



# Child Abuse and Neglect

This guide explains what happens if the State of New York opens an investigation or files a court case against you for child abuse or neglect.

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## What type of court case can be brought against me?

When the government thinks you are abusing or neglecting your child, it can bring two types of cases against you. One is in Criminal Court. The other is in Family Court. Sometimes criminal cases are heard in the Supreme Court.

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## What does the Criminal Court decide?

In the criminal case, you are arrested and charged with a crime against your child. The **Office of the District Attorney (DA)** prosecutes all criminal cases for the government. The DA's office can charge you with committing a crime against your child. The Criminal Court will decide:

- If you broke any laws; and
- If you did break any laws, what your punishment will be.

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## What does the Family Court decide?

The Family Court case is called a **child protective proceeding**. The agency that brings the case against you goes by different names depending on the county. In New York City, the agency is called the Administration for Children's Services (ACS). For purposes of this guide, the agency will be referred to as ACS.

When ACS files a child protective proceeding against you, the Family Court will decide:

- If you abused or neglected your child;
- If your child will still live with you; and
- Where your child will go if they cannot stay with you.

### Definitions of key terms

**Abuse:** When a parent or caregiver seriously injures a child or puts a child at risk of serious physical injury, not by accident.

**Neglect:** When a parent or caregiver fails to properly care for a child. This can include failing to provide basic needs, like food, clothing, shelter, and education. This can also include abandoning a child, not properly supervising a child, or using excessive corporal punishment.





## What happens to my child if they cannot stay with me or I go to jail?

It depends. If another parent can take your child, then your child is usually placed in that parent's care. If a parent cannot take your child, ACS is required to first explore placing your child with another relative before placing them with someone they do not know.

You have the right to tell ACS which relative you want your child to be placed with. If the relative is certified as a **kinship foster parent**, they can receive money from the state for caring for your child. A kinship foster parent is a foster parent that is related to the child they are caring for. The money is known as **KinGAP**. KinGAP stands for the Kinship Guardianship Assistance Program. The relative is not required to receive KinGAP.

Your child can be placed in the relative's home on a temporary basis. Or, if your child cannot be returned to your care for a long and unknown period of time, the relative can ask the Family Court for **custody**. Custody means that your child will live with the relative. The relative will also be responsible for making decisions concerning your child.

If no relative can take your child, they will be placed in foster care with a non-relative. This person is often known as a **non-kinship foster parent**. Before placing the child with anyone (even a relative), ACS will look at:

- The person's home;
- Other individuals living in the home; and
- If anyone in the home has a case with ACS and/or any prior indicated reports for child abuse and neglect with the **State Central Register (SCR)**. The SCR is the statewide database of reports of child abuse and neglect.

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## If my child is removed from my care, what can I do?

If your child is removed from your care, you have the right to request that your child be returned to your care immediately. You can do so by asking the court to hold a hearing. This hearing is often referred to as a **1027 or 1028 hearing**. At the hearing, the judge will determine whether the child would be in **imminent risk** if they returned home. Imminent risk means immediate danger. The hearing must be held within 3 days from the date of the request.

You can also ask for your child to be returned to your care at other times throughout the case. For more information on this, you should consult with your Family Court lawyer.



## If my child is not returned to my care, can I still see them during the case?

In most cases, yes. If your child was removed from your care, you have the right to ask the court to let you see them. The judge will decide if visitation is in your child's **best interests**. The judge will look at many things when figuring this out. The judge will then decide how often the visits will take place and whether the visits need to be supervised. Sometimes the judge will require an agency to supervise the visits. Other times, the judge will allow a family member or friend to supervise the visits.



## If I have an order of protection against me, can I see my child?

Maybe. It depends on which court issued the order of protection and what the order of protection says. An **order of protection (OP)** is a paper from a judge that makes rules about contact between people. The OP may say that you have to stay away from someone.

If you have an OP from Criminal Court that tells you to stay away from your child, you can ask the Family Court for permission to see your child. This is called asking for **visitation**. Visitation can only be granted by a Family Court judge. Even if there is an order for visitation from Family Court, you cannot see your child unless there is an exception to the Criminal Court OP allowing the visitation to happen. For example, the OP may say something like, "subject to modification by a subsequent order of the Family Court." The court that issued the OP must make the exception. For more information, see the Family Legal Care guide, "**Orders of Protection**," which is available at [familylegalcare.org](https://familylegalcare.org).

## If I am in jail or prison, can I see my child?

Yes, unless:

- Your parental rights have been terminated;
- There is an OP that does not allow you to see your child; or
- The court issued an order saying you cannot visit your child.

Typically, parents who are incarcerated are allowed to see their children at least once a month. ACS or the agency handling your case must arrange the visits.



## Can I take part in meetings about my child's care after they are removed?

Yes. If your child remain in foster care, ACS or the foster care agency will try to come up with a permanent plan for them. This is known as **permanency planning**. Most children have a permanency planning goal of returning to their parents' care. In some cases, ACS may ask the court to place your child permanently with a relative or up for adoption.

Every 6 months, ACS or the foster care agency will have a meeting about the permanency plan. These meetings are called **Service Plan Reviews (SPRs)**. You have the right to participate in these meetings. If you are incarcerated, you can participate by phone. You will not have to pay for the call. You can call collect. To learn more, you can contact the foster care agency's caseworker that was assigned to your case.

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## Will I get a lawyer for both my Family Court and Criminal Court cases?

Yes. You have a right to a free, court-appointed lawyer if you cannot afford one. You will have one lawyer in Criminal Court and another lawyer in Family Court.

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## Do the District Attorney and ACS talk to each other?

Sometimes. The District Attorney (DA) in your Criminal Court case and ACS in your Family Court case can talk to each other. This is important to remember because what happens in one case could affect your other case:

- Everything you say in Criminal Court and Family Court will be recorded or written down.
- The DA can find out what you said in Family Court.
- ACS can find out what you said in Criminal Court.
- The DA and ACS can bring up what you said in one court if it is different from what you said in the other court. This is sometimes called **impeachment**. It can make you look less believable. They can only do this if what you said was **on the record**. On the record means that it is recorded.
- An impeachment may influence what a judge or jury decides.





## What happens if I am convicted of a crime in Criminal Court while my Family Court case is still going on?

Convicted means the court finds that you committed a crime. If you are convicted in Criminal Court, you can ask the Family Court judge to make a decision based on what you said in Criminal Court. If you do this, you will not have to admit in Family Court that you committed abuse and neglect. However, you will not be able to tell your side of the story. You should talk to your Family Court lawyer to figure out if this is right for you. There are reasons why you may not want to do this. Even if you do not do this, ACS can ask the Family Court judge to make a decision based on what happened in Criminal Court. This is called a **request for summary judgment**. A summary judgment is a decision entered by the court without a trial.

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## If I am in jail or prison, can I take part in the Family Court proceeding?

Yes. You have the right to participate in your Family Court hearings. You can participate either by phone or in person. To appear in person, the Family Court will give you an **order to produce**. This is a piece of paper that says you must be brought from the jail or prison to court. Your caseworker or lawyer can help you get the order to produce. If you do not have a lawyer, you can write a letter to the Family Court judge or clerk asking for the order.

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## Can my parental rights be terminated?

Yes. Any time a child protective proceeding is filed against you, you must keep in contact with your child and the foster care agency responsible for them. If you do not, ACS or the foster care agency can file a **petition** in Family Court asking a judge to **terminate**, or end, your **parental rights**. A petition is a written request to the court. Parental rights are your rights as a parent.

If your child has been in foster care for 15 out of the past 22 months, ACS or the foster care agency is required to file a petition to terminate your rights. The petition must give a legal reason for the termination. The two most common legal reasons are:

- **Abandonment:** This means that you did not communicate with your child or the agency in charge of your child at all in the 6 months before the petition was filed.
- **Permanent neglect:** This means that for one year after your child entered foster care, you did not work with the agency to make plans for them to come home to you.



## What happens to my child if my parental rights are terminated?

When your parental rights are terminated, you cannot make decisions about your child and cannot contact or see your child until they are 18 years old. Your child will probably stay with the person who is taking care of them. That person will be able to adopt them if they want. For more information, see the Family Legal Care guide, “[Termination of Parental Rights](#),” which is available at [familylegalcare.org](http://familylegalcare.org).

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## Can I do anything to prevent my rights from being terminated?

Yes. Ask your Family Court lawyer how to prevent your parental rights from being terminated. Some ideas may include:

- Staying in contact with your child, your lawyer, and the foster care agency if your child was placed in foster care;
- Keeping a record of all calls and visits you have with your child; and
- Saving copies of letters you send to your child. This may help you prove that you did not abandon or neglect your child.

Also, if ACS or the foster care agency ask you to complete certain services, it is important to do so. Examples include parenting classes, substance abuse programs, and mental health treatment. If you are incarcerated, these programs may be offered in the jail or prison. Completing them can help prove that you are trying to plan for your child to live with you after you get out. If the services are not offered in your community, it will be important to show what efforts you made to complete them.

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## Can my parental rights be terminated just because I was convicted of certain crimes?

Yes. ACS must file a petition to terminate your parental rights if you are convicted of certain crimes and your child was the victim. These crimes include murder, manslaughter, assault, and aggravated assault.

If you have other children who were not victims in those crimes, ACS can file a petition to terminate your parental rights for these children as well.





## Will a report of child abuse and neglect stay on my record?

It depends. The **State Central Register (SCR)** is a statewide database of reports of child abuse and neglect. The New York State Office of Children and Family Services maintains the SCR. After certain periods of time (see below), the SCR will automatically **seal** an **indicated** report. A sealed report means that it cannot be provided to employers. Indicated means that there was enough evidence to support the claim of child abuse or neglect.

- Indicated reports of child abuse will be sealed 10 years after the youngest child in the report turns 18 years old (when the child is 28).
- Indicated reports of child neglect will be sealed 8 years\* after the youngest child named in the report turns 18 years old (when the child is 26).

\* Please note that prior to January 1, 2022, indicated reports of child neglect were sealed 10 years after the youngest child named in the report turned 18 years old.

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## Can my employer find out if I have an SCR record?

Maybe. An indicated SCR report can be provided to certain employers. For example, if you work with children in a daycare, school, or medical facility, your employer may be entitled to all SCR records concerning you. You may be able to seal your record and still work with children if you can show that:

- The allegations were not related to working with children; and
- You have taken steps to address the concerns.

For example, if a report was indicated against you because of alleged alcohol abuse and you can prove that you completed a substance abuse program and have been sober, you may be able to seal your record.

If the claims of child abuse and neglect were **unfounded**, no one is allowed to see the report except ACS and the police department. Unfounded means that ACS did not find enough reasons to start a child protective proceeding.

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## What can I do to seal my SCR record?

You have the right to request for a **fair hearing**. This means that you can request the SCR to amend, or change, the report from indicated to unfounded and to seal the report. You must make this request within 90 days of the report being indicated. Note that as of January 1, 2022, if a child protective proceeding is brought in the Family Court concerning the indicated report and the case is dismissed, you no longer have to request a fair hearing. However, you still need to write to the SCR to request that the report be amended and sealed.

Even if you are not convicted in Criminal Court, your arrest and the crime you were charged with will stay on your criminal record unless it is sealed.





## Notes

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