

REVISED AND UPDATED FOURTH EDITION

WHAT ARE MY RIGHTS?

Q&A About Teens
and the Law

JUDGE TOM JACOBS

free spirit
PUBLISHING®

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The MADD "Contract for Life" on page 133 is reprinted by permission of Mandy Msuta, community relations coordinator at MADD Canada.

The names, ages, schools, and locations of all persons in *What Are My Rights?* are real, except where noted. They have been taken from public records and published court opinions.

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DEDICATION

This book is dedicated to my children: Matt, Alex, Natalie, Julie, and Colin. A part of their teen years lives within the pages of this book. Their mother and I survived their adolescence and cherish them now as our best friends. And I must not forget my grandchildren: Tiago, Levi, Hannah, Paige, Felix, Tomas, Jackson, Hudson, Parker, Chase, Austin, Taylor, and Kali. I encourage them to listen, read, and enjoy life.

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Lana Malone deserves special mention for taking time to read the manuscript and pen a much-appreciated foreword. Our discussions about teens and the laws that affect them have contributed

to this effort. I'm honored to call her a friend and fellow educator of young people. And I must mention Dr. Jenny L. Walker, who contributed the foreword for an earlier edition. Thanks to each of you.

Editor Jay E. Johnson put me through the worst month of my life—resulting in a book vastly improved from its earlier, self-published editions. Thanks, Jay. Editors Elizabeth Verdick and Pamela Espeland guided me through a challenging process resulting in the first and second editions of the book. Alison Behnke helped shepherd the third and fourth editions to publication. Your dedication and hard work, Alison, are greatly appreciated. It has been a pleasure working with you again. And finally, the dedication and ongoing work by publicist Amanda Shofner must be recognized. Thanks, Amanda, for all you do.

Free Spirit founder and publisher Judy Galbraith and her support staff share in this effort, as well as graphic designers Emily Dyer, Marieka Heinlen, and Tasha Kenyon. Thanks for your wisdom and talent throughout this project.

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Foreword

Your life is complex. You're navigating a maze of issues involving friends, sexuality, jobs, internet use, school, and family—to name just a few. And, on top of all that, you probably have questions about your legal rights, yet it's not always obvious where to find the answers. As someone who taught high school for twenty-three years—and also as a mother of two and grandmother of six—I know that many adults don't have the answers to all your questions. In fact, often we may not even realize that some of your concerns have been addressed by the courts. That's just one reason why *What Are My Rights?* by Judge Tom Jacobs is such an important and valuable source of information.

As you'll see from the table of contents, *What Are My Rights?* addresses a wide range of questions about your rights. The book also is written with insight and caring, which is not surprising given that Judge Tom has many years of experience as a judge in juvenile and family courts and also has five children and thirteen grandchildren of his own. Judge Tom addresses issues including adoption, divorce, rights and responsibilities at school and at work, social media, sexual harassment, drugs and alcohol, discrimination, and a multitude of other topics that he knows are of concern to teens and the adults who care about them. His discussions of legal decisions and their impact on teens' lives are current, clear, and well researched.

As a “digital native”—a young person who has never known what it's like to live in a world without texting, tweeting, Snapchat, and Instagram—you probably get a lot of your information online, not only from books. You're in luck! If you still have questions after you read *What Are My Rights?*, visit AsktheJudge.info, Judge Tom's website. Judge Tom and his daughter, attorney Natalie, answer questions that come straight from teens from around the world. If you *still* don't see the answer that you're looking for, you can ask them a question yourself.

I can say with conviction that this book is an incredible resource—primarily for you, but also for parents, teachers, counselors, and anyone else who works with young people. More important, this could be a life-changing book for teens who might have no one to turn to for answers. I've seen my students, my children, their friends, and other young people in my life struggle with issues concerning their rights and responsibilities. It would have been much easier for all of us if we'd had this book to read before the issues occurred. *What Are My Rights?* is written with a profound understanding of the lives of teens and of the legal system—a very powerful combination. Thanks to Judge Tom and his expertise, this book gives you the knowledge you need to navigate some of the concerns that might arise in your daily life.

Lana Malone

former French teacher (23 years)

Flagstaff Unified School District, Arizona

Introduction

As a teen, your relationship to the law is complex. It's also very important to nearly every part of your life. How much do you know about your rights and responsibilities? What are your thoughts on how the legal system treats you? What do you want to learn more about?

As you think about these questions, consider the following real-life scenario about teens and the law:

Conrad, age eighteen, had a history of depression and had attempted suicide in the past. He met seventeen-year-old Michelle online and they began a romantic relationship. Because they lived in different towns, they communicated mostly through texts and online messages. Then, through text messages, he told Michelle that he was thinking about ending his life.

Although Michelle first encouraged Conrad to get help, she later began encouraging him to go through with suicide. She said his family would understand and that she would help them through their grief. Michelle researched methods of suicide, and wrote to Conrad about hanging, suffocation, and carbon monoxide poisoning. She wrote messages including, "You're just making it harder on yourself by pushing it off, you just have to do it," and, "I thought you wanted to do this. The time is right and you're ready."

Conrad ended his life by inhaling carbon monoxide while sitting in the cab of his grandfather's truck. That day, he and Michelle had texted frequently. At one point she said, "If u don't do it now you're never gonna do it." Conrad's body was found the next day.

A criminal investigation was conducted into Conrad's death and Michelle's role in it. Michelle's lawyer argued that her messages to Conrad were protected as free speech. But did her speech cross the line and constitute a crime? What do you think? Michelle didn't participate directly in Conrad's death. Should she be held responsible for encouraging him to act? See chapter 3, page 63, for more about this case.

Scenarios like the one above, although an extreme example of digital abuse, are part of why it was so important to revise, update,

2 What Are My Rights?

and expand *What Are My Rights?* Teens have always faced unique challenges and have always needed to know their rights. But the internet and online communication—including issues such as cyberbullying and sexting—continue to add more complexity and new facets to teens’ relationship to the law. Knowing about laws that directly affect teens can help you make better decisions about what to do—and what not to do. For example, being informed could help you decide whether or not to:

- cut class
- use a fake ID
- obey your teacher
- smoke cigarettes or marijuana
- bully someone online or by cell phone
- take action as a bystander to bullying or look the other way
- delete or forward a sexual image you receive
- gamble
- get a job
- stay out past curfew
- get into a fight

What Are My Rights? won’t tell you everything you need to know about how laws are passed and enforced, and it won’t tell you how the government works. It *will* tell you which laws affect you and why. It will also tell you what happens if you break the law and get caught. It will help you understand the law, recognize your responsibilities, and appreciate your rights. Each chapter has an introduction that orients you to certain issues, followed by a series of questions that raise topics concerning you and your friends.

Your rights are certainly nothing to take for granted. It wasn’t all that long ago that young people had no recognizable rights. As recently as seventy-five years ago, children were mainly considered the property of their parents. Many children and teenagers spent twelve-hour days laboring in terrible, unsafe conditions because they had no protection under the law—and in some countries, this is still the case. Thankfully, things have changed in

the United States. You and other young people now have rights that protect you within your family, at school, online, on the job, at the doctor, and in your community.

In 1899, the first juvenile court in the United States was established in Cook County, Illinois. The goal of the juvenile court was to focus on rehabilitation rather than punishment, and to guide young offenders toward being responsible, law-abiding adults. Before the juvenile justice system was created, children under the age of 7 were generally classified as “infants,” meaning that they were too young to fully understand their actions. Therefore, they could not be guilty of felonies (serious crimes). Juveniles between the ages of 7 and 14 could stand trial only if the court determined that they knew the difference between right and wrong. Juveniles over the age of 14 could be charged and tried for their offenses. If convicted, they faced the same consequences as adults—including, in some cases, the death penalty. As you’ll discover in the following pages, the status, rights, and responsibilities of children and teenagers have changed significantly since 1899.

Your state legislature and local officials are responsible for seeing that laws exist to protect and serve young people and the community as a whole. The authority to act for the people in passing laws and enforcing them in the nation’s courts comes from the United States Constitution, the Bill of Rights,* and state constitutions (which closely follow the US Constitution). Just as federal and state laws regarding teenagers in the United States differ, the laws of Canada vary among its provinces. Some Canadian laws and related community resources are included in this book, along with US laws and resources.

Many teenagers have questions about the law—“Can I get in trouble for what I do on the computer at home?” “Can my teacher search my cell phone?” “What if my parents die?”—but they don’t know where to turn for answers. *What Are My Rights?* is designed to be your first stop for exploring these and other legal questions. It covers some childhood issues as well as concerns of the later teen years. The first chapters address parental authority, your rights at school, and issues of law while you’re on the internet and at your job. Other chapters discuss rights of a more personal nature: dealing with your body and growing up. The final two chapters

* See chapter 2, page 25.

consider the more somber side of the law—the consequences of willful misconduct or bad judgment—and offer basic information about the legal system.

Throughout this book, you'll find "FYI" (For Your Information) sections with descriptions of resources—including other books, national organizations, and websites—that you can turn to for information and advice. You'll also find listings for toll-free telephone numbers and hotlines. But if an issue in this book applies to you, it's best to speak first with someone you know and trust. If possible, talk things over with your parents or guardians. Consider telling a teacher, a school counselor, or a youth leader at your place of worship. Or think of another adult you can talk to—someone who will listen, understand, and give you good advice. You probably know at least one adult who will help you and stand by you.

F Y I

Are you interested in learning more about the cases in *What Are My Rights?*

The published opinions of all the country's appellate courts are found in a series of books called reporters. The series is divided into regions. For example, California decisions are found in the *Pacific Reporter*, while Maine decisions are located in the *Atlantic Reporter*. Each state also has its own set of reporters. This means that each decision may be found in both a regional reporter and a state reporter.

United States Supreme Court decisions can be found in several federal reporters. All of the Supreme Court cases in this book are located in either the *US Supreme Court Reports* or the *Supreme Court Reporter*. You can also find most Supreme Court decisions on the Court's website at supremecourt.gov. In addition, you can search online for the name of a case to find the written opinion or go to legal websites such as findlaw.com or justia.com. Plus, if you're interested in what goes on at the Supreme Court, you can take a look at www.oyez.org for daily events and recordings of oral arguments before the Court.

In this book, you'll also find true stories of teenagers who have spoken out or changed the law to benefit young people. You'll read about different ways you can stand up for yourself and invoke your rights. Knowledge is power. As you learn more about legal issues, think about what you might do to bring about positive change at home, at work, at school, and in your community.

You and Your Family

“At our best level of existence, we are parts of a family, and at our highest level of achievement, we work to keep the family alive.”

—Maya Angelou, American writer, activist, and actress

Did you know that almost 200 countries, including the United States and Canada, have signed a Declaration of the Rights of the Child? The United Nations passed the Declaration in 1959, and it calls upon all countries to guarantee you (and every young person):

- a childhood without adult responsibilities
- a happy family life
- a school that educates you according to your learning needs and interests
- a doctor who knows your name
- a safe neighborhood
- a chance to achieve and succeed in life

“The rights to conceive and raise one’s children have been deemed ‘essential’ . . . ‘basic civil rights’ . . . and ‘rights far more precious . . . than property rights.’”

—US Supreme Court, *Stanley v. Illinois*, 92 S.Ct. 1208 (1972)

A teenagers’ bill of rights might also include the right to be heard and listened to by others, the right to receive good guidance, and the right to receive fair treatment and reasonable discipline from authority figures.

The process of safeguarding yourself and your future starts at home. In fact, many of the rules you have to follow at home are rooted in the law. While some of these rules may seem unfair or

overly strict, they're designed to protect you. Understanding your rights and responsibilities at home can bring you closer to reaching your goals in life.

In 2013, more than 5 million US children lived with a grandparent as their primary caretaker.

Source: *The Nation's Children 2015*, Child Welfare League of America



“WHAT DOES ADOPTION MEAN?”

Under special circumstances, you may receive a new parent or parents. If your parents die, for example, or agree to let someone else raise you, the court may allow that person to adopt you. Most of the time, it's young children or babies who are adopted, but in certain situations teenagers and even adults may be adopted. This often occurs in cases where there's a long-term relationship between a stepparent and stepchild or between adult and minor siblings.

More than 100,000 adoptions take place in the United States each year. These include children born in the United States as well as children brought into the United States from other countries. In most states, you must be at least eighteen to adopt a child. Some states require the adult to be ten years older than the child who is being adopted. Other states have no age restrictions. You don't have to be married to adopt a child. Single people—straight, gay, and lesbian—have become adoptive parents of children of all ages.

If your parents are divorced and your mother or father remarries, your new stepparent may adopt you if your other biological parent agrees. A stepparent adoption must also be approved by a judge. In many states, if you're over a certain age—usually ten to twelve years old—you must appear at the hearing and agree with the adoption. The judge will ask you if you want your stepfather or stepmother to be your legal parent, and if you want your last name to be changed to theirs.

During the adoption process, you may meet with a social worker and a lawyer. They, in turn, meet with your prospective

new parent or parents and gather information to help the judge decide whether to allow the adoption. After a complete investigation, recommendations are made to the court. The investigation, called an adoptive home study, considers the motivation to adopt, finances, criminal history, family background, education, work history, and references from relatives and nonrelatives. If the court has any concerns, the adoption may be delayed. The bottom line in any adoption is whether it's best for the child. While most adoptions are granted, occasionally the judge may decide that it's not in the child's best interests.

- In 2016, almost 118,000 children were waiting to be adopted in the United States.
- In 2017, 41 American children were adopted in Canada; 20 in the Netherlands; and 12 in Ireland.

Sources: *The AFCARS Report*, US Department of Health and Human Services (2017); US Department of State (2018)

If you were adopted when you were a baby, what are you entitled to know about the adoption and its circumstances? Privacy for birth parents, adoptive parents, and adopted children is still the general rule. Each state has its own laws regarding the disclosure of records. Depending on where you live, you may be able to find out nonidentifying information—information that tells you about your biological parents without revealing their names. Or, once you're an adult, you may be able to find out identifying information—including their names.

You may also be able to learn about your birth parents' medical history. Contact the court where the adoption took place to ask for this information. Some states operate a Confidential Intermediary (CI) Program. The CI attempts to make contact with the birth parents, adoptive parents, and adoptee. The sharing of confidential information may be arranged with consent from the people involved, as may contact among the parties. Do a Google search using the name of your state and the phrase "Confidential Intermediary" for details.

"Courts are not free to take children from parents simply by deciding another home appears more advantageous."

—US Supreme Court, *DeBoer v. DeBoer*, 114 S.Ct. 1 (1993)

F Y I

Adopted: The Ultimate Teen Guide by Suzanne Buckingham Slade (Scarecrow Press, Inc., 2013). Presenting stories of adopted teens, *Adopted* addresses the questions, concerns, and issues that other adopted teens may face.

All the Broken Pieces by Ann E. Burg (Scholastic Paperbacks, 2012). This moving novel, written in verse, tells the story of a Vietnamese boy adopted by an American family. Matt Pin was airlifted to the United States when he was abandoned by his American soldier father and his Vietnamese mother wanted him to have a better life than she could provide. Now 12 years old and a star pitcher on his school's baseball team, Matt wrestles with the present and the past.

Where Are My Birth Parents? A Guide for Teenage Adoptees by Karen Gravelle and Susan Fischer (Walker and Company, 1995). This book discusses how and why adopted children may try to locate and get to know their birth parents as well as explores the possible psychological benefits and problems associated with that process.

US Citizenship and Immigration Services

1-800-375-5283

uscis.gov

Contact the USCIS for information on international adoptions and immigration rules and regulations.

“WHAT IS FOSTER CARE? HOW LONG DOES IT LAST?”

Nearly half a million children live in foster homes, group homes, emergency receiving homes, or child-crisis centers across the United States. Young people are moved to out-of-home care for many reasons, including neglect, abandonment, or child abuse.* If the state learns that a child is being maltreated in some way, the child may be removed from the home. It's the state's responsibility to protect its children. If removed, a child is either placed with relatives, friends, or—as a last resort—into a foster home.

The people who operate foster homes are licensed, trained, and monitored by a state agency—usually Child Protective Services (CPS). If you're placed in foster care, you'll receive medical, dental, psychological, and educational services. An attorney and/or

* See chapter 5, pages 88–90, for more information on abuse and neglect.

guardian may be appointed to look out for you and to discuss your situation and represent you in court. Depending on your age, you may have the opportunity to appear in court with your lawyer. The judge may want to hear from you directly.

The goal of every court and agency responsible for your care is to find you a permanent home. This may mean returning you to your parents when they're ready to provide safe care, placing you with relatives or friends, or finding you an adoptive home. A lot depends on why you were originally placed in foster care. If the problems have been solved and you can be safely returned to your parents, the court may allow it. Otherwise, after you've spent six to twelve months in foster care, other more permanent plans will be considered.

- In 2016, there were more than 436,000 children in foster care in the United States, including 117,000 waiting to be adopted. Approximately 23,000 foster children aged out of the system without being adopted. More than 57,000 children were adopted out of the foster care system in 2016.
- In 2018, the US Department of Health and Human Services reported an increase, due in part to the country's opioid epidemic, in child abuse fatalities. The 1,700 deaths in 2016 represented a 7% increase over the 1,589 deaths reported in 2015.

Sources: US Department of Health and Human Services (2017); National Foster Youth Institute (2017); KidsCount.org (2018)



State laws regarding your rights and your parents' rights have changed in the last decade or so. Parents are required to show by their actions, not words, that they intend to work toward your return. They must resolve whatever problem caused you to be placed in foster care—by, for example, getting counseling, going into drug rehabilitation, or taking parenting classes. If too much time passes without any positive results, alternative plans must be made. Although there's no time limit on a foster home placement, state and federal laws discuss a "permanent" home for all children. Each case is considered on an individual basis by the courts and social workers.

You don't lose any rights while you're in foster care. The agency responsible for you must see that all of your needs are met and that you're in a safe environment. You should receive medical and dental care, as well as schooling and recreation. In foster care, you have to follow house rules regarding hygiene, curfew, and study and recreation time.

Once you turn eighteen and become an adult, foster care may end. Some states allow you to remain in foster care if you're still in high school or if special circumstances exist. Otherwise, if you do still need care after you're eighteen, your state may provide assistance to young adults who age out of foster care, or Adult Protective Services may provide help.

F Y I

FosterClub

fosterclub.com

Young people (24 or younger) who are or have been in foster care can join the FosterClub and meet and network with others who know what they have gone through. The site also has foster care facts, questions and answers, message boards, and contests.

“WHAT HAPPENS TO ME IF MY PARENTS GET A DIVORCE?”

If your parents get a divorce, it doesn't mean that they're no longer your parents, or that they no longer love you. Children are not the cause of their parents' divorce—and they have no reason to feel guilty or blame themselves. If your parents have divorced and you're struggling with feelings of guilt, sadness, or fear, get help so you can work things out in your life. Contact a school counselor, who may recommend that you talk to a therapist or other specialized professional. Or let your mother or father know that the divorce is bothering you, and that you need help dealing with it.

Can your parents force you to go to counseling if you're troubled by divorce (or any other issue)? Yes. They can arrange for the whole family to attend counseling or individual counseling for one or two of you. Since you have little choice but to go, keep an open mind. It

may seem awkward at first, but you'll soon find yourself opening up and feeling better. Relationship issues don't happen overnight, and healing also takes time. Talk with your friends and you'll see that you're not alone in your thoughts, fears, and concerns.

If your parents get a divorce, decisions have to be made that directly affect you. You may have questions: "Do I have to move?" "Will I be separated from my brothers and sisters?" "Will I get to see the parent I don't live with?" A court may help your parents with these decisions, and, depending on your age, you may be asked for your opinion on what *you* want to happen.

A lawyer may be appointed to represent you if your parents don't agree on visitation issues or where you should live. Tell your lawyer *exactly* what you feel about these issues and why. This is the *only* way to be sure that the judge considers your wishes before a decision is made.

The ultimate question in each divorce case is "What is in the child's best interests?" However, the states don't all follow the same laws in determining the answer. Some states give preference to the desires of the child; others don't. Some appoint lawyers or guardians to speak for children; others don't. In most cases, though, the results are the same, since "best interests" remains the goal in all jurisdictions. Both parents are considered in custody disputes about which parent you'll live with. In the past, the law tended to support automatic custody with the mother, but today fathers are often granted custody of their children.

Courts grant either sole custody to one parent, or joint or shared custody to both parents. In a *sole custody* situation, you'll live with one of your parents and visit the other (for example, on weekends, holidays, and during the summer). If your noncustodial parent lives out of state, you may spend all or part of the summer with that parent. The same is true for your brothers and sisters. Courts try to keep the children in a family together. If siblings are split up, arrangements may be made for frequent contact and visits.

Joint or shared custody requires both parents to agree on the living arrangements of the children. It allows both parents to share legal and physical custody of you and your brothers and sisters, with an agreed-upon division of time and responsibilities throughout the year. You may live with your mother during the school

year, and with your father during the summer and holidays. Or, if your parents live close by, especially in the same school district, you may alternate weeks or months at each parent's home.

The rule in custody situations should be whatever works out best for all of you. Be sure to speak up and let your parents know how you feel about the arrangements. Whatever is decided, give it a try for a while. If you feel strongly one way or the other, tell your parents. It's best to get your feelings out in the open. Speaking up may help change things. You'll also be helping your siblings if they feel the same way but are worried about saying anything.

If you find yourself unable to talk to anyone about divorce and custody worries, visit your school or public library. You'll find books and pamphlets written especially for children and teens that will help answer some of your questions and concerns. Or look online for similar resources. Check one out—and maybe confide in a friend.

For a state-by-state chart about custody factors, see pages 203–204.

Many cases have addressed custody and visitation issues and have made determinations including the following:

- A parent's marijuana abuse (not the legal use of medical marijuana) could affect a court's decision about custody rights.*
- It is the court's responsibility—not the responsibility of teenage children—to decide visitation terms and issues.**
- A 13-year-old should be interviewed by the judge prior to granting the mother's request that visits with the father be terminated.***

Citations: **Daggett v. Sternick*, 109 A.3d 1137 (Maine 2015); ***Milligan v. Milligan*, 149 So.3d 623 (Alabama 2014); ****Zubizarreta v. Hemminger*, 967 NYS2d 423 (New York 2013)

F Y I

The Divorce Workbook for Teens: Activities to Help You Move Beyond the Breakup by Lisa M. Schab (Instant Help Books, 2008). A wide range of suggestions and activities helps teens work through their feelings and thoughts about their parents' divorce.

My Parents Are Getting Divorced: How to Keep It Together When Your Mom and Dad Are Splitting Up by Florence Cadier and Melissa Daly (Amulet Books, 2004). Helpful information and guidance for young people going through their parents' divorce.

When Divorce Hits Home: Keeping Yourself Together When Your Family Comes Apart by Beth Baruch Joselow and Thea Joselow (Authors Choice Press, 2000). Written by a mother-daughter team, this book is based on interviews with lots of kids who have been through the divorce of their parents.

“WHAT IS KIDNAPPING?”

Kidnapping is defined as knowingly restraining someone with a specific intent to do something. This may be to collect a ransom, use a person as a hostage, or have someone do involuntary work. Other intentions may be to injure a person or to interfere with the operation of an airplane, bus, train, or other form of transportation. Kidnapping may be a felony, depending on the circumstances. If someone is convicted of kidnapping, it's not uncommon for that person to receive a jail or prison sentence.

Custodial interference, sometimes called *parental kidnapping*, happens when one parent keeps a child from the parent who has legal custody. Statistics indicate that over 200,000 children are kidnapped by parents or other family members every year. Specific state and federal laws against parental kidnapping carry stiff sentences for violation.

For example, say the court has placed you in the legal custody of your mother. Your father lives out of state and has holiday visits. After you spend two weeks with your father at Christmas, he decides not to return you to your mother. This is custodial interference and may be prosecuted as a crime.

If your parents agree that you can live with your father, however, they should ask the court to modify the custody order. Courts grant modification requests all the time. The key issue is what's

If you're a victim of kidnapping or custodial interference, or if your brother or sister is in danger of being kidnapped, *take immediate action*. Call the police or 911 for emergency assistance.

best for you. If there's no risk of abuse or neglect, and the change is to your benefit, it will most likely be approved.

Let your opinion be heard in custody modification situations. Many courts want to know whether you agree with the change of custody. Feel free to write the court a letter. Or you may have the opportunity to go to court and speak with the judge. This is your chance to state your true feelings. If you're hesitant to speak up in your parents' presence, ask to talk to the judge alone. Many judges will allow this. You may be taken to the judge's office with your lawyer or guardian, where you can speak freely. The judge will make sure your statements remain confidential.

The point is that *you* are the most important person in the case. Your opinion matters and should be heard. The results may not be 100 percent to your satisfaction, but speaking up gives you the chance to share your views and to make sure your concerns are taken into account.

"IF MY PARENTS GET A DIVORCE, WILL I STILL GET TO VISIT MY GRANDPARENTS?"

Visitation is a big issue that gets decided in every divorce case. It starts with your parents. If your mother is given sole custody, your father will probably be granted visitation rights or parenting time. Likewise, if your father is given sole custody, your mother will usually be granted visitation. This means the noncustodial parent will be able to see you on a regular basis, with set times and days. Or it may be more flexible, depending on what your parents agree on. The court will review the terms and, based on what's in your best interests, approve or modify them.

Over the past few years, grandparents and great-grandparents have become active in asserting their requests for visits with grandchildren (and great-grandchildren) whose parents divorce. Many states have passed laws allowing grandparents to seek a court order for visits if they've been denied visitation by the parents. Some states require a minimum period of time to pass (three to six months) before the visits begin—a period where everyone can cool off after the divorce. Other courts require a hearing with

an opportunity for parents to oppose grandparent visits if a good reason exists. If visits are granted, the court will usually set forth a schedule that all are required to follow. Each case is unique; there's no specific formula that's followed with identical results each time.

Stepparents may also seek visitation rights. For example, if your mother and stepfather get a divorce, does your former stepfather have any visitation rights? Can you continue to visit the stepparent who is now legally out of the picture? State legislatures are now considering laws addressing parents who find themselves in this situation. Most states, at this time, don't provide stepparents with visitation rights by law. Some courts, however, will look at the whole picture, including how long the stepparent has been involved in your life, your opinion about visitation, and any other relevant factors. Courts have granted former stepparents visitation with their stepchildren. Again, the bottom line is what's best for you.

"DO MY PARENTS HAVE TO SUPPORT ME AFTER THEY GET DIVORCED?"

Failure to pay child support is an ongoing issue before courts across the country. Thousands of single parents—most of whom are mothers—are receiving state and federal funds in the absence of financial assistance from the children's other parents (mostly fathers). Once brought before a judge, many parents who are delinquent on their payments start paying their child support as ordered by the court. Those who don't may be found in contempt of court and incarcerated.

What is this all about? Why are parents going to jail?

First, *all* parents have a legal duty and obligation to support their children. This includes divorced parents and those who never married. The *duty* to support a child means providing financial assistance to the custodial parent for the basic necessities of life—food, shelter, clothing, medical expenses, and education. The *obligation* may apply to either parent—mother or father. The court looks at the whole family situation, including both parents' earnings, standards of living, and debts, and the ages and needs of the children. Guidelines exist to help the court arrive at a fair

child support figure. Once the amount is determined, the court makes an order and payments are scheduled to begin, usually on a monthly basis.

As children get older, support payments may be increased as the children’s needs change and the cost of living rises. If a parent misses a payment or is occasionally late in paying, any dispute will probably be resolved without going back to court. However, if *no* payments are made, this becomes a serious matter. Nationwide, courts and law enforcement agencies have cracked down on parents who are behind in their payments. Why? In part, because taxpayers pay millions of dollars for families on welfare who aren’t being supported by responsible parents.

- A Colorado court held that a 16-year-old boy may be liable for child support if he is proven to be the baby’s father.*
- In cases from Arkansas** and Kansas,*** young parents have been held responsible for child support. The fathers were 12 and 13, while the mothers were 15 and 16. One case involved consenting teens while the other involved an older babysitter.

Citations: **Schierenbeck v. Minor*, 367 P.2d 333 (Colorado 1961); ***Hamm v. Office of Child Support Enforcement*, 985 SW2d 742 (Arkansas 1999); ****Hermesmann v. Seyer*, 847 P.2d 1273 (Kansas 1993)



States are trying various methods to get parents to pay their child support. Some states have gone public with billboards and wanted posters in an effort to embarrass “deadbeat” parents into paying. In Arizona, a parent who falls six months behind in child support payments can have his or her professional license (medical, law, therapist, etc.) or work permit or certificate suspended.

If your parents are divorced, their duty to support you continues until you turn eighteen or are emancipated.* Some states require child support to continue after your eighteenth birthday if you’re still in high school. Once you graduate or get your general educational development (GED) diploma, if you are eighteen or over, the legal obligation to support you may end. A number of states also extend the support obligation beyond eighteen if you’re

* To learn about emancipation, see chapter 6, pages 112–114.

physically or mentally disabled. Your parents may agree at the time of the divorce to cover your college or technical school expenses. This will obviously extend support past your eighteenth birthday, and such an agreement has been determined by the courts to be valid and enforceable.

Even if you're a teenage parent, you still have a duty and obligation to support your child or children. Some states require the parents of a teenage mother or father to assist in the baby's support, but the birth parents, regardless of age, carry the primary responsibility.

"CAN I 'DIVORCE' MY PARENTS?"

A Florida boy named Gregory K. got a court order terminating his mother's parental rights and giving him the legal right to become part of a new family. His birth father didn't contest the adoption. In effect, Gregory "divorced" his parents.

This case was unusual because it was filed by a child with a lawyer's help. Usually, the state or a child welfare agency files this type of lawsuit on behalf of a child. However, when Gregory was eleven, he decided he wanted to remain in the foster home where he'd lived for nine months. Because he'd been neglected and abused by his parents, Gregory had been in foster care for two years. He hadn't seen his mother in eighteen months. He thought she'd forgotten about him. His new foster parents wanted to adopt him, and the court determined that this was best for Gregory.

Gregory's case opened the door for a whole new discussion and review of children's rights. Since then, state legislatures and courts across the country have paid closer attention to the reasonable and legitimate demands of minors. The emphasis now is on "permanency" for all children and teenagers in foster care. If kids are unable to return home or be placed with relatives, alternative permanent homes are sought. In appropriate cases, public and private agencies take legal action toward terminating parents' rights.

This doesn't mean that because you don't like being grounded, you can go to court and get new parents. This is a serious decision that's limited in its application. Only in the most extreme situation, and usually as a last resort, will the legal rights of a parent be terminated.

If things are seriously wrong in your family and you have questions or problems that you've been keeping to yourself, find someone you trust and can talk to. A school counselor, a teacher, a clergy member, or an adult friend or family member may be someone you can turn to. Don't let the situation get so out of control that your health and safety are at risk. Community groups or Child Protective Services (CPS) are good resources for assistance.

"WHO HAS THE RIGHT TO DISCIPLINE ME?"

"You can't tell me what to do." "I don't have to—you're not my parent!" "If you touch me, I'll call the police!" In the heat of an argument, you may say things like this to a parent, stepparent, guardian, or teacher. Who has the right to discipline you?

The law gives your parents control over your life until you become an adult. In fact, the US Supreme Court has stated that the custody, care, and nurturance of a child belong first to the parents and that it's their duty to prepare you for independence.* This means that your parents can decide:

- what school you'll go to
- when you'll be able to drive
- what religion (if any) to raise you in
- when you can get a job
- if you can marry before you're eighteen

Your parents or guardians, however, are *not* free to discipline you beyond reason. Every state has child protection laws and an agency to investigate cases of child abuse, neglect, and abandonment. If Child Protective Services (CPS) determines that the discipline or punishment you receive is excessive or harmful, whether physically, sexually, or emotionally, they may remove you from your home to a safer environment.

Strict "rules of the house"—what you may consider harsh punishment—aren't sufficient for CPS or the police to get involved. The government cannot interfere with the duties of a parent to raise a child unless abuse has occurred or the threat of abuse or neglect exists.

* Exceptions to parental control are discussed in chapter 6.

Abuse and neglect are specifically defined by state law.* *Abuse* may include physical, sexual, and emotional harm. *Neglect* may mean physical, emotional, or educational deprivation. Emotional neglect by a parent isn't easy to pin down or prove. Not all states recognize emotional harm to a child or teenager as requiring legal action or intervention. Typical symptoms of emotional harm include depression, poor performance at school, and antisocial or destructive behavior.

In a case from Iowa, a ten-year-old girl whose parents were divorced was removed from her mother's home. Following the divorce, the girl had become depressed and developed an eating disorder. Her mother provoked the child's negative feelings toward her father and encouraged her to eat in order to cope with her stress. At one point, the 5'3" girl weighed 290 pounds. The court considered this a form of emotional abuse and placed her in a residential treatment program.

Although emotional neglect is difficult to define, a California court stated that "persons of common intelligence would not have to guess whether someone was maltreating their child to the point of causing severe emotional harm."

The bottom line, however, is that you're required to follow the rules your parents set. If there's a disagreement—about driving or your curfew, for example—talk about it with your parents. Ask them to sit down with you and calmly discuss the situation. Maybe you can reach a compromise. If not, you'll still feel better for getting your feelings out in the open.

While you're at school, teachers and other school staff take the place of your parents. This is referred to as *in loco parentis*, meaning "in the place of a parent." Misconduct will result in some form of disciplinary action such as detention time, extra assignments, or lost privileges. In extreme cases, suspension or expulsion may occur. School policy may also permit paddling or spanking, which the US Supreme Court has determined is not cruel and unusual punishment under the Eighth Amendment. School districts vary in the use of corporal punishment to discipline students.**

* See chapter 5, pages 88–90, for more information on abuse and neglect.

** See chapter 2, page 31.

Try these ideas for talking with your parents about disagreements or concerns you have:

- Pick a quiet time.
- Keep distractions to a minimum—turn off the TV, music, cell phones, and computers.
- Don't start talks when your friends are over.
- Stay calm and use respectful language. (Try to speak to your parents the same way you'd want them to talk to you.)
- State your position and explain why you feel the way you do.
- Ask your parents to state their position—and listen to what they say.

"CAN MY PARENTS FORCE ME TO FOLLOW THEIR RELIGION?"

The First Amendment to the US Constitution guarantees all Americans freedom of religion. This isn't limited to adults. Children and teenagers enjoy the same right, which is balanced with the fundamental rights of parents to raise their children without government interference.

This means the government and the courts won't get involved if you and your parents disagree about religious beliefs or practices. As long as you're safe and your parents provide for your basic needs (food, shelter, clothing, and medical care), the state can't interfere with your family. Your parents are free to decide what church you attend (if any), how often, and what practices will be honored in the home.

If, however, you are at risk of being abused or neglected because of your parents' religious beliefs, the police or Child Protective Services (CPS) may step in to ensure your safety. For example, if you needed a blood transfusion or other urgent medical care, and your parents refused to give their consent due to their religious beliefs, the court could get involved. In a life-threatening situation, or one where there's a risk of permanent disability, the court has the right to order the appropriate medical care for you.

Occasionally, a hospital or doctor will ask the court to assist with difficult emergency cases. In 1944, the US Supreme Court stated that parents may be free to become martyrs themselves, but they are not free to make martyrs of their children (*Prince v. Massachusetts*, 321 US 158, Massachusetts 1944). In following that decision, a Minnesota court stated that “although one is free to believe what one will, religious freedom ends when one’s conduct offends the law by, for example, endangering a child’s life” (*Lundman v. McKown*, 530 N.W.2d 807, Minnesota 1995).

In that Minnesota case, an eleven-year-old boy was diagnosed with juvenile-onset diabetes. His parents were Christian Scientists, members of a religion that believes in prayer as the proper treatment for illness. The boy died because he was denied medical treatment. In discussing the difference between freedom to believe and freedom to act, the court upheld the government’s right to restrict acts based on religious beliefs. In other words, people can’t claim religion as a reason for not paying taxes, violating child labor laws, being married to more than one person at a time, or refusing medical care for their children.

As you get older and think about the role of religion in your life, talk with your parents. Share your ideas and feelings. Talk with your friends who may belong to different faiths. What is their relationship with their parents on the subject of religion? It won’t be long before you’re independent and able to worship as you choose.

“DO I NEED A GUARDIAN IF MY PARENTS DIE?”

A guardian is a person who takes the place of your parents. He or she has the same responsibilities as your mother or father, including caring for you and your social, educational, and medical needs. Likewise, you have an obligation to obey and respect your guardian.

A guardian is either appointed by a court or named by your parents in their will. Usually, a relative or close friend of the family—someone you know—is named as your guardian.

In order for someone to be named a court-appointed guardian, the person must be screened and investigated to determine whether he or she can handle the responsibilities involved. If the court finds that the appointment isn’t in your best interests, it

won't be made. Another person will then be considered. If no one is available to be your guardian, then the state—through Child Protective Services (CPS)—will be appointed.

A guardian may be permanent or act as a guardian for you until you turn eighteen. If you get married or are adopted before then, the guardianship ends. In some states, if you're a certain age, you'll have a say in who becomes your guardian. You may have the opportunity to approve or disapprove the guardianship or request a new one. There must be good, sound reasons for such a request, or the court will deny it.

Think About It, Talk About It

1. Make a list of the rules you have to follow at home and think about how they're related to the law.
2. Consider starting a peer support group for teens with common concerns about custody, visitation, and adoption. Invite a local counselor to one of your meetings to discuss some of the issues.
3. You've recently made friends with a new student at your school. One day, she tells you that she's supposed to be living with her mother in another state. Against her mother's wishes, she decided not to return home after visiting her father for the summer. Your friend is afraid of being arrested, pulled out of school, and returned to her mother against her will. What can you tell her? How can you help?
4. Discuss how you would approach your parents about their rules regarding what you can and can't see at the movie theater, what you're allowed and not allowed to read, or places you're permitted or not permitted to go.