

# FAMILY COURT AND YOU

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## FAMILY COURT

Family Court deals with problems of children and their families. Cases involve:

- custody and visitation;
- family offense;
- juvenile delinquency (JD);
- person in need of supervision (PINS);
- support of children and spouses;
- paternity;
- abuse and neglect of children;
- permanent neglect and termination of parental rights; and
- permanency planning for children in foster care.

## BRINGING A PETITION

To bring a case into Family Court, you first file a petition. You are called the petitioner. If the petition is brought against you, you are called the respondent.

The Family Court Clerk's Office provides petition forms. A petition is a written, sworn statement setting out the facts of the case which the judge will be asked to decide. If you are not represented by a lawyer, you fill out the petition yourself.

You may ask the clerk for a representative of Community Dispute Resolution Center (CDRC) to assist you in filling out the petition. Call to request an appointment. This person cannot give you legal advice.

An advocate from the Advocacy Center is available to help adults and teens complete petitions when they have been victims of domestic abuse and sexual abuse. This person cannot give you legal advice, but can provide support, information about resources, and help with safety planning.

If it is possible, consult with a lawyer before filing a petition. You file the petition with the Family Court Clerk. The clerk will make sure the petition is filed correctly and will set a date for the first court appearance.

In JD and PINS cases, the County Attorney prepares the petition. In neglect and termination of parental rights cases, Department of Social Services (DSS) prepares the petition.

In some juvenile delinquency cases, probation intake workers interview the person who made the complaint, the police officer and sometimes the accused child to decide whether a case can be "adjusted" without a Family Court proceeding. No one can be forced to talk to the probation officer at this time. The law says that the child's statements from the probation interview cannot be used against the child.

## YOUR CASE

Be in court for every court appearance unless you have permission from the judge to not be there. If you are the petitioner and you are not there when scheduled, the judge may dismiss your case. If you are the respondent and you fail to come, the judge may grant the petition on default, giving the petitioner what he or she asked for – without ever hearing your side. In some cases, if you don't appear, the judge may put out a warrant for your arrest.

When you have a court date, be on time or early. If you cannot be at court for any reason, talk to your lawyer. He or she may be able to ask the court to schedule your case for another time, or for you to be excused. If you have a last-minute emergency and cannot reach your lawyer, call the Family Court Clerk's Office. If you have any question about your court date, call your lawyer or call the Family Court Clerk's Office. When you come to the courthouse for a court date, ask a court officer or clerk where to go.

If you are physically unable to appear in court, contact the Family Court Clerk's Office to determine what your options are. It may be possible for you to obtain permission to appear by telephone.

If you have any condition which makes it difficult for you to access court services or to understand what is happening in court, talk to the Family Court Clerk's Office to see what assistance is available.

When you come to court, try to show yourself at your best by being respectful to the judge, court personnel, and others in and out of the courtroom. Dress in a clean and businesslike manner. You should avoid bringing young children to court.

## LAWYERS

You have the right to be represented by a lawyer in all Family Court proceedings. You may choose and hire your own lawyer. If you cannot afford to pay for a lawyer and if you meet income qualifications, the Assigned Counsel Program will assign a lawyer to represent you in most cases..

If you hire a lawyer, you may want to look for a lawyer with experience in family court matters.

In most cases, the judge will assign a separate lawyer for a child involved in a Family Court proceeding. (An attorney for the child was formerly called a law guardian. You may still hear this term used.) An attorney for a child is responsible only to represent the interests of the child. There is no charge to the parent for an attorney for a child. Your child's lawyer may work for the Citizen's Concerned for Children Inc., Attorneys for Children or may be a lawyer in private practice who has qualified to be on the panel of children's lawyers.

In JD and PINS cases, the County Attorney is the petitioner. The District Attorney may also prosecute juveniles as adults in cases involving the most serious violent crimes.

In contested paternity or support cases, Support Collection Unit of DSS may provide an attorney

to represent the custodial parent for a fee. DSS may also bring a case on behalf of a parent. The Court will assign a lawyer to a man who denies paternity or any person who is charged with violation of a support order if that person cannot afford a lawyer. No other assignment is available in support or paternity cases.

Your lawyer's job is to hear you, counsel you, and to represent your rights.

Work with your lawyer so that you and your case can be presented to the judge in the best possible way. Let your lawyer know how to reach you and tell your lawyer if your contact information changes. Keep track of court dates and talk to your lawyer before and after court.

You are entitled to have copies of most court documents. Review these with your lawyer. Ask your lawyer to explain things to you and to give you advice on what you should do. Think carefully about your lawyer's advice.

Give your lawyer all information and papers that explain your case. Talk to your lawyer about bad things as well as good things so your lawyer can understand the full story. Lawyers have to follow ethical rules and when you give him or her information in confidence, your lawyer may not give out that information without your permission. Give your lawyer names, addresses, and phone numbers of people you think would testify in your favor if the case goes to trial.

When you are in court, it is your lawyer's job to talk to the judge. If you have something to say, talk with your lawyer first. Your lawyer will tell you whether what you want to say would help or hurt your case.

### ALTERNATE DISPUTE RESOLUTION PROCEDURES

Bringing a case to court is one way to settle a dispute. There are also other ways to settle disputes, including negotiation, mediation with Community Dispute Resolution Center or a private mediator, and collaboration.

However, if there has been abuse or violence in a relationship, alternate dispute resolution procedures may not be safe.

### INITIAL APPEARANCE

At the first court proceeding, called the initial appearance, the judge may ask:

- whether all parties are present in court;
- if not, whether the respondent was properly served with notice to come to court;
- whether all parties have lawyers or whether they need time to find a lawyer;
- whether the respondent agrees with what the petitioner is asking for;
- whether the parties want to try to resolve their problem through mediation or another alternate dispute resolution procedure;

- whether parents in a custody case should be ordered to take the Parents Apart course;
- whether there are emergency issues; and
- what should be scheduled next.

You may come to an agreement before you go to Court for the initial appearance. Or you may decide to try mediation or another alternate dispute resolution method. Unless you have a final court order, you must come to the initial appearance and tell the judge the status of your case.

At the end of the initial appearance, the judge usually sets a date for the lawyers to meet with the judge's law clerk for a conference. This is a meeting to discuss the case and figure out whether the case can be settled by agreement or needs a trial.

### FACT-FINDING HEARING (Trial)

Most of the time, you will settle your Family Court case – by negotiation, mediation, or collaboration. If you cannot settle your Family Court case, your case will go to trial and the Judge will make a decision for you. Custody, visitation, paternity and support cases are usually decided in one step – with a fact-finding hearing. Cases involving family offense, PINS, JD, abuse, neglect or permanent neglect are usually decided in two steps - with a fact-finding hearing first and a dispositional hearing second.

There is never a jury in Family Court; the Judge makes all decisions about the facts and the law.

You are entitled to a hearing.

At a fact-finding hearing, the Judge hears your evidence and the other side's evidence. Evidence includes testimony of parties, testimony of witnesses, documents, and other physical evidence, and the Judge decides what facts are proved. If the facts alleged in the petition are not proved, the case may be dismissed and it is finished.

When the Judge finds that the facts are proved in custody, visitation, paternity or support cases, the Judge will also decide what relief to grant as part of the fact-finding hearing.

When the facts are proved in family offense, JD, PINS, abuse, neglect or permanent neglect, the case moves into the second step of the hearing process, the dispositional hearing.

A case may be withdrawn, meaning that the petitioner decides not to go forward. Early in the proceeding, the petitioner may make the choice to withdraw. Later in the proceeding, if the petitioner wants to withdraw, all parties must agree.

### DISPOSITIONAL HEARING

A dispositional hearing may begin immediately after the fact-finding hearing ends or may be scheduled for another day. At the dispositional hearing, the Judge decides what should be done, based on what was proved in the fact-finding hearing.

## APPEALS

If you believe the court's final decision and order is incorrect, you may decide to appeal. This means that a higher court reviews the decision of the Family Court. For most cases, the Appellate Division Court in the Third Judicial Department will hear your appeal. For support cases, the Family Court Judge will hear your appeal. Talk to your lawyer about this right and ask his or her advice about what you should do.

If you decide to appeal, your lawyer must file a Notice of Appeal within thirty (30) days after the Judge's decision on your case is served on you or your attorney. If this notice is not filed within the thirty (30) day time limit, you lose your right to appeal. The lawyer who represented you at trial may represent you on appeal - or you or your lawyer may want a new lawyer. You may have an assigned lawyer on appeal if you qualify – you must submit a new application.

## TYPES OF CASES IN FAMILY COURT

Family Court hears these types of cases:

Custody and Visitation  
(Docket number begins with a V)  
Family Court Act Article 6

Custody and visitation proceedings address the question of what parenting plan will be best for the child, including questions of who has the right and responsibility to make decisions for a child, how a child divides time between households, what the schedule should be for holidays and vacations, and what special conditions need apply to keep a child safe and healthy.

The standard for deciding custody and visitation issues is the best interest of the child. Best interest is decided by looking at many different factors, including caretaking skills, nurturing relationships, continuity and stability, presence of violence or abuse, mental and physical health, practical concerns such as work schedules and distance between households, sibling relationships, and a child's preferences.

The Judge encourages parents to develop their own parenting plan since they are in the best position to understand all the nuances of their particular family.

Before the initial appearance, you may be scheduled to meet with the Family Assessment Coordinator who will interview both parties, check background information, and offer a report with recommendations to the Judge about the level of conflict and the complexity of issues in your case.

During your proceeding, the Judge may order substance abuse or mental health evaluations or child protective or probation investigations to help resolve the matter.

Usually, custody and visitation proceedings are between parents. Sometimes, a third party such as a family member or a person who has a close relationship with a child, brings a custody or

visitation proceeding. Third party custody and visitation and grandparent custody and visitation issues are governed by particular law.

Family Offense  
(Docket number begins with 0)  
Family Court Act Article 8

Family offense means that one person hurt or threatened a member of his or her family or household. This includes persons who were formerly married to one another, persons in a dating or intimate relationship, and persons who have a child in common, even if they were never married or never lived together.

When you file a family offense petition and you ask for protection from that person, you may immediately appear in front of the Judge to explain why you need protection. The Judge may grant a temporary order of protection. A temporary order of protection can do many things, the most common being to order the other person to stay away from you, or to not harass you. A temporary order of protection is effective for 6 months or until the court makes another order, whichever comes first.

When an order of protection is in effect, the person against whom an order is made may be charged in Family Court or in criminal court for violating the terms of the order of protection. An Order of Protection is an order from a judge. It is not an agreement between you and your partner. The judge is the only person who can change or end an order of Protection. Your partner is violating the Order of Protection by talking to you, even if you invited your partner to see your or if you are willing to talk to him or her.

A family offense proceeding may be finalized with a final order of protection. If a person violates the terms of an order of protection, that person may face Family Court or criminal charges which could include a jail sentence of up to six months.

In a family offense proceeding, the Judge may also make decisions about short-term custody and visitation with a child.

Integrated Domestic Violence Court (IDV)

These “one family/one judge “ courts are designed to respond to the unique nature of domestic violence with one judge handling all criminal domestic violence cases and related family issues, such as custody, visitation, civil protection orders and matrimonial actions.

When IDV is appropriate, all related will be transferred to IDV, and scheduled on the same track before a single Judge. When the criminal and civil cases conclude, if a defendant has been sentenced to probation supervision or has conditions to complete, that person will continue to report to IDV court for monitoring.

Juvenile Delinquency  
Docket number begins with D or E  
Family Court Act Article 3

A juvenile delinquent is a person over the age of 7 and under the age of 16 who commits an act that would be a crime (a misdemeanor or felony) if it were committed by an adult, and who requires supervision, treatment, or confinement. A child who commits certain serious, violent acts may also be treated as an adult in criminal court.

An attorney is assigned to a child in a JD proceeding. Some families choose to hire a private attorney.

JD proceedings follow the general procedure, including initial appearance, conference, fact-finding hearing and dispositional hearing.

After fact-finding hearing, dispositional options include conditional discharge, probation supervision, placement with DSS, and placement with Office of Children and Family Services. Placements may include foster care, group home, or institutional care.

A juvenile delinquency proceeding does not result in a criminal record. However, Family Court, Probation and police records exist.

Persons In Need of Supervision -- PINS  
Docket number begins with S  
Family Court Act Article 7

A person in need of supervision (PINS) is younger than 18 who

- does not attend school;
- behaves in a way that is dangerous or out of control;
- often disobeys parents, guardians or other authorities; or
- possesses marijuana

and who requires supervision or treatment.

To file a PINS petition, you must have permission from the Probation Department. Generally, a parent or school official will make the PINS referral. The Probation Department will first work with a child and family to put services and treatment in place to avoid coming to court.

PINS proceedings follow the general procedure, including initial appearance, conference, fact-finding hearing and dispositional hearing.

Dispositional alternatives include suspended judgment, probation supervision, and placement with DSS. Placement options include foster care, group home, or institutional care.

Support  
USDL  
Docket number begins with F  
Family Court Act Article 4

Family Court decides who is legally responsible for the support of a child, spouse or relative and how much support will be paid. When the person requesting support lives in another state and the person the support is being sought from lives in NYS, a Uniform Interstate Family Support Act (USIFA) petition is filed. A Support Magistrate, rather than a Family Court Judge, presides over support matters.

To be sure support payments are made, the Support Magistrate may order a payroll deduction or seizure of property or a money judgment. If an order of support is disobeyed, upon a finding of willful violation, a case may be referred to the Family Court Judge and the violator may be ordered to serve time in jail.

Paternity  
Docket number begins with P  
Family Court Act Article 5

Paternity proceedings determine whether a man is the father of a child born outside of a marriage. When a child is born to parents who are married, the husband is presumed to be the child's father. The Support Magistrate may order genetic testing. (In some instances, DSS will pay for the test.)

If paternity is found or a man admits he is the father, the Support Magistrate signs an Order of Filiation, a court order saying that the person is the father of the child. The Family Court Clerk will then notify the Birth Certificate Amendment Unit to issue a new birth certificate.

The case then continues to decide support rights.

An Order of Filiation is proof of legal fatherhood. Legal paternity is essential to establish certain rights, including custody, visitation, inheritance, and rights for the child to obtain benefits through the father (for example, support, military benefits, Social Security, etc.).

Neglect and Abuse  
Docket number begins with N  
Family Court Act Article 10

Neglect and abuse petitions charge that a parent, guardian, or other person legally responsible for a child, neglected or abused the child. Neglect and abuse means that the adult was responsible for emotional or physical harm or risk of harm to the child. It includes failing to protect a child from harm caused by other people.

You may lose certain rights to your child if a neglect or abuse petition is filed against you. If, at the end of the fact-finding and dispositional hearings, the Judge finds that neglect or abuse

occurred, the Judge may remove a child from home for up to twelve months. The Judge may order you to participate in programs and services designed to eliminate the problems that caused the neglect or abuse. DSS may later ask for an extension of the child's placement or may file a petition to terminate parental rights (see "Permanent Neglect", below).

A child may be removed from home before a petition is filed when a child is in a situation that is an imminent danger to the child's life or health. If a child is removed from home before a petition is filed, a parent must be notified immediately. DSS must file a petition in Family Court. When a child is removed from home on an emergency basis, a "super-conference" will be promptly scheduled where DSS, the parent, attorneys, and other interested parties meet to decide what to do on a temporary basis. After the super-conference, the parent or guardian of the child may request an expedited court hearing to decide whether the child should be returned home while the court case proceeds.

Sometimes a parent or guardian agrees that a child needs to be placed with DSS. A parent or guardian may make a Voluntary Placement Agreement (VPA) with DSS.

Family Treatment Court may be available where substance abuse issues are involved in an abuse or neglect proceeding. If you are eligible for Family Treatment Court, you will be offered an opportunity first to learn what the program can offer you and what you would be expected to do. Family Treatment Court includes supervision by a treatment team, weekly meetings, and long-term contact with the court during the period where you progress through treatment toward sobriety.

Permanent Neglect  
Docket number begins with B

When your child is removed from home because of neglect or abuse and you have failed to plan for more than one year for the child to return home, DSS may petition to terminate your parental rights.

DSS may also bring a petition if a parent abandons a child or if the parent suffers from a mental condition that prevents the parent from properly caring for the child.

Permanent neglect proceedings follow the general procedure, including initial appearance, fact-finding hearing and dispositional hearing.

Approval of Foster Care Placement  
Docket Number begins with L  
Foster Care Review  
Docket number begins with K

Sometimes a parent or guardian is unable to care for a child and temporarily gives custody of the child to DSS. When a child has been voluntarily placed in foster care for more than thirty (30) days, DSS must bring the matter to court. The parent must be notified of the court appearance and has the right to appear in court. The Judge decides if placement is voluntary and necessary.

## Permanency Hearing

The Judge will review the permanency plan for all children in foster care within 8 months of the initial removal and every 6 months thereafter. DSS reports to the Judge about progress on its permanency plan and goals for the child. The Judge may hear from parties, attorneys, the child (unless not appropriate), and foster parents at a permanency hearing.

### WHO'S WHO IN THE COURTROOM

Judge: An elected judge who makes the decisions about what happens in a case. He or she sits in the front of the courtroom.

Court officer: An officer who is responsible for the security and order of the courtroom.

Court attendant: A person responsible for helping the courtroom run smoothly.

Court reporter: A person who records what is said during court appearances and hearings on a special machine.

County Attorney: A lawyer from the County Attorney's Office, usually an assistant county attorney, who presents PINS and JD petitions against a youth.

District Attorney: A lawyer from the District Attorney's Office, usually an assistant district attorney, who presents the petition in JDs involving certain serious crimes or who prosecutes an adult in a criminal proceeding.

Attorney for the child: A lawyer assigned by the Judge to represent the child in a Family Court case. The attorney for the child was previously referred to as a law guardian.

Support Magistrate: An appointed judge in charge of support and paternity cases. The Support Magistrate may refer cases to the Family Court Judge.

Probation Officer: A supervisor of PINS youth, JD youth, or adults assigned to probation supervision. The Judge may order the county probation department to investigate a home or person.

Caseworker: A DSS employee who manages a family's DSS case, supervising or assisting a family in accessing services to keep children safe. A caseworker from the Child Protective Unit of DSS may be ordered to investigate child safety.

## PRINCIPLE AGENCIES AND SERVICES

Advocacy Center  
Domestic Violence and Sexual Abuse Services  
P.O. Box 164  
Ithaca, NY 14851  
(607) 277-3203  
24-hour hotline (607) 277-5000  
[www.theadvocacycenter.org](http://www.theadvocacycenter.org)

Alcohol & Drug Council of Tompkins County, Inc.  
201 East Green Street, Suite 500  
Ithaca, NY 14850  
(607) 274-6288  
[www.alcoholdrugcouncil.org](http://www.alcoholdrugcouncil.org)

Cayuga Addiction Recovery Services  
Outpatient Clinic  
334 West State Street  
Ithaca, NY 14851  
(607) 273-5500  
[www.carsny.org](http://www.carsny.org)

Child Abuse and Maltreatment Reporting Hotline  
(tollfree) 1-800-342-3720  
[www.ocfs.state.ny.us/main/cps/](http://www.ocfs.state.ny.us/main/cps/)

Collaborative Family Lawyers of Central New York  
P. O. Box 273  
Ithaca, NY 14851-0273  
(607) 273-1774  
[www.collab-law.com](http://www.collab-law.com)

Community Dispute Resolution Center (mediation services)  
120 West State Street  
Ithaca, NY 14850  
(607) 273-9347  
[www.cdrc.org](http://www.cdrc.org)

Child Development Council of Tompkins County  
Including Teen Pregnancy Parenting Program (TP3)  
609 West Clinton Street  
Ithaca, NY 14850  
(607) 273-1055  
[www.daycarecouncil.org](http://www.daycarecouncil.org)

Family & Children's Services of Ithaca  
Including Dispositional Alternatives Program  
127 West State Street and 204 North Cayuga Street  
Ithaca, NY 14850  
(607) 273-7494  
[www.fcsith.org](http://www.fcsith.org)

Citizens Concerned for Children, Inc., Attorneys for Children  
121 E. Buffalo Street  
Ithaca, NY 14850  
(607) 277-3198

Mental Health Association in Tompkins County (support of mental health services)  
225 South Fulton Street  
Ithaca, NY 14850  
(607) 273-0250  
[www.mhaedu.org](http://www.mhaedu.org)

Parents Apart (Tompkins County's NYS Parent Education & Awareness Program)  
Cornell Cooperative Extension  
(Other parenting programs also available)  
615 Willow Avenue  
Ithaca, NY 14850  
(607) 272-2292 ext 243  
[www.ccetompkins.org/ParentsApart](http://www.ccetompkins.org/ParentsApart)  
[www.nycourts.gov/ip/parent-ed](http://www.nycourts.gov/ip/parent-ed)

Tompkins Community Action (Headstart)  
Early Childhood Department  
701 Spencer Road  
Ithaca, NY 14850  
(607) 273-8816  
[www.taction.org/ECMainPage.htm](http://www.taction.org/ECMainPage.htm)

Tompkins County Assigned Counsel Program  
Center Ithaca Box 149, Suite 227  
171 E. State St.  
Ithaca, NY 14850  
(607) 272-7487

Tompkins County Attorney  
125 East Court Street  
Ithaca, NY 14850  
(607) 274-5546  
<http://www.tompkins-co.org/ctyattorney>

Tompkins County Department of Social Services  
320 West State Street  
Ithaca, NY 14850  
(607) 274-5211  
[www.co.tompkins.ny.us/dss](http://www.co.tompkins.ny.us/dss)

Tompkins County Department of Social Services  
Support Collection Unit  
320 West State Street  
Ithaca, NY 14850  
1-888-208-4485

Tompkins County District Attorney  
320 North Tioga Street, 3d Floor  
Ithaca, NY 14850  
(607) 274-5461  
<http://www.co.tompkins.ny.us/distatto>

Tompkins County Family Court Clerk  
Tompkins County Courthouse  
320 North Tioga Street  
Ithaca, NY 14850  
(607) 277-1517  
Family Services Coordinator (607) 256-9432  
<http://www.nycourts.gov/courts/6jd/tompkins/family>

Tompkins County Health Department  
Early Intervention Program  
401 Harris B. Dates Drive  
Ithaca, NY 14850  
(607) 274-6644  
[www.tompkins-co.org/health/cscn](http://www.tompkins-co.org/health/cscn)

Tompkins County Mental Health Department  
201 East Green Street  
Ithaca, NY 14850  
(607) 274-6200  
[www.co.tompkins.ny.us/departments/detail.aspx?DeptID=28](http://www.co.tompkins.ny.us/departments/detail.aspx?DeptID=28)

Youth Advocacy Program  
423 First St  
Ithaca, NY 14850  
(607) 277-5254