



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

COMMITTEE ON FAMILY LAW & 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, Jonathan Lippman, and the New York City Family Court's Administrative Judge, Edwina Richardson-Mendelson, the Family Court attempts to respond to both the legal and social service needs of families. Today's Family Courts house numerous services to assist families, such as childcare centers, parent education 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 Family Court and Family Law updated, revised, and expanded it. In 2012, the Committee on Family Court and Family Law updated the Guide once again.

Thanks are due to all the current members of the Committee on Family Court and Family Law for their contributions to this most recent edition of the Guide. Specific recognition is owed to Lillian Wan and Rachel Stier, who co-chaired the subcommittee that spearheaded the completion of this project, and to Marion Perry who edited this Guide. I would like to also thank the entire committee for their input into this guide, specifically: Melissa M. Beck, Amy L. Berlin, Catherine Canade, Marshall Currey Cook, Sarah P. Cooper, Janette Cortes-Gomez, Hon. Susan S. Danoff, Alicea Elloras, Elizabeth Fee, Sara J. Hemmeter, Hon. Anne Katz, Jill Kotner, Hon. Sabrina B. Kraus, Mark B. Leider, Emily C. Malloy, Darlene Jorif-Mangane, Theresa B. Moser, Marion Perry, Lisa Rivera, Claire B. Steinberger, and Sabra R. Sasson.

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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.

A set of laws called 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

W: Material Witness

Z: Other

## Overview

In New York City, each of the five boroughs has its own Family Court: Bronx, Brooklyn, Manhattan, Queens, and Staten Island. Generally, a case may be filed for free in the county where one of the parties lives. The Family Court is usually open to the people directly involved in a particular case, also known as “the parties”, and to the public. Even though the Court is open to the public, the judge or support magistrate presiding over each case may, in limited circumstances, exclude the public from the courtroom.

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 some foster care cases. Judicial Hearing Officers (JHOs) hear some family offense, custody, visitation, adoption, and voluntary placement foster care cases. There are no juries in Family Court.

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.), the hearing rooms in each courthouse close for a lunch recess, but each building remains open to the public. However, in Staten Island the Family Court building closes entirely during the lunch recess and all parties, attorneys, or members of the public must exit the building by 1:00 PM. Information about the hours of operation for each courthouse may be obtained by calling the individual courthouses or visiting [www.nycourts.gov](http://www.nycourts.gov) or [www.courthelp.gov](http://www.courthelp.gov).

Due to recent budget cutbacks in 2011, Night Court is no longer available in any of the New York City Family Courts.

Persons scheduled to appear in court are expected to arrive at the courthouse on time. 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. If a party is absent when the case is ready to be heard, the judge, referee, or support magistrate may begin and decide the case in that person’s absence; if the petitioner is not present, the judge may dismiss the case.

The Family Courts in all five boroughs 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 in writing, each party is entitled to a copy of the written decision, known as the “Final order.” Only the parties involved in a case, including the lawyers, are entitled to view or get a copy of a court order and other documents in the court file. To get a copy of an order, the party may wait in the courtroom or just outside the courtroom, or request a copy in the Record Room of the courthouse where the case was heard. Proof of identity (picture ID) is required to see or obtain copies of court records. The general public is not allowed to look at the court records of Family Court cases.

Each party has the right to appeal the judge’s or court attorney referee’s Final order. An appeal is a request for a higher court to take another look at the case. A support magistrate’s decision is first appealed by filing an “objection” with the Family Court. A Family Court judge reviews the support magistrate’s decision and determines whether the decision was correct. The judge’s decision may then 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).

Generally, 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, often called an “18b attorney”. 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 factors) might be able to get help from a legal services office (The Legal Aid Society only represents children in Family Court). For more information on obtaining a court appointed attorney, visit the Clerk’s Office in the Family Court.

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). For more resources, see the Appendix, starting on page 49.

## Glossary

**ADJOURNMENT:** A case has been postponed and scheduled for another day.

**ADJUDICATED:** A case has been adjudicated when the court has made a final decision about the allegations in the petition.

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

**ASSISTANT CORPORATION COUNSEL:** Assistant Corporation Counsel are lawyers from the New York City Law Department who prosecute juvenile delinquency cases. These lawyers also represent New York City in support and paternity 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. These cases are usually presented in the Criminal Court.

**ATTORNEY FOR THE CHILD:** An attorney for the child (formerly referred to as “law guardian”) is a lawyer the judge assigns to represent a child in Family Court. The attorney may be from The Legal Aid Society, Lawyers for Children, The Society for the Prevention of Cruelty to Children, Children’s Law Center, or the 18b panel (attorneys in private practice). In Family Court, children are represented by these attorneys free of charge.

**CASEWORKER:** Caseworkers are social service agency workers assigned to work with families in abuse/neglect cases. Caseworkers meet with the parties and their families outside of court (including at their homes) and assist the families with the problems that brought them to court. Caseworkers also bring case records to court and testify about the family during hearings. There are ACS caseworkers as well as foster care agency caseworkers.

**COURT ATTORNEY:** A court attorney is a lawyer who works with a judge and helps the judge by conducting legal research and conferencing cases. Court attorneys also often meet with the parties and their lawyers to try to reach an agreement and avoid a lengthy trial. Court attorneys do not make legal decisions.

**COURT ATTORNEY REFEREE:** A court attorney referee hears cases and may issue orders in custody, visitation, and foster care cases.

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

**COURT OFFICERS:** Uniformed court officers are assigned throughout every Family Court. They are responsible for security throughout the courthouse. In some courtrooms the court officers call the parties into the hearing rooms when the judges, court attorney referees, or support magistrates are ready to hear the cases. Every Family Court house has metal detectors and scanners, which every party must pass through. Court officers ensure that no party brings in any dangerous items. The following items are not allowed in New York City courthouses: weapons such as guns, knives, explosives, box cutters, corkscrews; cameras, or animals except service animals for the visually impaired. Some courthouses do not permit food or beverage.

**COURT REPORTER:** 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. If a court reporter is not present in the courtroom, the cases are recorded on a tape recorder. The parties may also order a transcript of the taped proceeding.

**CUSTODIAL PARENT:** A custodial parent is the parent with whom the child lives 50% or more of the time. This is also the parent who may receive child support.

**DEFAULT:** A default is an absence from court without a good reason. If a respondent was properly served with the court papers but did not appear in court, the judge may find that person in default. If a respondent is absent without an excuse, the court can decide the case without him/her.

**DISPOSITIONAL HEARING:** A trial on what happened *after* the petition was filed and what the court’s final decision should be. This hearing takes place after the fact finding hearing. The parties may testify, call and cross-examine witnesses, and present other proof.

**FACT FINDING HEARING:** A trial on the allegations in the petition, at which the parties may testify, call and cross-examine witnesses, and present other proof.

**GUARDIAN AD LITEM:** A guardian ad litem may be assigned to act in the place of a party where the party is required to appear in court or is necessary to the case but is unable to attend due to, for example, illness or incarceration. A guardian ad litem may also appear with a party who is mentally or physically unable to speak for themselves in court. In this situation, the guardian ad litem discusses the case with the party but has the authority to make decisions regarding the case on the party’s behalf. A guardian ad litem is not the party’s attorney; when there is a guardian ad litem appointed, there is also an attorney assigned to the party.

**INQUEST:** An inquest is a trial at which only the petitioner and, possibly, the child’s attorney present evidence. An inquest occurs when a respondent defaults or if a respondent chooses to not participate in the hearing.

**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 obtain interpreters for many other languages, including sign language for the hearing-impaired.

**JUDGE:** A judge is in charge of the hearing (trial). All Family Court Judges in New York City were attorneys before becoming judges. Judges listen to witnesses, examine evidence, and then decide whether the case has been proven. During the course of a case, judges also decide temporary issues such as who can visit a child before a full visitation trial is completed or other issues, such as whether one party is entitled to see the documents that the other party wants to put into evidence at trial.

**NONCUSTODIAL PARENT:** A noncustodial parent is the parent with whom the child lives less than 50% of the time. This is also the parent who may be required to pay child support.

**PARTY:** A party is a person directly involved in a case, including the petitioner, the respondents, and the child.

**PERSONAL JURISDICTION:** When a person is served with papers in a court case, it gives the court “personal jurisdiction.” Personal jurisdiction gives the court the power to make orders against the person who was served with the court papers.

**PETITION:** A petition is a written request for the court to make a decision. A petition must be filed to start a case in Family Court.

**PETITIONER:** A petitioner is the person or agency filing the petition.

**PRESENTMENT AGENCY:** The agency that files certain petitions in court, usually Administration for Children’s Services or Corporation Counsel.

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

**REMAND:** Placement of a child in foster care or detention, and specifically not with the parent. The court may remand a child in a child protective, PINS, or juvenile delinquency proceeding.

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

**SERVICE:** After a petition is filed, the summons and petition must be served on the respondent. In most cases, it is the petitioner's responsibility to arrange for service. The court provides the petitioner with instructions on who may serve the papers and how it has to be done. In most cases, "service" means that the summons and petition were delivered personally to the respondent. In some limited circumstances, the court may allow the petitioner to mail or leave the papers at the respondent's home.

**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.

**SUMMONS:** A summons is a document that lists who filed the case, what kind of case it is, where the case is being heard, when the case is next scheduled for court, and the consequences if the respondent does not appear in court.

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

## **Juvenile Delinquency Proceedings**

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

A “juvenile delinquent” is someone at least 7 but under 16 years old 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 a “delinquent act.” Juvenile delinquency cases are heard in Family Court. In Family Court, the accused child is called “the respondent.” The alleged victim is called “the complainant.”

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

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

After a youth is arrested, the police may release the young person with a “desk appearance ticket” directing the child to appear in court on a specific date. If the court is still in session, the police will bring the young person to court. If the child is not released from the police department and the court is not in session, the child is taken to a detention center until court reopens on the next business day.

At court the young person goes through the Probation Intake process. An intake officer from the Department of Probation (Probation) interviews the young person about the alleged crime, school attendance, and living situation, among other topics. The intake officer also interviews the arresting officer, the complainant/victim, and the parents or caregiver of the young person. The intake officer then determines whether the case should be referred for formal court proceedings (prosecution) or held open with Probation for adjustment services. Adjustment services can include restitution, community service, referral for community-based services, letter of apology, and/or mediation. If the case is held open for adjustment services it may be monitored by Probation for up to four months.

If the intake officer refers the case to Family Court, the matter proceeds to the Office of the Corporation Counsel, which prosecutes Family Court juvenile delinquency matters including more serious crimes called “designated felonies”. These attorneys, also known as the Presentment Agency, prepare the petition against the child describing the acts the child is accused of committing. In court, the child and the parent or guardian are given a copy of the petition.

### **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 an “attorney for the child.”

#### **D. WHERE DOES THE CHILD GO WHILE THE CASE PROCEEDS IN COURT?**

When the case first comes to court, the child is “arraigned” on the charges. This is called the “initial appearance.” The child is assigned his or her lawyer and the child can plead not guilty and ask for a trial, or can plead guilty. When the child is being interviewed by Probation, the Probation officer conducts a risk assessment using a questionnaire called a Risk Assessment Instrument (RAI). The RAI uses a young person’s strengths and risk factors to assess what level of risk the young person would be at to commit a delinquent act or fail to reappear in court if released at the initial appearance. At the initial appearance, the CLO recommends “parole” or “remand” of the child based on the results of the RAI.

If the child is detained while the case is proceeding, the child can be held in secure detention or non-secure detention. This detention is called “remand.” Alternatives to Detention (ATD) were also developed to provide a true continuum of supervision and service options based on a youth’s risk level. The ATDs allow the child to be “paroled” (sent home with a parent or guardian) on the condition that they attend one of these programs. If the child presents as low risk, the child can be “paroled home” with no conditions while the case proceeds in court. No bail is set in juvenile delinquency cases.

#### **E. 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 child is “remanded” to secure or non-secure detention until trial, the child is entitled to a “probable cause hearing” before the fact-finding hearing to determine whether there is good reason to hold the child in detention.

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

#### **F. 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 of the acts described in the petition. If the case has not been proven, the judge will dismiss the case.

If a finding is made, the judge will schedule a “dispositional hearing.”

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

The purpose of the dispositional hearing is for the parties to argue and offer evidence so that the judge can decide what to do next. 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.

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 may hear testimony from the probation officer who conducted the investigation regarding the respondent's home and school behavior and about any other court cases involving the respondent. The respondent, the respondent's parents or guardians, and any other persons with information helpful to the respondent may testify.

The Probation Officer may make one of several different recommendations in their report:

- 1) That the respondent be permitted to live at home without court supervision but with certain conditions that the judge sets called a "conditional discharge."
- 2) That the Department of Probation supervise the respondent while living at home.
- 3) That the child be placed on Probation but with the condition that he or she attend an Alternative to Placement (ATP) program such as the Juvenile Justice Initiative (JJI) or Esperanza.
- 4) That the child be placed away from home in a juvenile incarceration facility or in foster care with the Commissioner of Social Services.

The judge must decide which of these recommendations is best for the child and the community; the judge must balance the child's needs with the need to protect the community. The judge is required to use the "least restrictive" option, meaning that the court must not lock up or otherwise limit the respondent's freedom more than is necessary to achieve the goals of helping the respondent change his/her behavior for the better and protecting the community from further crimes by that respondent.

Even if a judge finds that the respondent committed the acts described in the petition, the judge may dismiss the petition at disposition 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). For an ACD, the judge will set conditions for the respondent to follow. If the respondent follows the conditions and is not re-arrested, the petition will automatically be dismissed after 6 months.

When the judge reaches a decision, the court issues a written decision, ordering the respondent to cooperate with that disposition ("dispositional order").

## **H. WHAT HAPPENS IF THE RESPONDENT DISOBEYS THE DISPOSITIONAL ORDER?**

If the respondent does not obey the dispositional order, the Probation Officer or the Presentment Agency may file a Violation of Probation (VOP) petition. If a violation is proven, the judge can order a different disposition, including placement in a juvenile incarceration facility.

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

### **A. WHAT IS A “PINS”?**

“PINS” stands for a Person in Need of Supervision. A “PINS” is a child under the age of 18 who the court has determined 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. All PINS proceedings are heard in Family Court.

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

The Family Assessment Program (FAP) was created by ACS in 2002 to help families with adolescents who are difficult to handle and at risk of being adjudicated a PINS and being placed in foster care. FAP is run by the Administration for Children’s Services (ACS). FAP is located in all 5 boroughs, in or close by the Family Court or in the surrounding community. FAP is staffed with social workers who assess families and children for appropriate services. In 2010, FAP implemented additional services designed to assist families and adolescents with a multitude of issues, including but not limited to truancy, running away from home and substance abuse.

### **C. HOW DOES A PINS CASE BEGIN?**

Before a PINS petition can be filed in Family Court, the family must first attempt diversion services. The purpose of these services is to help the family address the problems without involving the child in a court case. Diversion services are provided by FAP. A parent or other person legally responsible for the child’s care and the child must meet with a FAP social worker to be assessed for diversion services. FAP will try to keep the case out of court (divert) by recommending various community or governmental programs to help the child and the family. These services may include individual or family counseling, tutoring services, etc.

If the matter is diverted (the family cooperates with services), no petition is filed and no court case begins.

### **D. HOW AND WHEN CAN A PINS CASE GO TO COURT?**

A PINS petition describes the child’s behavior and asks the court to find that the child needs supervision. A PINS petition can only be filed if FAP makes a determination that there is “no substantial likelihood that the youth and his or her family will benefit from further diversion attempts.” However, a PINS petition cannot be filed if the parent is the party that is refusing to cooperate with the diversion services.

A parent or other person legally responsible for the child’s care, with documentation from FAP that diversion services are not likely to succeed, may file a PINS petition in Family Court. A PINS petition may also be filed by (1) a peace or police officer; (2) a person claiming that the child injured him or her, or a witness to the act; or (3) a school or other authorized agency. 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.

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

The court will assign an attorney to represent the child, usually from The Legal Aid Society or the 18-b panel. In some circumstances, the judge assigns a lawyer to represent the petitioner, or the petitioner may hire a lawyer.

### **F. WHAT HAPPENS WHEN THE PARTIES SEE THE JUDGE?**

The judge may ask the petitioner about the allegations in the petition and ask the child (with his/her attorney) if he/she wants to say anything about the allegations. The judge may ask if the parent will let the child continue to live at home. If the parent refuses to take the child home, then the child will be remanded into foster care. Usually the case is adjourned for another trial date, to try to reach an agreement between the parent and the child or to have a fact finding hearing.

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

No. If the court finds that the 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. In New York City, a child on a PINS petition can only be detained in a foster care facility. The court can order that the child be held in non-secure detention only *after* the court finds that the child may not appear in court on the return date or all available alternatives to detention have been exhausted.

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

During the fact finding hearing, the petitioner presents proof that the child committed the allegations in the petition, such as not attending school or not complying with the parent’s reasonable rules, and the child seeks to prove that the allegations are not true. 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. Prior to the 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. The court may also order an evaluation by New York City’s Department of Mental Health Services.

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

The purpose of the dispositional hearing is to see if (despite the child’s prior misbehavior) the child is currently in need of court supervision. A child is not a PINS until after the dispositional hearing.

At the dispositional hearing, information is given to the court to help the judge decide whether the child is in need of supervision. Witnesses with information about the child’s current behavior, school attendance, and cooperation with services may testify and present evidence. The child may also testify. Once the judge decides what to do, the judge signs a “dispositional order.”

If the judge decides that the child does not need supervision, the judge will dismiss the case. The court could also adjourn the case in contemplation of dismissal (ACD) for up to 6 months. If an ACD is granted and the child complies with the rules and services for the next 6 months, the case will be dismissed.

If the judge decides that the child needs supervision, the judge may:

- Discharge the child with a warning.
- Suspend judgment for up to one year with court ordered terms and conditions that the child must follow for that one year period.
- Place the child on probation for up to one year.
- Place the child in a foster home, group home or social services facility for up to one year.

The judge may also:

- Order the child to pay for any damage done to someone's property (restitution) if the child is at least 10 years old and less than 16 years old.
- Require the child to perform community service.
- Require the child to attend services, such as therapy or afterschool tutoring.

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

If the child does not obey the terms of the court's order, the probation officer, parent, or foster care agency may file a violation petition. If it is proven that the child violated any part of the court's order, a new dispositional hearing will be held and 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. The petition should be filed in the county in which the child resides, so long as the child has been residing in the state for the past six (6) months. A copy of the petition and a summons must be delivered personally to (served on) 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 parents must be served.

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

If the parties reach an agreement about custody of the child, the judge may take testimony from both parties and enter an order of custody on consent 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 will 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 over non-parents, for example, grandparents. But the court will always consider what is in the child's best interests.

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

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

A Family Court judge decides custody cases based on what is best for the child. This is known as the "best interests" standard. 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 LEGAL AND PHYSICAL CUSTODY?**

Legal custody is the right to make major decisions about the child's care, including medical care, religious upbringing, and education. Physical custody is where the child resides.

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

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

In joint physical custody, the child lives with each parent for equal time. In sole physical custody, the child lives with one parent more than 50% of the time and the time the child spends with the other parent (non-custodial parent) is called visitation or parenting time.

#### **G. WHAT IS AN ORDER OF VISITATION?**

Visitation (also called parenting time) is determined the same way as custody. A parent seeking to visit with his/her child may file a petition in the Family Court against the person or persons who have custody of the child, if those persons are preventing the parent from seeing the child. 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 or may be harmful to the child. 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 an agency, relative or other person supervise the visitation, if the court believes that is best for 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 file a petition seeking visitation.

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

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

#### **I. 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 the circumstances have changed and whether the requested modification is best for the child.

#### **J. 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 person harmed 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 (imposing penalties against that person) for refusing to follow the judge's orders.

## **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 permanently, 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, the custodial parent may file a petition in the Family Court asking the non-custodial parent to pay child support. A non-parent who has legal custody or guardianship of the child may also file for support against one or both of the parents. 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 non-custodial parent or parents. This petition asks that the court order the parent to pay support to the Department of Social Services for as long as the DSS provides assistance to the child.

### **C. SHOULD THE PARTIES BE REPRESENTED BY LAWYERS?**

The parties may hire lawyers to represent them or may speak for themselves without a lawyer. Unlike many other types of cases, attorneys are not assigned for free. However, if jail is a possibility for failing to pay child support (see section G below), 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, several 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, utilities, clothing, medical costs, child care and 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 pursuant to court order.

### **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 non-custodial parent must pay to the parent with custody and sets a payment schedule.

The calculation of child support owed is based on a percentage of the two parents' combined incomes and/or the child's needs. The law requires parents to contribute a set percentage of their combined net incomes to the child's care, with the noncustodial parent paying his/her share to the custodial parent. Currently, the percentage is 17% for one child, 25% for two children, 29% for three children, 31% for four children, and 35% for five or more children. In limited circumstances, the court may choose to not use the standard percentages if a parent proves the child's needs require it, such as a child with severe illness or disability.

This contribution must be made in cash, not in the form of food, diapers, clothes, etc. Payments may be paid directly to the petitioner or through a branch of the Human Resources Administration called the Support Collections Unit ("SCU"). 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 mailed to them. The objection must be filed with the 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. This appeal is determined by a Family Court judge. 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 served on 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 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 noncustodial parent 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. In addition, a petitioner may request a modification if it has been three years since the order was made or there is a 15 percent change in either party's income since the order was entered, last modified or adjusted. 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 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 either party disagrees with the proposed new order, the party 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.

1) The custodial parent may file an UIFSA case in the state where the non-custodial 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 non-custodial parent lives. The other state will arrange to serve the petition. The non-custodial 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 non-custodial parent lives would apply that state's law and issue the support order.

2) 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 must have been conceived 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 non-custodial parent with these papers. The party who resides outside the state may be permitted to testify by

telephone or other electronic means. New York's Family Court would issue the support order based on New York's law.

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 only 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 needs 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 outside the county 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 existing order against 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 to 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?**

If the father was not married to the child's mother when the child was conceived or born and did not sign an Acknowledgment of Paternity, then he has no obligation to pay child support until the court decides that he is the biological father. A person who is not a legal parent also has no legal right to custody of or visitation with the child or the right to be notified of the child's proposed 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 and ultimately allows the child to inherit from the father.

### **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 child support. In some cases, a paternity petition may be filed even if the alleged father has died.

### **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 unless a court decides that he is not the father, even though he might not be the biological father. This is called a presumption of legitimacy.

Where the mother was married, the mother's husband must also be served with the petition. The husband has the right to appear in court and agree that he is not the father or argue that he is biologically (or, in some cases, emotionally) the child's father. If the husband does not want to come to court, 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.

If the judge decides that the husband is not the father and the presumption of legitimacy has been overcome, the paternity case against the other alleged father may continue.

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

The petitioner should present a copy of the child's birth certificate. If the mother was married at the time the child was conceived or born, but is divorced when she files her petition, the petitioner should also bring a copy of the divorce judgment and the findings of fact.

If the birth certificate or divorce judgment is in any language other than English, parties must submit a certified, translated copy of the document along with the original.

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

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

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

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 the man is the father, the support magistrate enters an order of filiation on consent. If the mother was married and all three parties agree, the support magistrate enters an order of filiation on consent.

If any party denies the alleged paternity, the support magistrate *may* order DNA tests of both parties and the child and adjourn the case to another date. Depending on the child's age, if a party requests DNA testing, the court may assign an attorney for the child to speak with the child and give the court a report before a DNA test is ordered. In some cases, the request for a DNA test must be sent to a Judge for a hearing to determine if DNA testing should be ordered.

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

The parties are given an appointment for DNA tests at a laboratory. The petitioner or respondent will have to pay for the testing, unless the court finds that the party cannot afford it. If so, DSS will pay for the test. The laboratory will send the results directly to the court.

When the parties return to court, the court will explain the test results. DNA test results are expressed in percentages. For example, the DNA test might show that the man is 98% likely to be the biological father. If, after learning about the DNA results, the parties agree on paternity, the court may enter an order of filiation. If the parties still do not 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% likelihood of paternity 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 (harmful 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. It is the court's responsibility to decide whether the allegations of abuse or neglect are true and, if so, what action the court should take to protect the child.

Upon the filing of an abuse or neglect case, ACS may request that a child be placed away from the home for his or her protection or it may request that the child remain in the home under certain conditions.

### **B. DO THE PARTIES NEED LAWYERS TO REPRESENT THEM?**

Although respondents have the right to represent themselves, a respondent should obtain a lawyer. Respondents 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.

In all child protective cases, an "attorney for the child" is assigned to represent the child. The lawyer usually works for The Legal Aid Society, Lawyers for Children, or another child advocacy organization. The attorney for the child may also be an 18-b panel member (assigned counsel).

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

When the petition is filed in Family Court, the child may already be in foster care because ACS or the police may have already taken (removed) the child from 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 without a court order, the parents may ask that a court hearing be held within three days of the request. This is commonly referred to as a 1028 hearing. At the 1028 hearing, the parents ask the court to decide whether the child may return home until the court finishes a full hearing or fact finding about the allegations of abuse or neglect. ACS may ask that the child be in ACS custody (remanded) until a fact finding is held. ACS must prove that a return home would present an immediate risk to the child's life or health. The court must also consider, in most cases, whether ACS made reasonable efforts to keep the child in the home before the removal. At the 1028 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.

In some cases ACS asks the court's permission to remove the child before taking any action. In that case, the parents are notified of the court date and, if the parents object to

the removal, a hearing will be held before the child is removed. This is called a 1027 hearing.

#### **D. IF THE CHILD IS NOT ALLOWED TO GO HOME, WHERE DOES THE CHILD GO?**

If the judge finds that the child should not be with the parent, the parent may ask the judge to move the child to a relative's home. The relative may be certified by ACS as a kinship foster parent or the child may be placed there under a custody order (not foster care).

If the child is ordered to be placed or remain in ACS's custody, ACS will assign the case to a foster care agency. The foster care agency will place the child with a specific foster parent, supervise the child and the foster home, and work with the parent to correct the problems that caused the child to enter foster care. A foster care agency will also be assigned if a relative is certified as a kinship foster parent.

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

The petition is filed by attorneys for ACS. 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 (a relative with a custody order or a person who has been caring 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. If only one parent is named as a respondent on the petition, ACS must also notify the child's other parent (the non-respondent parent) that a case has been filed and that he/she has the right to appear in court. This notice may be provided by mail. In some cases, other relatives of the child may also want to appear in court.

#### **F. WHAT IS CASE CONFERENCING?**

The judge may adjourn the case to be conferenced by a court attorney. A preliminary conference will be scheduled to discuss issues such as kinship resources (relatives who can care for the child if the child is not allowed to go home with the respondent), visitation and services for the respondents and the subject children. Another conference is usually scheduled to review issues raised at the preliminary conference, to discuss a possible settlement of the case, and/or to discuss preparation for fact finding, including issues of discovery (what each party intends to provide to the court as evidence).

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

If the parties do not reach an agreement about whether the allegations in the petition are true, the court will hold a "fact finding hearing" to determine whether the child has been neglected or abused.

At the fact finding hearing, ACS may present hospital and agency records, photographs, and other evidence to prove neglect or abuse. ACS may call witnesses who heard or saw the abuse/neglect or to whom the parent admitted the allegations of abuse/neglect. The

respondents' lawyers and the attorney for the child may cross-examine the witnesses, challenge the evidence that ACS offers, and present their own witnesses and evidence.

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. Only the child's attorney is present for this interview, but the other attorneys may ask the judge to ask specific questions of the child.

#### **H. 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 should happen next. The court must make a decision that is child's best interests, balancing how to protect the child with how to keep or bring back together the family.

If the child has not already been removed from the home and the court finds that removal would be best for the child, the court will remand the child to ACS's custody before the dispositional hearing. The child may be placed in foster care or with relatives or other suitable persons until the court makes its final disposition.

Before the dispositional hearing, the court will order ACS and/or the foster care agency 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.

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

At the dispositional hearing, the court receives evidence about what will be in the child's best interest. Caseworkers from ACS and/or the foster care agency may testify, as well as the parents. Written investigations and reports from ACS, Mental Health Services, or other professionals may be given to the judge as evidence.

Possible dispositions include:

- 1) Suspending judgment for a maximum of one year. If the respondent complies with the terms and conditions of a suspended judgment, the petition will be dismissed at the conclusion of the suspended judgment period, despite the finding of abuse and/or neglect. However, the finding of abuse/neglect remains, even if the case is dismissed. If the child is not living with the parent, the court may not order a suspended judgment. The suspended judgment can be extended for another year if the court conducts a hearing and finds that exceptional circumstances (serious reasons) require continued court supervision.
- 2) Releasing the child to the parent(s) or other person(s) legally responsible with supervision on conditions specified by the court.

- 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) Issuing an Order of Protection.
- 5) Placing the respondent under the supervision of ACS.
- 6) Granting custody or guardianship of the child to a relative or a suitable person upon the consent of the parents. If the parent fails to consent, the court, after a hearing, may find extraordinary circumstances to support an order granting custody or guardianship.

## **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 and/or a foster care agency for either short-term or long-term care. Placement may be with a “foster family,” the child’s relatives, or a group home. A relative who is a foster parent is often called a “kinship” foster parent. Foster families receive foster care funds (child support from ACS) to help care for the child. ACS and/or the foster care agency have 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?**

There are a number of ways a child may be placed into foster care:

- 1) A parent or legal guardian may ask to have the child placed in foster care – called a voluntary placement.
- 2) The court may order the child be placed in foster care, as part of a PINS or child protective case.
- 3) 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. See Paragraph C in the Child Protective Proceeding section, above.

### **C. WHAT IS A VOLUNTARY PLACEMENT?**

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 ACS. (This is different from agreeing to the child’s placement during a child protective case.) This may occur if the parent is experiencing difficulties caring for the child, for reasons that are not the parent’s fault (such as homelessness or illness).

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 will stay in foster care or the period of time may be left open. The court hears testimony from the parent or person 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 the best option for the child, and how long the child is expected to stay in foster care. (See the section on ASFA, below.)

### **D. WHERE DOES A CHILD IN FOSTER CARE LIVE?**

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 placement is available (i.e. the least restrictive alternative).

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

A child's placement in foster care is supposed to be temporary. The child will return to the parents or guardian when the court decides that it is best for the child. In some circumstances, a child who has been discharged from foster care may reenter foster care.

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.

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

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

### **G. 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 and 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. The court may want the parties and attorneys to come back to court more often to check on everyone's progress toward returning the child to the parent.

ACS is required to send a permanency hearing report about the case to the parties and the Court 14 days before the permanency planning hearing. At the permanency hearing, ACS must provide information on how the child is doing, the parent's progress in working toward family reunification, and what ACS recommends for the child. The court must determine what permanency plan is in the best interests of the child. The court must also determine whether the agency is making reasonable efforts to effectuate that plan.

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) Return the child to the parent;
- 2) Order ACS to file a termination of parental rights petition and start working toward adoption;
- 3) Place the child permanently with a fit and willing relative; or
- 4) Place an older child in another permanent living arrangement with a significant connection to an adult, such as helping the child obtain his/her own apartment and source of income.

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.

## **H. 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 “voluntary surrender,” giving up their rights as parents.

If the parent does not agree to a proposed adoption, the agency may file a petition asking the court to “terminate” (end) the parent’s rights. See the Termination of Parental Rights section below.

If the court grants the termination petition, the child may be adopted by his/her current foster parent, who may be relatives, or the agency may look for another suitable family to adopt 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, ACS or the foster care agency must either file petitions 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 ACS or the foster care agency file sworn permanency 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, permanent home. Copies of the reports must be given to the parents, the parents' lawyers, the child's lawyer, and the foster parents. The agency must update the court on the child's progress in foster care, including subjects such as school, medical care, special needs, and visitation with family members. The report must also contain information about how the parents are doing in their service 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 would 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 is not required 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.

## **Termination of Parental Rights**

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

ACS or the foster care 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. WHAT ARE A PARENT'S LEGAL RIGHTS?**

The rights that the child protective agency seeks to terminate include the parent's right to custody, to raise the child, to make religious, educational, or medical decisions for the child, to visit with the child, to speak with the child, to contact the child, and to learn about the child.

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

The mother must be served with the petition and a summons. If the child's parents are or were married, then the agency must also serve the father.

For a child born out of wedlock, the father must also be served with the summons and petition if (1) for a child who came into foster care over six months of age, the father consistently maintained contact with the child and paid child support on behalf of the child before and after the child came into foster care, or (2) if the child was less than six months old when placed into foster care, the father was ready, willing, and able to take custody of the child when the child entered foster care.

Even if the parents were not married and the father does not meet the above requirements, the father must also be notified (by delivering the summons to the father in person or by mail) of the proceedings if one of the following conditions is met:

- 1) The court has entered an order of filiation (a paternity order declaring the biological father to be the child's legal parent),
- 2) The father is named as the father of the child on the child's birth certificate,
- 3) The father is listed on 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),
- 4) The mother identified the father in a sworn (notarized) written statement,
- 5) The father was living with the child and the child's mother and was alleging to be the father when the child came into foster care, or
- 6) The father married the mother within six months after the child was born.

If none of these circumstances exists, the court may still order that the father be notified of the case.

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

Although respondents have the right to represent themselves, a respondent should obtain a lawyer. Respondents 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.

**E. WHO ELSE WILL HAVE A LAWYER?**

The Court will assign a lawyer to represent the child. The same lawyer who has been representing the child in the child protective case is usually assigned to the child in the termination proceeding. The foster care agency will also be represented by a private attorney, not the ACS attorney in the child protective case.

**F. WHAT HAPPENS AT THE FACT FINDING HEARING?**

The foster care agency must prove that each parent abandoned, permanently neglected, or severely abused the child, or that the parent is mentally unable to care for the child now and in the foreseeable future due to mental illness or mental retardation. The foster care agency must do this by calling witnesses to testify and/or presenting written evidence. The agency may also have to show that it used diligent efforts to help the parent complete his/her service programs and provided any other assistance to prepare the parent for the return of the child to his/her care. The petitioner must prove the allegations by clear and convincing evidence. The agency may not be required to prove these allegations against a father who was only entitled to be notified of the proceedings.

Each parent has the right to be present at the hearing, to see the evidence, and to hear the witnesses. Each parent has the right to testify and present his/her own witnesses and evidence. The child's lawyer may also cross-examine witnesses and present additional evidence.

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 or, if appropriate, be returned to the parent. If the agency has proven that the parent has severely or repeatedly abused the child, has abandoned the child, or is mentally unable to care for the child for now and in the foreseeable future, the court may terminate that parent's rights. If the agency has proven that the parent permanently neglected the child, the court must hold a dispositional hearing.

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

If a parent does not come to court even though he/she was served properly with the court papers and had the opportunity to appear, the court can hold the hearing without that parent. The judge will then hear only evidence from the foster care agency and the child's lawyer, and will make decisions without the parent being present. This hearing is called an inquest.

## **H. WHAT IF ONLY ONE PARENT COMES TO COURT?**

Each parent's case is independent of the other parent. If one parent does not appear, an inquest will be held against him/her. But the parent who does appear is still entitled to a full fact finding hearing on the case against him/her, including testifying and calling witnesses. By not coming to court, the parent does not delay his/her case or the other parent's case.

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

At the dispositional hearing, the child protective agency, child's attorney, and parents may submit evidence regarding what is best for the child. After everyone has had the opportunity to present evidence and/or testify, the court determines what will be in the child's best interests: (1) terminating the parents' rights and preparing the child for adoption, or (2) continuing efforts to work with one or both parents to return the child to a parent.

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 with the adoptive parents' names.

If the court finds that it is best to continue to try to return the child to one or both parents, the court may dismiss the petition (even though there was sufficient proof at the fact finding hearing) or suspend judgment (delay the case for up to one year). This might happen if the parent has taken significant 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 allowing the parent more time to correct his/her problems and have the child returned to the home. If the court suspends judgment, the court will issue written conditions that the parent must cooperate with during the following six or twelve months. If the parent cooperates, the petition will be dismissed at the end of the suspended judgment period. If the parent does not complete the goals of the suspended judgment, the court may terminate the parent's rights and free the child for adoption.

## **J. SURRENDERS**

Parents may choose to give up the right to a trial and surrender their parental rights. The judge must determine that the parent giving up his/her parental rights understands what he/she is doing and is surrendering freely and without pressure from someone else. The foster care agency and child's attorney must agree to the surrender. If the parties agree to the surrender, then the foster care agency will withdraw the termination case and there will not be a finding of abandonment, permanent neglect, severe abuse, or mental unfitness. Surrenders may be conditional or unconditional:

- 1) Unconditional Surrender – If a parent chooses to surrender unconditionally, the parent gives up all his/her parental rights, including the right to have custody, visit with, speak with, write to or learn about the child.

2) Conditional Surrender – If the parties agree, a parent may keep some of his/her parental rights while allowing the child to be adopted. A parent may have a say in who adopts his/her child by signing a conditional surrender that specifies who will adopt the child. Before the parent can sign such a surrender, the proposed adoptive parent must be investigated by the foster care agency, including submitting to criminal and child abuse/neglect clearances and home visits, and be approved as an adoptive parent. A conditional surrender may also allow a parent to keep the right to contact and visit with the child after the adoption (called “open adoption”). If the parent wants an open adoption, the judge must determine that the visits or contact will be beneficial for the child. The contact portion of the surrender may be made enforceable (the parent can go to court if the adoptive parent does not permit the agreed to visitation) and the provision for contact may be incorporated into the order of adoption.

#### **K. CAN A TERMINATION BE BROUGHT IN A CUSTODY CASE?**

No, a petition to terminate parental rights can only be brought when the child is in foster care, during a child protective case (when the child is with a relative and not technically in foster care), or in a private adoption case (such as step-parent adoptions). A parent cannot bring a termination proceeding against the other parent in a custody case.

#### **L. RESTORATION OF PARENTAL RIGHTS**

A petition to restore parental rights can be filed when the following conditions are met:

- 1) The order terminating parental rights was issued more than two years ago;
- 2) The termination of parental rights was based on abandonment, mental illness, mental retardation, or permanent neglect;
- 3) The child is 14 years old or older, is still in foster care, and the permanency goal is no longer adoption.

The parent seeking to restore his/her parental rights must prove to the court that restoration of parental rights and return of the child to the parent’s custody is in the child’s best interests. The parent, child, attorney for the child, and the court must agree to the restoration of parental rights. If the foster care agency objects to restoration, the parent must prove that the agency does not have good cause to object.

## **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 the 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—people 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 any of the following people: (1) an adult unmarried person; (2) a married couple; (3) two unmarried adult intimate partners; (4) 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 (5) 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.

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 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 parents are able to provide for a child's care and support, the court will certify them as qualified adoptive parents for up to 18 months. For a step-parent adoption, there is no need to pre-certify where the step-child has resided with the birth parent and the step-parent for a continuous period of at least one year.

After the adoptive parents are certified and after the child is placed with the adoptive parents, the adoptive parents will file the petition for adoption. The court requires the adoptive parents to submit a number of additional documents with the adoption petition, including marriage records (if any), 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 consenting to the child's adoption or that the court terminated (ended) their parental rights.

If the court finds that the adoptive parents are able to provide for the child's proper care and support, the court approves the adoption. The adoptive parents 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 a non-foster care, "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 a foster care or private agency. The agency investigates the adoptive parent or parents' home and background to see whether they are suitable for the child. This must include New York State Criminal and Child Abuse clearances for any adults in the adoptive home, and may also include FBI clearances. The agency "certifies" that 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 parents are able to provide proper care and support for the child, the court approves the adoption. 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 parents, but the court will not appoint a lawyer for free. In foster care adoption matters, however, the adoptive parents' attorneys' fees are generally paid for by the City or State of New York.

### **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 an enforceable post-adoption contact agreement regarding visitation), to have custody rights, or to find out about the child's life. The biological 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 parents. Often, the child will be given a new social security number.

## **Family Offense Proceedings**

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

A family offense proceeding is a court case in which a petitioner alleges to have been hurt or threatened by the respondent. The petitioner may request an order of protection against the respondent. A person may file a family offense petition against a spouse or former spouse, family member, someone with whom he or she has a child (even if they were never married to each other and never lived together) or someone with whom they have or had an intimate relationship. The Court will consider whether the relationship is *intimate* by examining a number of factors, including but not limited to, the nature and type of relationship (it does not have to be a sexual relationship), the frequency of interaction, and the duration of the relationship. The petitioner must allege that the respondent has committed an act involving abuse against the petitioner or child. Abuse includes any acts of violence, threats of physical violence, verbal abuse, or sexual abuse.

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

An order of protection is a court order that lists behavior and actions the respondent is forbidden from doing, 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; or contacting or harassing the petitioner. Other conditions may be added to the order to keep family members and the petitioner safe. An order of protection must be served on the respondent; otherwise, the court or police may not enforce it.

### **C. WHERE CAN SOMEONE GET AN ORDER OF PROTECTION?**

A person seeking a Family Court order of protection may go to the Family Court in the borough where the petitioner lives, where the respondent lives, or where the abuse took place.

The petitioner may also seek a Criminal Court order of protection by either calling the police or filing a complaint at the police precinct about the incident of abuse. The Criminal Court may then hear criminal charges against the respondent. Both courts have the power to issue orders of protection, but the Criminal Court has discretion to incarcerate the respondent for the violent or threatening acts.

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.

### **D. 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 borough in which either party resides or where the violence or harassment took place.

The petition must describe the Respondent's acts and/or threats, and the petition must ask that the court issue an order of protection. The Respondent's acts or threats must equal a criminal offense such as disorderly conduct, harassment, sexual abuse, stalking or assault. Whether an act is a criminal offense is a legal determination. The petitioner should file a petition in court and have the court decide if the act is a criminal offense. If the incident was reported to the police, the petitioner should bring the police report to court, if possible.

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. 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 the respondent, including the right to have the Police Department serve the summons, petition, and order.

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. If the respondent does not appear in court after being properly served, the court may 1) issue an arrest warrant for the respondent or 2) issue a final order of protection in the respondent's absence and conclude the case.

#### **E. WHAT CAN A PETITIONER ASK FOR?**

The petitioner may ask the court to order the respondent to: (1) stay away from the petitioner and/or from places like petitioner's home, work, and school; (2) stop certain behavior like physical and verbal abuse; (3) surrender guns and gun licenses; (4) leave the family home; (5) pay temporary child support; and (6) let the petitioner go home to collect belongings. 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 of or visits with a child.

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

A temporary order of protection may be given to the petitioner the same day the petition is filed or on a subsequent court date. A temporary order of protection lasts only until the next court date, but the court may grant a temporary order of protection on every court date until the case is over. The court may issue a final order of protection if the judge finds that the respondent committed a family offense.

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

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

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

The court holds a fact finding hearing to decide whether the respondent committed the acts alleged in the petition. The petitioner must provide proof of the allegations by

testifying, calling witnesses, and/or submitting documents such as police reports. 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 GUARDIANSHIP?**

A guardian is a person or an agency that the court gives authority to be responsible for a child's care. The Family Court may grant guardianship of a child 18 years of age or younger, or of an 18-21 year old with the young person's consent. Guardianship is similar to custody and to adoption: a person petitions to care for and be legally responsible for a child.

An adult relative, family friend, or a child protective agency may petition the court to be appointed the child's guardian. Guardianship is the most extensive power, short of adoption, that a court can give a non-parent. It is not a permanent relationship; it ends automatically when the child reaches 18 years of age (21 if the child consents) or when the child 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.

### **B. WHAT IS STANDBY GUARDIANSHIP?**

Standby guardianship is a way for a terminally or seriously ill parent to plan for a child's future. The parent selects who he/she wants to care for the child in the event that the parent dies. The parent makes this decision legally valid by signing a sworn statement of his/her wishes or by filing a petition in court. If the parent does die before the child reaches 18, the standby guardian must petition the court for guardianship. The guardian must serve the other parent, such as a legal father. If the surviving parent wants custody of the child, a fact finding hearing is conducted and the court makes a decision based on what is best for the child.

### **C. IS GUARDIANSHIP DIFFERENT IN SURROGATE'S COURT?**

Guardianship of a child under age 18, or 18-21 with the young person's consent, may be sought in Surrogate's Court or Family Court, though these petitions are most often filed in Family Court.

Additionally, the Surrogate's Court may grant guardianship of an adult who is mentally impaired and unable to care for him/herself. Contact the Surrogate's Court for more information.

### **D. WHAT HAPPENS AT THE FACT FINDING 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. A person with a prior child abuse or child neglect case cannot be approved as a guardian.

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

To file a guardianship petition, the petitioner should bring to court the child's birth certificate, the original death certificate (if the parent is dead), and proof of identification (picture ID), proof of residence.

If the child is over 14 years old and unable to appear in court, the child should sign and notarize a Form 6-3, "Preference of a Minor over 14 Years of Age." If the child's parents are unable or do not wish to appear in court, the parents should sign and notarize a Form 6-4 "Waiver of Process, Renunciation or Consent to Guardianship." The petitioner should bring these forms to court.

**F. WHAT IS KINSHIP GUARDIANSHIP?**

Kinship Guardianship, or subsidized kinship guardianship, allows relatives who take guardianship of children who have been in foster care to receive financial assistance. The relative must be related to the child either by blood, marriage, or adoption; must be caring for the child as a foster parent; and the child must have been in the relative's home for at least six months. While an order of guardianship is a determination made by the court, the Administration for Children's Services decides whether or not to provide financial assistance to the guardian. For information about the application process for Kinship Guardianship, speak with a foster care agency or with the Family Court's Clerk.

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

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\* Principal Editor of the 2012 Guide

\*\* Committee Member who edited the 2012 Guide.

## **Appendix: For More Information**

### **Family Court, Bronx County**

Family Court (718) 618-2098  
Chief Clerk's Office  
900 Sheridan Avenue  
Bronx, NY 10451-3384  
<http://www.nycourts.gov/courts/nyc/family/index.shtml>

City of New York (718) 246-7962  
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/about/divisions\\_family.shtml](http://www.nyc.gov/html/law/html/about/divisions_family.shtml)

The Legal Aid Society (718) 579-7900  
Juvenile Rights Practice  
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) 590-2374  
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.bronxdanyc.gov>

**Family Court, Kings County**

Family Court (347) 401-9610  
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/about/divisions\\_family.shtml](http://www.nyc.gov/html/law/html/about/divisions_family.shtml)

The Legal Aid Society (718) 237-3100  
Juvenile Rights Practice  
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) 643-3878  
Department of Probation  
Brooklyn Family Intake Services  
330 Jay Street  
Brooklyn, NY 11201-2935  
<http://www.nyc.gov/html/prob/html/contact/contact.shtml>

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>

Legal Information for Families Today (LIFT) (212) 343-1122  
King County Family Court Help Center and 5<sup>th</sup> Floor  
330 Jay Street  
Brooklyn, NY 11201-2935  
[www.liftonline.org](http://www.liftonline.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.newyorkchilddiscovery.com](http://www.newyorkchilddiscovery.com)

Office of the Corporation Counsel (212) 442-6860  
Family Court Division  
60 Lafayette Street  
New York, NY 10013-4094  
[http://www.nyc.gov/html/law/html/about/divisions\\_family.shtml](http://www.nyc.gov/html/law/html/about/divisions_family.shtml)

The Legal Aid Society (212) 312-2260  
Juvenile Rights Practice  
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) 676-8521  
Department of Probation  
Manhattan Family Intake Services  
60 Lafayette Street  
New York, NY 10013-4094  
<http://www.nyc.gov/html/prob/html/contact/contact.shtml>

Safe Horizon (212) 577-1271  
60 Lafayette Street  
New York, NY 10013  
<http://www.safehorizon.org>

Legal Information for Families Today (LIFT) (212) 343-1122  
350 Broadway, Suite 501  
New York, NY 10013  
[www.liftonline.org](http://www.liftonline.org)

**Family Court, Queens County**

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

City of New York (888) 208-4485  
Human Resources Administration  
Child Support Collection Unit  
151-20 Jamaica Avenue  
Jamaica, NY 11432-3726  
<http://www.nyc.gov/html/hra>

Office of the Corporation Counsel (718) 658-0500  
Family Court Division  
151-20 Jamaica Avenue  
Jamaica, NY 11432-3726  
[http://www.nyc.gov/html/law/html/about/divisions\\_family.shtml](http://www.nyc.gov/html/law/html/about/divisions_family.shtml)

The Legal Aid Society (718) 298-8900  
Juvenile Rights Practice  
153-01 Jamaica Avenue, 3<sup>rd</sup> Floor  
Jamaica, NY 11432-6103  
<http://www.legal-aid.org>

State of New York (718) 658-6524  
Office of Children and Family Services  
151-20 Jamaica Avenue  
Jamaica, NY 11432-3726  
<http://www.ocfs.state.ny.us>

New York City (718) 657-4385  
Department of Probation  
Queens Family Intake Services  
151-20 Jamaica Avenue  
Jamaica, NY 11432-3726  
<http://www.nyc.gov/html/prob/html/contact/contact.shtml>

Safe Horizon (718) 262-0202  
151-02 Jamaica Avenue - 2nd Floor  
Jamaica, NY 11432-3726  
<http://www.safehorizon.org>

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>

Legal Information for Families Today (LIFT) (212) 343-1122  
Queens County Family Court Help Center  
151-20 Jamaica Avenue  
Jamaica, NY 11432-3726  
[www.liftonline.org](http://www.liftonline.org)

**Family Court, Richmond County**

Family Court (718) 675-8890  
Chief Clerk's Office  
100 Richmond Terrace  
Staten Island, NY 10301-1905  
<http://www.nycourts.gov/courts/nyc/family/index.shtml>

City of New York (212) 487-6884  
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 (347) 422-5333  
Juvenile Rights Practice  
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/about/divisions\\_family.shtml](http://www.nyc.gov/html/law/html/about/divisions_family.shtml)

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.nyc.gov/html/prob/html/contact/contact.shtml>

Safe Horizon (718) 270-2591  
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>

Legal Information for Families Today (LIFT) (212) 343-1122  
350 Broadway, Suite 501  
New York, NY 10013  
[www.liftonline.org](http://www.liftonline.org)