

Breaches of Parenting Orders



INTRODUCTION

A **parenting order** is an order made by the Family Court that says who is responsible for the day-to-day care of a child, and when and how someone else important in the child's life, usually the other parent, can have contact with them.

It is important that the parents or other parties to the order co-operate together and try to make it work. Each should do what they are supposed to do under the order and not make things difficult for the other person.

HOW CAN YOU BE SURE OF YOUR OBLIGATIONS UNDER A PARENTING ORDER?

Both parties are given a copy of the parenting order when it is made. The order will have a clear and simple explanation of what it means. This includes what each person's obligations are, and what might happen if either of them breaches the order by not doing what the order requires or by making things difficult for the other person.

WHAT HAPPENS IF A PERSON BREACHES A PARENTING ORDER?

If someone breaches a parenting order, the order can be enforced just like any other order of the Court.

The Family Court has a range of options for dealing with this, including arranging free counselling to help the parties sort out the problem themselves. The Court can also make various orders to deal with a breach – like reducing the time the person who breached the order has with the child, or requiring them to pay money to the Court as a bond, which they could lose if they continue to disobey the order.



STARTING WITH COUNSELLING

Either person can ask the Family Court to arrange counselling if they believe the other is breaching a parenting order by not doing what the order requires or by making things difficult for them.

If counselling is arranged and one person doesn't turn up, the Court can order them to be there.

The Family Court won't send people to counselling if it thinks it probably wouldn't help – if one of them has been violent, for example. In this case, the Court would probably recommend that an application be made to it for an order enforcing the parenting order.

For more information, see the pamphlet **Counselling**.

COURT ORDERS DEALING WITH BREACHES OF PARENTING ORDERS

COURT ORDERS ARE A LAST RESORT

The Court will make an order to deal with a breach of a parenting order only as a last resort. It's much better for everyone involved, especially the child, if the parties can sort out the problem themselves.

WHAT CAN THE COURT DO?

If the Court is satisfied that one of the parties is not complying with a parenting order, it can do any of the following things –

- **admonish them** – this is like the Court telling the person off
- **change the order** – the Court can change (vary) or cancel (discharge) the parenting order – for example, it could significantly reduce the amount of time when the person has day-to-day care of the child
- **order a bond be paid** – the Court can require the person to pay money to the Court as a bond, which they could lose if they continue to disobey the order

- **order compensation be paid** – if the other person had to spend money because of the breach (like paying for travel tickets), the Court can order the person who breached the order to compensate them by paying them an amount of money
- **enforce care or contact** – if one person is preventing the other from having day-to-day care or contact with the child as provided in the parenting order, the Court can order the Police or a social worker to pick up the child and deliver them to the other person.

THE CHILD COMES FIRST

When the Court is deciding how to deal with a breach of a parenting order, the first and most important consideration is always the welfare and the best interests of the child.

BREACHING A PARENTING ORDER IS A CRIMINAL OFFENCE

Intentionally breaching a parenting order without a reasonable excuse is a criminal offence.

If the Police charge you and you're convicted in Court, you can be jailed for up to **three months**, or fined up to **\$2,500**.



BONDS

WHAT IS A BOND AND WHEN CAN THE COURT REQUIRE ONE?

A bond is an amount of money the Court can require someone to pay to the Court. The money is kept in a special bank account managed by the Collections Unit of the Ministry of Justice.

The Court can require a bond as a condition of a parenting order, which means the bond is paid when the order is first made, or it can order a bond to be paid after a person has breached a parenting order.

The person who pays the bond may lose it if they continue to disobey a Court order.

Before requiring a bond, the Court has to take into account how much the person can afford to pay as a bond, or whether they can afford to pay anything at all.

A bond will have written conditions that make it very clear what the person has to do, and not do, to avoid losing the money.

WHAT HAPPENS IF A PERSON CONTINUES TO BREACH A PARENTING ORDER?

If someone continues to breach a parenting order they may lose some or all of the bond. The other person can apply to the Court for this to happen, or the Court can decide to do it itself.

Before the Court can order that a person should lose their bond money it must consider –

- why the person had to pay the bond
- how far they have met or breached the conditions of the bond
- any explanation they have given
- anything else the Court thinks is relevant.

WHO RECEIVES THE BOND MONEY IF THE PERSON LOSES IT?

Usually the bond money is paid to the Court. But the Court can order that the bond money be used to compensate the other person for money they had to spend because of the breach.

HOW LONG CAN THE COURT HOLD A BOND?

When the Court orders someone to pay a bond, it has to set a date when the bond money, or what's left of it, will be refunded to them. If the parenting order comes to an end before then, the bond will be refunded when that happens.

COMPENSATION FOR THE OTHER PERSON

WHEN CAN THE COURT ORDER COMPENSATION?

If one person breaches a parenting order, the Family Court can order them to pay compensation to the other person if the other person had to spend money because of the breach – for example, paying for travel tickets.

WHAT IF IT WASN'T REALLY NECESSARY TO SPEND THE MONEY?

The Court will order compensation only if it was reasonable for the other person to spend the money.

CAN THE BOND BE USED FOR COMPENSATION?

Yes. The Court can order that the compensation be paid out of the money it holds as a bond from the person who breached the order.

WARRANTS TO ENFORCE DAY-TO-DAY CARE OR CONTACT

WHAT IF ONE PERSON PREVENTS THE OTHER FROM SEEING THE CHILD?

If one of the parties to a parenting order prevents the other from having day-to-day care or contact with the child as provided in the order, the Court can issue a warrant that orders the Police, a social worker or someone else to pick up the child and deliver them to the other party.

It can also do this when contact is provided for in an order for supervised contact and when an overseas parenting order has been registered with the New Zealand Courts.

However, if a parenting order provides for two parents or caregivers to share day-to-day care of children, the Court won't issue a warrant unless, at the same time, it changes the parenting order to give day-to-day care only to the person who is not breaching the order.

WHAT IF THE OTHER PERSON TRIES TO STOP THE CHILDREN BEING RETURNED?

With a warrant, a Police officer, social worker or someone else named in the warrant is allowed to use reasonable force if necessary to enter a house and pick up the child.

It's a criminal offence for anyone to stop or try to stop someone with a warrant picking up children. It's also a criminal offence not to let them in right away when they come to the door.

If convicted of this offence, a person can be jailed for up to **three months**, or fined up to **\$2,500**.



HOW DO YOU GET THE COURT TO ISSUE A WARRANT?

A person wanting a warrant will need to apply to the Family Court for one. But the Court can decide to issue one on its own – if, for example, a case is already before the Court because one of the parties to a parenting order has applied for a change to the order after a serious breach.

CHILDREN 16 AND OLDER

The Court won't issue a warrant for a child who is 16 or older unless the case is exceptional.

TAKING THE CHILD OVERSEAS

HOW CAN YOU PREVENT THE CHILD BEING TAKEN OVERSEAS?

If you believe your child's other parent or another person is about to take them overseas in breach of a parenting order, you can ask the High Court, District Court or Family Court to prevent this. You can also do this if you've only applied for a parenting order or are about to apply for one.

You need to be able to prove to the Court –

- that taking the child out of New Zealand would breach a current parenting order that gives you day-to-day care of or contact with your child, or

- that you have applied for a parenting order or were about to apply for one, and the other person is about to take the child overseas to prevent you getting day-to-day care or contact under an order.

People other than parents can also ask the Court to intervene if they have been given day-to-day care of or contact with a child under a parenting order, or have applied for a parenting order or are about to apply.

You will also need to tell the Court why you believe the child is about to be removed – for example, because their other parent has said they will take the children with them when they go to live overseas.

WHAT CAN THE COURT DO?

If the Court believes on reasonable grounds that the child is about to be taken overseas, it can issue a warrant for the Police or a social worker to get the child and take them to a suitable person until a Family Court deals with the case.

The Court can also order that the person who was about to remove the child must surrender their own, and the child's, travel tickets and passports.

For more information, see the pamphlet **Preventing Children Being Removed from New Zealand**.

CRIMINAL OFFENCES

It's a criminal offence to take, or try to take, a child out of New Zealand knowing that a current parenting order gives day-to-day care or contact to someone else, or as a way of preventing a parenting order being complied with.

It's also an offence to take a child overseas knowing that a dispute involving the child is about to go to Court or that the other parent is about to apply for a Court order.

If convicted of this offence, a person can be jailed for up to **three months**, fined up to **\$2,500**, or both.

It's also a criminal offence to stop or try to stop the Police or a social worker from taking the child if the Court has issued a warrant for them to do this.

If convicted of this offence, a person can be jailed for up to **three months**, or fined up to **\$2,500**.

NEED MORE INFORMATION OR ADVICE?

For more information or advice about breaches of parenting orders, look on the Family Court website (www.justice.govt.nz/family), or contact a family lawyer (www.familylaw.org.nz), a community law centre, or the nearest Family Court office.

LEGAL AID

Anyone who needs a lawyer but can't afford one may be able to get **legal aid**. This is where the Government pays some or all of the lawyer's bills (sometimes you may have to pay some or all of it back).

You can get information on legal aid by –

- contacting the local Legal Services Agency office (see the blue Government pages at the front of the phonebook)
- visiting the Legal Services Agency website at www.lsa.govt.nz, or
- seeing a lawyer and discussing legal aid with them.

Legal aid is available for all Family Court cases, except dissolution of marriage (divorce).



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www.justice.govt.nz/family