

## FCA ARTICLE 1: FAMILY COURT.

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Family Court Act applies to ALL counties in New York State.

There is a Family Court in each county.

"Exclusive Original Jurisdiction" means that certain cases must originate in Family Court; this does *not* limit Supreme Court's powers.

Family Court has exclusive original jurisdiction over: Abuse/Neglect; Support; Paternity (out of wed-lock); Termination of Parental Rights by Permanent Neglect, Mental Illness, Severe/Repeated Abuse, death of parents, or Abandonment over 6 months; Persons In Need of Supervision [PINS]; and Juvenile Delinquencies.

Family Court also has jurisdiction (though not "exclusive original") over: Adoption; Custody (also Uniform Child Custody Jurisdiction Enforcement Act [UCCJEA]); Handicapped Children; Uniform Interstate Family Support Act proceedings [UIFSA]; Foster Care (including Interstate Compact on Placement of Children [ICPC]); Guardianship upon parents' death/surrender/abandonment; and Standby Guardianship.

Criminal Court has concurrent jurisdiction regarding Family Offenses.

Native American children are governed by US Indian Acts and Tribal Law.

Family Court may direct license suspension proceedings upon default in support, and has such jurisdiction over State boards and agencies as is necessary therefor.

When Practicable: Remand/Commitment of children shall be to an Agency controlled by the same religious faith as that of the child; non-parent placements and guardianships (other than guardian ad litem [GAL]) shall also generally be to same religion. This shall be construed literally, but not so as to preclude hospital or detention as appropriate. If the Court diverges from these guidelines, shall state the facts therefor.

Religious faith of child is generally deemed to be that of the parent(s) [unwed couple = MOM only!]; however parent(s) can designate another faith in writing and signed, for purposes of non-agency adoption shall be by affidavit though.

Each and every Family Court shall have a "Child Abuse Part", to which all such cases must be transferred unless another judge shall have had a related case previously. Child Abuse Parts may also hear other cases as well. In NYC: there shall be at least one "Designated Felony" Part, handling designated felony act juvenile delinquencies; elsewhere such cases shall have preference, except over Article 10 (neglect).

Chief Administrator may establish Child Support Parts. All other Parts shall be by

the appropriate Appellate Division, in accordance with the Judicial Conference.

Designated Felony = **I**: 13-15 year old Murder 1,2; Kidnap 1; Arson 1. **II**: 13-15 charged with Assault 1; Manslaughter 1; Rape 1; Criminal Sex 1; Kidnap 2 (ONLY utilizing deadly physical force!); Arson 2; Robbery 1. **III**: 14-15 year old Attempted Murder 1,2; Attempted Kidnap 1. **IV**: 14-15 Burglary 1, or armed/injurious Burglary 2/Robbery 2; Criminal Possess Firearm @ school. **V**: 14-15 Assault 2/Robbery 2 with prior finding = Assault 2/Robbery 2 or I/II/III. **VI**: any felony by 7-16 (JD), if 2 prior felony findings. Also I - IV regardless of age, where committed as part of "sexually motivated" felony.

Agencies include those incorporated under NYS law, with actual business here, and supervised by Social Services, for instance a Society for Prevention of Cruelty to Children.

Person Legally Responsible = custodian/guardian of child at relevant time.

Infant/Minor < 18.

Salaries of Support Magistrates are State charge (Office of Court Administration [OCA]). All other judicial and non-judicial pay is County charge (or NYC as super-county).

Family Court judges are MAGISTRATES! Term = 10 years.

NYC has 47 family court judges; & @ least one resident of each county. NYC judges are appointed by mayor. Must have been admitted to practice law in NYS for minimum of 10 years; and also "especially qualified".

Outside NYC: elected position. Vacancy during term is filled by General Election at least 3 months later; interim appointee by Governor (with advice/consent of Senate, if in session); continuing in office until December 31st after election.

Certain counties having multiple Supreme Justices may have one or more designated by appropriate Appellate Division to "sit" as Family.

Family Court judges may be temporarily reassigned to other locations by Administrative Judge.

Family Court judges can attend association meetings, and visit schools/institutions where children may be placed; travel expenses to be paid by county.

Family Court judges may also be involved in community education/religious/charitable organizations.

If a Family Court judge acts in good faith - without malice or deliberate abuse of

discretion = not liable for consequences.

Family Court judges can take oaths/acknowledgments, OR designate court official to do so. Judge MAY dispense with oath for minor.

Family Court judges can also issue Subpoenas (including Duces Tecum by CPLR); and Warrants. Judges can Bail/Parole parties; and also may hear child support motions.

Family Court warrant can be executed any day, any hour.

Process (Summons/Petition) relating to any Order of Protection may be served at any time; police/peace officer may serve in all such cases. Order of Protection itself **must** be issued to officer by Court for service on Respondent, unless Petitioner on record indicates that they will make other arrangements. Proof of service by officer shall be an affirmed statement; and also entered into the statewide registry.

Petitioner seeking an Order of Protection during court hours **must** be allowed to *file* that day; hearing shall be same day OR next day court in session.

Process of Family Court can be sent to any NYS county to the same effect as a local County Court. Paternity/Support papers may be sent out-state to non-domiciliary. Order of Protection process can only be sent out-state on non-dom if acts occurred here AND Petitioner lives or has substantial contact here. Out-state OP process must be at least 20 days before hearing.

Any OP: counter-claim at least 5 days before hearing. Petitioner may reply to Respondent's counter-claim, failure to do so = denial.

Party's address may be kept confidential on motion of party, Law Guardian, or Court. Party residing in Domestic Violence shelter: address **MUST** be confidential! Confidential address = Clerk is designated agent for service of process (or other person on own consent); Party must keep agent informed of address change, agent must forward all papers received.

OPs or TOPs can be emergency modified in Criminal Court, must be returnable to Family Court by next session day, never later than 4 calendar days.

Out-State OPs are accorded full faith & credit if VALID [see CPL 530]; *may* also be registered, but such **not** necessary for enforcement.

An adult arrested pursuant to Family Court warrant or OP when such issuing court not in session shall be taken before nearest magistrate. Police desk officer or superior may take cash bail against Respondent's appearance the next day in Family Court, so long as arrest is between 11:00 AM and 8:00 AM (NYC = 2:00 PM - 8:00 AM).

Unless other specified penalty, contempt of Family Court is punishable as under Judiciary Law.

Material witnesses under 16 years of age may be placed in protective custody only up to 14 days, then additional periods of 14 days up to total maximum of 42 days.

There shall - if possible - be a separate waiting area for children. Children's cases shall be heard separately from adults'; in another room if practicable.

Any procedure not specified in Family Court Act is governed by CPLR.

Family Court records are not open to indiscriminate public inspection. Court may in discretion allow records to be inspected in any case, including for copying by agency to which child is committed.

Personal appearance confers jurisdiction unless service is objected to.

OPs shall be issued by Clerk to Petr, Resp, and any affected person; also FILED with police/sheriff where Petr resides. Clerk/Petr may then also file order with police/sheriff of other locations (where party works, goes to school, etc...).

Family Court orders can be enforced or modified where any party resides or is found; original or certified copy of order shall be attached to petition. Court where such application is brought may transfer back to original court; else must request original papers, and issuing Court shall forthwith comply.

Family Court may for good cause transfer a case to any other county where it may have been originated; MUST transfer to proper venue if filed in wrong county.

Violations of Probation may also be filed in county where acts occurred. Court can transfer Probation Supervision to county where probationer relocates to.