

REENTRY & PARENTAL RIGHTS*

1. *Can I lose my parental rights if I am convicted of a crime?*

- Only very serious criminal convictions *against a child* – like murder and manslaughter – require the state to sue to terminate your parental rights.

2. *Can I lose my parental rights if I am sentenced to prison or a residential treatment program?*

- Not necessarily. Federal law also says that if your child is in non-kinship foster care for fifteen of the last twenty-two months (which could happen if you are incarcerated), your parental rights should be terminated *unless there is a compelling reason not to terminate them*. Some examples of compelling reasons are:
 - i. You can demonstrate that you are in contact with your child and working towards a permanent arrangement for him/her.
 - ii. The court determines that the child should not be adopted
 - iii. The child is aged fourteen or older and will not consent to adoption
- A recent change in New York allows foster care agencies to delay filing for termination if a parent is in prison or residential drug treatment. It also requires agencies to inform incarcerated parents of their rights and responsibilities and to provide referrals to services and visiting programs.
- If you are serving a jail or prison sentence of one year or longer and your child is in foster care you **must**:
 - i. Consult a lawyer immediately about steps you can take to try to preserve your parental rights. You can call Legal Information for Families Today (LIFT) hotline at (212) 343-1122 for free advice and referrals to free legal services.
 - ii. Begin making efforts to stay in contact with your child right away, and keep copies of papers documenting every contact and attempted contact that you make with your child or with your child's caseworker.
- For more information, download these excellent fact sheets created by the Women in Prison Project at the Correctional Association of NY.
 - i. What Are My Rights as a Parent in Prison or Residential Drug Treatment with a Child in Foster Care?
<http://www.reentry.net/ny/library/attachment.185089>
 - ii. Fact Sheet on 2010 Changes to New York's Adoption & Safe Families Act
<http://www.reentry.net/ny/library/attachment.185093>

* This handout is an excerpt from *The Consequences of Criminal Charges: A People's Guide*, published by The Bronx Defenders. It is for informational purposes only and is NOT a substitute for legal advice. It is up to date as of October 2010.

3. *If I can lose my parental rights when my child is in foster care for a certain period of time, what counts as time in foster care?*

- Only time when your child is in the care of a state agency counts as foster care.
- If you arrange to place your child with a responsible adult, that does not count as foster care. You will not have to go to court to regain custody of your child, unless the other adult refuses to give your child back. The Department of Correctional Services should have “Temporary Acknowledgement of Custody” forms you can use. Here’s the process:
 - Describe the custody arrangement in writing; and
 - Have both the parent and caretaker agree to the arrangement with their notarized signatures.
- A Voluntary Placement Agreement, however, does count as foster care. A Voluntary Placement Agreement gives custody of your child to the local child welfare office or Department of Social Services.

4. *Can I lose custody of my child simply by being in jail or prison?*

- You can’t lose custody of your children just for being in jail or prison, but if you don’t visit or communicate with your kids for six consecutive months, your parental rights can be permanently terminated on grounds of abandonment.

Visitation

1. *How do I visit my kids if the other parent has an order of protection against me?*

- Ask your defense attorney to get the criminal court to change it to a “limited” order of protection or to make it “subject to family court modification.” If an order of protection is “subject to family court modification,” you can go into family court yourself and ask the judge to let you visit your kids.

2. *What rights do I have if my children are in foster care?*

- You have the right to visit with your child *at least* once per month.
- You have the right to know the reason why your child is placed in foster care, and to identify a family-member or other people who should be explored as resources for your children while you are incarcerated.
- You have a right to an attorney to represent you in Family Court.
- You have a right to know the name of your child’s caseworker, and to be in contact with him/her.
- You have the right to receive help in taking steps you need to take in order to be reunified with your child.
- You have a right to participate in planning for your child’s future; you have a right to input into the “permanency plan” and to receive a copy of this plan.

Adoption & Foster Care

3. *Can I still become a foster or adoptive parent if I have been convicted of a crime?*

- It depends on the offense.
- You will be denied if you have a felony conviction for
 - Child abuse or neglect;
 - Spousal abuse;
 - A crime against a child, including child pornography;
 - A crime involving violence, including rape, sexual assault, or homicide, other than physical assault; or
 - Within the past five years, a felony for drugs or physical assault.
- Until recently, New York State “opted out” of the federal law that called for mandatory disqualification of adoptive and foster care parent applicants with these types of felony convictions. As of October 1, 2008 New York *is no longer opting out of this law*. This means that if you have a felony conviction that falls into any of the categories above you cannot be a foster or adoptive parent.
 - However, the law only applies to *new applications*. If you are already a foster or adoptive parent your children will not be removed from you based on past convictions.
 - You can view the Policy Directive from the Office of Children & Family Services on Reentry Net/NY (<http://www.reentry.net/ny/library/attachment.130360>).
- You might be denied if:
 - You have been charged with or convicted of any crime; or
 - Someone in your house over the age of 18 has been charged with or convicted of any crime.