETITIONER:** A petitioner is the person or agency filing the petition. A petition is a written request to the court to make a decision.

**RESPONDENT:** The respondent is the person or agency against whom the petition is filed.

**COURT OFFICERS:** Uniformed court officers are assigned to every courtroom and hearing room. They are responsible for security throughout the courthouse and call the parties into the hearing rooms when the judges or support magistrates are ready to hear the case.

**INTERPRETERS:** The court provides interpreters for parties and witnesses who have difficulty with English. Albanian, Creole, Chinese (Cantonese and Mandarin), Spanish, and Russian interpreters are available daily in the courthouse in many counties. The court may also order interpreters for many other languages, including sign language for the hearing-impaired.

**COURT REPORTERS:** Court reporters record all testimony and statements made during court hearings. In some courtrooms, court reporters take notes during the hearing using a machine that looks like a typewriter. The court reporter may be asked to type a "transcript," a word-for-word report of what is said during the hearing. Hearings before support magistrates and some hearings before judges are recorded on tape recorders. The parties may also order a transcript of the taped proceeding.

**COURT ATTORNEYS:** Court attorneys are lawyers who work with a judge and help the judge by conducting legal research and conferencing cases. Court attorneys also often meet with the parties and their lawyers to reach an agreement without the need for a trial.



**COURT CLERKS/COURT ASSISTANTS:** Court clerks and assistants sit near the judge or support magistrate and prepare court orders for the judge or support magistrate to sign.

**ASSISTANT CORPORATION COUNSEL:** Assistant Corporation Counsel are lawyers from the New York City Law Department who prosecute juvenile-delinquency cases. These lawyers also represent the petitioner in support and paternity cases when the custodial parent is on public assistance or in family-offense cases if the judge assigns them.

**SPECIAL ASSISTANT CORPORATION COUNSEL:** Special Assistant Corporation Counsel are lawyers from the Department of Social Services or Administration for Children’s Services (ACS) who prosecute child abuse and neglect cases and termination of parental rights cases, and present support cases involving children receiving public assistance.

**ASSISTANT DISTRICT ATTORNEYS:** Assistant District Attorneys (ADAs) prosecute juvenile-delinquency cases involving children between the ages of 13 and 15 accused of committing serious or violent acts.

**LAW GUARDIANS:** Law guardians are lawyers the judge assigns to represent a child in Family Court. They may be from The Legal Aid Society, Lawyers for Children, The Society for the Prevention of Cruelty to Children, or Children’s Law Center, but they may also be solo practitioners.

**GUARDIANS AD LITEM:** Guardians ad litem are assigned to act in the place of a parent for a child whose parents must appear in court but are unable to be there. They also act in the place of adults mentally or physically unable to speak for themselves in court.

**ASSIGNED COUNSEL:** Assigned counsel are lawyers assigned by the judge or support magistrate if a party cannot afford one. This lawyer, sometimes called an “18-b” lawyer, represents that person and is paid by the City.

**PROBATION OFFICERS:** Probation officers work for the New York Department of Probation and prepare reports for the judges about the people involved in the cases. The Probation Officer assigned to the courtroom is called a Court Liaison Officer (CLO).

**CASEWORKERS:** Case workers are social-service agency workers assigned to work with families. They bring case records to court and testify about the family during hearings.



## Juvenile-Delinquency Proceedings

### **A. WHO IS A JUVENILE DELINQUENT?**

A “juvenile delinquent” is someone between 7 and 16 who commits an act that would be a crime if committed by an adult and is found to be in need of supervision, treatment, or confinement. The act committed is called a “delinquent act.” Juvenile delinquency cases are heard in Family Court.

Children 13, 14, and 15 years old who commit more serious or violent acts may be treated as adults. These cases are heard in the Supreme Court but may sometimes be transferred to the Family Court. If found guilty in the Supreme Court, the child is called a “juvenile offender” and is subject to more serious penalties than a juvenile delinquent.

### **B. HOW DOES A DELINQUENCY CASE BEGIN?**

A prosecuting lawyer from the New York City Law Department, called an “Assistant Corporation Counsel,” brings the juvenile-delinquency case to court. An Assistant District Attorney brings cases involving juvenile offenders and some juvenile-delinquency cases involving serious crimes (called “designated felonies”). The New York City Law Department (the presentment agency, or prosecutor) prepares a petition against the child describing the acts the child is accused committing. The accused child is called the “respondent.” The alleged victim is called the “complainant.”

The police must bring a child who has been arrested directly to the Family Court. If the court is not in session, the child may be held overnight in a detention center until the next court day. In some cases, a child may be arrested and released after being given an “appearance ticket” directing the child to appear in court on a specific date.

In court, the child and the parent or guardian are given a copy of the petition, which describes the acts the child is supposed to have committed.

### **C. DOES THE CHILD NEED A LAWYER?**

The child must have a lawyer. If the parent or guardian cannot afford to hire a lawyer, the court will assign a lawyer to represent the child for free. This lawyer is called a “law guardian.”



#### **D. WHAT TYPES OF HEARINGS ARE HELD?**

In a juvenile-delinquency case, the trial is called a “fact-finding hearing.” A fact-finding hearing is the same as a criminal trial, but without a jury. The judge decides whether the child committed the acts described in the petition. If the court decides that the child must be held in a detention center (“remanded”) while waiting for the fact-finding hearing to take place, a “probable cause” hearing may be held to determine whether there is a good reason to hold the child in detention. No bail is set in juvenile-delinquency cases.

Other hearings might be scheduled to determine whether the presentment agency may use certain evidence at the fact-finding hearing. The presentment agency must give certain police reports and other documents to the respondent’s lawyer to prepare a defense.

#### **E. WHAT HAPPENS AT THE FACT-FINDING HEARING?**

At the fact-finding hearing, the presentment agency must prove its case by calling witnesses and showing other evidence to the court. The respondent’s lawyer may cross-examine the witnesses and present witnesses and evidence for the respondent. If the presentment agency proves the case beyond a reasonable doubt, the judge makes a “finding” that the respondent committed some or all the acts described in the petition. If the case has not been proven, the judge will dismiss the petition.

If a finding is made, the judge will schedule a “dispositional hearing.” The purpose of a dispositional hearing is for the parties to argue and offer evidence so that the judge can decide what to do. To prepare for the hearing, the judge will order the Department of Probation to investigate and prepare a report about the respondent’s home and school behavior. The judge may also order Mental Health Services to evaluate the child. The court may either “remand” (send) the respondent to a detention facility or “parole” (release) the child to the custody of a parent or guardian until the dispositional hearing can take place.

#### **F. WHAT HAPPENS AT THE DISPOSITIONAL HEARING?**

At the dispositional hearing, the judge decides whether the respondent is a “juvenile delinquent” in need of supervision, treatment, or confinement (placement). During the hearing, the judge hears testimony from the probation officer about the respondent’s behavior in school and at home and about any previous court cases involving the respondent. The respondent, the respondent’s parents or guardians, and other persons with information helpful to the respondent may testify.



The probation officer may recommend that the respondent be permitted to live at home without court supervision but with certain conditions the judge sets (a “conditional discharge”); that the Department of Probation supervise the respondent living at home (an “order of probation”); or that the court place the respondent in a facility away from home, such as a group home or secure facility. The respondent may also be ordered to pay for damage to the complainant’s property, a process called “restitution.”

The judge decides which disposition, or result, is the least restrictive available alternative consistent with the child’s needs and best interests and the need to protect the community. The judge then signs a dispositional order.

Even if the judge finds that the respondent committed the acts described in the petition, the judge may dismiss the petition if the judge finds that the respondent does not need supervision, treatment, or confinement. The judge may also adjourn the case in contemplation of dismissal (ACD). This means that the petition will be dismissed if the respondent obeys the court order’s terms for no more than six months.

**G. WHAT HAPPENS IF THE RESPONDENT DISOBEYS THE DISPOSITIONAL ORDER?**

If the respondent does not obey the dispositional order’s conditions, the probation officer or presentment agency may file a violation petition, and a new dispositional hearing may be held. If the violation is proven, the judge can order a different disposition.



## “PINS” Proceedings (Person In Need of Supervision)

### **A. WHAT IS A “PINS”?**

A “PINS” is a child under 18 who does not attend school, behaves in a way that is dangerous or out of control, or often disobeys his or her parents, guardians, or other authorities. Such a child may be found to be a Person In Need of Supervision, or “PINS.” All PINS proceedings are heard in the Family Court.

### **B. WHAT IS PINS “DIVERSION”?**

Before a PINS case is filed, the Family Court Assessment Program (FAP) meets with the child and the complaining party. The FAP will try to set aside, or divert, the case to keep it out of court. The FAP may recommend referrals to various community or governmental programs to help the child. If the matter is “diverted,” no petition is filed, and no court case begins. If the diversion is unsuccessful, the complaining party may then file a PINS petition.

### **C. WHAT IS THE FAMILY ASSESSMENT PROGRAM (FAP)?**

The FAP offers help to families with children who are difficult to handle and at risk of becoming a PINS and being placed in foster care. The Administration for Children’s Services (ACS) and the Department of Probation operate the FAP.

The FAP was jointly established by the Office of Children and Family Services and Division of Probation to offer help to families in crisis with children who are difficult to handle and at risk of becoming a PINS and being placed in foster care.

### **D. IS THE CHILD REPRESENTED BY A LAWYER?**

Yes. A private attorney may be hired to represent the child, or the court will assign a lawyer for free if the family cannot afford to pay for one. The child’s lawyer is called a “law guardian.”

### **E. HOW DOES A PINS COURT CASE BEGIN?**

All persons who request PINS services will first be seen by the FAP social work staff. A parent or other person legally responsible for the child’s care and the child must first meet with an FAP social worker or probation officer concerning diversion services. A PINS petition may not be filed without documentation from the Department of Probation Department that diversion efforts will no longer help the child and family.

A parent or other person legally responsible for the child’s care, with the documentation from the Department of Probation, may file a PINS petition in the Family Court. A PINS petition may also be filed by a peace or police officer, a person claiming that the child injured him or her, a witness to the act, or a school or other authorized agency.



The PINS petition describes the child's behavior and asks the court to find that the child needs supervision. The petition and a summons must be given to the child and the parent telling them to appear in Family Court on a specific date.

**F. WHO STARTS A CASE AGAINST THE CHILD?**

The complaining party begins the case at the hearing by testifying about the child's behavior. Sometimes the judge assigns a lawyer to represent the complaining party, or the complaining party may hire a lawyer.

**G. CAN THE COURT HOLD THE CHILD IN A SECURE FACILITY (A "LOCK-UP")?**

No. If the court finds that the PINS child should not be released to the custody of the child's parent or guardian while waiting for the fact-finding hearing, the court may not order a child held in a secure, or "lock-up," facility. If it appears that a PINS respondent might fail to appear for a scheduled court date, or is at risk of committing an act that would be a crime if committed by an adult, the court may order the child held in a non-secure facility or place the child with a relative or other person willing and able to take responsibility for the child.

**H. WHAT HAPPENS AT THE FACT-FINDING HEARING?**

In a PINS case, the trial is called a "fact-finding hearing." The parties may testify and present witnesses and evidence to the court.

If the judge decides that the child committed the acts described in the petition, the judge sets a date for a "dispositional hearing." The court may order the Department of Probation to prepare a report about the child's general behavior, home life, and school attendance and behavior, and may order an evaluation by the New York City Department of Mental Health Services.

**I. WHAT HAPPENS AT THE DISPOSITIONAL HEARING?**

At the dispositional hearing, information is given to the court to help the judge decide whether the child is a person in need of supervision — a PINS. Witnesses with information about the child may testify and present evidence. The child may also testify.

If the judge decides that the child does not need supervision or treatment, the judge will dismiss the case. If the judge decides that the child needs supervision or treatment, the judge can place the child in a foster home, group home, or a social-services facility for up to 12 months or send the child home under a probation officer's supervision. If the child is at least 10 years old, the judge can order the child to pay for any damage done to someone's property (restitution) or require the child to perform community service. The judge may also discharge



the child with a warning or adjourn the case in contemplation of dismissal (ACD) for up to 6 months. This gives the judge time to decide whether the case should be dismissed. Once the judge decides what to do, the judge signs a “dispositional order.”

**J. WHAT HAPPENS IF THE CHILD DISOBEYS THE DISPOSITIONAL ORDER?**

If the court finds that the child is not obeying the terms of the court’s order, the probation officer or placement agency may file a violation petition, and a new dispositional hearing may be held. If the violation is proven, the court may change the dispositional order.

**Note on Child Support:** A parent whose child has been placed in foster care as a “PINS” must continue to pay child support. The Department of Social Services (Administration for Children’s Services) has the right to file a petition for child support against the parent of a “PINS” child in placement.



## Custody and Visitation

### **A. WHAT IS AN ORDER OF CUSTODY?**

An order of custody gives responsibility for the child's care, control, and maintenance to one or both of the child's parents or to another party.

The court may not decide issues of custody and visitation if the child is 18 years or older.

### **B. WHO MAY FILE A PETITION FOR AN ORDER OF CUSTODY?**

A person who has an interest in a child's well-being and has some connection or relationship with the child may file a petition in the Family Court requesting that the court place the child in his or her custody. A copy of the petition and a summons must be delivered personally to the person or parties who have custody of the child. If the child's parents are separated and one parent seeks a custody order, that parent must have the papers served on the other parent. If a non-parent is seeking custody of the child, then both the child's mother and father must be served.

### **C. WHAT HAPPENS AT THE HEARING?**

A Family Court judge decides custody cases based on what is best for the child. This is known as the "best interests" standard.

If the parties agree about custody of the child, the judge may take testimony from both parties and enter an order of custody on consent (with the parties' agreement), without a formal hearing. If the parties cannot agree on who should have custody, the court will hold a hearing. The court will hear testimony from both sides and may appoint a lawyer to represent the child. The court may order an investigation and report from a social-services agency or mental health professional. After considering the evidence, the court will award custody. Parents have priority to receive custody. The court will always consider what is in the child's best interests.

In some counties in New York City, a custody or visitation case may, if all the parties agree, be heard by a Family Court "court attorney referee."

Either before or during the hearing, a judge may refer the parties to the PEACE (parent education) program. The program, which is held in the evenings, helps parents understand the court process and the effects of a court case on children. A judge also may refer the parties to a mediation program to help them reach a compromise or to narrow the legal issues.



**D. WHAT DOES THE COURT CONSIDER WHEN DECIDING WHAT IS BEST FOR A CHILD?**

To make a custody decision, the judge will hear evidence about (1) which parent has been the primary care giver; (2) each parent’s parenting skills; (3) each parent’s ability to provide food, shelter, and education for the child; (4) each parent’s mental and physical health; (5) whether there is a history of domestic violence in the home; (6) the child’s relationship with other family members; (7) what the child wants; and (8) the parents’ ability to cooperate with each other.

**E. WHAT IS THE DIFFERENCE BETWEEN JOINT CUSTODY AND SOLE CUSTODY?**

In joint custody, the parents make major decisions about the child together. In sole custody, only one parent has the right to make the major decisions.

**F. WHAT IS AN ORDER OF VISITATION?**

A parent seeking to visit with a child may file a petition in the Family Court against the person or persons who have custody of the child, if those persons are keeping the other parent from seeing the child. Custody and visitation matters are often heard together in the same hearing, but a visitation petition may also be filed separately. In some circumstances, other family members, such as grandparents, may also file a petition seeking visitation.

The court may order visitation and allow the party who seeks visitation to spend time with the child if doing so is in the child’s best interests. Parents are entitled to visit with their children unless doing so is bad for the children. Court orders for visitation may specify days, times, and places the child may be picked up and dropped off. Where the child will spend holidays and vacations may also be stated in the order. Sometimes the court will order that a relative or other person may supervise the visitation, if the court believes that is best for the child.

**G. MUST THE PARTIES HAVE LAWYERS TO REPRESENT THEM?**

The parties in custody and visitation matters may represent themselves or hire lawyers. When a party cannot afford to hire a lawyer, the judge may appoint a lawyer at no cost, although the assignment of a lawyer is not required. The judge may also appoint a lawyer to represent the child. This lawyer is called a “law guardian.”

**H. CAN A CUSTODY OR VISITATION ORDER BE CHANGED?**

Either party may file a petition to change, or modify, a custody or visitation order. For the court to change the child’s custody or visitation schedule, the party seeking the change must show the court that circumstances have changed since the earlier order. The court holds a hearing to determine whether a change is best for the child.



**I. WHAT HAPPENS IF ONE SIDE FAILS TO OBEY COURT-ORDERED CUSTODY OR VISITATION?**

If a court order gives custody or visitation rights to a party and the other party fails to obey the order, the child's custodian may file a petition stating that the other party violated the order. After the court holds a hearing, the judge may change the order. The judge may also hold a party in contempt of court for refusing to follow the judge's orders.

**J. WHAT IS MEDIATION?**

Mediation is a free, voluntary, and confidential process in which parents work with a neutral mediator to create their own parenting plan. If the parents and court approve the plan, it will become a court order. Not all cases are eligible for mediation.



## Support

### **A. UNTIL WHAT AGE MUST A PARENT SUPPORT A CHILD?**

Under New York State law, parents must support a child until the age of 21. If the child is under 21 and is married, self-supporting, or in the military, the child is considered “emancipated,” and the parents’ support obligation ends.

Children may also be considered “emancipated” if they are between 17 and 21, leave their parents’ home, or refuse to obey their parents’ reasonable commands.

### **B. WHO MAY FILE A PETITION FOR CHILD SUPPORT?**

When parents live separately and one parent has custody of the child, that parent, called the custodial parent, may file a petition in the Family Court asking the noncustodial parent to pay child support. A non-parent who has legal custody or guardianship of the child may also file for support. If the child’s parents are involved in a divorce case in the Supreme Court, the petition for support should be filed in that court so that the cases will be heard together.

Children not emancipated and living away from both parents may file a petition against their parents and ask that a judge issue an order of support to take care of the child’s financial needs.

When a child is receiving public-assistance benefits or is living in a foster home and receiving foster-care services, the Department of Social Services (Human Resources Administration) may file a petition against the noncustodial parent or parents asking that the court enter an order for child support to be paid to the government agency while it continues to provide services to the child.

The party filing the petition is called the “petitioner” and the party from whom support is sought is the “respondent.” The petition, together with a summons indicating the date of the court hearing, must be served on (delivered to) the respondent.

### **C. DO THE PARTIES NEED TO BE REPRESENTED BY LAWYERS?**

The parties may hire lawyers to represent them or may speak for themselves without a lawyer. If jail is a possibility for failing to pay child support, the court will assign a lawyer at no cost.

### **D. WHAT DOCUMENTS MUST BE BROUGHT TO COURT?**

The parties must provide copies of their most recently filed tax returns, some recent pay stubs, and a completed financial-disclosure statement showing their earnings and expenses. The parties should also bring to court proof of their expenses, such as copies of a lease or bills, for rent, food, clothing, medical costs,



child care, education. The judge will also want to know about the cost of caring for other children in the family and whether the parent who owes child support is paying to support other children.

**E. WHAT HAPPENS AT THE HEARING?**

A support magistrate conducts the hearing, taking testimony from both sides about their income, expenses, and the cost of supporting the child. The parties can present evidence and witnesses and cross-examine each other and the witnesses. The support magistrate calculates how much support the noncustodial parent must pay to the parent with custody and sets a payment schedule. The calculation of child support owed is based on either a percentage of the noncustodial parent's income or the child's needs. Payments may be paid directly to the petitioner or through a branch of the Human Resources Administration called the Support Collections Unit (ASCU"). SCU will then send the money to the petitioner.

**F. WHAT IF THE PARTIES DISAGREE WITH THE SUPPORT MAGISTRATE'S ORDER?**

Both parties have the right to appeal the order by filing an "objection" within 30 days of receiving the order in court or 35 days after the order is sent to them. The objection must be filed with the court clerk's office, and a copy must be sent to the other party. The other party may send a reply, called a "rebuttal," to the court. After reviewing the case file, a judge then rules on the objection. The judge may leave the order as it is, change it, or send the case back to the support magistrate for additional information or another hearing. If either party disagrees with the judge's decision, the case may be appealed to a higher (appellate) court.

**G. WHAT HAPPENS IF THE RESPONDENT DOES NOT PAY THE AMOUNT IN THE ORDER?**

The petitioner may file a "violation petition" asking the court to take action against a respondent who fails to pay a support order. The petition must be delivered to the respondent. A hearing is then held to decide whether the respondent has violated the court's order. The support magistrate may enforce the order by ordering the SCU to take the payments directly from the respondent's paycheck, by ordering the respondent to pay a lump sum to reduce the amount of money owed to the custodial parent, or by taking other steps to collect the money owed.

Respondents who fall behind in payments also risk having their driver's, professional, and business licenses suspended. A respondent found to have willfully and voluntarily failed to pay child support may be jailed for up to six months for civil contempt of court. A hearing to decide that issue is called a "willfulness hearing."



#### **H. CAN THE SUPPORT ORDER BE CHANGED?**

If there is a change in circumstances, for example if the supporter lost a job or got a raise, either party has the right to file a petition to modify the order so that the supporter will have to pay more or less child support. The party seeking a change in the order must file a modification petition containing a statement explaining the change in circumstances. The petition and a summons must be served on (delivered to) the other party. The court then holds a hearing to consider changing the order.

Orders paid through the Support Collections Unit (SCU) will be reviewed automatically every three years for a possible Cost of Living Adjustment (COLA), upon either party's request, or when the person with custody of the child receives public assistance for the child. The parties are notified of their right to ask the SCU to review the order. Following the review, the parties are notified of the possible change in the order. If they disagree with the proposed new order, they may request a hearing before a support magistrate.

#### **I. WHAT IF A CUSTODIAL PARENT IS SEEKING SUPPORT FROM A PARENT WHO LIVES OUTSIDE NEW YORK STATE OR IN A COUNTY IN NEW YORK STATE FAR FROM THE CHILD'S HOME COUNTY?**

The Uniform Interstate Family Support Act (UIFSA) provides a custodial parent with two options to secure an order of child support over an out-of-state parent. First, the custodial parent may file a UIFSA case in the state where the noncustodial parent resides. The New York City Law Department (Corporation Counsel) will help the custodial parent initiate a UIFSA petition. This petition is forwarded to the state where the noncustodial parent lives. The other state will arrange to serve the petition. The noncustodial parent appears in the Family Court, or its equivalent, in his or her home state. The custodial parent is not required to appear in court. A lawyer, at no cost to the custodial parent, will appear in the out-of-state court to represent the custodial parent at the support hearing. The Family Court in the state where the noncustodial parent lives would issue the support order.

Second, a custodial parent may file a paternity or support proceeding in the New York Family Court to obtain personal jurisdiction over a person who lives in another state. This is called "long-arm jurisdiction." To file a "long arm" case, the nonresident parent must have significant ties to the child or the child's conception in New York State.

A custodial parent files a petition in the Family Court in his or her home county. The out-of-state parent must be served with a copy of the petition, a nonresident summons, and an application for electronic testimony. Corporation Counsel or



the Support Collection Unit (SCU) may help a custodial parent serve the out-of-state noncustodial parent with these papers. The party who resides outside the state may be permitted to testify by telephone or other electronic means. The New York Family Court would issue the support order.

As stated earlier, New York law provides that parents must support a child up to the age of 21, unless the child is emancipated. Under the law of many other states, parents must support a child up to the age of 18. Parties should speak to the Corporation Counsel's office or visit their local Family Court to determine which option is available and would best fit their and the child's needs.

When the parents reside in two different counties in New York State not located next to one another (New York City is considered one county for this purpose), the custodial parent may file the case in the Family Court of either county. The party who resides in a county other than that of the Family Court in which the case is filed may be permitted to testify by telephone or other electronic means.

**J. CAN A PETITION BE FILED AGAINST A HUSBAND OR WIFE FOR SPOUSAL SUPPORT?**

In New York State, a married person may file a petition in the Family Court seeking spousal support from a current husband or wife. Although a divorced person may not seek a new order of support from an ex-spouse in Family Court (that would be done in State Supreme Court), a petition may be filed in the Family Court to modify an already existing order for an ex-spouse.

The petition and summons must be delivered to the respondent. A hearing is then held before a support magistrate. The parties must present evidence of their income and expenses, and may present witnesses to testify. The support magistrate decides whether to order the respondent to pay spousal support for the petitioner and, if so, how much and for how long.



## Paternity

### **A. WHAT IS A PATERNITY CASE?**

When a child is born to parents who are not married to each other, the biological father is not considered the child's legal parent unless (1) the father has signed an "Acknowledgment of Paternity" (usually done at the hospital when the child is born) declaring himself to be the child's father or (2) the court enters an "order of filiation," a court order that declares that person to be the legal father. A petition may be filed in the Family Court seeking an order of filiation.

### **B. WHY IS IT NECESSARY TO HAVE AN ORDER OF FILIATION?**

A man who was not married to the child's mother when the child was conceived or born or who did not sign an Acknowledgment of Paternity has no obligation to pay child support unless the court decides that he is the biological father. A non-biological parent also has no legal right to custody of or visitation with the child or the right to be notified of a case involving the child's adoption. An order of filiation from the court allows the father to ask the court for custody of the child or visitation and the right to be notified if the child will be placed for adoption. An order of filiation also allows the child's mother to petition the court for child support.

### **C. WHO MAY FILE A PATERNITY PETITION?**

The petition may be filed by the mother, by a man who believes he is the child's father, or by the child or the child's guardian. If the child is receiving public assistance, the Department of Social Services (DSS) may file a petition against the alleged father seeking an order of filiation and an order of support. In some cases, a paternity petition may be filed even if the alleged father has died.

The paternity petition and a summons must be delivered to the respondent. The person filing a paternity petition is the petitioner. The person against whom the petition is filed is the respondent.

### **D. WHAT IF THE MOTHER WAS MARRIED TO SOMEONE ELSE WHEN THE CHILD WAS BORN?**

If the mother was married when the child was conceived or born, her husband is considered to be the child's legal father, even though he might not be the biological father, unless a court decides that he is not the father. This is called a presumption of legitimacy.

If someone who believes he is the child's father files a paternity petition, a copy of the paternity petition must be served on the mother's husband to notify him



about the court case. After the mother's husband is served, a judge may make a ruling about whether he is the child's father.

If the judge decides that the husband is not the father, and the presumption has been overcome, the paternity case against the other alleged father may continue. The court may accept an affidavit of non-paternity from the legal husband, stating that although he was married to the mother, he is not the child's father. If the legal husband cannot be located, the petitioner may submit an affidavit of due diligence, stating that the petitioner contacted city and state agencies to find the legal husband but was unsuccessful.

#### **E. WHAT DOCUMENTS MUST BE BROUGHT TO COURT?**

The petitioner should present a copy of the child's birth certificate.

#### **F. DO THE PARTIES NEED LAWYERS?**

The parties may represent themselves or hire lawyers. A respondent who cannot afford to hire a lawyer will be assigned one at no cost.

#### **G. WHAT HAPPENS AT THE HEARING?**

Initially, the parties appear before a support magistrate. If the mother was not married when the child was conceived or born, and both parties acknowledge that he is the father, the support magistrate enters an order of filiation. If either party denies the alleged paternity, the support magistrate will order DNA tests of both parties and the child and adjourn the case to another date.

#### **H. HOW DOES THE DNA TEST WORK?**

The parties are given an appointment for the laboratory tests. The petitioner or respondent may have to pay for it, unless the court finds that the party cannot afford it. If so, DSS will pay for the test.

When the parties return to court, the court explains the test results. The DNA tests might show that the man is likely not the biological father or may show how likely it is that he is the father. If the respondent admits paternity, an order of filiation is entered. If the parties cannot agree on paternity, the matter is adjourned for a hearing. At the hearing, both parties may testify and present witnesses, and the blood or DNA test results may be offered in evidence. The petitioner usually has the burden of proving paternity by clear and convincing evidence. If the DNA test results are 95% or higher, the burden shifts to the respondent to prove he is not the child's father. If the petitioner presents sufficient proof, the court will enter an order of filiation. If not, the petition will be dismissed.

After paternity has been decided, the support magistrate will conduct a support hearing if the custodial parent seeks an order of child support or is receiving public assistance for the child.



## Child-Protective Proceedings

### **A. WHAT IS A CHILD-PROTECTIVE PROCEEDING?**

When it appears that a child under 18 years old has been abused or neglected (meaning harmed or not taken care of) or is in danger of being abused or neglected, a child-protective agency may file a petition asking the Family Court to assist in protecting the child. In New York City, this agency is the Administration for Children’s Services (ACS). ACS is the petitioner, and the parent or caretaker is the respondent.

A child-protective proceeding is a court case to decide whether the allegations of abuse or neglect are true and, if so, what action the court should take to protect the child.

### **B. WHAT IF THE POLICE OR AN AGENCY HAS REMOVED THE CHILD?**

When the petition is filed in the Family Court, the child may already be in foster care because ACS or the police might already have taken (removed) the child from the home due to an emergency. In emergencies, ACS or the police may remove a child with or without a court order. If the child has been removed, the parents may ask that a court hearing be held within three days of the request. At this hearing, the parents may ask the court to decide whether the child may return home until the court finishes a full hearing on the allegations of abuse or neglect.

At that hearing, the judge must return the child to the parent unless the judge finds that returning the child to the parent would pose an immediate risk to the child. The parent may also ask the judge to move the child to a relative’s home if the judge finds that the child should not be with the parent.

### **C. DO THE PARENTS NEED LAWYERS TO REPRESENT THEM?**

The parents should obtain a lawyer. They may hire lawyers to represent them in court or ask the court to assign lawyers at no cost if they cannot afford to hire their own. Each respondent must have a separate lawyer.

A lawyer is also assigned to represent the child. This lawyer is called the “law guardian.” The lawyer usually works for The Legal Aid Society, Lawyers for Children, or another child-advocacy organization. The law guardian may also be an 18-b panel member (assigned counsel plan).



#### **D. HOW DOES THE COURT CASE BEGIN?**

The petition and a summons must be delivered to the parents or other persons legally responsible for the child's care to tell them to come to court so that they may hear the case against them and defend themselves. If the persons named in the petition are not the child's parents but are people legally responsible for the child, then the parents must also be served with court papers so that they may appear in court if they wish to request temporary or permanent custody of their child. In some cases, other relatives of the child may also want to appear in court.

#### **E. WHAT HAPPENS AT THE FACT-FINDING HEARING?**

The court holds a "fact-finding hearing" to decide whether the child has been neglected or abused and a "dispositional hearing" to decide what should be done if the court finds this to be so.

At the fact-finding hearing, the child-protective agency may present hospital and agency records, photographs, and other evidence to prove neglect or abuse, and may call witnesses. If appropriate, the child may be called as a witness. Sometimes young children may be interviewed by the judge in "chambers" (the judge's office) instead of in the courtroom if the judge believes that it is better for them to talk privately. The respondents' lawyers and the law guardian may cross-examine (question) the witnesses, challenge the evidence that ACS offers, and present their own witnesses and evidence.

#### **F. WHAT HAPPENS AFTER THE FACT-FINDING HEARING?**

If the court finds that the abuse or neglect has not been proven, the court will dismiss the petition and return the child to his or her home.

If the court decides that the child has been abused or neglected, a dispositional hearing will be held so that the court can determine what orders to make in the child's best interests. If the child has not already been removed from the home and the court finds that removal would be best for the child, the child will be removed and given (remanded) to ACS's custody before the dispositional hearing. The child may be placed in foster care or with other suitable persons until the court makes its final disposition.

The court then orders ACS to investigate and report on the child's home and family. In some cases, the court orders Mental Health Services to evaluate the respondent. Reports are prepared to help the judge decide what orders will serve the child's best interests.



### **G. WHAT HAPPENS AT THE DISPOSITIONAL HEARING?**

At the dispositional hearing, the court hears testimony and reviews reports recommending what should be done for the child.

Possible dispositions of the child include:

1. Releasing the child to the parents or guardian with supervision on conditions the court specifies.
2. Adjourning the case in contemplation of dismissal (ACD), which may also occur before the fact-finding hearing.
3. Placing the child in foster care while services are provided to the parents to help them become better parents and to allow for the child's possible return to them at a future date.
4. Suspending judgment for a maximum of one year, unless the court finds at the end of that period, at a hearing, that exceptional circumstances (serious reasons) require that the court wait another year to make a decision.
5. Releasing the child to a fit (someone who can take good care of the child) and willing (who wants the child) relative if the parents consent.



## Foster Care

### **A. WHAT IS FOSTER CARE?**

A child in “foster care” is a child who has been placed in the care and custody of ACS or another approved childcare agency for either short-term or long-term care. Placement may be with a “foster family,” which may include the child’s relatives. Foster families receive foster-care funds to help care for the child. ACS or another authorized agency has custody of the child, but the parent continues to have legal rights to make some decisions about the child’s welfare.

### **B. HOW DOES A CHILD ENTER FOSTER CARE?**

A parent or legal guardian may ask to have the child placed in foster care. A child may also enter foster care by court order. The court may order that the child be placed in the care of ACS or another approved agency if it finds that the child has been abused or neglected or are at risk of such harm, or when the child’s behavior is beyond the control of those responsible for caring for the child. A child-protective agency like ACS may also remove children from their homes in emergencies if the agency determines that the children are in danger.

### **C. WHERE IS THE CHILD PLACED?**

The child may be placed with foster parents (who may be the child’s relatives), in a group home, or in an institution, depending on the child’s needs and what foster care is available.

### **D. HOW LONG DOES THE CHILD STAY IN FOSTER CARE?**

A child’s placement in foster care may be temporary. If so, the child will return to the parents or guardian when the court decides that it is best for the child. If it is not in the child’s best interests to return to the parents or guardian, the child may become eligible for adoption by another family.

A parent or guardian who agrees to place a child into foster care signs a “Voluntary Placement Agreement” transferring the child’s care and custody to an agency. If the child is expected to stay in foster care for more than 30 days, ACS must file a petition asking the court to approve the placement and stating the agency’s plan for the child’s future. The agreement may say how long the child must stay in foster care, or the period of time may be left open. The court then hears testimony from the persons who signed the agreement and from the agency representative who witnessed the signing of the agreement to decide whether the agreement is valid (for example, did the parents sign it willingly?), whether foster care is good for the child, and how long the child should stay in foster care. (See the section on ASFA, below.)



**E. DO THE PARENTS NEED TO HAVE A LAWYER REPRESENT THEM?**

The child’s parents or guardian may represent themselves or may hire a lawyer. If they cannot afford a lawyer, they have the right to have the court appoint one at no cost.

**F. WHAT HAPPENS WHILE THE CHILD IS IN FOSTER CARE?**

Whenever a child is in foster care, the case will stay on the court’s calendar, meaning that the parties must come back to court so that the judge can keep track of the case. The court must hold a “permanency planning hearing” at least once every six months when a child is in foster care.

At the permanency hearing, ACS must give the court a report that includes information on how the child is doing, the parent’s progress in working toward family reunification, and what ACS recommends for the child. At the hearing, the court must review ACS’s plan for the child and decide whether the child should be returned home to the parent.

If the child is not returned home after the hearing, the court must decide what goal would be in the child’s best interests. The goal may be to

1. To return the child to the parent;
2. To allow the child to be adopted by telling ACS to file a termination of parental rights petition;
3. To find a legal guardian for the child;
4. To place the child permanently with a fit and willing relative; or
5. To place the child in another planned permanent-living arrangement.

The court may also tell ACS to provide services to the child or services to the parent to help achieve family reunification. If the child is staying in foster care, the court must also outline a plan for visitation between the parent and the child.

**G. WHAT HAPPENS WHEN PARENTS DO NOT WISH TO HAVE THEIR CHILDREN RETURN HOME OR CANNOT PROPERLY CARE FOR THEM?**

Parents may voluntarily agree to have their children adopted by signing a document in court called a “surrender,” giving up their rights as parents. The agency may also file a petition asking the court to hold a hearing to determine whether



the court should “terminate” (end) the parents’ rights. The court may permanently end the parents’ legal rights to the child and give custody and guardianship of the child to ACS and the foster-care agency if (1) the court finds that the child has been abandoned, severely or repeatedly abused, or permanently neglected or (2) if the parents are unable to care for the child because of mental illness or retardation, and (3) if the court decides that it would be in the child’s best interest to be adopted. Foster parents may then adopt the child, or the agency may look for another suitable permanent home for the child.



## Adoption and Safe Families Act (ASFA)

In 1996, President Clinton signed the Adoption and Safe Families Act (ASFA), a law designed to make the lives of abused and neglected children more stable. The law says that children who have been in foster care for 15 of the last 22 months must, in most cases, be ready to be placed in a permanent home. For these children, the child-welfare agency must either ask the court to terminate the parent's rights or ask the parents to sign voluntary surrenders so that the child can be adopted. Otherwise, the agency must return the child to the parents or find a relative or other suitable person to take custody of the child. For children old enough to live on their own, the agency may recommend to the court that the children live on their own.

As of December 21, 2005, New York State law requires that the child-protective agency file sworn reports with the court so that the court may review the child's foster-care situation. The agency must also give the court a service plan, which is a recommendation on how to make it possible for the child to live in a stable home. Copies of the reports must be given to the child, the parents, the parents' lawyer, the child's law guardian, and the foster parents. The agency must also update the court on the child's progress in foster care on issues like immunizations, health care, visitation, parental compliance with services, and special needs the child might have, as well as whether the parents are doing well in their parenting or other programs.

The law also gives parents a certain amount of time to become more responsible parents, which means that parenting programs and other services are available to them only for a limited time period. The law was written so that children will not stay in foster care for long periods of time and so that the adoption process will happen quickly if it is necessary for the child's health and safety. Social-service agencies must make reasonable efforts to help parents regain custody of their children. "Reasonable efforts" means that the agency must help parents visit with their children and refer parents to services they need, such as parenting classes, drug treatment programs, and anger management classes. If the court finds aggravated circumstances, which could mean that a parent murdered a child's sibling or the parent's rights to another sibling were terminated by the court, the law says that the agency might not have to make reasonable efforts to give services to the parent. If parents are referred to programs to help them with their problems, they must do what the programs require. Otherwise, they risk losing their children to people ready, willing, and able to adopt them.



## Permanent Termination of Parental Rights

### **A. WHO FILES A PETITION TO TERMINATE A PARENT'S RIGHTS?**

An approved child-protective agency may in some circumstances file a petition asking the court to terminate (end) a parent's legal rights to a child so that the child may be adopted.

### **B. WHO MUST BE NOTIFIED ABOUT THE PETITION?**

If the child's parents are or were married, the agency must deliver the petition and a summons to both parents. If the child was born out of wedlock, the mother must be served. The father must also be served (1) if the court has entered an order of filiation (a paternity order declaring the biological father to be the child's legal parent), (2) if the father has signed an "Acknowledgment of Paternity," (3) if the father is named as the father of the child on the child's birth certificate, (4) if the mother identified the father in a sworn (notarized) written statement, or (5) if the father is registered with the New York State Putative Father Registry (a Department of Social Services list of any person adjudicated by a court to be the father, any person who has filed with the registry a notice of intent to claim paternity, and any person who has filed an Acknowledgment of Paternity with the registry). If none of those circumstances exists, the court may still order that the father be served with notice of the case.

### **C. DO THE PARENTS NEED A LAWYER TO REPRESENT THEM?**

It is important for the parents to have a lawyer. The parents may hire a lawyer or ask the court to appoint one to them at no cost if they cannot afford a lawyer. The court will assign a lawyer C called a "law guardian" C to represent the child. The law guardian will usually be the same lawyer who has been representing the child in the child-protective case.

### **D. WHAT IF THE PARENTS DO NOT COME TO COURT FOR THE HEARING?**

The parents have the right to be present at the hearing, to see the evidence, and to hear the witnesses. Their lawyer may cross-examine the witnesses and present the parents' own witnesses and evidence. If the parents do not come to court and the court finds that they were served properly with the court papers and had the opportunity to appear, the court can hold the hearing without them. The judge will then hear only the agency's lawyer and the law guardian and make decisions without the parents being present. This hearing is called an inquest.



#### **E. WHAT HAPPENS AT THE FACT-FINDING HEARING?**

If the parents come to court, the court will hold a fact-finding hearing. At the fact-finding hearing, the agency (petitioner) must present evidence and witnesses to prove that the parents permanently neglected, severely or repeatedly abused, or abandoned the child, or that the parents are mentally unable to care for the child now and in the foreseeable future due to mental illness or mental retardation. The agency may also have to show that it used diligent efforts to help the parents complete their service programs and that even with the agency's help, the parents have not cooperated and completed them. The parents' lawyers may cross-examine the petitioner's witnesses and present witnesses for the parents. The parents may also testify. The petitioner must prove the allegations by clear and convincing evidence.

#### **F. WHAT HAPPENS AFTER THE FACT-FINDING HEARING?**

If the court finds that the petitioner has not proven the case, the petition will be dismissed and the child may remain in foster care. If the agency has proven that the parent has severely or repeatedly abused or abandoned the child, or that the parents are mentally unable to care for the child for now and in the foreseeable future, the court may terminate the parent's rights. If the agency has proven permanent neglect, the court will move on to the dispositional hearing to decide what to do. If the court finds that the parent has abandoned the child or that the parents are mentally unable to care for the child for now and in the foreseeable future, the court may hold a dispositional hearing and may terminate the parental rights without a termination hearing.

If a parent's rights are terminated, the child can be adopted without the parent's consent. After the child is adopted, the biological parents' names are removed from the child's birth certificate, and a new birth certificate is issued.

At the dispositional hearing, the parties submit evidence, and the court determines what will be in the child's best interests: returning the child to the parent or making the child ready for adoption.

Even if the court finds that the agency has proven the fact-finding portion of the case, judgment may be suspended (delayed) for up to one year. This might happen if the parents have taken steps to comply with the agency's service plan after the petition was filed and the court finds that the parent and child would benefit from one more year of the parent's efforts to have the child returned to the home. The petition will be dismissed at the end of the suspended-judgment period if the parents have cooperated. Otherwise, the court will find that the parents' rights should be terminated, and the court might move to free the child for adoption, meaning that the child can be adopted.



### **G. CONDITIONAL SURRENDERS**

Parents may choose to give up the right to a trial and surrender their parental rights. Parents may sign a conditional surrender that says they agree to give up their rights if a specific person adopts their children. All parties and the judge must agree that the parent giving up the right to parent a child is competent to do so and that the parent is surrendering freely and without pressure from someone else. Further, all parties must agree that if there is a request that a certain person adopt the child, it would be in the child's best interests that this person adopt the child. Additionally, the social-services agency must investigate and approve the person identified to adopt. This means that, among other things, the adopting parent must have child abuse and neglect clearances and criminal clearances and that the agency must have investigated the person's home and approved that person as a foster parent. The conditional surrender may also allow a parent to keep the right to contact and visit with their children after they have been adopted, a process called "open adoption."



## Adoption

### **A. WHAT IS AN ADOPTION?**

When a child's parents have died, when the parents cannot continue to provide for their child's care or custody, or when the court terminates (ends) the parents' right to continue having responsibility for their child's care and custody of their child, the child may be "adopted." In an adoption, the birth parents' rights are ended, and the court gives permanent legal responsibility for the child to other persons, who then become the child's legal parents. Children 14 years of age or older may not be adopted without their consent.

Adoptive parents can be the following people: (1) an adult unmarried person or a husband and wife together, (2) an adult married person who is separated from his or her spouse under a decree or judgment of separation or a written and notarized separation agreement, or (3) an adult married person who has been living apart from his or her spouse for at least three years before the adoption case is filed. Additionally, two unmarried adult persons living together may adopt together.

There are two types of adoptions in the Family Court: "private placement" and "agency." Adoption petitions are sometimes filed and heard in the Surrogate's Court.

### **B. WHAT IS A "PRIVATE PLACEMENT ADOPTION"?**

In a private-placement adoption, an agreement is reached between the child's biological parents and the person(s) who wishes to adopt the child. The court must "pre-certify" (approve) the adoptive parent or parents as persons able to take temporary custody of the child. In a pre-certification petition, the court requires that a licensed social worker submit a home-study investigation report of the adoptive parent's home. The court also requires that the adoptive parents give the court (1) criminal clearances, (2) child abuse and neglect clearances, (3) health clearances, (4) tax returns or financial statements, and (5) letters of reference.

If the court finds that the prospective adoptive parent(s) is (are) able to provide for a child's care and support, the court will certify them as qualified adoptive parents for 18 months. For a step-parent adoption, there is no need to pre-certify.

After the adoptive parents are certified and after a child is placed with the adoptive parents, the adoptive parents will file the petition for adoption. The court



requires the adoptive parent(s) to submit a number of additional documents, including an adoption petition, marriage records, if any, and a report following an investigation of the adoptive parents' home by a licensed social worker, criminal clearances, child abuse and neglect clearances, and medical statements of health. The court requires proof that the biological parents are voluntarily giving up their rights to the child or that the court terminated (ended) their parental rights.

If the court finds that the adoptive parent(s) is (are) able to provide for the child's proper care and support, the court approves the adoption. The adoptive parent(s) and the child and their lawyer will appear before the judge, who will sign the order of adoption with all parties present.

### **C. WHAT IS AN "AGENCY ADOPTION"?**

There are two types of agency adoptions: adoptions through a foster-care agency and adoptions through private adoption agency. A private-agency adoption means that the biological parent has voluntarily placed the child with the agency for adoption. The agency will then place the child with prospective adoptive parent(s). In a foster-care-agency adoption, the agency files a petition to terminate (end) the parents' rights to the child when a court has already given responsibility for a child's care and custody to an agency and the child is living with foster parents. A child whose parents' rights have been terminated is then freed (ready) for adoption. As explained earlier, a biological parent may also surrender parental rights to a foster-care agency.

Persons interested in adopting a child may apply to adopt through an agency. The agency investigates the adoptive parent or parents' home and background to see whether they are suitable for the child. The agency "certifies" the adoptive parent(s) in agency adoptions just as the court does in private adoptions.

A petition and other documents are then submitted to the court for its approval. If the court finds that the adoptive parent(s) is (are) able to provide proper care and support for the child, the court approves the adoption. Sometimes, money, called an "adoption subsidy," may be available through the agency to help support the child.

When the court approves the adoption, the adoptive parent(s) and the child and their lawyer will appear before the judge, who will sign the order of adoption with all parties present.

### **D. DO THE PARTIES NEED LAWYERS?**

A lawyer should represent the adoptive parent(s), but the court will not appoint a lawyer for free.



**E. WHAT IS THE LEGAL EFFECT OF AN ADOPTION?**

Once a court approves an adoption, the adoptive parent or parents are considered to be the child's legal parents, with all the rights and obligations of biological parents. The biological parents have no further rights regarding the child. They have no right to visit the child (except in the case of a conditional surrender if the surrender contains a visitation clause), to have custody rights, or to find out about the child's life. The parents' duty to pay child support ends when the adoption is finalized. The child's name may be changed as part of the adoption, and the child's birth certificate will be changed to reflect any new name and the names of the adoptive parent(s) as mother and father. Often, the child will be given a new social security number showing the child's new name.



## Family-Offense Proceedings

### **A. WHAT IS A FAMILY-OFFENSE PROCEEDING?**

A family-offense proceeding is a court case in which a petitioner claims that a spouse or former spouse, family member, or someone with whom he or she has a child (even if they were never married to each other and never lived together) has committed an act against the petitioner or child involving disorderly conduct, reckless endangerment, harassment, stalking, menacing, or physical harm or the threat of harm. The person accused of committing these acts is the respondent. The person asking for protection is the petitioner.

The petitioner may file the case in the Family Court or the Criminal Court, or both. Both courts have the power to issue orders of protection, but the Criminal Court may also hear criminal charges against the respondent. If the case involves domestic violence, a case that might otherwise require hearings in the Family Court (family-offense case), the Criminal Court (criminal case), and the Supreme Court (a divorce case) may be heard in one court called the “Integrated Domestic Violence Court.” This allows all the cases (family offense, criminal, and divorce) to be heard at the same time and place. Any Family Court case, including a family-offense case, that involves drugs may be heard in the Drug Court. The Drug Court has the power to send a party for a urine test and to require a party enter a treatment program.

### **B. WHAT IS AN ORDER OF PROTECTION?**

An order of protection is a court order that lists behavior and actions the respondent is forbidden to do, such as threatening or harming the petitioner or other family members; going near the petitioner’s home or place of employment or a child’s school; harassing the petitioner; or using alcohol or illegal drugs. Other conditions may be added to the order to keep family members and the petitioner safe. An order of protection must be served (delivered) on the respondent; otherwise, the court may not enforce it.

### **C. HOW IS A FAMILY-OFFENSE PROCEEDING FILED?**

The petitioner seeking a Family Court order of protection may file a petition in the petition room of the court in the county in which either party resides or where the violence or harassment took place. The petitioner may also seek an order of protection in the Criminal Court. The petition must describe the acts complained of — abuse, threats, etc. — and ask that the court issue an order of protection.

If the incident was reported to the police, the petitioner should bring the police report to court, if possible.



**D. WHAT CAN A PETITIONER ASK FOR?**

The petitioner may ask the court to order the respondent to (1) stay away from places like the petitioner’s home, work, and school, (2) stop certain behavior like physical and verbal abuse, (3) let the petitioner go home to collect belongings, (4) leave the family home, (5) pay temporary child support, and (6) surrender guns and gun licenses. The petitioner can also ask the court to make the order of protection last for up to five years under certain circumstances and to give the petitioner custody and visitation of the child.

**E. WHAT IS THE DIFFERENCE BETWEEN A TEMPORARY AND A FINAL ORDER OF PROTECTION?**

A temporary order of protection is given to the petitioner the same day the petition for an order of protection is filed. It lasts only until the next court date, but the court may extend it until the case is over. The court may issue a final order of protection if the judge found that the respondent committed a family offense.

**F. HOW DOES THE FAMILY COURT CASE BEGIN?**

When the petition is filed in the Family Court, the judge may issue either a summons for the respondent to appear in court or an arrest warrant, depending on the circumstances. When the petitioner appears in the Family Court to file the petition, the judge may also issue a temporary order of protection and a temporary order of support. The court will tell the petitioner how the summons, petition, and order of protection must be served on (delivered to) the respondent, including the right to have the Police Department serve the summons, petition, and order.

**G. DO THE PARTIES NEED LAWYERS?**

Each party has the right to hire a lawyer. If they cannot afford a lawyer, they may ask the court to assign lawyers to represent them for free.

**H. WHAT HAPPENS AT THE HEARING?**

When both parties appear in court, the judge may adjourn the case to another day for updates on the household situation, appointment of lawyers, or other good reasons. The matter is then postponed for a fact-finding hearing, or trial. The court holds a fact-finding hearing to decide whether the respondent committed the acts alleged in the petition or complaint. The petitioner must testify and prove the case. Both parties have the right to present witnesses and evidence and to cross-examine each other and the witnesses.

If the judge decides that the petitioner has not proven the case, the judge will dismiss the petition. If the judge decides that the acts happened, then the court will hold a dispositional hearing to decide what action to take.



### **I. WHAT ARE THE POSSIBLE DISPOSITIONS (RESULTS)?**

1. The judge may issue an order of protection, which will be in effect for up to two years, or five years if there were “aggravating circumstances,” such as the use of a weapon.
2. The judge may set limits on the respondent’s future conduct, such as confiscating a gun or not allowing the respondent into the home.
3. The judge may place the respondent on probation.
4. The judge may order the respondent to take part in a substance-abuse, anger management, or other rehabilitation program.
5. The judge may order the respondent to pay the petitioner for any damage to the petitioner’s property (restitution).
6. The Family Court judge may also refer the matter to the Criminal Court for criminal proceedings against the respondent.

### **J. WHAT HAPPENS IF THE RESPONDENT DISOBEYS THE ORDER OF PROTECTION?**

If a respondent violates an order of protection, the petitioner may contact the police to arrest the respondent. The petitioner may also file a petition in either the Family Court or the Criminal Court, claiming that the respondent violated the order. This petition, called a “violation petition,” and a summons must be served on the respondent, or the court may issue a warrant for the respondent’s arrest.

When the parties are before the court, the court holds a hearing to determine whether the respondent disobeyed the order of protection. If the petition is not proven, the court will dismiss the petition. If the court finds that the respondent violated the order, the court holds a dispositional hearing to determine what action should be taken against the respondent. The Probation Department may be asked to investigate and make a recommendation to the court.

Possible dispositions include probation or incarceration or a change in the conditions set in the order of protection.

### **K. WHAT HAPPENS IF THE PETITIONER DOES NOT COME BACK TO COURT?**

The court may dismiss a case if the petitioner does not appear in court. If that



happens, the temporary order of protection is no longer valid. Petitioners who cannot appear in court should send someone in their place or notify the court by telephone or in writing to ask for a new court date.

**L. CAN AN ORDER OF PROTECTION OBTAINED IN ONE STATE BE USED IN ANOTHER STATE?**

If a person gets an order of protection in one state and leaves that state, the law requires that all states enforce the order. A party must have a certified copy of the order and complete an “affidavit in support of the entry of out-of-state order of protection.” A party does not need to serve the other side or see a judge to enforce the order.

Any person with a valid order of protection (an order that has not expired) who moves to another state should inquire as soon as possible at a court or law-enforcement agency about how to enforce orders in that state. Each state has a different way to keep track of orders.



## Guardianship

### **A. WHAT IS A GUARDIAN?**

A guardian is a person or an agency that the court gives authority to be responsible for a child's care. Guardianship may be temporary. It also may be planned for in the future: The court may appoint a "standby guardian" to take responsibility for a child's care at a future date if, for example, a parent's illness is worsening and he or she is not expected to be able to continue caring for the child.

An adult relative, family friend, or a child-protective agency may petition the court to be appointed the child's guardian or standby guardian. An adult relative, family friend, or a child-protective agency may petition the court to be appointed the child's guardian or standby guardian. Guardianship is the most extensive power, short of adoption, that a court can give a nonparent. It is not a permanent relationship; it ends automatically when the child reaches 18, marries, or dies. The child's guardian can, among other things, obtain or consent to medical, educational, and mental-health services; consent to marriage; consent to enlistment in the armed services; and consent to the inspection and release of confidential medical records.

Families should know the difference between guardianship in the Family Court and Surrogate's Court. The Family Court has similar jurisdiction and authority as the Surrogate Court about the guardianship of the person of a minor, a child 17 years or younger. Normally, guardianship petitions of the person of a minor are filed in the Family Court. The Surrogate's Court has the power over the property of a minor and may to appoint a guardian of the person, the property, or both the person and property.

### **B. WHAT HAPPENS AT THE HEARING?**

In a guardianship hearing, the court takes testimony about the person seeking guardianship to determine whether it would be in the child's best interests to allow that person to take responsibility for the child's care. The court may consider the child's wishes. Before the guardian's appointment becomes permanent, the guardian will be fingerprinted and undergo a background check.

### **C. WHAT SHOULD THE PERSON SEEKING GUARDIANSHIP BRING TO FILE A PETITION?**

The person wants to be a guardian should, if possible, bring the following documents to court:

- Child's birth certificate.
- If the parent is dead, the original death certificate.
- Proof of identification, preferably a picture ID and proof of residence.



If the child is over 14 years old and unable to appear in court, the child should sign and notarize Form 6-3, "Preference of a Minor over 14 Years of Age." If the child's parents are unable to appear in court, the parents should sign and notarize Form 6-4 "Waiver of Process, Renunciation or Consent to Guardianship."



**The Association of the Bar of the City of New York  
Committee on the Family Court and Family Law**

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Diego M. Santiago, Secretary\*\*

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June B. Callwood  
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## For More Information

### FAMILY COURT, BRONX COUNTY

**Family Court** (718) 590-3321  
**Chief Clerk's Office** (718) 590-3318  
900 Sheridan Avenue  
Bronx, NY 10451-3384  
<http://www.nycourts.gov/courts/nyc/family/index.shtml>

**City of New York** (718) 590-3435  
**Human Resources Administration**  
**Child Support Collection Unit**  
900 Sheridan Avenue  
Bronx, NY 10451-3384  
<https://newyorkchildsupport.com/home.html>

**Office of Corporation Counsel** (718) 590-3255  
**Family Court Division**  
900 Sheridan Avenue  
Bronx, NY 10451-3384  
<http://www.nyc.gov/html/law/html/fcourt.html>

**The Legal Aid Society** (718) 579-7900  
**Juvenile Rights Division**  
900 Sheridan Avenue, Room 6-C12  
Bronx, NY 10451-3384  
<http://www.legal-aid.org>

**State of New York** (718) 992-3600  
**Office of Children and Family Services**  
900 Sheridan Avenue  
Bronx, NY 10451-3384  
<http://ocfs.state.ny.us>

**New York City** (718) 590-3180  
**Department of Probation**  
**Bronx Family Intake Services**  
900 Sheridan Avenue  
Bronx, NY 10451-3384  
<http://www.nyc.gov/html/prob>



**Safe Horizon** (718) 538-3441  
900 Sheridan Avenue  
Bronx, NY 10451-3384  
<http://www.safehorizon.org>

**Office of the District Attorney** (718) 590-2000  
*Bronx County*  
900 Sheridan Avenue  
Bronx, NY 10451-3384  
<http://www.bronxda.net>

**FAMILY COURT, KINGS COUNTY**

**Family Court** (347) 401-9600  
*Chief Clerk's Office*  
330 Jay Street, 7th Floor  
Brooklyn, NY 11201-2935  
<http://www.nycourts.gov/courts/nyc/family/index.shtml>

**City of New York** (718) 246-7962  
**Human Resources Administration**  
*Child Support Collection Unit*  
330 Jay Street  
Brooklyn, NY 11201-2935  
<https://newyorkchildsupport.com/home.html>

**Office of the Corporation Counsel** (718) 222-2381  
*Family Court Division*  
330 Jay Street  
Brooklyn, NY 11201-2935  
<http://www.nyc.gov/html/law/html/fcourt.html>

**The Legal Aid Society** (718) 237-3100  
*Juvenile Rights Division*  
111 Livingston Street, 11th Floor  
Brooklyn, NY 11201-5078  
<http://www.legal-aid.org>



**State of New York** (718) 855-3384  
*Office of Children and Family Services*  
330 Jay Street  
Brooklyn, NY 11201-2935  
<http://www.ocfs.state.ny.us>

**New York City** (718) 643-4038  
**Department of Probation**  
*Brooklyn Family Intake Services*  
330 Jay Street  
Brooklyn, NY 11201-2935  
[http://www.ci.nyc.ny.us/html/prob/html/units\\_family.html#intake](http://www.ci.nyc.ny.us/html/prob/html/units_family.html#intake)

**Safe Horizon** (718) 834-7440  
330 Jay Street, 12th floor  
Brooklyn, N.Y. 11201-2935  
<http://www.safehorizon.org>

**Office of the District Attorney** (718) 250-3804  
**Kings County**  
*Juvenile Crimes Bureau*  
350 Jay Street  
Brooklyn, NY 11201-2935  
<http://www.brooklynda.org>

**FAMILY COURT, NEW YORK COUNTY**

**Family Court** (646) 382-5206  
*Chief Clerk's Office*  
60 Lafayette Street, 5th Floor  
New York, NY 10013-4094  
<http://www.nycourts.gov/courts/nyc/family/index.shtml>

**City of New York** (212) 334-7654  
**Human Resources Administration**  
*Child Support Collection Unit*  
115 Chrystie Street  
New York, NY 10013-5000  
[www.newyorkchildsupport.com](http://www.newyorkchildsupport.com)



**Office of the Corporation Counsel** (212) 442-6800  
*Family Court Division*  
60 Lafayette Street  
New York, NY 10013-4094  
<http://www.nyc.gov/html/law/html/fcourt.html>

**The Legal Aid Society** (212) 312-2260  
*Juvenile Rights Division*  
60 Lafayette Street, Room 9A  
New York, NY 10013-4094  
<http://www.legal-aid.org>

**State of New York** (212) 964-3003  
*Office of Children and Family Services*  
60 Lafayette Street, Room 7B20  
New York, NY 10013-4094  
<http://www.ocfs.state.ny.us>

**New York City** (212) 232-0470  
**Department of Probation**  
*Manhattan Family Intake Services*  
60 Lafayette Street  
New York, NY 10013-4094  
[http://www.ci.nyc.ny.us/html/prob/html/units\\_family.html#intake](http://www.ci.nyc.ny.us/html/prob/html/units_family.html#intake)

**Safe Horizon** (212) 577-7700  
60 Lafayette Street  
New York, NY 10013  
<http://www.safehorizon.org>

**FAMILY COURT, QUEENS COUNTY**

**Family Court** (718) 298-0197  
*Chief Clerk's Office* (718) 298-0198  
151-20 Jamaica Avenue (718) 298-0199  
Jamaica, NY 11432-3726  
<http://www.nycourts.gov/courts/nyc/family/index.shtml>



<b>City of New York</b> <b>Human Resources Administration</b> <i>Child Support Collection Unit</i> 151-20 Jamaica Avenue Jamaica, NY 11432-3726 <a href="http://www.nyc.gov/html/hra">http://www.nyc.gov/html/hra</a>	<b>(888) 208-4485</b>
<b>Office of the Corporation Counsel</b> <i>Family Court Division</i> 151-20 Jamaica Avenue Jamaica, NY 11432-3726 <a href="http://www.nyc.gov/html/law/html/fcourt.html">http://www.nyc.gov/html/law/html/fcourt.html</a>	<b>(718) 658-0500</b>
<b>The Legal Aid Society</b> <i>Juvenile Rights Division</i> 90-04 161st Street Jamaica, NY 11432-6103 <a href="http://www.legal-aid.org">http://www.legal-aid.org</a>	<b>(718) 298-8900</b>
<b>State of New York</b> <i>Office of Children and Family Services</i> 151-20 Jamaica Avenue Jamaica, NY 11432-3726 <a href="http://www.ocfs.state.ny.us">http://www.ocfs.state.ny.us</a>	<b>(718) 658-6524</b>
<b>New York City</b> <b>Department of Probation</b> <i>Queens Family Intake Services</i> 151-20 Jamaica Avenue Jamaica, NY 11432-3726 <a href="http://www.ci.nyc.ny.us/html/prob/html/units_family.html#intake">http://www.ci.nyc.ny.us/html/prob/html/units_family.html#intake</a>	<b>(718) 657-4385</b>
<b>Safe Horizon</b> 151-02 Jamaica Avenue - 2nd Floor Jamaica, NY 11432-3726 <a href="http://www.safehorizon.org">http://www.safehorizon.org</a>	<b>(718) 262-0202</b>



**Office of the District Attorney** (718) 526-6040  
**Queens County**  
***Family Court Bureau***  
121-01 Queens Boulevard  
Kew Gardens, NY 11415-1564  
<http://www.queensda.org>

**FAMILY COURT, RICHMOND COUNTY**

**Family Court** (718) 390-5465  
***Chief Clerk's Office*** (718) 390-5466  
100 Richmond Terrace  
Staten Island, NY 10301-1905  
<http://www.nycourts.gov/courts/nyc/family/index.shtml>

**City of New York** (718) 720-2456  
**Human Resources Administration**  
***Child Support Collection Unit***  
100 Richmond Terrace  
Staten Island, NY 10301-1905  
[www.newyorkchildsupport.com](http://www.newyorkchildsupport.com)

**The Legal Aid Society** (718) 981-0219  
***Juvenile Rights Division***  
60 Bay Street  
Staten Island, NY 10301-2514  
<http://www.legal-aid.org>

**Office of the Corporation Counsel** (718) 447-5395  
***Family Court Division***  
60 Bay Street  
Staten Island, NY 10301-2514  
<http://www.nyc.gov/html/law/html/fcourt.html>

**State of New York** (718) 447-1268  
***Office of Children and Family Services***  
599 Port Richmond Avenue  
Staten Island, NY 10302-1723  
<http://www.ocfs.state.ny.us>



**New York City** (718) 556-4000  
**Department of Probation**  
*Staten Island Family Intake Services*  
130 Stuyvesant Place, 4th Floor  
Staten Island, NY 10301  
[http://www.ci.nyc.ny.us/html/prob/html/units\\_family.html#intake](http://www.ci.nyc.ny.us/html/prob/html/units_family.html#intake)

**Safe Horizon** (718) 447-3820  
130 Stuyvesant Place  
Staten Island, NY 10301  
<http://www.safehorizon.org>

**Office of the District Attorney** (718) 876-6300  
**Richmond County**  
*Youth Violence/ Gang Unit*  
130 Stuyvesant Place  
Staten Island, NY 10301-2512  
<http://rcda.nyc.gov>



**NOTES**

