

Children & Parenting

Are you experiencing family violence? Do you have children?

Your children may or may not also be experiencing the abuse. If you are thinking of leaving, know what to do to keep your children safe.

This info sheet addresses frequently asked questions about children and parenting when you are experiencing violence, maybe caused by your partner or the other parent of your children.

Can I take my children with me if I leave?

This is tricky. First, make sure your children are safe. If you take your children with you, apply as soon as you can to the court for an interim (temporary) parenting order giving you primary care and control of your children. Make getting a parenting order part of your safety planning.

It is a good idea to get legal help about parenting your children before you leave your relationship. You can talk to a lawyer through Legal Aid Alberta or a community legal clinic in your area. To find a lawyer to hire, contact the Lawyer Referral Service. Find contact information for each resource at the end of this info sheet.

Canada's *Divorce Act* says that a parent must give notice of a change of residence or relocation to the other parent and people having contact with the children. It also says you can apply to the court without notice to the other parent to waive this requirement in cases of family violence. Learn more about moving and the *Divorce Act* at www.cplea.ca/family.



For more information about parenting and the law, see CPLEA's **Parenting Time and Contact** booklet and video at: www.cplea.ca/family

For more information about **safety plans**, see the **Planning to Leave** info sheet at www.willownet.ca

Or contact Alberta's **Family Violence Info Line** at 310.1818 from anywhere in the province.

*You should NOT rely on this booklet for legal advice.
It provides general information on Alberta law only.*



For more information about how to apply for a parenting order, see CPLEA's **Parenting Time and Contact** booklet and video at www.cplea.ca/family

What is an interim parenting order?

An interim parenting order is a temporary court order about parenting arrangements. Parenting arrangements include:

- where the children will live
- how the parents will look after the children
- how the parents will make decisions about the children
- how the parents should communicate with each other

Parenting time is the time a parent has with a child. During this time a parent has responsibility for the child. They can make day-to-day decisions about the child, unless the court orders otherwise. Both parents can make major decisions for the children unless the court also orders otherwise. This is called decision-making responsibility (in Canada's *Divorce Act*) or the responsibilities of guardianship (in Alberta's *Family Law Act*).

An interim order is not final. The court can review the order and make changes as necessary, usually over time or as the situation changes.

When should I apply for an interim parenting order?

You should apply for an interim parenting order as soon as you safely can. If you can, apply before you leave your relationship.

If your situation is urgent or unsafe, you may be able to apply for an interim parenting order **without notice** to the other parent. This means you appear in court without telling the other person that you are doing so. Usually these orders are only good for a short time until the court can safely hear from both parents.

Does the court consider family violence and abuse when making an interim parenting order?

Yes. The court always makes parenting decisions in the **best interests of the child**. This means the parenting order or plan must protect the child's physical, emotional and psychological safety, as well as the child's needs and security.

One of the factors the court considers when looking at the best interests of the child is whether there has been family violence and the impact of the violence on the child. Both Canada's *Divorce Act* (for married people) and Alberta's *Family Law Act* (for married and unmarried people) list family violence as a

factor for the court to think about when making a decision in the best interests of the children. You must give the court evidence to convince them that spending time with the other parent is not in the child's best interests.

Remember though, just because the court finds there is family violence, the court may still decide it is in the child's best interests to spend time with the other parent. The court may find the person causing harm to you may still be able to safely parent your children. The court can also order safety measures for a parent's time with the children, such as supervision, time together only in public places, or contact only by phone or video chat.

What happens if I do not get an interim parenting order?

Unless the court says otherwise, parents in Alberta must make major decisions about their children together. One parent cannot move with the children without the permission of either the other parent or the court.

If you do not get a court order allowing you to keep your children with you, you can face serious consequences. The other parent may claim you kidnapped the children and you could face criminal charges. The other parent may apply to court for a parenting order before you do. Withholding the children from the other parent without a court order can reflect badly on you when you eventually go to court.

Sometimes parents can agree on parenting their children when they separate without going to court. You should still think about getting a parenting order if any of the following are true:

- You are concerned about your children's safety when they are with the other parent. A good question to ask is: "If we were still in a relationship, would I leave the children alone with the other parent or guardian?"
- You feel unsafe or intimidated by your spouse or partner.
- Your spouse or partner has not let you see your children.
- Your spouse or partner is ignoring the situation and won't deal with your relationship breakdown.
- Your spouse or partner has taken the children and cannot be found.
- You are concerned your spouse or partner may try to remove the children from Canada.



About CPLEA

The Centre for Public Legal Education Alberta is dedicated to making the law understandable for Albertans. We provide legal information on a wide variety of topics through our websites, print resources, workshops and more. For more information, visit our website: www.cplea.ca

© 2021

Legal Resource Centre of Alberta Ltd., Edmonton, Alberta

Operating as: Centre for Public Legal Education Alberta

You should NOT rely on this booklet for legal advice. It provides general information on Alberta law only.

We would like to thank the Alberta Law Foundation and the Department of Justice Canada for providing operational funding, which makes publications like this possible.

**Alberta LAW
FOUNDATION**



Department of Justice
Canada

Ministère de la Justice
Canada

Does the person causing harm have the right to still see our children?

Yes, unless the court says otherwise. Which is why it is important to get a parenting order as soon as you can. The court will decide on parenting time based on what is in the children's best interests.

Resources

Find more information about domestic violence and the other info sheets in this series on **WillowNet** – a CPLEA website about violence and abuse laws in Alberta. www.willownet.ca

- **Family Violence Info Line: 310.1818**
Get help anonymously. Available 24/7 in over 170 languages.
- **Victim Services Alberta: 780.427.3460 or www.alberta.ca/victim-services-units.aspx**
Connect with local supports.
- **Court and Justice Services: www.alberta.ca/court-and-justice-services.aspx**
Get help finding court forms or information on the court process.
- **Community Legal Clinics in Alberta: www.lawcentralalberta.ca/clinics**
Get free legal advice if you earn a low income.
- **Legal Aid Alberta: www.legalaid.ab.ca or 1.866.845.3425**
Subsidized legal services in Alberta.
- **Legal Aid Alberta's Emergency Protection Order Program (EPOP): 1.780.422.9222 (Edmonton area) or 1.403.297.5260 (Calgary area) or www.legalaid.ab.ca/services/family-violence-matters/**
Get free legal help applying for an EPO.
- **Law Society of Alberta's Lawyer Referral Service: 1.800.661.1095 or bit.ly/3cPI207**
Find a lawyer to hire in Alberta.



We want to know what you think!
To take our one minute survey:

- capture this QR code with your phone camera, or
- go to bit.ly/3g8tby9