

# BROOKLYN FAMILY DEFENSE PRACTICE

MAKING A DIFFERENCE IN FAMILIES' LIVES

## KNOW YOUR RIGHTS BROCHURE



Learn how to keep your children safe  
and how to deal with ACS.

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## PARENTS: KNOW YOUR RIGHTS

This guide tells you about your legal rights and responsibilities regarding your children and New York City's child welfare system (ACS). It is intended to help you to keep your children home with you and avoid a family court case (called an abuse or neglect case) if someone calls in a report against you.

As parents, you may face difficult times: your child may be refusing to go to school, you may not know how to discipline your child or you may be struggling with difficult housing conditions or drug or alcohol abuse. Agencies and certain people, such as schools, doctors, shelters or therapists must call in a report to the State Central Registry if they think a child may be "maltreated" by his or her caretakers. (They are called mandated reporters.) What they think is maltreatment may not be the same as what you think. ACS **must** investigate any call that is accepted by the State Central Registry.

### COMMON MISPERCEPTIONS:

**You are NOT a bad parent:** ACS gets involved with families for many reasons that you might not think of as abuse or neglect. For example, smoking marijuana outside of your child's presence, leaving your children home alone, being a victim of domestic violence or having a teenager who cuts class are reasons ACS might investigate you.

- **You CAN** do something about your situation: Know your responsibilities when dealing with ACS, Family Court, and foster care.
- **You are NOT going to jail:** While a criminal case MAY be brought against you involving similar allegations, Family Court cases deal with whether you neglected your children, what services you and/or the children need and where your children should live. They are NOT criminal cases.

## WHAT SHOULD I DO IF ACS COMES TO MY DOOR?

**When ACS investigates a report, ACS will usually first go to the child's home to interview his or her caretaker (usually the parent) and maybe siblings.**

### **YOU HAVE RIGHTS, YOU HAVE CHOICES**

When ACS comes to your home, you have several rights and choices.

**You have the right to refuse to allow ACS into your home.** You have to choose whether allowing ACS in or refusing to is right for your family. Unless ACS has a court order, you can refuse to open the door. But ACS will likely continue with the investigation even if you don't let them in. They will seek information from other people in your and your children's lives; they may gather records from schools or service providers; and they may choose to file a case against you in court, even if you've never let them into your home. If ACS believes your children are in immediate danger, they can come to your house with police to remove your children, even without a court order. They can also file a case against you in Family Court and ask that you be brought to court.

**You have the right to an interpreter.** You should not have to rely on friends or family members to interpret for you.

**You have a right to know what the allegations are against you.** While ACS is not allowed to tell you who called in the report against you, they should tell you what the allegations are.

**You have the right to know who you are talking to.** Ask the person who comes to your door for their name and phone number. Ask for their supervisors' names and numbers.

**You have the right to refuse to share private information with the ACS investigator.** Keep in mind, however, that if you refuse to speak with ACS, they may become suspicious, and they will continue to seek information from other sources. ACS will not close your case until they have been convinced that the allegations are untrue and your children are not in any danger.

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**You have the right to seek legal advice.** You have the right to seek the advice of an attorney. Even before a case is filed in Family Court, you have the right to consult an attorney or to speak to someone about your rights. Especially if you refuse to allow ACS into your home or refuse to share information with them, you should seek help. If a case is filed against you and you can't afford an attorney, the court will appoint an attorney for you.

**You have the right to preventive services.** Depending on the severity of the allegations against you, ACS should not immediately remove your children as the first option. ACS is supposed to work with you to solve problems and provide you with services to keep your children in your home, where possible.

*If ACS comes to your door, the most important thing to remember is not to panic and make a mistake. Take your time and be thoughtful when dealing with ACS. Getting angry and upset usually will NOT help ACS get out of your life. You can ask them to come back another time so you can speak to someone first. Please consider your options carefully.*

## **WHAT DOES IT MEAN TO HAVE AN “INDICATED” CASE?**

After a call has been made to the state central registry, ACS must complete their investigation of abuse or neglect allegations within 60 days. After the investigation, you are supposed to receive a letter telling you whether they found evidence of abuse or neglect. If the letter says the case was “**unfounded**”, that means the ACS worker found no believable evidence of abuse or neglect. If it is “**indicated**,” that means the worker did find believable evidence of abuse or neglect.

If a report against you is “indicated,” then ACS will probably open a case and require you to do certain services and/or they might file a family court case against you. Reports to the State Central Register remain on file until your youngest child turns 28 years old. If a case is marked as “unfounded,” it will not be.

**It is important to check if you have an indicated case. It can affect your ability to:**

**Get a job |** Certain employers, mostly where employees have contact with children, can call the SCR and find out if there are any indicated cases against you.

***You are supposed to get a letter telling you that you have an indicated case. Send a letter to the State Central Registry if you have not received a letter or think you may have had an ACS investigation.***

***State Central Registry, P.O.Box 4480, Albany, N.Y. 11204***

**Become a foster parent |** Foster agencies often will not license individuals with indicated cases to become foster parents.

**Gain custody of a child |**

An indicated case may affect your ability to get custody of your children or other children at some point.

**Challenging an Indicated case:**

You can challenge your indicated case, and ask the SCR to *amend* and *seal* your record. Having your case *amended* means that it will no longer be listed as “indicated.” Having it *sealed* means that the SCR will no longer be able to tell anyone who calls about it.

In order to challenge your indicated case, you have two options:

Within **90 days** of receiving notice about your indicated case, you can request a **fair hearing**

If and when an employee or potential employer searches the SCR and you are denied a job, volunteer position, etc., you can request a hearing. At this hearing, you will only be able to challenge the sufficiency of the evidence, not the relevancy.

At either of these hearings, you can and should bring someone with you to support you and help you to advocate for yourself. To request either of these hearings, send a letter to: **State Central Register, P.O. Box 4480, Albany, N.Y. 12204**. Keep a copy of any letter you send for your records.

*If you have a criminal case, please speak to a criminal attorney before discussing the allegations. It is always best not to speak about the allegations when you have a criminal case.*

## CASE CONFERENCES AND CONFIDENTIALITY

If you are under ACS investigation, ACS may schedule a conference to discuss allegations raised against you. From the onset of the case there are a series of out of court conferences that one is required to attend. It should be scheduled at a time convenient for you. Generally, the conferences are held at the local ACS offices (in Brooklyn there are 6) and the foster care agencies. **You are allowed to bring family members or supportive individuals from your community (pastor, rabbi, therapist, mentor) with you.** The conference and conversation at the meeting should only discuss the issues raised in the allegations. At times, the conferences can be very emotional and one may feel frustrated, not heard or overwhelmed—as difficult as it may be, it is in your best interest to remain as calm as possible throughout the meeting. You will have the opportunity to speak and discuss what occurred.

ACS is required to provide an interpreter if needed.

The first meeting is called the **Initial Child Safety Conference (ICSC)**- this conference is held at the local ACS office and is supposed to happen before ACS takes you to court. The purpose of this conference is for ACS to lay out the issues they perceive are the safety concerns for the child(ren). The child protective specialist (cps) and supervisor will be at the conference. There is also an ACS facilitator at this meeting who is required to go over the law with you at this time. All information discussed at the conference can be reported to the ACS attorneys and the judge. A service plan for you and your child will be discussed and written. This plan includes the services you are supposed to do to keep your children with you or have your child returned to you. This contract also outlines the visitation between you and your child, and the date for the **20 Day Conference**. Ask for a copy of the service plan if they don't give it to you.

## WHAT DOES NEGLECT MEAN?

If ACS investigates your home, they are investigating what they believe are allegations of abuse or neglect.

Under the law, neglect is when a parent fails to provide adequate food, shelter, clothing, hygiene, school attendance, medical care, and/or supervision to a child when the parent is financially able to do so or offered financial or other reasonable means to do so. Neglect also means abandonment, excessive corporal punishment (hitting or spanking with a belt or causing injury), and misusing drugs or alcohol to the extent that a child is harmed or can be harmed.

The following is a list of examples that may be considered as neglect, as well as ways to protect yourself from facing an ACS investigation.

### **Hitting or Spanking your Child:**

Hitting or spanking your child could be neglect under the law. A court may find that physical discipline rises to the level of neglect when you use an object such as a belt, wire, cord, or other object. Even **one** incident of physical is enough for a neglect finding if it is serious.

***“Abuse or “neglect” under the law means many different things that ordinary people might not think of as neglect or abuse.***

It is always safe to practice forms of discipline other than hitting or threatening to hit your children and take action if you suspect someone is hitting your child. *Get more information about how to do discipline your children without hitting them.*

### **Use of Drugs and/or Alcohol:**

ACS may allege that you have neglected your child because you have used drugs or alcohol. Under the law, the Family Court considers the use of drugs or alcohol by parents neglectful if the parent or caregiver repeatedly misuses a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions. If ACS even suspects that there might be drugs in the home, they can petition to remove your children and place them in foster or kinship care until the case is resolved. It can take months to resolve a case, even if you are not found to be negligent.

An ACS or Caseworker can request a drug at anytime. While you are not required to take the test without an order or statement from the Court, not complying with a drug test is sometimes considered evidence of neglect.

### **Medical Neglect:**

ACS may allege that your child is being neglected because you have failed to ensure that the child receives appropriate medical treatment. Under the law, a child is found to be neglected if the child needs medical care and you have failed to provide care.

Often times, a parent is concerned about taking a child to the doctors for fear of an ACS investigation. If your child needs medical care, it is important to get it immediately and follow up with any further medical appointments.

### **Housing Problems:**

ACS may allege that you have neglected your child for failing to provide adequate housing.

It is important to show that if your house needs repairs, you have taken steps to repair them. If you are living in a shelter, it is also important to follow shelter rules.

## **SOME OTHER IMPORTANT CONSIDERATIONS**

### **KEEP DOCUMENTS!!**

Keep copies of important documents about your children, in order to show that you are ensuring your child's safety and maintaining his or her well-being, such as:

- Any attempt to take a drug test
- Drug test results
- Regular reports from service providers (including therapist, counselors)
- Children's medical appointments

## SOCIAL NETWORKING SITES

Many of us use Facebook, Twitter and other social networking sites. Often times, these sites lead to reports being called in and may be used against you in an ACS investigation.

### Look at your privacy settings.

When you are using social networking services like Facebook or Twitter, remember that until you change your privacy settings, anyone (including ACS workers) can see what you post!

On Facebook, consider adjusting your wall and photo sharing settings so that only friends can see them. Also consider only accepting friend requests from people you know and trust.

On Twitter, consider making your Twitter feed private and only accepting follow requests from people you know and trust.

Remember, the same goes for other services like Instagram and Tumblr.

Even if you have adjusted your privacy settings to be more secure, **remember that someone else could misuse your information.**

Friends who have access to your full profile on sites like Facebook and Twitter – including posts and photos – could share your Information with someone else by e-mailing it or printing it out. If someone gained access to a friend's account, that person could also misuse your information.

If you are being investigated by ACS, have an ACS case open, or have had an ACS case that is not currently active, **be especially careful about what you post on social networking sites** – whether it is about your children or about yourself. Could your post be misinterpreted by someone seeing it?

Remember, even if your children never see you using, ACS may charge you with neglect. If you post anything on social networking sites that suggests you are using drugs (even marijuana) or drinking heavily, it could lead to a neglect case.

If you are not sure whether something you want to post would be appropriate, it might be better not to.

**This guide is not intended to provide legal advice. If you have questions regarding your own case, please contact an attorney immediately.**

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