

The information in this pamphlet is general legal information only. You should get legal advice about your own situation.



Metropolitan Action Committee on Violence Against Women and Children

158 Spadina Road
Toronto, ON, M5R 2T8
Phone 416-392-3135
Fax 416-392-3136
www.metrac.org
info@metrac.org

Resource funded by



Produced December 2008

What happens when CAS gets involved?

Upon receiving a referral or report, CAS will investigate, look at the safety of and risks for the children, and then prepare a “plan of service” (a plan of what they will do). They must use the “least disruptive course of action” while ensuring the safety of the children. If they believe the children can remain in the home, they will create a “voluntary agreement” with the parents (a list of things parents must agree to do to ensure the children are safe).

Only in the most extreme

11

cases are children removed from their parents’ custody.

What can I do if CAS takes my child(ren) when I am in jail?

You can contact CAS immediately to let them know where you are being held. You can let them know that you want to maintain custody and contact with your child(ren). You can also let them know that you want to be involved in decisions made about your child(ren). If a responsible adult family member or friend is willing to care for your child(ren) during your incarceration, let CAS know so they may contact the person. CAS is committed to

12

placing children with family or friends before placing them in foster care.

What are my rights if my child is taken from me?

You have the right to participate in the CAS process. This means that you:

- will be notified of all court proceedings;
- can make your own statement to the judge;
- can have a lawyer represent you; and
- can get legal aid if you meet the financial requirements.

13

Should I get a lawyer?

A lawyer’s aid can be helpful if your children are taken from you by CAS. The consequences of a child protection investigation can be severe and significant for you and your child(ren). For example:

- your children may be taken away temporarily or permanently;
- there may be a police investigation, and they may lay criminal charges; and/or
- there may be implications in present or future child custody and access proceedings.

14

Resources

Elizabeth Fry Society of Toronto

215 Wellesley Street East
Toronto, ON, M4X 1G1
416-924-3708

Elizabeth Fry Society of Ottawa

701-151 Slater Street/211
Bronson Avenue
Ottawa, ON, K1P 5H3
613-237-7427

Aboriginal Legal Services

803-415 Yonge Street
Toronto, ON, M5B 2E7
Tel: (416) 408-3967
416-408-3967

15

Family Law Information Centre

161 Elgin Street, 2nd floor
of the Court House
Ottawa, ON
613-239-2236

Ontario Association of Children’s Aid Societies

75 Front Street East
2nd floor
Toronto, ON, M5E 1V9
416-987-7725

Legal Aid Ontario

1-800-688-8258 (toll-free)

Ontario Women’s Justice Network

www.owjn.org

16

Legal Aid Ontario, Toronto

375 University Avenue
Suite 404
Toronto, ON, M5G 2G1
416-979-1446

Legal Aid Ontario, Ottawa

73 Albert Street, 1st floor
Ottawa, ON, K1P 1E3
613-238-7931

17

Notes



Rights of parents

18

Women in jail have to depend on friends, family members, and in some cases, caseworkers from the Children's Aid Society (CAS) to help organize visits and telephone calls with their children. Visits and calls may be costly, which may affect how often you speak with your children. In Canada, most female prisoners are in provincial jails. Of these women, many are awaiting trial. Most women in jail are there for non-violent crimes such as theft, fraud, shoplifting, and offenses related to sex work. Many of these crimes were committed by women

fighting for economic survival and/or are related to dealing with violence, poverty, and discrimination caused by racism, sexism, and homophobia. While the incarceration rate for Aboriginal women and other racialized women are high, the following groups of women are also at a greater risk of coming in contact with the law and are not always treated as equals before the law:

- young women;
- single mothers;
- women living in poverty;
- women with a history of

experiencing violence;

- women with mental health issues; and
- women struggling with addiction(s).

Women with children face unique problems when they are in jail. An estimated 60% of women in jail had custody of their children before they were sent to jail. You and your children are entitled to maintain a relationship while you are in jail.

Maintaining contact with your children while in jail

Provided there are no court orders denying you access

to your child, visits should be permitted. The regularity of the visits will depend on how far away your child lives, as well as the ability and willingness of the child's caregiver to facilitate visits.

When deciding who to leave your child with, it is very important to consider such things as the person's criminal history, the way they raise their own children, and who will have access to your children. This is a hard decision to make at a stressful time, but it is important to make sure your children are safe and well-cared for while you are in jail.

The first option is to have a friend or relative agree to take care of your children while you are in jail. Under these informal circumstances, you can maintain a relationship with your children through visits, telephone calls, and letters, with the help of your children's caregiver. The second option is to make a formal arrangement such as custody and access with your children's caregiver - whether it be the children's other parent or step-parent, a family member, or a friend.

What is custody?

"Custody" refers to who a

child lives with and a parent's right to make important decisions about their child. If you have "sole custody" at the time you are sent to jail, you can enter into a "joint custody" agreement with the child's caregiver to keep your legal rights as a parent while knowing the caregiver will meet your child's needs while you are in prison. Please be aware that the court can take your custody away before you are proven guilty.

What is access?

"Access" happens when the parent who does not live with the child spends time with

the child. Access is granted by the court when parents are separated or divorced, but it is also granted in child protection cases. Access means you should be able to:

- maintain contact with your child, and
- be informed about important decisions made about your child.

How do I apply for access?

Forms are available on-line, or you can ask your case management team or an Elizabeth Fry Society support worker to get the information for you. If a court date is

scheduled and you have a lawyer, you can ask the lawyer to make arrangements to have you taken from prison to court.

Some judges will issue orders for appearances but many others will not. When arguing for access, it will be important to tell the judge why it is in the child's best interests to maintain contact with you. The judge will look at many factors, including:

- who is the child's "primary caregiver", doing most of the parenting and caring for the child's emotional, physical, and financial well-being (e.g. feeding,

clothing, schooling);

- if the child was healthy under your care, doing well in school, and enjoying contact with friends and family; and
- your bond with your child (e.g. the judge will look for activities you did together).

What if I do not have anyone who can care for my child?

If you are unable to find a friend or family member to care for your child when you are arrested or during your jail sentence, the Children's Aid Society (CAS) will find a

temporary home for your child. CAS is the child protection organization given authority by the Ontario government to protect children.

CAS can remove a child from his/her family under certain conditions, but often works to support and help the family in staying together. CAS makes decisions based on what they believe is best for child(ren), not always based on the parent's cultural wishes. However, culture is a factor that CAS should take into consideration.