



# Family Court Basics for Parents Who Were Previously Incarcerated

This guide answers questions that a parent who was previously incarcerated may have about paternity, child support, custody, and visitation. The information is written for non-custodial parents but is helpful for custodial caregivers as well.

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# Paternity



## What is paternity?

**Paternity** is the legal status of being a father. **Establishing paternity** means proving someone is the legal father of a child.

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## Why do I need to establish paternity?

When paternity is established, a father has the same rights and responsibilities as a mother:

- He can file petitions for custody or visitation;
- He must be told any time there is a custody, visitation, adoption, abuse, or neglect case about his child;
- He can be ordered to pay child support if he does not live with the child; and
- His child may be able to receive Social Security, workers' compensation benefits, or an inheritance if the father passes away or becomes disabled.

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## How can I establish paternity?

There are three ways to establish paternity:

1. If the parents are married at the time the child is born, they are both automatically considered legal parents. You do not have to establish paternity in court.
2. If the father signs an **acknowledgment of paternity** after the child is born, he has established paternity. The acknowledgment of paternity is a form that unmarried parents sign saying who the child's father is. The parents usually sign the form at the hospital when the child is born.
3. You may file a **petition** for paternity in Family Court. A petition is a written request. Both parents appear before a judge or magistrate. The parents can agree that the person present is the father. If the parents do not agree, the judge may order a DNA test. If the DNA test comes back as at least 95% positive, the court will enter an **order of filiation**. An order of filiation is an official document stating that a person is the father of a child

For more information on paternity, see the Family Legal Care guide "[Fathers in Family Court: Paternity & More](#)," which is available at [familylegalcare.org](http://familylegalcare.org).



## Child Support



### Why was I ordered to pay child support while I was incarcerated?

Under New York law, parents must support their children until the age of 21. Once someone starts a child support case against you, the court generally will order you to pay at least \$25 per month in child support. This is true even if you are incarcerated and have no income.

A child support case may start because the **custodial caregiver** receives public assistance benefits for your child. The custodial caregiver is the person who lives with the child most of the time. The custodial caregiver may be a parent, a relative like a grandparent, or someone else.

The state is required to start a child support case against any non-custodial parent who is not included on the public assistance budget letter. A non-custodial parent is a parent who does not live primarily with the child. The Department of Social Services (DSS) starts the case automatically, even if the non-custodial parent is incarcerated. In New York City, DSS is also called the Human Resources Administration, or HRA.

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### Can someone start a child support case against me without me knowing?

No. People who are incarcerated still have rights in court. One important right is the right to be served. Being served means receiving a copy of the court papers so that you know a case was filed against you. The court has strict rules about how to serve court papers. You must be served every time there is a Family Court case about you or your child. This is true even when you are incarcerated. For more information, see the Family Legal Care guide "[Serving Court Papers](#)," which is available at [familylegalcare.org](http://familylegalcare.org).

People who are incarcerated also have the right to appear in court for their cases. You can ask the court to appear by phone or through video. To do this, you must fill out a form called "Electronic Testimony Application and Waiver of Personal Appearance."

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### What if I was not served or was not able to go to court because I was incarcerated?

If you did not appear in court, the court may have entered a **default judgment**. A default judgment is an order that is made when someone does not show up for court. In child support cases, the default judgment is an order for child support against the non-custodial parent. The order is based on information the custodial caregiver gave to the court.

To find out if there is a default judgment against you, you can go to the records room in Family Court. Bring your ID. You can get a copy of the court order and other information about what happened in the case.



## What can I do if I have a default order of child support?

You may file a **motion to vacate** the default order. This is a written request asking the court to cancel the order. This motion must also have an **affidavit**. An affidavit is a written sworn statement. It must be signed and notarized. In the affidavit, you can explain why you missed court. You can also explain how the order would have been different if you were there to give information about your income. You must file the motion at the same Family Court that issued the default order. Contact that court for the forms and instructions.

On your court date, you have to prove what is in your motion and affidavit. The court will decide whether to put the case back on the calendar. Also bring proof of your income and expenses. The court needs this information to make an accurate child support order.

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## Does child support automatically stop when a parent becomes incarcerated?

No. If the court ordered you to pay child support, the order does NOT stop automatically when you become incarcerated. If you want to modify, or change, the child support order, you may file a **petition for downward modification**. This is a written request asking the court to lower the amount of child support you pay. Usually you can file the petition at the same Family Court that issued the order. For more information, see Family Legal Care guide "**Modifying Your Child Support Order**," which is available at [familylegalcare.org](http://familylegalcare.org).

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## Could I receive jail time for not paying child support?

Maybe. The court could order you to go to jail for up to six months or put you on probation if it finds that you **willfully violated** the support order. Willfully violating a support order means not following the order on purpose. For example, the court may find a willful violation if you had enough money to pay the child support but chose not to pay. Or, the court may find a willful violation if you can work but did not try to find a job. The court must have a **willfulness hearing** to find out why you did not pay child support.



**You have a right to a lawyer for the willfulness hearing. If you cannot afford a lawyer, the court can appoint, or assign, one to you for free.**



## What happens if I did not pay child support while I was incarcerated?

Once there is a court order for child support, you are responsible for paying. This is true even if you are incarcerated. If you did not pay, you might have **arrears**. Arrears are unpaid child support payments. If you owe arrears, the court can add a set amount to your current child support payment until you pay off the money you owe. Arrears typically do not go away until they are paid off, even after your child turns 21. Arrears do not go away with bankruptcy and can affect your credit.

In New York City, the **Office of Child Support Services (OCSS)** is the government agency that collects and enforces child support orders. In other parts of New York State, this agency may be called the **Support Collection Unit (SCU)** or the **Child Support Enforcement Unit (CSEU)**. This agency can take certain actions against you if you have arrears. For example, they can:

- Take your state or federal tax refund;
- Suspend your driver's license;
- Freeze your bank account and take money from it;
- Stop you from getting a new passport or renewing your passport if it expires; or
- Report you to credit bureaus, which can affect your credit score.

The custodial caregiver can also file a **violation petition** against you in Family Court. A violation petition lets the court know that you did not pay some or all of the child support. The court can issue a **money judgment**. This is a court order saying how much you owe. Until the money judgment is paid off, your arrears build up interest at 9% per year. The custodial caregiver can use the money judgment to take your assets, put liens on your property, or suspend your business or professional licenses.

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## What can I do to reduce my child support arrears?

This depends on whom the arrears are owed to.

- If you owe arrears to the custodial caregiver, only the custodial caregiver can forgive these arrears. This is true even if the payments go through OCSS or SCU. If the custodial caregiver agrees to forgive arrears, you still need to go to court. Both of you must agree to this in front of the support magistrate.
- If you owe arrears to the Department of Social Services (DSS) in New York City, you may qualify for one of the arrears forgiveness programs offered by OCSS. You may owe arrears to New York City's DSS if the custodial caregiver lives there and receives public assistance for your child. More information on the programs is below.

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## How do I apply for one of the OCSS arrears forgiveness programs?

If your child's custodial caregiver receives public assistance in New York City, you can go to the main OCSS office. The main office is at 151 West Broadway in downtown Manhattan. OCSS will tell you if you qualify for one of the programs and how to apply. You can also call the New York Child Support Helpline at 1-888-208-4485 to learn more.



## My child does not live in New York City. Can I still apply for arrears forgiveness?

You may owe arrears to the public assistance agency in your child's county or state. Contact that agency to see if they offer arrears forgiveness programs.

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## What arrears forgiveness programs does OCSS offer?

OCSS offers several arrears forgiveness programs. These programs are for non-custodial parents who owe arrears to DSS in New York City.

**Arrears Cap** can reduce your arrears to as little as \$500. It can reduce arrears that built up while you were incarcerated. It can also reduce your arrears if your income was below the federal poverty line. You have to show proof of incarceration and/or proof of your income for the periods when you are requesting arrears forgiveness. You can prove your income by providing at least one of the following:

- Proof of the dates of your incarceration;
- State and federal tax returns;
- Paystubs; or
- Proof of cash assistance, food stamps, Medicaid, and/or SSI.

**Arrears Credit** requires you to sign an agreement to pay your child support order in full every month for 12 months. If you do, OCSS will give you a matching credit on your arrears balance, up to \$5,000. For example, say your child support order is \$100 per month. If you pay it in full for 12 months, you will have paid a total of \$1,200. OCSS will then give you a matching credit of \$1,200 toward your arrears. You must sign up for this program. OCSS does not match payments automatically. You can participate in this program for up to three years.

**Pay It Off** is a limited-time arrears forgiveness program. OCSS typically offers this program for a few weeks each year. When Pay It Off is happening, you can make a large lump sum payment, usually \$200 or more. OCSS will match your payment dollar-for-dollar. For example, if you pay \$500, OCSS will give you a matching credit of \$500. This will reduce your arrears by a total of \$1,000. Call the Family Legal Care Helpline at 212-343-1122 or visit an OCSS office to find out when Pay It Off is being offered.

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## How can I lower my child support order?

The court will not automatically lower your child support. If your income goes down or you have a change in circumstances, it is your responsibility to file a petition for a downward modification in Family Court. This is a written request asking the court to lower your child support payments.

Modifying your child support order will not reduce arrears that built up before you filed the petition. The court can only lower the child support starting from the date you filed the petition for modification.

For more information, see Family Legal Care's guide "**Modifying a Child Support Order**," which is available at [familylegalcare.org](https://familylegalcare.org).





## Where can I go if I am having a hard time finding a job?

If your child support case is in New York City, the court may refer you to a free program called STEP. This stands for the Support Through Employment Program. You can also enroll in STEP on your own by speaking with the child support staff at the Family Court near you. STEP can:

- give you job training;
- help you write a resume;
- prepare you for job interviews;
- connect you with employers; or
- prepare you to take a high school equivalency exam (also called a GED or HSE/TASC).

If the court refers you to STEP, it is important that you go. STEP will tell the court whether you have been attending the program.

Some organizations also help people who were previously incarcerated find jobs. If you live in New York City, call 311. Ask for “Jail Release Services.” Or visit [www.NYC.gov](http://www.NYC.gov) for more information.

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## If I do not have a job, how much child support will I have to pay?

This depends on why you do not have a job. If you cannot work because you have a disability, you must show proof of your disability. Examples might be a Social Security Disability Insurance (SSDI) award letter or certified medical records. The court will decide whether you showed enough proof. If so, the court can calculate child support based on the income you do have. Examples of income are disability benefits and veterans' benefits. Supplemental Security Income, or SSI, does not count as income in child support calculations. If your income is below the federal poverty line, you can ask the court to set child support at \$25 per month. You can also ask the court to cap your arrears at \$500.

If you cannot find a job for some other reason, the court can order you to pay child support based on what your income would be if you were working. This is called **imputed income**. To impute your income, the court can consider:

- What you earned in the past;
- The minimum wage where you live;
- Your education or skills; and
- Any other information the court believes is important.

If you are having trouble finding a job because of your criminal conviction, the court can still impute your income until you find a job.

If the court does not have enough information to impute your income, the court could base the order on your child's needs. The court looks at the custodial caregiver's expenses to determine the child's needs.

The court may ask you to bring in a **job search diary**. To make a job search diary, write down every job you apply for, the date you applied, and what happened with your application. This helps the court see that you are applying to jobs and trying to find work.





## What if I work “off the books”?

If you work “off the books” or do not receive regular paychecks, the court may base your income on one of the following:

- What you currently earn;
- What you earned in the past;
- What the court thinks you could earn; or
- The standard of living in your household.

The amount the court decides on is called imputed income. The court uses this **imputed income** to decide how much child support you will pay.

The court may ask you to bring in an **odd jobs diary**. In an odd jobs diary, you keep track of all the odd jobs you do and what you get paid.



# Custody/Visitation

## Someone else took custody of my child while I was incarcerated. Do I still have parental rights?

A parent's rights to their child are not terminated automatically because of incarceration. There are only two ways a parent's rights can be terminated:

- **Voluntarily:** A parent can agree to surrender, or give up, their parental rights if someone else wants to adopt their child. Generally, both birth parents need to agree to the adoption.
- **Involuntarily:** A child welfare agency or foster care agency can file a petition to terminate parental rights if they believe a parent has abused or neglected their child. A judge will decide whether to terminate the parent's rights. New York City's child welfare agency is called the Administration for Children's Services (ACS). Other parts of New York have Child Protective Services (CPS).

As long as your parental rights were not terminated, you may ask the court for custody or visitation again.



### How do I ask for custody of my child?

If someone else has a court order for custody or guardianship of your child, you may file a **petition for modification** to get custody back. You must show the court that the situation has changed in some way since the last order was made. This is called a **change in circumstances**.

You must also show that it would be in your child's **best interests** for you to have custody now. This means that the court looks at several factors to decide what is best for your child. Factors include who has the safest and most stable home, who has been taking care of the child and, possibly, what the child wants. For more information on custody, see the Family Legal Care guide "**Custody & Visitation Basics**," which is available at [familylegalcare.org](https://familylegalcare.org).

If your child is living with someone else but that person does not have a court order for custody or guardianship, that person can give custody back to you at any time. You do not need to go to court. If they do not agree to give you custody, you may file a petition for custody in Family Court.



## I have not seen my child in a long time, but I want to be in their life. What can I do?

You may file a petition for custody or visitation. Generally, you must file in the county where your child has lived for the past six months. The court may consider how long you and your child have been apart, how visits would affect your child, and what your child wants. The court might start by granting a small amount of visitation in a place where your child feels safe and comfortable.

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## Will my conviction affect my custody or visitation case?

Maybe. The court decides custody and visitation based on the best interests of the child. The court has to consider a parent's conviction for domestic violence as a factor in the child's best interests. The judge will decide how other types of convictions affect the decision.

The court might not allow a parent to visit a child if there is **evidence** that the visits would put the child in danger. Evidence is information presented to the court to prove a case. Examples of things the court might consider dangerous are a past conviction of a violent crime or a history of child abuse.

The court can order **supervised visitation** if it finds that supervision would make the child safer or more comfortable. Supervised visitation means someone else is there to watch while the parent and child visit. This can be at an agency, with a therapist, or with another person on whom both parties agree. For more information on custody and visitation, see the Family Legal Care guide "[Custody & Visitation Basics](#)," which is available at [familylegalcare.org](http://familylegalcare.org).

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## Can I get custody or visitation if there is an order of protection against me?

It depends on which court issued the order of protection and what the order of protection says.

- *If the order of protection is from Criminal Court and includes your child:* Some Criminal Court orders of protection have an exception that allows parents to file for visitation in Family Court. You must ask the Criminal Court judge to include the exception. You cannot visit your child until you get a Family Court order for visitation.
- *If the order of protection is from Family Court and includes your child:* You may file a petition for visitation in Family Court. Usually, the same judge who made the order of protection will decide on visitation too. The judge can create an exception in the order of protection to allow you to visit your child. The judge will determine what is in your child's best interests when deciding whether to allow visitation. You cannot visit your child until you get a visitation order.
- *If the custodial caregiver has an order of protection against you, but it does not include your child:* You may still be able to see your child. However, you must follow the rules in the order of protection. You may need to file a petition for visitation in Family Court. The judge can tell you how to visit your child without violating the order of protection. For example, the judge might order pick-ups and drop-offs to take place at a police precinct or another public place. Or the judge might say that you can talk to your child's custodial caregiver about visitation but not about anything else.



## Can I get custody or visitation if I had an ACS or CPS case?

It depends on whether your parental rights were terminated in the ACS or CPS case. ACS stands for the Administration for Children's Services. CPS stands for Child Protective Services. ACS and CPS handle cases of child abuse and neglect. If a parent's rights were terminated, usually that parent cannot get custody back. For more information, talk to the lawyer who represented you in the case or call the Family Legal Care helpline at 212-343-1122.

If your parental rights were not terminated, you can file for custody or visitation. You will have to show the court why it is in your child's best interests for you to have custody or visitation. The court will look to see if you made changes after the ACS or CPS case. Examples of changes may be going to a parenting or anger management class, finding stable housing, or getting treatment for substance use or mental illness.



## I do not know where my child is. Can I still get custody or visitation?

Maybe. First, you need to find out where your child lives. This is so you can decide which court to go to. In general, you must file for custody or visitation in the county where your child has lived for the past six months.

You also need to **serve** your child's custodial caregiver with the court papers. Serving means having someone give the **respondent** the court papers. The respondent is the person on the other side of a court case. In custody and visitation cases, the court papers must be handed directly to the respondent. This is called **personal service**.

It is your responsibility to find the respondent. The court cannot help you find someone. The court also cannot make any decisions about custody or visitation until you serve the respondent. For more information about service, see the Family Legal Care guide "[Serving Court Papers](#)," which is available at [familylegalcare.org](http://familylegalcare.org).

## I cannot afford to pay child support right now. Can I still get visitation?

Yes. Child support and visitation are separate. You can still get visitation even if you do not pay child support. If you already have a court order for visitation, your child's caregiver is required to follow it. This is true whether or not you pay child support. If you do not have a court order for visitation, you may file a visitation petition in Family Court. See the Family Legal Care guide "[Custody & Visitation Basics](#)" for more information. This guide is available at [familylegalcare.org](http://familylegalcare.org).



## Other



### Where can I go for help resolving custody, visitation, or child support issues if I want to avoid court?

**Mediation** is one way to resolve disputes without going to court. Some organizations offer free mediation for custody, visitation, and child support. In mediation, you and the other parent or caregiver meet with a trained, neutral person. That person helps you talk about your disagreements and find solutions together. Mediation gives you the chance to discuss all issues affecting your child, not just legal ones. Although the mediator guides your discussion, they do not tell you what to do like a judge would. They also cannot give you advice. You and the other party make all the decisions.

If you reach an agreement, you can file it with the Family Court. A judge can turn the agreement into a court order. This means that everyone who signed the agreement must follow it. This process is much faster and simpler than a regular court case.

Mediation may not be a good option if there is a history of domestic violence between the parties. Some mediators may not provide services if there was domestic violence. Also, mediation is voluntary and confidential. You do not have to go if you do not want to. You can still start a case in Family Court if mediation does not work.



## Additional Resources

### Administration for Children's Services (ACS)

#### Main Office

150 William Street, New York, NY 10038  
212-341-0900 (Outside NYC: 1-877-543-7692)

#### Office of Advocacy

Provides information about parents' and children's rights and responsibilities and assists with concerns about ACS services.  
212-676-9421

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### Child Support

#### New York State Child Support Helpline

1-888-208-4485 (TTY: 1-866-875-9975)

#### Office of Child Support Services (OCSS) (NYC)

Customer Services Walk-In Center  
151 West Broadway, 4th Floor  
New York, NY 10013

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### Counseling and Mental Health Support

#### NYC Well

Offers a free 24-hour hotline for mental health support and referrals: 1-888-692-9355 (NYC-WELL)  
Or, you can search for services online:  
[nycwell.cityofnewyork.us/en/find-services/](https://nycwell.cityofnewyork.us/en/find-services/)

### Reentry Services

#### The Fortune Society

Offers a variety of services to people with histories of incarceration in order to support reentry from prison. Services include housing, employment services, education, family services, alternatives to incarceration, mental health treatment, substance abuse treatment, health services, benefits access, food and nutrition, and creative arts. 212-691-7554, [www.fortunesociety.org](http://www.fortunesociety.org)

#### Hour Children

Provides services to currently and previously incarcerated women and their families. Services include housing, childcare, education, employment, and financial services. 718-433-4724, [www.hourchildren.org](http://www.hourchildren.org)

#### The Osborne Association

Offers a broad range of services for people involved in the criminal justice system, including both currently and formerly incarcerated people, their children, and family members. Also offers a free reentry hotline: 1-833-672-3733, [www.osborneny.org](http://www.osborneny.org)

**(Brooklyn)** 175 Remsen Street, Suite 800,  
718-637-6560

**(The Bronx)** 809 Westchester Avenue,  
718-707-2600

**(Manhattan)** 2090 Adam Clayton Powell Jr. Boulevard,  
212-324-5577

#### Women's Prison Association

Offers services to women at all stages of criminal justice involvement, including reentry services. Reentry services include emergency assistance, employment services, health and mental health services, legal services, and housing services. 646-292-7740, [www.wpaonline.org](http://www.wpaonline.org)

For additional resources, you can also call 311 if you live in New York City. Ask for "Jail Release Services."  
Or, visit [www.NYC.gov](http://www.NYC.gov) for more information.



## Mediation

Below are some free or low-cost mediation resources in New York City:

### **New York Peace Institute:**

**(Brooklyn)** 210 Joralemon Street, Suite 618  
718-834-6671

**(Manhattan)** 111 John Street, Suite 600  
212-577-1740 [www.nypeace.org](http://www.nypeace.org)

### **Institute for Mediation and Conflict Resolution**

**(The Bronx)** 384 East 149th Street, Suite 330  
718-585-1190 [www.imcr.org](http://www.imcr.org)

### **Community Mediation Services**

**(Queens)** 89-64 163rd Street, 718-523-6868  
[www.mediatenyc.org](http://www.mediatenyc.org)

### **New York Center for Interpersonal Development**

**(Staten Island)** 130 Stuyvesant Place, 5th Floor  
718-815-4557 [www.nycid.org](http://www.nycid.org)

## Domestic Violence and Intimate Partner Violence Services

**If you are experiencing domestic violence or have concerns about your safety, seek help immediately. You can also call Safe Horizon's free 24-hour domestic violence hotline for New York City: 800-621-4673 (HOPE)**

### **Family Justice Centers**

Offers free and confidential service centers for survivors of intimate partner violence, elder abuse, and sex trafficking. Help is available in all languages, regardless of a person's immigration status.

### **Brooklyn Family Justice Center**

350 Jay Street, 718-250-5111

### **Bronx Family Justice Center**

198 East 161st Street, 2nd Floor, 718-508-1220

### **Manhattan Family Justice Center**

80 Centre Street, 212-602-2800

### **Queens Family Justice Center**

126-02 82nd Avenue, 718-575-4545

### **Staten Island Family Justice Center**

126 Stuyvesant Place, 718-697-430

### **Sanctuary for Families**

Provides free and confidential legal and counseling services, shelter, and economic empowerment support to adult and child survivors of domestic violence, trafficking, and related forms of gender-based violence.

212-349-6009, [www.sanctuaryforfamilies.org](http://www.sanctuaryforfamilies.org)



