

ABC's of Family Court



This information is applicable in the following New York Counties: Onondaga, Oneida, Jefferson, Herkimer, Oswego, and Lewis.

18-B: A free attorney who represents a person in court. Also called assigned counsel or panel attorneys. A judge decides who can get an 18-B lawyer based on the kind of case and the person's income. The judge picks the lawyer from a list of lawyers previously approved by the State Supreme Court.

1027 hearing: Also called an intake hearing. A hearing held after a child is removed from his or her home without a court order because of suspected child abuse or child neglect. This hearing must be held as soon as possible to determine if the child should be sent to foster care or returned home. 1027 is a section in the Family Court Act.

1028 hearing: If a child is removed from a parent's home for child abuse or child neglect, the parent can request a 1028 hearing. At the hearing the court will decide if the child would be at "imminent risk" (immediate danger) if returned home. The hearing must be held within three days after the parent, or the parent's lawyer, asks for it. 1028 is a section in the Family Court Act.

A

ACD (Adjournment in Contemplation of Dismissal):

A judge puts off making a decision on a case. This is done to see if the **respondent** (defined on page 7) follows all of the directions given by the court. If the respondent follows all of the directions, the case might be dismissed. Depending on the kind of case, the decision might be put off 6 to 12 months.

Acknowledgement of Paternity: A form usually filled out by both a mother and father saying that the man

filling out the form is the father of the baby. The form is usually filled out at the hospital.

ADA (Assistant District Attorney): A lawyer who represents the state in criminal prosecutions.

Adjourn: To temporarily postpone or reschedule a case for a later time or on another day.

Adjudicate: The formal word for deciding a case in court.

Admission: When a person tells the court, under oath, that he or she did the actions that he or she has been accused of.

Adoption: The granting of permanent legal rights and responsibilities for a child to an individual other than the child's biological parents.

Adoption and Safe Families Act

(ASFA): A federal law that requires that a child who has been in foster care for 15 or more of the past 22 months be returned home or steps must be taken to have the child adopted.



Affidavit: A sworn statement made in writing and signed.

Allegation: An unproven fact.

Appeal: When you ask a higher court to review or look at an order, or decision, made by the court you went to first to see if it was done correctly.

Appellant: The person who asks for an appeal.

Appellate Division: The court that hears appeals.

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Arrears: Unpaid child or spousal support, a debt.

Article 10: The section of the **Family Court Act** that covers child abuse and neglect cases. Sometimes abuse and neglect cases are called “Article 10 cases.”

Article 78: A special proceeding brought to challenge the activities of an administrative agency. Usually done in Supreme Court.

Article 81: A special proceeding under the Mental Hygiene Law to name a person as the guardian of another. Once appointed, the guardian is given the power and charged with the duty of taking care of the person and managing the property and rights of that person, who is not able to take care of his or her own affairs. Usually done in Surrogate's Court.

Assigned Counsel: A free attorney who represents a person in court. Also called 18-B or panel attorneys.

Assistant County Attorney/Assistant Corporation Counsel: A lawyer who represents the county, city, or an agency of either. The lawyer works on cases involving juvenile delinquency and interstate child support cases.

Attorney for the Child: An attorney assigned by a judge to represent a child in court. Attorneys for the Child used to be called “Law Guardians.”

B

Bench warrant: An order issued by a judge (“from the bench”) for the arrest of a person who did not come to court when ordered.

Best interests: The standard a Family Court judge uses when making decisions about a child. The judge will look at many things when figuring this out. The standard does not mean who loves the child more or who has more money. It does not favor a mother over a father, even if the case involves a young child.

Brief: A written document submitted by a party to a case that explains the relevant facts and law.

Burden of proof: This relates to who is responsible for proving the allegations in a case, and how much proof is required. In Family Court, an allegation must be proved by a “preponderance of the evidence.” In criminal court it must be proved “beyond a reasonable doubt.”

C

CASA (Court Appointed Special Advocate): An agency that is appointed by a judge to monitor and report to the Family Court on foster care placement cases. An individual who works for or volunteers with the agency may also be referred to as “a CASA.” Please check with your local Family Court to see if this Agency is available in your county.

Change of Venue: Moving a case to another jurisdiction for legal reasons.

Child abuse: The harming of a child through physical, sexual, mental, or emotional injury.

Child neglect: The failure to properly care for a child. This can include failure to provide enough food, shelter, clothing or appropriate supervision. It can also include failing to provide adequate education (**educational neglect**) or medical care (**medical neglect**). It can also include alcohol or drug use.

Child protective proceeding: A case brought under Article 10 of the Family Court Act, involving child abuse or child neglect.

Child Protective Services Worker: The person from the county or city child protective agency (In New York City this is New York City Administration for Children's Services) who investigate charges of child abuse and child neglect.

Child Support Enforcement

The Child Support Enforcement Program (CSE) establishes and enforces child support, monitors collections and disbursement of child support payments, establishes paternity (legal fatherhood) for children born outside the marriage, and locates absent parents when necessary. See Department of Social Services.

Citation or Cite: A group of numbers and letters used to identify and locate a previously decided case in a law casebook.

Commit: The power of a court to order a person to a correctional institution, mental hospital or juvenile reformatory.

Consent: Agreeing to something happening.

Contempt of Court: An act done with the intent to embarrass, hinder or prevent a court from the administration of justice. “Direct contempt” is an act done in the presence of the court. “Indirect contempt” is the willful disobedience of a court order.

Counsel: Another word for attorney or lawyer.

Court Attorney: A lawyer who works for a judge helping with legal research, drafting decisions, conferencing cases, and reviewing orders.

Court Clerk/Court Assistant: A court employee who works with a judge. The employee prepares court orders for signature, schedules cases, and helps ensure the availability of interpreters.

Court Officer/Deputy Sheriff:

A uniformed guard who maintains order in the courtroom and public areas of the courthouse. Court officers are assigned to every courtroom. They may call parties into the hearing, administer oaths, and bring respondents to the courtroom from detention facilities in the building.



Cross-Examination: The questioning of a witness called by the other party to a case.

Cross-Petition: Called a counterclaim in other courts. A petition by the respondent that is in conflict with the original petition filed by the petitioner.

Custodial parent: The parent who lives with the child.

Custody and Detention: The act of arresting a young person. After the juvenile is taken into custody, he or she may be detained, or held, for a limited period of time in a locked facility.

D

Default: When a party does not answer the papers or come to a scheduled court date in a set period of time.

Department of Social Services: The services provided by the Department of Social Services in each county may vary, depending on each county. Usually the Child Support Enforcement Program (CSE) is contained within the Department of Social Services. The Child Support Enforcement Program establishes and enforces child

support orders, monitors collection and disbursement of child support payments, establishes paternity (legal fatherhood) for children born outside of marriage, and locates absent parents when necessary. The Department of Social Services may also sponsor day care assistance and other services.

County Department of Social Services may be found at the following numbers:

Herkimer County: (315) 867-1291

Jefferson County: (315) 782-9030

Oneida County:

In Utica, NY (315) 798-5632

In Rome, NY (315) 338-0200

Onondaga County: (315) 435-2985

Oswego County: (315) 963-5000

Designated Felony Act: An act committed by a person age 13, 14, or 15, which if committed by an adult, would constitute one of the following crimes: murder, kidnapping, arson, assault, manslaughter, rape, sodomy, or robbery.

Discovery: How one party obtains information or facts about the case from the other side. There are different rules in the law about how discovery works in different kinds of cases.

Dismissal: The termination or ending of a court case. Cases can be dismissed “with prejudice” or “without prejudice.” If a case is dismissed “with prejudice” the person cannot file the case again. If the case is dismissed “without prejudice” the person can file the case again.

Dispositional hearing: A hearing that takes place after the **fact-finding hearing** (defined on page 4) where a judge makes a final ruling.

Dispositional order: The final order entered by the judge following a dispositional hearing.

Docket Number: The unique letter and numbers assigned to a case. In Family Court Docket Numbers start with a letter that indicates what kind of case it is, followed by a unique set of numbers, ending with two digits that indicate the year the case started.

E

Educational neglect: A type of **child neglect** (see page 2).

Emancipation: The declaration that a person who has not reached full legal age is self-supporting and independent of parental control. There is no court order for emancipation in New York State.

Equitable estoppel: Typically in cases to determine who is the father of a child. Equitable estoppel is a determination that because someone has already been acting as the father of a child for an extended period of time, he is considered the father even if he is not the biological father of the child.

Evidence: Proof used to support or rebut facts.

Ex parte (ex par'te): Communication with the judge on a case without the other party being present.

F

Fact-finding hearing: A hearing to determine whether the **allegations** of the **petition** have been proven. This is called a trial in other courts.

Family Court Act: The New York State law that sets forth the powers of and types of cases in Family Court.

Family offense: One of the following acts if committed by a family member, a person to whom you are married or used to be married, a person with whom you have a child, or a person with whom you had an intimate relationship: disorderly conduct; harassment; aggravated harassment; menacing; reckless endangerment; assault or attempted assault; or stalking.

Family Treatment Court: A special courtroom that hears child neglect and abuse cases involving parents with substance abuse problems.

Felony: A crime punishable by imprisonment for more than one year.

Forensics: The use of a psychologist or other qualified person to examine parties. The forensic examiner writes a report to help a judge make decisions in custody and visitation cases.

G

Garnishment: A way of collecting money or property to pay back a debt. Often wages are garnished in child support and spousal support cases, meaning money is taken directly from a paycheck.



Good cause: A legally sufficient reason.

Group home: A facility with a number of foster children who live there under adult supervision.

Guardian ad Litem: An individual appointed by the court to represent an infant or an adult who is mentally or physically unable to speak for themselves. The Guardian ad Litem can also stand in place of a parent who is unable to appear in court.

Guardian: A person who is legally responsible for the care and management of a person or a person's property. Usually the person is a minor or an adult who cannot take care of him or herself.

H

Habeas Corpus: The name given to a variety of court orders (called writs) whose primary purpose is to bring a person before a court or judge to determine if that person is being deprived of his or her liberty against the law. Writs of Habeas Corpus are sometimes used to order a parent or guardian to bring a child to court, when that parent may be violating a court order of custody or visitation.

Hearing Examiner: A person, like a judge, who can make decisions in support and paternity cases. Decisions made by hearing examiners can be appealed to a judge by filing an objection (defined on page 6).

Hearsay: Evidence not based on the personal knowledge of the witness.

I

IDV (Integrated Domestic Violence Court):

A special court part that hears all aspects of domestic violence cases – including Family Court and Criminal Court cases – based on a one-family/one-judge model.

Imputed income: In a case for child or spousal support, the amount of income the court attributes to a person based upon past income, ability to earn, educational background, etc. An order of support can be made based upon the imputed income instead of a person's current reported income.

Income Execution: A way to satisfy a court order for an amount of money by taking a portion of the person's wages directly from their paycheck. This is used in child support and spousal support cases. This is often referred to as garnishing wages.

Interrogatories: Written questions given by one side to the other which must be answered in writing. Interrogatories can be part of the discovery process in a case.

Interpreter: A person who translates for litigants with limited English language ability or hearing impaired litigants in any part of the courthouse.

J

Joint Custody: Both parents share **legal custody** of the child. This means they must make decisions together about the important decisions being made about their children. They share this responsibility regardless of which parent lives with the children.

Judge: The individual who is in charge of the courtroom, listens to witnesses, examines evidence, and decides any legal questions that arise during the proceedings. Following the presentation of all evidence, he or she determines the outcome of the case and issues any necessary orders.

Judicial Hearing Officer (JHO): A former or retired judge who hears contested paternity, custody and visitation, and order of protection cases in Family Court. Usually, JHO's hear cases and report their recommendations to a judge. The judge then determines the outcome of the cases.

Jurisdiction: The geographical and "type of actions" limitations of a court. Courts can only make decisions for certain places and on certain kinds of cases.

Juvenile Delinquent: A person at least 7 years of age but under age 16 who commits an act that, if committed by an adult, would constitute a crime.

Juvenile Offender: A person aged 13, 14, or 15, who commits certain serious crimes explained in the criminal law which if committed by an adult, would constitute one of the following crimes: murder, kidnapping, arson, assault, manslaughter, rape, sodomy, or robbery.

K

Kinship Foster Care: A foster parent that is related to the child that he or she is caring for.



L

Law Guardian: An old term for an attorney assigned by a judge to represent a child in court. "Law Guardians" are now called "Attorneys for the Child."

Legal Custody: When an adult has the responsibility of making important decisions – such as medical or religious decisions – about the life of a child.

Lien: A claim or charge on property for payment of a debt.

M

Matrimonial: Having to do with marriage.

Mediation: A method of resolving a dispute outside of a courtroom. It involves a neutral third party who tries to help the parties reach an agreement.

Medical Neglect: A type of **child neglect** and includes not taking a child to a doctor for necessary medical treatment.

Misdemeanor: An offense punishable by a fine or imprisonment of up to one year.

Modification: The changing of something. In court the changing of all or part of an order.

Motion: An oral or written request made by a party to the court for specific relief.

N**New York State Central Register of Child Abuse and Maltreatment (SCR):**

A state hotline that receives telephone calls alleging child abuse or child neglect. The SCR gives information from the calls to the local child protective agency for investigation, monitors their response, and identifies if there are prior child abuse or neglect reports about the family.



Non-Custodial Parent: The parent with whom the child does not live most of the time.

Non-Secure Detention Facility: A facility for detained children characterized by the absence of locks, guards and similar security measures.

O

Objection: (1) The process by which a petitioner or respondent can appeal a decision made by a support magistrate. The appeal is made to a Family Court judge. (2) The act of expressing disagreement with a statement or ruling in a case.

Office of Court Administration (OCA): The administrative branch of the New York State court system. OCA is overseen by the Chief Judge of the Court of Appeals. It supervises the standards, administrative policies, and operations of the trial courts, including Family Courts, throughout the state.

Open Adoption: An adoption in which both the adoptive and the biological parents agree to share specified information about or communication with the child.

Order: A written direction or command delivered by the court or a judge.

Order of Custody: An order determining who the custodial parent of the child will be.

Order of Filiation: An order establishing who is the father of a child. This order establishes the child's legal right to support and inheritance from the father. It also establishes the father's right to seek custody and visitation.

Order of Protection: An order issued by a judge that limits the interactions between two people so that one person will be protected from the harmful or risky actions of the other.

Order of Support: An order entered by a support magistrate or judge, directing that a specified amount of money be paid to the petitioner for a child or a spouse.

Order of Visitation: An order issued by a judge, determining the conditions of visitation of non-custodial parents or relatives.

Order to Show Cause: A court order directing someone to appear in court on a specific time and date in order to explain why a particular order should not be made.

P

Panel Attorney: A free attorney who represents a person in court. Also called assigned counsel or 18-B attorneys.

Parole: The supervised release of a juvenile pending a **dispositional hearing** (defined on page 3) in a juvenile delinquency case. Also, the release of a child to a parent pending the outcome of a dispositional hearing in a child protective proceeding.

Part: A courtroom.

Paternity: The legal status of being a father.

Permanency Hearing: A proceeding, held eight months after a child has been placed in foster care, and every 6 months after that. At the hearing the judge reviews the **permanency plan** which says where the child will live permanently.

Permanency Plan: A plan developed for a child placed in foster care to determine where the child will live permanently. There are five possible options: Return of the child to the parent; Adoption; Legal guardianship; Permanent placement with a fit and willing relative; and Placement in another planned permanent living arrangement, such as independent living.

Person In Need of Supervision (PINS): A person under age 18 whose behavior is beyond the control of a parent or other lawful authority, and who a judge decides is in need of court-ordered supervision.

Petition: The written document that forms the basis for a Family Court proceeding.

Petition Clerk: The court employee who helps prepare petitions.

Physical Custody: Being responsible for caring for a child's everyday needs. Usually the child lives with the adult who has physical custody of him or her.

Preventive Services: Help provided to a family when a child is at risk of being removed from a home and put into the foster care system because of child neglect or child abuse.

Private Placement Adoption: An adoption in which the child's biological parents and the potential adoptive parents reach an agreement outside of the foster care system.

Probable Cause Hearing: A hearing to determine whether there is a good reason to hold a child in detention pending a fact-finding hearing in a juvenile delinquency case.

Pro Bono: Legal services provided for free.

Pro se: A party to a case that represents him or herself, also called self-represented or unrepresented.

Prosecute: To put someone on trial.

R

Recuse: An action taken by judge to remove him or herself from a case. This action is usually done because the judge does not think that he/she can be fair in the case. This might be because of bias, prejudice or self interest.

Referee: A person in court who is like a judge, but does not have all of the same powers as a judge. Referees can make decisions on certain cases. Those decisions can be reviewed by a judge, or if everyone agrees, those decisions can be treated like an order from a judge.

Relief: The benefit a party asks for from the opposing party in a court action.

Remand: An order by the judge that a child be kept at a detention facility while awaiting a hearing in a delinquency or PINS case. It can also refer to an order that a child be kept in temporary foster care in a child protective proceeding.



Residential Treatment Facility: A facility authorized by the county's social services agency to care for children in foster care or who have been otherwise detained, who have special needs such as intensive mental health services.

Respondent: The person or agency against whom a petition is filed. The respondent is known as the "defendant" in other types of courts.

Restitution: Money or other compensation paid to a victim for a loss or injury.

Restrictive Placement: The placement in a secure facility, for a specified length of time, of a youth found to have committed a designated felony act.

S

SCU (Support Collection Unit): A unit of the Department of Social Services (DSS) that collects, disburses and enforces support payments made pursuant to court orders.

Seal Order: A court order mandating that a record be closed to the public.

Secure Detention Facility: A locked, guarded residential facility.

Service (of process): The delivery of a legal notice to an individual. The notice may include a summons or warrant requiring the individual to appear in court.

Service Plan Review (SPR): A meeting held every six months when a child is in foster care. At the meeting, services for the child's family are discussed.

Settlement: An agreement about the outcome of a case reached by two parties.

Standby Guardian: An individual who agrees to act as a guardian for a child in cases where the parent of the child is suffering from a chronic or potentially fatal illness or is otherwise unable to care for the child.

Statute: A law enacted by a governmental body.

Stay: A court order that delays a case or an order from being put into effect.

Subject child: The child who is the focus of a court case.

Subpoena: A formal document, usually signed by a judge or lawyer, telling a witness that he or she is required to appear and give testimony before a court.

Subpoena Duces Tecum: A formal document, usually signed by a judge or lawyer, which tells a person he or she is required to produce records or other documents.

Summons: Legal papers that tell a person to come to court. A summons includes the date and location of the court case.



Supervised Visitation: A visit with a child by a non-custodial parent or relative that takes place in the presence of another adult.

Support Collection Unit (SCU): A unit of the Department of Social Services (DSS) that collects, disburses and enforces support payments made pursuant to court orders.

Support Magistrate: A person in court who is like a judge, but only makes decisions in cases about paternity, child support, and spousal support.

Surrender: A voluntary agreement to terminate the parental rights of a biological parent. Surrender has the same legal effect as a termination of parental rights, and must be approved by a judge.

Suspension of Judgment: A judge temporarily delays making a decision on a case until further facts and circumstances are assessed on a later date.

Sustain: To support or maintain an order or decision of the court.

T

Testimony: Evidence that a witness gives under oath at trial, in an affidavit, or at a deposition.

TPR (Termination of Parental Rights): The permanent end of the legal rights of the biological parents to their child. After a TPR the child is “freed” for adoption.

Transcript: The official record of what was said at a court proceeding.

U

Uncontested: Unopposed. When there is no objection to the issue or fact presented.

V

Vacate: To set aside a previous case or order.

Venue: The particular county or geographical area in which a court with jurisdiction may hear a case.

Violation: The determination that someone did not follow a court order.

Voluntary Placement Agreement: A document signed by a parent or person legally responsible for a child placing the child in foster care.

W

Warrant: A court order requiring the arrest of an individual.

Witness: A person who gives testimony under oath to something they have seen, heard, or know to be true.

Without prejudice: A dismissal “without prejudice” allows a new case to be brought on the same cause of action.

Writ: Order from a court requiring a certain act to be done.

Y

Youthful Offender (YO): A person charged with a crime when he or she was at least 14 years old and less than 19 years old. The person is called a youthful offender after being found guilty at a trial or pleading guilty to a criminal charge. “Y.O.” is not the same as a criminal conviction; it does not disqualify a person from public employment or licensing.

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

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