

Parenting Order Contraventions

This factsheet explains contraventions of parenting orders. Read this factsheet to learn:

- what is a contravention?
- what can you do if the other party to a parenting matter is contravening the parenting orders?
- how does the Court deal with a contravention application?

What is a 'contravention'?

A contravention occurs when a party intentionally does not comply with court orders or makes no reasonable attempt to comply with court orders. A contravention can also occur where a person prevents another person from complying with an order. Some parenting orders will include an order that allows the parties to make alternative arrangements if both parties agree to the alternative arrangements (usually in writing or in a subsequent Parenting Plan). In these circumstances, a contravention may not occur.

When the other party contravenes the orders

If you believe that the other party is contravening the parenting orders or has recently contravened the parenting orders, you may wish to apply to the Court to resolve the issue. This application is called a Contravention Application.

Before you file a Contravention Application with the Court, you should speak to a solicitor. Legal Aid's Family Law Duty Service can provide free information and advice about whether applying to the Court is the best way to deal with the contravention.

Legal Aid ACT Family Law Duty Service

Phone: 1300 654 314

Location: Family Court, Nigel Bowen Commonwealth Law Courts, Cnr University Ave & Childers St, Canberra Australian Capital Territory 2601.

Generally, you will be required to attend a mediation to attempt to resolve the contravention dispute before you apply to the Court. Other ways to deal with a contravention may include writing to the contravening party to request compliance with the orders. If the contraventions are occurring because the orders are no longer suitable for both parties, you may wish to amend the order by agreement so that both parties can better follow the orders.

If the contravention is happening because the parties disagree on how the orders should be interpreted, you should get legal advice. In this circumstance, the orders may need to be amended to make them clearer to the parties.

What is involved in a Contravention Application?

A Contravention Application should focus on the facts. You will be required to file the application with an affidavit. The affidavit should set out specifically when the contravention(s) occurred and how, including times and dates of each contravention. The affidavit should also include details about attempts that you have made to have the orders complied with. This might include things like messages you have sent the contravening party where you have told them they are contravening the orders, and you have asked them to comply with the orders.

How does the Court deal with Contravention Applications?

A Court, in considering the Contravention Application, may do one of the following things: -

1. Find that there was no contravention.
2. Find that there was a contravention but take *no* action.
3. Find that there was a contravention and take *some* action.
4. Find that a contravention is established, but that there was a *reasonable excuse* for

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contravention.

What sort of action will the Court take if a contravention is established?

If the Court finds that, on the balance of probabilities, a contravention has been established and it is appropriate to take action, the Court may make any of the following orders: -

1. An Order for make-up time for time lost.
2. An Order for change of residence.
3. An Order that the contravening party pay a fine.
4. An Order that the contravening party spend a period incarcerated.

Whether or not the Court orders any of the above will depend on the circumstances of the case and the severity of the contravention.

What happens if I contravene the orders?

The Court expects parties to make all reasonable efforts to comply with an order.

A Family Law Court may decide not to take action where a person had a **reasonable excuse** to contravene orders. A person may have a reasonable excuse to contravene the parenting orders if the contravention is necessary to protect the health or safety of a child. For example, you may have a reasonable excuse to breach the parenting orders if it is necessary to protect the child(ren) from a real risk of family violence, abuse, or neglect. Please be aware that the court will not consider a party to have a reasonable excuse to contravene the orders lightly. The risk to the child(ren) that you are alleging must be serious and real.

If you intend to contravene parenting orders, or have contravened parenting orders, you should get legal advice straight away. Legal Aid's Family Law Duty Service can provide free information and advice about contravening a parenting order.

Where there is a reasonable excuse to contravene the orders, orders should only be contravened for as long as the risk exists. This means that if the risk is addressed, it may no longer be reasonable to contravene the orders.

If you contravene parenting orders without a reasonable excuse, or your concerns in relation to the safety and wellbeing of the child(ren) cannot be substantiated, the Court may deal with your contravention as outlined earlier in this factsheet, under the heading '*What sort of action will the Court take if a contravention is established?*'

Get Help

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Please note that the Legal Aid Family Law Duty Service 'in-person' service at the Family Court is temporarily suspended due to the current Covid-19 crisis and is operating remotely by phone.

<http://www.legalaidact.org.au/events>

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This factsheet provides basic information only on family law. This factsheet should not be substituted for legal advice. You should seek legal advice about what to do in relation to your matter.

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