



My Criminal Conviction and My Family Court Case

Hotline: (212) 343-1122 • www.LIFTonline.org

General Family Court Questions about Criminal Convictions

Can my conviction be used against me in Family Court?

Maybe. Depending on what you have been convicted of, a Family Court judge can take it into consideration.

Can I try to minimize the impact of my conviction?

Yes. It may also be possible to seal (prevent people from seeing) the conviction in limited circumstances. Limited circumstances include some cases of violations, ACDs (adjournment in contemplation of dismissal) or juvenile offenders. The limited circumstances do not include felonies and misdemeanors. It may also be possible to get a **Certificate of Rehabilitation**. This says your conviction should not be used against you in certain situations because you have taken certain steps. You should also fix any errors that may exist on your RAP sheet. A RAP sheet is the record of your arrests and convictions. For more information on these options you can speak to your attorney, the Division of Criminal Justice Services, or call the Legal Action Center at (212) 243-1313.



If I am incarcerated, what happens to my Family Court cases?

Your Family Court cases do not end just because you are incarcerated. You have the right to be brought to Family Court for your scheduled court dates. Your Family Court judge can sign a document called an **Order to Produce**. This tells the correctional facility when you need to be brought to court.

Child Support

If I am incarcerated, do I have to pay child support?

Yes. If there is a child support order in place, you must pay.



What happens if I do not pay child support while I am incarcerated?

Once there is a court order to pay child support, you must pay. You are expected to pay even while you are incarcerated. If you do not pay, you will have **arrears**. Arrears are unpaid child support that add up and become debt. If you owe arrears, the court can add a set amount to your payment until you have paid all the money you owe. Arrears never go away, even after your child turns 21.

If I am incarcerated, can I lower the amount of child support I am paying?



You have the right to petition for a **downward modification**.

This is when you ask the Family Court to lower the amount of child support you are paying. The judge does not have to make that order. To do this from prison, you can write to the Family Court and ask them to send you the forms to fill out.

When deciding to modify (change) a child support order, a judge will look at whether you have proven that a **significant change of circumstances** has happened since the final child support order was made. You must also prove that the change in circumstances was **involuntary**. This means that the change was not your decision.

A judge may view your incarceration as **voluntary** and may not reduce your child support order.

If a judge does reduce your child support order, the lowest it can be is \$25 a month.

What happens to my child support obligation if I cannot find a job when I am released?

You have the right to petition for a **downward modification** (see above).

If a judge does reduce your child support order, the lowest it can be is \$25 a month.

Please note: It is illegal for an employer to refuse to hire you because you have been convicted, unless the crime is directly related to your job or your license has been suspended. It is illegal for you to fail to give information about your criminal history if you are asked.

Custody and Visitation

Can my conviction be a factor in my custody case?

Judges make decisions about custody based on what is in the “**best interests**” of the child. The “best interests” are a number of factors the judge uses to determine custody. They include who has the safest and most stable home, who takes care of the child, and, possibly, what the child wants. Judges have to consider a conviction for domestic violence as a factor in deciding what is in the “best interests” in a custody case, but it is up to the judge how other convictions for other crimes will affect the decision.

How can my conviction be a factor in my visitation case?

Just like in custody cases, judges make decisions about visitation based on what is in the “best interests” of the child. Also like custody cases, a judge has to consider your conviction for domestic violence when deciding visitation. It is up to the judge how other convictions should be considered when deciding a visitation schedule.

If I am incarcerated, can I visit with my children?



Maybe. If there is a visitation order, the person taking care of your children must bring them to visit you at your facility. That person does not have to bring them if there is no order from the court. You have the right to file a petition in court and ask the judge to order that person to bring the children to visit. The judge will make that decision based on what is in the best interests of your children.

Different correctional facilities may have different rules and different options for visits with children. More information can be found here: <http://www.docs.state.ny.us/FamilyGuide/FamilyHandbook.html#visi>.

Can I visit with my children if there is an order of protection against me?

Maybe. Visitation can only be granted by a Family Court judge. If there is an order for visitation from Family Court, but you also have an order of protection against you **that includes your children**, you might not be able to see your children. To see your children, there has to be an exception in the order of protection that allows the visit to happen. You must ask your attorney to ask the judge for the exception to be made. If the exception is granted, then you can visit your children.

Orders of Protection

If someone has an order of protection against me from Criminal Court, can they automatically get one in Family Court?



No. It is not automatic. The Criminal Court and Family Court look at different things when making the order. To get an order from Family Court, the person first has to file a petition asking for the order.

For more information on this, see the LIFT guide, “Orders of Protection: A Guide for Defendants and Respondents.”

Foster Care System

How does a conviction for child abuse affect a Family Court case for child abuse?

If you are convicted of child abuse, the Family Court judge can make a decision in your child abuse or neglect case based on your testimony or plea in your Criminal Court case. 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 your conviction. This is called a **request for summary judgment**.

For more information on this please see LIFT’s guide, “Child Abuse and Neglect: A Guide for Criminal Court and Family Court.”

How does my conviction affect my parental rights?



Your parental rights cannot be terminated simply because you were convicted of a crime. However, if you are convicted of certain serious crimes against your children a judge can use that as grounds to terminate your parental rights. If you are incarcerated and your children are in foster care and you do not remain in contact with your children or caseworker for an extended period of time, ACS may try to terminate your parental rights. This usually happens when the children have been in foster care for 15 of the last 22 months.

For more on this please see the LIFT guide “Termination of Parental Rights.”

Can my conviction stop me from becoming a foster parent?

Maybe. It depends on what you were convicted of. Many violent crimes (such as rape, assault, battery, robbery) will stop you from becoming a foster parent. A conviction for child abuse will also disqualify you. You can speak to the caseworker to find out if your crime stops you.

More Information

Many times people have other issues in addition to those that are discussed above that come up as a result of their conviction. These might include losing your right to vote and difficulty finding employment. These issues are called **collateral consequences** of a criminal conviction. Here are some places that can help you.

Housing

For more information on how your criminal conviction can affect your family's housing situation, you can contact:

Legal Action Center at
(212) 243-1313.



Immigration

For more information on how your criminal conviction can affect you and your family's immigration situation, you can contact:



The New York State Defenders Association Immigrant Defense Project. They have a hotline Tuesdays and Thursdays from 1:30 PM to 4:30 PM. The number is (718) 858-9658 ext. 201.

You can also write to them at:

The New York State Defenders Association
Immigrant Defense Project
3 West 29th Street, Suite 803
New York, NY 10001

Other

You can go to www.lawhelp.org/ny and go to the page called "Consequences of Criminal Charges." The site includes information about criminal cases and housing, immigration, employment, certificates of rehabilitation, voting and public benefits.

If you do not have access to a computer at home, you can use a computer at a public library. You can also call **LIFT's Family Law Information Hotline at (212) 343-1122**. The Hotline accepts collect calls from correctional facilities.

This document should not take the place of a consultation with a lawyer. LIFT encourages all individuals involved with the Family Court or Criminal Court to consult with a lawyer.

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