

My Kids Are in State Custody, What Do I Do Now



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You are a happily married father of two children. Due to an accident, you are hospitalized with permanent and life-threatening injuries and the financial and emotional strain of the accident causes your wife to find relief in alcohol.

After your wife arrives drunk at the hospital with your two children, hospital staff call the police, who call child protective services, and your children are placed in an emergency shelter. No one asks if you, as the father, have any input into placement for the kids, or even tells you where your children are going.

The next day, the state files a petition to declare your children in need of aid. You are notified by phone. For the next year, your family is supervised by the court, you are monitored by social workers, and you must submit to home visits. Even after you go home and the children are with you, the state says it has the right to make home visits, question you and make you appear in court to give status reports about your children. All this, even though you never harmed your children, and have shown that you and your extended family can care for your kids despite your wife's alcohol issues and the fact that you are bedridden from your accident. It takes a year of litigation before you are allowed to live with your family on your terms.

Sadly, this is a true story. It was the plight of Peter A., a very real, gravely disabled, non-offending parent in rural Alaska who fought for two years to win his children back, free of state interference.¹ He did eventually succeed, but not without significant emotional cost to himself and his family.

The purpose of this article is to provide guidance learned from Peter's case to non-offending, non-resident fathers when their children are involved in the child welfare system. Many non-offending fathers are not in regular contact with their children when they enter the child welfare system, and may not have seen their children for a long time. For these reasons, many are not in a position to assume care of their children right away. Nonetheless, this is not a reason to give up on the relationship; even previously absentee dads can be united with their children.

The law gives a fit, non-offending father the right to make key decisions about the care of his children and gain custody of them from the state.² The key to successfully navigating the court system and child welfare agency process is asserting that right in a way that is effective and shows that the father is capable of protecting the children. While that sounds simple enough, no amount of litigation — no matter how expensive, creative, or dramatic — will force a court to release a child to someone whom the court feels will not safely and competently supervise his children.

With all this in mind, here are some practical and specific legal steps a non-offending parent can take when he learns his children are in state custody:

- **Don't wait.** If you are the "legal father" you are entitled to formal notice that your children are in custody (see "Constitutional Rights of Non-Resident Fathers" on page 13). The particulars of this notice will vary state by state; however, if the only notice you have is from someone other than your lawyer, the court or the child welfare agency, call the local child welfare agency immediately. Do not wait; every day you delay can be seen as a day you don't care enough to call, even if it is the agency's job to notify you.
- **Be professionally persistent.** To gain custody of your children, the state must file a document in state court saying that your children need protection. You are entitled to a copy of that document. The social worker assigned to work with your children should give it to you. If you do not know who the social worker is, keep calling the agency until you get a name. If no one answers, leave a message. Repeat daily until you get a response, but always be polite. Keep a written list of every phone call you make and to whom you spoke.
- **Do not give up your rights.** You have a constitutional right to an individualized court hearing on your fitness as a parent.³ In most states, before this hearing, the court will appoint a lawyer

to assist a parent who can't afford one. If you do not meet the income requirements, you should hire a lawyer to guide you through the system. Do not agree that your children should remain in state custody if you feel you are fit, or can soon be fit, to parent them. Demand your hearing, and ask for a delay if you need time to gather resources to prove to the court that you can safely care for the children. Even though the state must prove you unfit to raise your children, you also need to satisfy the judge that your children will be safe and secure with you.

- **Be proactive.** Even before the court hearing, request visitation; you have a right to it. If you do not know your children very well or at all, suggest bringing extended family members or other mutual contacts to the visit to help introduce yourself to the children and ease their discomfort.
- **Be there.** Do not miss visits under any circumstances for any reason. Also, do not use alcohol or drugs before, during or after a visit. Never talk badly about the other parent during the visit. As time goes on, request more natural contact with your children, like going to school activities, sports events or restaurants. If this is denied by the child welfare agency, seek help from the court by asking for a hearing.
- **Protect the children from the offending parent.** A fit father who finds out that the mother of his children neglected or abused them must protect the children from her. Do not, for any reason, leave the children alone with the neglectful or abusive parent, or even visit her with the children, without prior approval of the social worker. Keep any contact with the offending parent minimal and supervised. You must show that your relationship with the children and their safety is more important than any issues you have with the mother. Otherwise, the failure to protect the



children from the offending parent can be used to show that you are unfit to care for them, and they will remain in state custody.

- **Go to every court hearing.** You have a right to be at every court hearing about your children. Do not miss them for any reason; court hearings are an opportunity to show the judge that you care and you are doing everything you can to parent your children. If transportation is a problem, talk to your attorney about it.
- **Just do it.** If you had little or no contact with your children in the past and now want to be a parent to them, the court will want to see that you can do it. The court will make the agency visit your home, make sure you can support the children and make you submit to a background check, etc. For the sake of your children, just do it. These are minimally intrusive measures designed to protect the children from further abuse or neglect, and, if successfully completed, leave the court with very little choice but to reunite you and your children.

For parents like Peter A., who had more extensive contact with his children, it is an open constitutional question whether the state could subject them to this type of scrutiny when they have already shown they can be, and are, active parents. Unfortunately, the Peter A. case did not settle that question. Hopefully, another fit parent will take on that battle and proven fathers like Peter A. will not have to undergo years of litigation and heartache to be respected as individuals with rights to their children.

¹Peter A. v. State, Dept. of Health and Soc. Serv., OCS, 146 P.3d 991 (Alaska 2006).

²Troxel v. Granville, 530 U.S. 57, 68-69 (2000); Stanley v. Illinois, 405 U.S. 645, 656-58 (1972).

³Stanley, 405 U.S. at 652 (“What is the state interest in separating children from fathers without a hearing designed to determine whether the father is unfit in a particular case?”)