



# Legal power and protection.

## QuickLaw answers your questions

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# Child Access

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GUIDE





## Child Access

### What is child access?

- > Child contact/ access refers to the legal right of a non-custodial parent or guardian to spend time with and visit their child who primarily resides with the other parent or guardian. It encompasses the opportunity for the non-custodial parent to have regular contact and meaningful relationships with their child, even if they do not have physical custody.
- > Child access arrangements typically outline the schedule and terms under which the non-custodial parent can visit or spend time with the child, taking into account factors such as the child's best interests, the parents' schedules, and any special needs or circumstances of the child or family.
- > Access rights can vary depending on the custody arrangement, court orders, and agreements between the parents or guardians. The goal of child access arrangements is to ensure that both parents maintain an active and ongoing presence in the child's life, promoting the child's well-being and relationship with both parents.

### Parental rights

- > Subject to the best interests of the child, and to section 78 of the Children's Act, every parent shall have the right, in relation to the child, to-
  - (a) Have the child live with him or her;
  - (b) Control and guide the child's upbringing;
  - (c) Maintain personal relations with, and have access to, the child if the child does not live with him/her;
  - (d) Represent the child in all contractual and other legal matters regarding the child's property and other interests;
  - (e) Participate in the prescribed manner, in court and other proceedings related to the child;
  - (f) Appoint a guardian or revoke the appointment of a guardian when one has been appointed, subject to the court's approval, and
  - (g) Have access to parenting skills programmes put in place in terms of this Act or any other law.

### How can a person obtain the right to contact or access to a child?

- > Any person who has an interest in the care, well-being or development of a child, may apply for the right to access to such a child at the Magistrates Court, which sits as a Children's Court.
- > The right to contact can also be obtained by agreement with the custodian or parent/s of the child.

### What will the court consider when granting an order in respect of contact?

- > When considering the granting of order in respect child contact, the best interests of the child concerned is the paramount consideration. In determining the best interests of the child, the court must take into account the following factors, where relevant:
  - the child's age, maturity and stage of development, sex, background and any other relevant characteristics of the child;

- The quality of the child's relationship with their parent(s) or the individual seeking contact.
- The level of commitment demonstrated by the parent(s) or relevant individual toward the child.
- The financial support provided by the parent(s) or relevant individual for the child's birth and upbringing expenses.
- The potential impact on the child of any changes in their circumstances, including separation from family members they have been living with. Instances of family violence affecting the child or any family members.
- The necessity of shielding the child from physical or psychological harm resulting from maltreatment, abuse, neglect, violence, or harmful behavior.
- Factors such as the child's age, maturity, developmental stage, gender, background, and relevant characteristics.
- Any disabilities or chronic illnesses affecting the child.

### Can the custodian parent/s refuse contact after a court order in respect of such contact was obtained?

- > It is a criminal offence for the custodial parent/s to unreasonably refuse or prevent another person from having contact with the child if an order exists; or
- > If the custodial parent/s do not advise the other person in writing of any change of his/her residential address.
- > The aggrieved person may:
  - > Lay a complaint at the police, which offence is punishable with a fine or imprisonment or apply to the Children's Court or Magistrates Court for committal of contempt of court.
  - > The aggrieved person must prove that the custodial parent/s acted willfully and mala fide (in bad faith/intentionally misleading the other person).
- > A child who is born out of wedlock and does not live with both of his or her biological parents has a right to access the absent parent, and to be nurtured, supported and maintained by such absent parent in accordance with the provisions of the Children's Act and any other Act which deals with the care and maintenance of children.
- > Any parent, other relative or guardian or other person who, without reasonable excuse, refuses the absent parent access to the child shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term of not less than three months but not more than six months, or both.
- > No person shall separate a child from his or her parents, other relatives or guardian unless it is in the child's best interests to do so.
- > Subject to a child's age, maturity and level of understanding, any person seeking to separate the child from his or her parents, other relatives or guardian shall seek the child's consent.
- > Any person who contravenes the provisions of the above 2 subsection shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term of not less than three months but not more than six years, or both.

### Does a parent have to pay maintenance if s/he is refused contact?

- > Both parents of a child have a legal duty to maintain their child. It includes money for food, accommodation, clothing, medical care and education.
- > It is the primary responsibility of parents to maintain their child. Even if the child is cared for by someone else, the mother and father both have a duty to maintain the child. If a child is adopted, the adoptive parents have a duty to maintain the child.
- > A parent still has the legal duty to maintain his or her child whether a parent has a contact right or not.

### May a court order in respect of contact be changed or cancelled?

- > Yes, an application must be made at the Children's Court/ Magistrates Court for the changing (variation) or cancellation of the court order (the Family and/or their attorney must be informed of this application).
- > The court must be satisfied that the changing (variation) or cancellation of the court order will be in the best interests of the child.

### What if a dispute exists between the parents in respect of contact?

- > A dispute can be referred for mediation via a family meeting, a designated social worker or to the children's court, if the mediation process fails.

### How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest Branch.