



Child Abuse and Neglect

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

This guide explains what happens if you are being **prosecuted** for **abusing** or **neglecting** your children. Prosecuted means charged with a crime. Abusing your children means hurting them. Neglecting your children means not taking good care of them.

Why do I have two cases against me?

When the government thinks you are abusing or neglecting your children it can bring two cases against you. One is in Criminal Court. The other is in Family Court. Sometimes Criminal Court cases are in the Supreme Court.

What does the Criminal Court decide?

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

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



What does the Family Court decide?

The Family Court case is called a **child protective proceeding**. The New York City agency that brings the charges against you is called the **Administration for Children's Services (ACS)**. The Family Court decides:

- If you abused or neglected your children
- If your children will still live with you
- Where your children will go if they cannot stay with you

Will I get a lawyer for both cases?

Yes. You have a right to a court appointed lawyer if the judges thinks you cannot afford one. You will have one lawyer in Criminal Court and another lawyer in Family Court. A lawyer is also called an attorney.

Do the DA and ACS talk to each other?

They can talk to each other, but they do not always do this. It is very important to remember this.

- Everything you say in Criminal Court and Family Court will be tape 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. This is called **impeachment**. It can make you look less believable. They can only do this if you what you said was on the record. On the record means that it is being 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 have 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. But 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 don't do this, ACS can also ask the Family Court judge to make a decision based on what happened in Criminal Court. This is called a **request for summary judgment**.

Can I see my children during the cases?

Maybe. If your children were taken away, you have the right to ask the Family Court to let you see them. A Family Court judge will decide if this is what is best for your children.

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



Maybe. It may not be possible for you to see your children, even if the Family Court judge says it is okay. An **order of protection**, or OP, is a paper from a judge that makes rules about contact between people. It can say that you have to stay away from someone, including your children. If you have an order of protection from Criminal Court, you may not be able to see your children. You can see and visit your children only if the Criminal Court order of protection allows it. If it does, it will say “subject to Family Court orders.” This means you can follow the Family Court orders without **violating** the Criminal Court order of protection. Violating means not following the rules. For more information, please see the LIFT guide “Orders of Protection.”

What happens to my children if I go to jail?

It depends. Every family is different. If another parent can take the children he or she usually gets **custody**. To have custody means to be in charge of someone. If a parent cannot take the children, ACS will try to place them with another relative. You have a right to tell ACS the relative you want them to be with. The relative can get custody or become a **kinship foster parent** of the children. If no relative can take your children, they will be placed in foster care with a non-relative.

More on what happens to my children if I go to jail

Before ACS places the children with anyone (even a relative), it will look at:

- The home of the person
- Who else lives in the home
- If anyone in the home has a case with ACS

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

Yes, unless your parental rights have been terminated, there is an order of protection that does not allow you to visit, or the court specifically issued an order saying you cannot visit them. Parents who are incarcerated are usually allowed to see their children at least once a month. ACS or the agency handling your case must arrange the visits, even if you are upstate.



If I am in jail or prison, can I take part in Family Court proceedings?

Yes. You have the right to be present at your Family Court hearings. Family Court will give you an **order to produce**. This is a piece of paper that says you must be brought from 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.

If I am in jail or prison, can I take part in meetings about my children's care?



Yes. When your children are in foster care, ACS tries to find them a permanent home. Every six months ACS has a meeting about this. These meetings are called **Service Plan Reviews**, or SPRs. You can ask to participate by telephone. You will not have to pay for the call; you can call collect. The number is (212) 619-1309. This is the Parents' and Childrens' Rights Unit of ACS.

Can my parental rights be terminated while I am in jail or prison?

Yes. When you are incarcerated, you must keep in contact with your children AND the foster care agency responsible for them. If you do not, ACS or the foster care agency caring for your children can file a **petition** (pe-TI-shun) in Family Court asking a judge to terminate your rights. A petition is a written request to the court.

In fact, if your children have been in foster care for 15 months out of the past 22, ACS or the foster care agency is required to file this petition. 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 children or the agency in charge of your children at all in the six months before the petition was filed.
- **Permanent neglect:** This means that for one year after your children entered foster care you did not work with the agency to make plans for them to come home to you.

What happens to my children if my parental rights are terminated?

Parental rights are your rights as a parent. When they are **terminated** it means you cannot make decisions about your children and you cannot contact or **communicate** with your children until they are 18 years old. Communicate means talk to or see. If this happens, your children will probably stay with the person who is taking care of them. That person will be able to adopt them if he or she wants to. For more information, see the LIFT guide, "Termination of Parental Rights."

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



If you are moved to a new jail or prison, tell the agency right away. You should also make sure to keep in contact with your attorney. Save copies of letters you send to your children. Keep a record of all calls and visits you have with your children. This will help you prove that you have not neglected or abandoned them. Completing programs offered in the jail or prison can also help prove that you are trying to plan for your child to live with you after you get out.

Can my rights be terminated just because I have been convicted?

Yes. ACS is required to file a petition to terminate your parental rights if you have been 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 rights to them.

If I am not convicted, will the allegations of abuse or neglect stay on my record?

The **Department of Social Services (DSS)** will keep a report of child abuse or neglect for 10 years after the youngest child named in the report turns 18 years old. That is, until that child is 28 years old. This report will be kept even if the allegations, or claims, of child abuse and neglect were **unfounded**. Unfounded means ACS did not find enough reasons to start a child protective proceeding. No one is allowed to see this report except DSS and the police department.

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

Where can I get help?

- If you need help getting your children to and from your jail or prison, see a LIFT representative. LIFT has information about different programs that can help. **Please note that the LIFT Legal Information Hotline accepts collect calls from inmates in jail or prison.** The Legal Information Hotline number is (212) 343-1122.
- To report complaints about ACS or a foster care agency, call (212) 676-9421.
- To report a complaint about your lawyer, if his or her office is in Manhattan or the Bronx, call (212) 401-0800.
- To report complaints about your lawyer, if his or her office is in Queens, Staten Island, or Brooklyn, call (718) 923-6300.
- For more information or support, call the Child Welfare Organizing Project (CWOP) at (212) 348-3000.

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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