



**CHILD LAW**

## PREAMBLE

*Jusshjelpa* i Nord-Norge receives a large number of questions regarding children's law. The purpose of this brochure is to help clarify and raise awareness of children's law in a simple and understandable way.

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## Content

<b>Terminology .....</b>	<b>5</b>
<b>1 Mom and Dad .....</b>	<b>7</b>
1.1 The mother of the child.....	7
1.2 The father of the child.....	7
1.3 Change of established paternity .....	8
1.4 Co-mother .....	8
1.5 Co-father .....	8
<b>2 Parental Responsibility and Permanent Residence.....</b>	<b>9</b>
2.1 Content of the parental responsibility .....	9
2.2 Who has the parental responsibility? .....	9
2.3 The child's right of co-determination and self-determination .....	10
2.4 The permanent residence of the child.....	10
2.5 Shared residence .....	11
2.6 How to get the full parental responsibility.....	11
2.7 Conflict of parental responsibility after death .....	12
<b>3 Right of Access .....</b>	<b>14</b>
3.1 Right of access .....	14
3.2 The extent of the right of access.....	15
3.3 Implementation of the right of access .....	15
3.4 Denial of the right of access.....	16
<b>4 Entering a Contract .....</b>	<b>17</b>
4.1 About the agreement.....	17
4.2 Shared residence .....	17
4.3 Right of access .....	17
4.4 Vacation and other important events.....	18
<b>5 Coercive Measures .....</b>	<b>19</b>
5.1 The need for coercive measures.....	19
5.2 Coercive measures .....	19
<b>6 Child Support .....</b>	<b>20</b>
6.1 Child support when parents do not live together.....	20
6.2 Duration of the child support.....	20
6.3 Change of child support .....	21
6.4 Enforcement of child support.....	21
6.5 Support for families with children and single parents .....	21
6.6 Recovery of contributions when the paternity is revoked.....	22

<b>7</b>	<b>Family Protection Office.....</b>	<b>24</b>
7.1	<i>Family Protection Office for parents and families.....</i>	24
7.2	<i>Family Protection Office for children .....</i>	24
7.3	<i>Mediation at the Family Protection Office.....</i>	24
<b>8</b>	<b>The Child Protection Service.....</b>	<b>26</b>
8.1	<i>The child protection service's duty to investigate.....</i>	26
8.2	<i>General processing rules .....</i>	26
8.3	<i>The child protection service duties .....</i>	26
8.4	<i>Care order .....</i>	27
8.5	<i>Depriving of parental responsibility.....</i>	29
8.6	<i>Measures for children with behavioral difficulties.....</i>	29
<b>9</b>	<b>Processing of Parental Disputes in the Court.....</b>	<b>30</b>
9.1	<i>To bring a case for the court.....</i>	30

## Terminology

**Right of access** – The child has a right of access with both parents, and the parents have a mutual responsibility for putting the right of access into practice.

**NAV** – NAV, or the Norwegian Labor and Welfare Administration, administers a third of the national budget through programmes such as unemployment benefit, work assessment allowance, sickness benefit, pensions, child benefit and cash-for-care benefit. The local authorities and central government cooperate to find good solutions for users through 456 NAV offices in municipalities and city boroughs. Each local authority and NAV agree on what local authority services their office should provide. The services provided by a NAV office will therefore include different services provided by NAV.

**The Family Counselling Office** – The Family Counselling Offices are staffed by psychologists, social workers and other specialists in family therapy. Family counselling offices provide couples and family therapy, as well as individual counselling sessions.

**The Child Welfare Service** – The Child Welfare Services provides help and support to children, adolescents and parents who are experiencing challenges or difficulties within the family. The Child Welfare Services may also get involved if a child is in need of help for other reasons, such as behavioral issues connected to drugs or alcohol.

**Care order** – A Care Order is an order, which places a child under the care of the Local Authority. This is otherwise known as a child “being in care”. The Order is applied for by the Social Services Department of the Local Authority and gives the Local Authority parental responsibility for the child.

**The Enforcement Officer** – Enforcement Officer is a Norwegian government official who carries out forced transactions (extradition transactions, exceptions and forced sales). The functions performed by the Enforcement Officer are called the civil justice system on the ground level and are one of the tasks of the police, along with order service and investigation.

**The Execution Authority** – The Execution Authority is responsible for securing and enforcing money claims. This type of work is often performed by your nearest police office.

**SSB** – Statistics Norway is the central institution for the collection, processing and dissemination of official statistics in Norway.

**The County Governor** – The County Governor is the chief representative of the King and Government, and work to ensure that decisions of the Parliament and Government are implemented correctly. The County Governor is the state’s representative in local counties and is responsible for monitoring the decisions, objectives and guidelines set out by the parliament and Government. In addition, the County Governor provides an important link between municipalities and central government authorities.

**The County Social Welfare Boards** – The Boards are a state body and serve as a tribunal. Decisions made by the boards are impartial and pursuant to the Child Welfare Act, the Act Relating to Municipal Health and Care Services, and the Act Relating to the Control of Communicable Diseases. The boards are free of influence when they carry out their judicial function.

**Parental responsibility** – Parental responsibility is the duty and the right parents have to make decisions about the child’s personal matters. The one or those who have parental responsibility are also the child’s guardians.

**The child’s place of residence** – The child’s place of residence is where the child has its primary residence.

**Section** – Paragraph or §.

**The National Insurance Scheme** – Membership in the National Insurance Scheme is the key to eligibility for rights to services from NAV. In Norway, your membership can be based on residence or employment. You can also be a member of the National Insurance Scheme during stays abroad.

**SFO** – Stands for “After School Childcare”.

**Paragraph** – A subsection in a law or regulation.

**Regulation** – Legally binding regulation of rights or obligations, determined by the state or municipal executive agency.

**Preparatory works** – This is the work of the Parliament, experts and interest groups that is made prior to new law or amendments. It can be helpful to read the preparations to get insight into what the legislature wanted to achieve by introducing the law.

#### **Relevant Laws:**

- Lov av 8. april 1981 om barn og foreldre (barneloven)
- Lov av 17. juli 1992 om barneverntjenester (barnevernloven)
- Lov av 13. juni 1980 om fri rettshjelp (rettshjelploven)
- Lov av 16. juni 2017 om adopsjon (adopsjonsloven)
- Forskrift av 12. desember 2005 til lov om fri rettshjelp (rettshjelpsforskriften)
- Forskrift av 15. januar 2003 om fastsetjing og endring av fostringstilskot (bidragsforskriften)
- Convention for the Protection of Human Rights and Fundamental Freedoms
- Convention on the Rights of the Child

You can find current legislation at [www.lovdata.no](http://www.lovdata.no).

# 1 Mom and Dad

## 1.1 The mother of the child

The Children Act Section 2 stipulates that the woman who has given birth to the child, shall be regarded as the mother of the child. This applies regardless of surrogacy and egg donation.

## 1.2 The father of the child

According to the Children Act Sections 3 and 4, one can become a father in three different ways: Through marriage, by declaration or by judgment.

### Married parents

If the child's mother is married at the time of birth, her spouse will automatically be determined to be the father of the child, according to Section 3 first paragraph of the Children Act.

### Separated parents

If the child's mother is formally separated at the time of birth, the paternity must be registered through a statement. However, if the father declares paternity, the child will be considered born by married parents, and the rules of married parents will apply.

### Unmarried parents

If the mother and father are not married at the time of birth, the father must register his paternity through a statement. The father can declare paternity before, in connection with, or after birth. According to Section 4 of the Children Act, paternity can be declared in three alternative ways:

#### 1) In the birth announcement

In order for the acknowledgment of the birth announcement to be valid, it must either be approved in writing by the child's mother or given by the man the mother has stated as the child's father.

#### 2) Declaration of paternity while in personal attendance before:

##### a. Midwife or doctor during pregnancy check

It is possible to declare paternity in connection with pregnancy checks at the midwife's or at the doctor's office. It is not possible to declare paternity in this way after birth.

##### b. National Register

##### c. NAV or judge

##### d. Norwegian diplomatic or consular official, if the father is abroad

#### 3) By DNA analysis

NAV can demand that the potential father and the child deliver biological samples for DNA testing. Following this process, a judicial decision of paternity will be sent to the potential father. Read more about DNA analysis in the Children Act Section 11.

If the potential father does not acknowledge paternity or fails to respond to the paternity injunction, this will be sent to a court for a decision. The court may declare paternity by judgment, see Sections 5 and 9 of the Children Act.

### **1.3 Change of established paternity**

It is possible to change established paternity. The child, each of the parents and a third person who believes he is the father of the child despite an already established paternity, can file a suit of such change. A case regarding the change of paternity can be arranged even if the paternity is determined by recognition or after determination as a result of marriage. If the paternity is established by judgment, the previous case has to be reopened.

Paternity can also be changed if the mother of the child, the one who has been regarded as the father of the child and a third party agrees in writing.

For more information, read about change of paternity in Sections 6 and 7 of the Children Act.

### **1.4 Co-mother**

#### **Married mothers**

The co-mother of the child is the woman who is married to the mother on the time of the birth, if the child is born by lawfully assisted fertilization. Maternity does not occur if they later marry or converts their partnership to marriage.

If the child's mother is formally separated at birth, maternity is determined as if the mother is unmarried, see Section 3, second and third paragraph, of the Children Act. If they are cohabitants, the co-mother may declare the maternity. This is regulated by Section 4, last paragraph.

A child cannot have both a father and a co-mother.

#### **Unmarried mothers**

The rules that applies to the declaration of paternity, also applies to co-maternity. This follows from Section 4a, third paragraph of the Children Act. For more information see this brochure part 1.2 under "The father of the child".

### **1.5 Co-father**

Co-father has become a term on equal line with the co-mother. But legally speaking, there is no such term. The male partner of the biological father cannot be a father from the beginning. The only achievable way to establish co-fathership is for the non-biological father to adopt.

The rules about adoption is regulated in the Adoption Act Section 13. If you have questions about adoption, you can contact the Directorate for Children, Youth and Families. See the preparatory works to the adoption act.



## 2 Parental Responsibility and Permanent Residence

### 2.1 Content of the parental responsibility

Parental responsibility is regulated by Chapter 5 of the Children Act, and the content of the parental responsibility is described in Section 30 of the Children Act.

The child is entitled to receive care and solicitude from those who have parental responsibility. This means that those with parental responsibility are obliged to provide a safe upbringing for their child. Parental responsibility shall be exercised based on the child's interest and needs. Those who have parental responsibility shall ensure that the child is educated according to its ability.

The parent whom the child lives permanently with can make decisions about significant aspects of the care of the child. This applies even if the parents have shared parental responsibility. It involves decisions such as whether the child shall attend a kindergarten, questions about leisure activities and where in the country the child shall live. If the parents disagree about where the child shall live, the parents have a duty to mediate, see Section 51, fourth paragraph of The Children Act. You can contact the Family Counselling Office to conduct the mediation.

In major decisions in the child's life that does not concern the daily life, the parents make the decisions together if they have joint parental responsibility. Such decisions are for example guardianship, choice of type of school, religion, questions about name, consent to adoption, whether the child should live outside Norway and issuing passports.

If the parent with the full parental responsibility moves out of the country with the child, the other parent cannot oppose to this. If the parents have joint parental responsibility, both parents must consent for the child to move out of the country. The child can't move out of the country if the parents disagree about parental responsibility or who the child should live with, until the matter is settled. If there is an agreement about visitation rights, the person who is moving away with the child must notify the other parent, even if they are moving within the country. This notification cannot be later than three months before the moving, see Section 42a of the Children Act.

Those who have shared parental custody, or those with full parental responsibility, can take the child on short trips abroad. If the parents have joint parental responsibility, the court may decide to ban foreign trips with the child if it is uncertain whether the child will return.

### 2.2 Who has the parental responsibility?

The main rule for children born *after* 31. December 2019 is that parents have joint parental responsibility, see Sections 34 and 35 of the Children Act. This means that both the mother and the father of the child have joint parental responsibility as a starting point. For children born *before* 31. December 2019 the mother has sole responsibility if the parents are not married.

It is assumed with joint parental responsibility that paternity/co-maternity is set in accordance with the Children Act and is valid from the moment paternity/co-mothership is established.

As long as the parents live together the parents have joint parental responsibility. The parents will not be able to deviate from this arrangement. See the Children Act Section 35 first paragraph and preparatory work.

If the parents are separated or divorced, they have the freedom to decide whether to share the parental responsibility, or if just one of them should have it alone. Until such agreement is concluded, or the court has given a judgment, the parents have joint parental responsibility, see Section 34 second paragraph of the Children Act. The same rule applies for cohabiting parents. See the Children Act Section 35 second paragraph.

When parents are not married or living together at the time of birth, and the mother wants to have the parental responsibility alone, she may notify the National Population Register accordingly within one year after paternity has been established. This shall also apply when the father does not want to have joint parental responsibility. When one of the parents has submitted such notification, the mother shall have the parental responsibility alone. See the Children Act Section 35 first paragraph.

### **2.3 The child's right of co-determination and self-determination**

The child's right to self-determination and co-determination is regulated by Sections 31, 32 and 33 of the Children Act and in the Convention on the Rights of the Child Section 12.

When the child is able to form its own opinions in matters that concern the child, the child has the right to be heard before a decision is made. The child's right to be heard must gradually be taken more into account as the child ages and becomes more mature.

As the child gets older and more mature, the parents shall place more emphasis on the child's opinion. A child who has reached the age of seven, and younger children who are able to form their own opinions, must be provided with information and opportunities to express their opinions before decisions are taken concerning personal matters affecting the child. E.g., which of the parents the child shall live with.

When the child reaches the age of 12, the opinion of the child shall carry significant weight. Children who have reached the age of 15 can decide choice of education and associations themselves.

### **2.4 The permanent residence of the child**

The child's permanent residence is the place where the child lives most of the time, and where the child has its registered address. If the child lives equally with both parents, the child has shared residence.

The parents can agree on who the child should live with. They can agree that the child lives with either one of the parents or both. The agreement can be made between the parents alone, with help from a lawyer, with help from the Family Counselling Office, or others. If the parents disagree on the child's permanent residence, the court decides which one of the parents the child shall live with. The child's interest is the decisive factor for where the child should live, see Sections 36 and 48 of the Children Act.

Factors the courts previously have used in the assessment of what is to the child's best interest are the following:

- Which parent the child is emotionally closest connected to

- The risk of environmental change when moving
- The best possible parental contact
- Stable conditions at home
- The opportunities of childcare
- Keeping siblings together
- The child's own opinion, see part 2.3 in this brochure
- Parents' personal qualities

The court makes a concrete overall assessment of what is considered best for the child in each case. Such a decision will be based on the above-mentioned factors. Therefore it is difficult to give a general prediction of court cases concerning children.

If the child has permanent residence with one of the parents, but the parents share parental responsibility, the other parent cannot object on decisions concerning significant aspects of the caretaking. Such decisions may include whether the child should go to kindergarten, where in the country the child will live, and other major decisions in daily life. See more about this in part 2.1 in this brochure.

## 2.5 Shared residence

The parents can agree on whether the child should have permanent residence with one of the parents or both. If the parents work well together and they live in the same area, shared residence can be a good solution for the child.

If the parents disagree, the court must decide permanent residence with one of them. However, if there are special reasons, the court may decide shared residence.

In cases before the court, the conflict level between the parents is usually high. On this basis the court will often show caution about imposing shared residence. It is also stated in the legislative history of the Children Act that you normally don't want to give shared residence for children under the age of seven. The main rule in Norwegian Children Act is that shared residence is only required when there are very special circumstances, which makes it more beneficial for the child to have a shared residence than to live with one of the parents.

## 2.6 How to get the full parental responsibility

There are two ways to get parental responsibility alone. Either through an agreement, see Section 35 third paragraph of the Children Act, or through a judgment, see Section 56 first paragraph of the Children Act.

### Through agreement

The main rule is that the parents can agree that one of the parents shall have parental responsibility alone.

In most cases, the parents know the child best. The court has a subsidiary role, which is intended for situations where the parents either fail to agree, or in cases where caregivers do not have the best interest in mind for the child.

For the agreement on parental responsibility to be binding, it must be reported to the National Register, see Section 35 third paragraph of the Children Act. Such an agreement implies that the parents have agreed upon a joint understanding about parental responsibility.

## **Through judgment**

If the parents do not reach an agreement, the court decide matters regarding parental responsibility. Section 56 first paragraph of the Children Act states that if the parents disagree on parental responsibility, each of them may file a lawsuit before the court. Furthermore, the provision stipulates that the parents must present a valid mediation certificate. Section 51 of the Children Act also confirms that parents with common children under the age of 16 must attend mediation before a case can be raised about parental responsibility.

A mediation certificate is given by the Family Counselling Office after the parents have tried mediation. The purpose of such mediation is to reach an agreement before involving the court. One should try as far as possible to agree upon an arrangement to avoid a lawsuit. Mediation is cheaper and will often lead to less conflict. If the parents still cannot agree, they will be offered further mediation.

The mediation certificate that is given by the Family Counselling Office is valid for six months. A valid mediation certificate is a requirement for being able to file a lawsuit about parental responsibility, permanent residence and/or right of access.

## **2.7 Conflict of parental responsibility after death**

### **If the parents share parental responsibility**

If the parents share parental responsibility, and one of them dies, the surviving parent gets the parental responsibility alone.

### **If only one parent have parental responsibility**

If the child lives with both parents, and one of them dies, the surviving parent is given the full parental responsibility, even if only the deceased parent had parental responsibility.

If one of the parents die, someone beside the remaining parent may file a lawsuit to get parental responsibility if the remaining parent either:

- 1) have shared parental responsibility, but does not live with the child
- 2) lives with the child, but does not have parental responsibility

You can read more about this in Section 38 in the Children Act.

The time limit for filing a lawsuit is six months. This is especially relevant where the child is placed with a stepparent, foster parent etc. (the deceased's spouse or cohabitant) and perhaps new siblings, and should not be removed from yet another family. Alternatively, there may be relatives of the deceased who wish to take over parental responsibility for the child. In order to prevent the child from being moved before the case is finally settled, a preliminary decision can be requested.

If the deceased parent has stated in writing who they wish should have the parental responsibility, this should be emphasized, see Section 64 third paragraph of the Children Act. The only formal requirement is that the statement must be in writing for it to be valid. Furthermore, this statement should be kept with someone you can, in the event of death, expect to present it. A statement like this will not be decisive for determining who should have parental responsibility, but the statement will be a factor when the court decides the child's best interests. The statement will be given more weight if it is relatively new and if it is reasoned by the writer.

The statement about who should have parental responsibility after the parent's death can lead to a difficult assessment for the court, especially in cases where the surviving parent wants the parental responsibility. In cases like this, the court must make a decision based on the child's best interest. In this evaluation, the court must consider the statement and the consideration of biological affiliation.

If no one has the parental responsibility for the child, the person(s) that wish to have the parental responsibility should contact the district court where the child has its residence. If there is only one claim for parental responsibility, the court should normally agree to grant that person parental responsibility. However, this does not happen if there is a risk that the child will not receive proper care, or if the child will suffer harm in another way.

## 3 Right of Access

### 3.1 Right of access

#### The child's right of access

The child has a right of access with both parents, regardless of whether the parents were together when the child was born. Children have a basic need for contact with both of the parents, and the parents have a mutual responsibility for the right of access. The child's right of access is regulated in Section 42 in the Children Act. The primary purpose of the right of access is to establish and/or maintain a closer contact between the child and the parent who does not live with the child. This should be taken into account when drafting an agreement and exercising the right of access.

#### When can the child participate in deciding the right of access?

All children have the right to be heard. When the child reaches the age of 7, the child's opinion shall be given more weight. When the child is 12 years old, it should be put great emphasis on the child's opinion.

The Children Act assumes that it is in the child's best interest to have contact with both parents. The threshold for deciding that the right of access should be denied, is high. However, the situation is different if there are special circumstances that can make the child unsafe with the person who has access with the child. In a situation like this, it will be possible to establish a safe environment by using, for example, a supervisor during a transitional period. A supervisor is a person the child knows and that has the child's trust.

#### The parents right of access

The parent that does not live with the child has the right of access, unless otherwise is agreed or stipulated. See Section 43 of the Children Act for more information. This means that a parent has the right of access even though he or she has never lived with the child.

The Section provides only a right of access, not a duty of access. The right of access cannot be enforced if the parent does not want to be with the child. However, if the parent neglects his or her right of access, they may be imposed to pay more child support. See Section 71 of the Children Act for more information on reduction of child support for access.

If right of access is not in the best interest for the child, the court must decide that the right of access should be denied. See part 3.4 in this brochure for more information on denial of access.

#### Right of access for other people/individuals than the parents

If one or both parents die, the relatives of the child, or other closely related to the child, may demand the court to determine that they have the right of access and the extent of this right. See Section 45 of the Children Act for more information.

In addition, there is a rule of contact for grandparents in situations where one of the parents is denied the right of access. In a situation like this, the parent can demand that the court decides whether his or her parents should have the right of access, and the extent of it. See Section 45 second paragraph of the Children Act for more information.

### 3.2 The extent of the right of access

The parents may initially agree on the extent of the right of access. This agreement should be based on what they think is in the child's best interest. There is a duty for the parents to examine the opinion of the child, and they must emphasize the child's own opinion, see Section 31 second paragraph of the Children Act. According to the Children Act Section 43, the best possible overall parental contact, the child's age, the child's connection to the local community, travel distance between the parents and other considerations regarding the child, must be considered in the agreement.

Ordinary right of access is defined as a right to be with the child one afternoon a week with accommodation for the night, every other weekend, all together three weeks during the summer vacation, and every other autumn, Christmas, winter and Easter holiday. See section 43 of the Children act. However, this is only a point of reference, and the parents have the freedom to agree on another arrangement.

If there is a high level of conflict between the parents, it may be necessary to formulate a detailed agreement.

If the parents do not agree, the court must decide the right of access. The court is free to decide if right of access should take place and the extent of it. There are no restrictions in the Children's Act against imposing right of access up to 50 %, if this is in the child's best interest. However, the court has been cautious on deciding arrangements up to 50 %. In a situation like this, shared residence may work better.

The court may also restrict the extent of the right of access. According to case law it will be relevant to the restriction if there are strong conflicts between the parents, and whether the right of access can negatively affect the child or there may be personal characteristics of the person who demands right of access.

### 3.3 Implementation of the right of access

The right of access should be carried out even if the parents live far apart. The agreement regarding right of access should be flexible, so that right of access can be implemented. For example, the parents can agree that the right of access should happen less frequently, but over a longer period of time. The travel expenses should normally be shared according to the parents income, but an agreement can be made about a different arrangement, see Section 44 in the Children Act.

The parent who has the right of access must normally cover the costs during the meeting between the parent and child.

The parents who have the right of access can make decisions about the ongoing care of the child during access. This applies to food, clothing, bedtime, socializing with friends, following up at school and other supervision and care.

If, for any reason, the right of access cannot take place as agreed, the other parent shall be notified within reasonable time before the meeting, see Section 43 fourth paragraph of the Children Act. This is important because the parents should have the possibility to align themselves. However, there are no sanctions for violating this rule.

It's considered sabotage of the right to access if the meeting does not happen at the agreed time, and there is no reasonable explanation for this. The law does not say anything about

when there is sabotage, but the law does contain consequences for sabotage of right of access. If the parent with parental responsibility tries to prevent the right of access, the parent with right of access can demand a new decision on who should have parental responsibility and where the child should live, see section 43 fifth paragraph in the Children Act. If one of the parents sabotages the relationship between the child and the other parent, this can be used as an argument against the sabotaging parent in these cases.

The court may set conditions for the right of access. For example, it may be determined that the right of access should take place under supervision. Furthermore, there might be set conditions that certain people may not be present during the right of access, that the right of access must take place in a specific location, that a certain person must pick up or bring the child, or that the adult must be sober during the right of access.

### **3.4 Denial of the right of access**

The right of access should not take place if it is not in the best interest of the child. A decision about denial of the right of access that one of the parents subject to must be made by the court.

This may be necessary if the child has been prone to abuse, or if there is a risk that this will happen. It may also be appropriate for the court to deny the right of access if there is a high chance that the person in attendance will abduct the child.

Abuse includes both psychological and physical violence and sexual abuse.



## 4 Entering a Contract

### 4.1 About the agreement

The purpose of entering into agreements in cases where children are involved is to reduce conflicts within the family. The main goal is to find an agreement in the child's best interest. Therefore, it must be raised awareness of the child's opinion before anything is decided.

A good agreement must regulate the conditions that previously caused problems within the family. The level of conflict between the parents should decide how detailed the agreement should be. In order to reduce the conflict as much as possible, it may be wise to have a detailed agreement.

If the level of conflict between the parents is high, the agreement should determine how the parents are going to communicate. Upon implementation, the agreement should regulate that the parents must show flexibility and respect each other and the child.

The parents decide where the children shall live permanently, and which solution they think is the best for their children. It must be considered whether it is best to have a joint agreement for all children, or whether it is more appropriate to make one agreement for each child.

### 4.2 Shared residence

An agreement about shared residence must be based on the child's best interest. The factor of stability is important.

The agreement should state when the child lives with the father and when the child lives with the mother. It should also regulate how to change residence. It can be useful to change the child's place of residence on a Friday instead of a Monday to make the transition before kindergarten or school easier.

The agreement should also regulate an appropriate time during the stay where the child can call the other parent. This is usually a greater need for the parents than the child, because the child doesn't always feel the need to talk to the other parent. In this aspect of child law, the parents need for contact with the children should be considered. It is also important that the child has a good relationship with both parents. It is important to keep in mind that the parent should show consideration if the child doesn't want to talk on the phone every time.

In general, one parent must not intervene during the care period of the other parent unless this has been clarified in advance.

### 4.3 Right of access

When establishing an agreement about the right of access it will be advisable, and often necessary, to set the time for pickup and delivery of the child. For example, it may be agreed upon that the child should be picked up in kindergarten or after school.

It may be appropriate to merge over a weekend to avoid an overnight stay in the middle of the week. An example of this can be from Wednesday to Sunday, every other week.

When it comes to things the child needs during the visitation period, it is the parent with main care that is responsible for the more expensive items such as bicycles, skis, etc. These should then be brought over to the get-together if needed.

#### 4.4 Vacation and other important events

An agreement should also include practical decisions about holidays, birthdays, sick days, upbringing and other things that are important to the child.

The practice of school holidays depends on where in the country you live in. For example, in Tromsø you do not have an autumn holiday. However, the winter holidays are over a week, usually for nine days. With shared living, one does not usually do anything different in the fall or winter holidays so that these fall under the usual care shifts.

When it comes to Christmas holidays, including New Year's Eve, it's common to split Christmas and New Year in two, especially when living in the same city. Then the child could travel to the other parent on December 27th - this is just an example and is of course optional.

Easter holidays are usually split in half if you live in the same city. If this is not practically doable because the parents live far away from each other, you can agree upon every other Easter.

Decisions concerning summer vacation depends on the child's age. As a starting point, parents can decide how the summer holidays should be conducted every other year. The summer vacation should be determined within a reasonable time so that each parent has time to plan. Parents should work together to the best of their ability. The parent who is the most flexible in terms of work, should be willing to stretch a bit further than the other parent to come up with a solution.

## 5 Coercive Measures

### 5.1 The need for coercive measures

An agreement about the child's permanent residence does not have any practical meaning if the parents does not follow it. Situations like this may occur, and it shows the need for coercive measures. The use of coercive measures can also help prevent conflicts.

### 5.2 Coercive measures

In order to exercise legal coercion, a compulsory basis is required. In custody cases, only decisions made by the court or a county governor can serve as a compulsory basis and be enforced. An agreement between the parents outside the legal system, cannot serve as a compulsory basis.

The coercive measures are different depending on the type of decision which is set to be enforced. The Enforcement Officer makes decisions on which coercive measures should be used.

In decisions about parental responsibility and permanent residence, three alternatives are possible. Firstly, the implementation can be done by the Enforcement Officer picking up the child. This is considered the most drastic way. Second, the entitled can be given the right to pick up the child. It is intended that this opportunity should be used with caution, as such implementation can increase the level of conflict. Finally, it is possible to indirectly enforce coercive fines. For example, you are obliged to pay the national treasury 1000 NOK per day when you exceed the deadline for the execution of the judgment or decision. See Section 65 second paragraph of the Children Act and Section 13-14 of the Enforcement Act.

In decisions about the right of access, the situation is different. Here it is only possible to get enforcement fines. The reason is that the right of access is something being fulfilled on an ongoing basis.

If the person with the right of access fails to complete it, there are no sanctions. A parent has no duty to access which corresponds to the child's right of access. However, according to the rules of contribution, the extent of the attendance is a matter of importance for the child support. The person who has a small amount of right of access, must pay more in contributions. See Section 9 of the Contribution Regulations.

## 6 Child Support

### 6.1 Child support when parents do not live together

Child support is regulated in Section 67 of the Children Act.

Child support is something that the parent who does not live with the child must pay to the parent who lives with the child. The person who is liable to pay child support must pay a fixed sum for the child's care and education, typically once a month. A subsidy like this may also be imposed on a parent who lives with the child, if the parent neglects their duty of care.

Child support is to be paid where one (or both) parents do not live with the child, whether it is a result of separation/divorce, breach of cohabitation or if they never have lived together. This also applies where the Child Welfare Services have taken over the care of the child, and also when the parents have been deprived of parental responsibility. See Section 9-2 of the Children Act.

The parents may also have shared residence, for example every other week. According to section 8 of the contribution regulations, it must be assumed that the parents have the same expenses if the child has shared residence and lives equally with both. Therefore, it is assumed that the child is supported equally by both parents, so that neither of them pays child support.

Child support can be determined retroactively, but not for more than three years back in time. See Section 72 of the Children Act.

#### **Freedom of contract**

Decisions about the size of child support is something the parents must agree upon. The reason for this is that the parents themselves should decide what is best in their situation. An agreement like this should be written.

NAV has developed a contribution calculator.<sup>1</sup> The contribution calculator helps to calculate the contribution size. You can use the calculator to enter into a private child support agreement. The calculator calculates child support in the same way that NAV would have done it.

#### **Child support determined by NAV**

If the parents do not agree about the child support, NAV can determine the contribution. NAV determines child support according to the parents' ability to pay. Eligibility is calculated from a separate model. Contact your local NAV office for guidance.

#### **Collection of contributions**

If one of the parents requires it, contributions can be claimed through NAV. If the contributor does not pay voluntarily, NAV Collection can use coercive measures such as deductions in salary or other ongoing financial benefits.

### 6.2 Duration of the child support

The duration of the child support is regulated in Section 68 of the Children Act.

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<sup>1</sup> <https://tjenester.nav.no/bidragkalkulator/innledning?0>

The obligation to pay child support lasts until the child is 18 years old, unless something else is agreed upon or is regulated by the law. If the child, after the age of 18 is entitled to a subsidy for the time the education lasts. Regular education is considered high school.

### **6.3 Change of child support**

Child support varies according to how old the child is. Children are divided into different age classes: 0-5 years, 6-10 years, 11-14 years and 15-18 years. Transition to a new age class occurs on the 1st of July the year the child enters a new age class. See Section 3 of the Contribution Regulations.

In order to ensure that the contribution is as correct as possible based on the child's age, NAV shall of its own initiative adjust the child support when the child enters a new age class. The same information as in the previous ordinary contribution determination is used. If there has been a change in the ratio of income, you can apply for re-determination. The contribution can be changed by NAV, only if the change is more than 12 % in relation to the current contribution. See Section 12 of the Contribution Regulations.

Instead of re-applying, you can also enter into a new private contribution agreement.

Contributions determined at discretion, assuming that one of the parents receives child allowance benefit or that it has been agreed privately, will not be covered by the automatic adjustment.

### **6.4 Enforcement of child support**

NAV has the authority to claim contributions in cases where the willingness to pay is absent. NAV can use a number of coercive measures such as salary deductions and forced sales of assets.

You can also apply to NAV for advance payments if the child support is not paid. The contribution advance is tested for needs. However, the size of the advance depends on how much income you have, how many children you have and whether you live alone or with a partner.<sup>2</sup>

Contact your NAV office for further assistance.

### **6.5 Support for families with children and single parents**

#### **Child support**

The parent who lives with the child receives child support. If the parents have an agreement that the child should live with both parents, the parents receive 50 % each. If the child lives with a parent who is considered single, this parent is entitled to extended child support, corresponding to the rate for one additional child. This right stops if you remarry, have been cohabiting with a person you do not have joint children with for 12 months, or if you have a child with your cohabitant.<sup>3</sup>

The child support is tax-free and is paid once a month.

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<sup>2</sup> <https://www.nav.no/no/person/familie/barne-og-ektefellebidrag/bidragsforskudd>

<sup>3</sup> <https://www.nav.no/no/person/familie/barnetrygd-og-kontantstotte/barnetrygd>

## How do you apply for child support?

Normally you do not need to apply for child support. If the child is born in Norway, the mother will automatically receive child support approximately two months after birth.

One must still apply for child benefit when:

- The mother is not registered as a resident of Norway.
- The child is older than six months when the right to child support occurs.
- The child is not born in Norway.
- You may be entitled to extended child support.
- Father receives or has received child support for other children.
- The parents have agreed in writing on shared housing for the child and want shared payment.
- The child support shall be assessed in accordance with the rules of the EEA Agreement or other social security agreements.
- The mother wants the father to receive the payment. In such cases, the father must apply.
- You are the guardian of the child. In such cases, it is the child who must be the applicant. You must also enclose guardianship or other documentation confirming that you are the guardian of the child.

## How long can you receive child support?

You can receive child support from the month after the child is born, or from the month after the conditions are met if the right to child benefit arises later. The child support is paid up to and including the month before the child reaches the age of 18.

### Transitional support

In addition, a single parent may be entitled to transitional support. Such benefits can be granted if the single parent is temporarily unable to support herself/himself through his or her own work, because of providing child care or because he or she is eligible for work after finished education. The main rule is that transitional benefit can be paid until the youngest child reaches eight years old. The transitional support is taxable income.

For more information see [www.NAV.no](http://www.NAV.no).

## 6.6 Recovery of contributions when the paternity is revoked

If someone has paid or agreed to child allowance, and later been exempt from paternity, he or she can claim the amount repaid by the National Insurance Scheme. He or she gets a recovery claim, but the claim cannot be addressed to the child itself, the mother or the legal father. It is the National Insurance that has to pay.

The contribution must be agreed upon or imposed. The actual coverage of expenses will not be enough.

The sum shall be index-adjusted in accordance with the consumer price index from Statistics Norway (SSB) from the moment the grant was paid until it is repaid.

The change of paternity must be lawful before recovery can be claimed.

A claim becomes outdated three years after a final decision to repeal paternity has been taken.

The rules mentioned above are regulated from Section 80 of the Children Act.

## 7 Family Protection Office

### 7.1 Family Protection Office for parents and families

The Family Protection Office provides advice and treatment to anyone experiencing difficulties, conflicts or crisis in the family. This can be anything from everyday problems to break-ups and custody removals. At the Family Protection Office, work is done by family therapists, psychologists and social workers.

The services of the Family Protection Office are free and the employees have a duty of confidentiality.

### 7.2 Family Protection Office for children

Children are offered consultations at the Family Protection Office. They may have conversations about all family related issues, such as conflicts between parents, physical and mental violence, illness, drug abuse, forced marriage, control, pressure and coercion in the family.

Some Family Protection Offices organize support groups for children after the parents have split up. This often happens in collaboration with a school or health nurse. Contact your local family protection office for more information.

### 7.3 Mediation at the Family Protection Office

#### Who must meet for mediation?

All parents who have joint children under the age of 16 must attend mediation at the Family Protection Office in connection with separation and cohabitation.

Parents who are considering bringing a case regarding parental responsibility, permanent residence or right of access to the court, must attend mediation to obtain a valid mediation certificate. The mediation certificate is required when a case is to be brought to court. A mediation certificate is valid for six months.

#### Should the children be involved in mediation?

Children have a statutory right to be heard in matters concerning themselves. Children can decide themselves whether they would like to participate in mediation. The child's voice can come more clearly after the child has had a conversation with a mediator. Such a conversation can make the child feeling involved in an important self-related process.

If the child does not want to make a statement, this must be respected.

#### What is the purpose of mediation?

The goal of mediation is to help parents make good arrangements and agreements that takes care of the child's interests.

During the mediation, the parents will make a private agreement on:

- Parental responsibility
- Permanent residence
- Being together
- Other practical things



A written agreement is important to create a safe and predictable framework both for the children and the parents, to remember the content of the agreement and to avoid conflicts later.

After the first completed mediation hour, the parents receive a mediation certificate. This certificate is needed, among other things, to be able to apply for separation or to take a case to court. The mediation certificate is valid for six months.

### **Do you have to meet for mediation?**

The first mediation hour is mandatory. The entire hour must be completed to fulfil the attendance requirement.

If you are prevented from attending, the Family Protection Office must be contacted as soon as possible. The mediator will then decide whether you have a valid reason to postpone the hour.

### **Must one meet for mediation together?**

One should meet together and at the same time for the mediation hour. If you have a very long travel route, it is possible to apply for telephone mediation. If one or both of the parents live abroad, this may provide grounds for exemption from mediation.

In some cases, it is possible to apply for separate mediation, this can be the case where one of the parties is subject to a visitation ban, or where one is in prison or lives at a secret address, or where the balance of power between the parents is particularly skewed.

Application for exemption from mediation is to be addressed to the Family Protection Office. The mediator decides the outcome of applications for telephone mediation and separate mediation.

## 8 The Child Protection Service

### 8.1 The child protection service's duty to investigate

The Child Protection Service has a duty to investigate, which is regulated in the child Protection Act Section 4-2 and 4-3.

If there are reasonable grounds to believe that there are conditions as discussed in, for example section 6-2, 6.3 and 6.4, it's the child protection services duty to investigate these conditions.

An examination may be perceived as unpleasant for both the child and the parent. It must be carried out as careful as possible to minimize the damage for the people involved.

### 8.2 General processing rules

A child who has reached the age of seven, and children younger than seven who are able to form their own views, has the right to be informed and given an opportunity to express their opinion before a decision is made in a case that affects the child. The weight of the child's opinion depends on the child's age and maturity.

If the child has reached 15 years old and understands what the case is about, the child can represent himself and obtain the rights of a party. The child is always considered as a party in cases where measures are to be established for children with behavioral difficulties and for children who may be exposed to human trafficking.

When the Child Welfare Service makes individual decisions, these can be appealed to the country governor. This applies also to follow-up decisions made by the state regional child welfare authority. The Country Governor can override all aspects of the case. This means that The Country Governor investigates the case and investigate what has been done. This includes whether the case processing is reasonable, whether the law has been applied correctly and whether the judgement is correct.

According to the public administration act, anyone who performs service or work for an administrative body, an institution, a center for parents and children or a care center for minors pursuant to the child welfare act, have a duty of confidentiality.

Before any decision is made by the child welfare service, they must obtain the information that is necessary to make a well-informed decision. This requires the case to be thoroughly scrutinized in regard to the actual circumstances and professional assessments, before a decision is made. Which measures that shall apply and which measures that are relevant in the specific case, shall be considered. The parents also have the right to present their objections before a decision is made.

### 8.3 The child protection service duties

#### General information about duties in the Child Protection Service

Public interventions that affects the relationship is regulated by the Child Welfare Act. A distinction is made between voluntary measures, which cannot be implemented against the parents will, and coercive decisions that makes intervention possible without the consent of the parents and the children.

There are two reasons behind the making of the Child Welfare Act. Firstly, the law should ensure that children and young people that live in conditions that can damage their health and development, receive necessary help and care. Secondly, help will ensure that children and young people grow up under safe conditions.

Child welfare cases are processed by the County Social Welfare Board, while parenting disputes about children are processed by the courts, see part 9 in this brochure.

### **Remedial duties**

Before compulsory measures are implemented, remedial measures must be tried. The main provision of remedial measures is regulated in Section 4-4 of the Child Welfare Act. In order to implement remedial measures, there must be circumstances at home, or if the child for other reasons has a special need for remedial measures. What is considered a special need depends on the individual child's situation. Examples can be if the child has an illness, but it may also be the parent's ability to care for the child. Furthermore, specific conditions in the home can also be important, such as the family's finances, the parent's mental disorders, poor interaction between the parents, or difficulties and challenges related to parenting and boundaries.

There are many different remedial measures. Examples of measures includes treatment therapy, parental guidance groups, visitation homes, support contact, daycare and SFO. Some remedial measures can be related directly to the child, while others will be aimed for the parents. A combination of measures will often be required, and they can be implemented for shorter and longer periods. In certain situations, remedial measures can extend over many years.

As a starting point, remedial measures are voluntary. This means that the parents must consent to the remedial measures. Remedial measures can be imposed if the parents do not consent. The conditions for imposed remedial measures are stricter than the conditions for voluntary remedial measures. The County Council has the competence to take decisions. This is because it is a coercive decision, and therefore it needs reassuring case processing.

Remedial measures cannot be imposed by the Child Welfare Service if voluntary remedial measures can create satisfactory conditions. This is according both the necessity requirement (that the measure should be necessary for the child) and in line with the mildest intervention principle. The principle of the mildest intervention, suggests that one should start with the least intervention before a more serious one is to be used. The possibility of remedial measures is also justified based on the biological principle. The biological principle is a principle where it is considered an important starting point for children to grow up with their biological parents. Therefore, one would above all try to help out families in order for the children to be able to continue living with their biological parents.

Instead of or in addition to implementing specific remedial measures, the Child Welfare Service can give children and parents advice and guidance.

## **8.4 Care order**

One of the compulsory measures is that the Child Welfare Services take the child into their care - care order. This means that the child is removed from the parents and that physical care is taken over by the Child Welfare Services. A decision of care order is a very severe intervention, both for the child and for the parents. This means that it will often be a very

difficult assessment to determine if the conditions for care order are met. The care order is regulated by Section 4-12 of the Child Welfare Act.

### Terms

There are four alternative conditions for care order. In addition, it is an absolute requirement for the care order that it is necessary based on the situation the child is in. A decision on care order cannot be made if satisfactory terms can be created for the child by remedial measures.

This means that only one of the four terms must be present. Furthermore, the care order must be necessary and satisfactory conditions can't be created from remedial measures.

- 1) The Child Welfare Service can make decisions about care order if there are serious deficiencies in the daily care of the child or in relation to the personal contact and security that the child needs according to his or her age and development.

The fact that there must be "serious shortcomings" indicates that it takes a lot to take over the care of the child. Serious deficiencies in daily care may, for example, be that the child does not receive food.

When it comes to serious deficiencies in relation to personal contact and security, this relates to the emotional relationship between the children and the parents. It also requires stability for the child.

- 2) The Child Welfare Service can also command a care order if the parents do not ensure that a sick or disabled child, or a child with special needs, receives their necessary special treatment and education.
- 3) Furthermore, the Child Welfare Service can take care order of the child if it is mistreated or exposed to serious domestic abuse. This provision applies to both physical and mental abuse. It also applies for various forms of sexual abuse.
- 4) Finally, the Child Welfare Service can take care order if it is reasonably likely that the child's health or development can be seriously damaged because the parents are unable to take adequate responsibility for the child. This provision is based on an assessment in the future and it concerns the parents' ability to take responsibility for the child. It is particularly this provision that will be applicable to newborns and young children. The parents' personal prerequisites for taking care of the child will be a key assessment criterion. The provision includes the right to take away the care of the child or children when the parents are mentally challenged, or they have mental difficulties that affects their ability to care for the children. This provision may also be relevant if the parents have a substance abuse problem.

When a decision about care order is made, the child should be placed either in a foster home, institution, in a training or treatment institution when this is necessary because the child is disabled, or in a care center for minors. When choosing a placement, emphasis should be put on what is best for the child.

## 8.5 Depriving of parental responsibility

The depriving of parental responsibility is regulated in Section 4-20 of the Child Welfare Act.

If a decision about care order has been taken, there might also have been made a decision stating the parental responsibility shall be deprived from the parents.

Deprivation of parental responsibility is a radical decision, and therefore there must be strong reasons for making such a decision. This means that strong additional reasons are required to deprive the parental responsibility along with deprivation of the care. This applies particularly when the parental responsibility is taken away at the same time as the care, or in close connection with this decision.

A decision to take over care can be maintained even if one does not deprive parental responsibility.

## 8.6 Measures for children with behavioral difficulties

Measures for children with behavioral difficulties are regulated by Section 4-24 of the Child Welfare Act.

A child who has shown severe behavioral difficulties in the event of a serious or repeated crime through persistent abuse of drugs or other types of similar actions, may be placed in an institution without the consent from the person or persons who have parental responsibility. The child is then placed in an institution for observation, examination and short-term treatment for up to four weeks, or for a shorter period if stipulated in the decision.

In principle, there are no restrictions regarding the type of institution it may be appropriate to place the child in. However, it is important to consider the purpose regarding the placement. This means that the institution must have the necessary prerequisites to achieve the purpose of the placement. The institution may be a child welfare institution or other institutions regulated by other legislations than child law.

If the child is likely to need long-term treatment, there can be made decisions about placements for up to 12 months.

"Serious crime" are in the preparatory works aimed particularly at "serious crimes of violence or morality". The term "repeated crime" is exemplified in the same place as "series of thefts or vandalism". However, it must also include other forms of repeated crime, e.g. less serious violent crimes.<sup>4</sup>

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<sup>4</sup>[https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandler/Lesevisning/?p=1991-92&paid=4&wid=c&psid=DIVL312&pgid=c\\_0143&vt=c&did=DIVL320&s=True](https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandler/Lesevisning/?p=1991-92&paid=4&wid=c&psid=DIVL312&pgid=c_0143&vt=c&did=DIVL320&s=True)

## 9 Processing of Parental Disputes in the Court

### 9.1 To bring a case for the court

If you do not reach an agreement after mediation at the Family Protection Office, you can bring a case for the court. Bringing a case to court is costly, it may take a long time, and be burdensome for both the parents and the children.

Some cases should be brought for the court. This applies for, as an example, cases where there are concerns about violence, abuse, intoxication or mental illness, that can expose the child for physical or mental danger. There might also be other conditions where it is necessary to take a case to court.

Child distribution cases can be stressful both for the parents and for the children. However, a successful child distribution process can be clarifying and help to form a secure foundation for the child's further upbringing.

Before you can go to court, the parents must have mediated. All Family Protection Offices offer mediation, see part 8.3.

If the parenting dispute is brought for the court, the judge is responsible for handling the case. The court can take decisions regarding parental responsibility, permanent residence, and visitation. The judge has a duty to check and consider whether it is possible to reach a settlement between the parties. The judge is responsible for the opinion of the child to be heard. It is usually the judge, an expert, or both, who have conversations with the children.

The judge has the opportunity to send the case back to the Family Protection Office for new mediation.

#### **Free legal aid**

Free legal aid is a service created by the public authority to provide people with the necessary legal assistance regardless of their finances. This applies to certain types of cases that are considered particularly important. The offer is reasoned upon the fact that the state, in whole or in partial, covers expenses and costs incurred in connection with legal assistance. Free legal aid is given as free legal counsel, free litigation or exemption from legal fees, see Section 1 of the Legal Aid Act.

#### **Free legal aid may be tried based on your needs**

In some cases, the assistance is means-tested. The fact that the case is tested for needs means that the assistance depends on an individual assessment of the individual's financial situation. Recipients of free legal aid in need-tested cases must pay a deductible part of the expenses for assistance, see Section 9 of the Legal Aid Act.

#### **Free trial**

Free trial means free legal aid during a trial (during court proceedings). The free trial includes full or partial coverage of expenses for a lawyer.

In parenting disputes one can be entitled to free trial, according to Section 16 of the Legal Aid Act. Help is need-tested. The condition is that one has gross annual income and net assets that are below a set limit.

According to Section 1-1 of the Legal Aid Regulation, for an application to be granted, there must be:

- Gross income below 246,000 NOK for single people
- Gross income of less than 369,000 NOK for spouses and others living together with common economy
- Net assets below 100,000 NOK

Gross income means the sum of all taxable income before tax deduction.

Free legislation is not need-tested in cases dealt with by the county board according to chapter 7 of the Child Welfare Act, see Section 17 third paragraph of the Legal Aid Act.

### **Free legal counsel**

Free legal counsel includes necessary expenses for counselling and assistance from a lawyer outside of court (outside court proceedings).

An application for free legal counsel can be granted without need-testing in the following cases:

- a) For those who are part in a case where the child welfare service has made a decision mentioned in:
  - Section 4-6, second and third paragraphs of the Child Welfare Act (temporary decisions in emergencies)
  - Section 4-9 of the Child Welfare Act, first and second paragraphs (preliminary decisions)
  - Section 4-25, second paragraph second sentence, of the Children's Act, where the decision is not followed up by the child welfare service starting preparation for a matter to be dealt with by the county board pursuant to Chapter 7 of the Child Welfare Services Act.
- b) For a party involved in a case where the child welfare service has started preparing for a case to be dealt with by the county board according to Chapter 7 of the Child Welfare Services Act, but where the case is not sent to the county board anyway.

The provisions give right to free legal advice in child welfare cases that are not subjected to subsequent processing for the county board. For cases that are dealt with in the county board, a free trial is granted without the need for a trial according to Section 17 third paragraph nr. 2.

### **How to apply for free legal aid**

An application for free legal aid can be addressed to the County Governor or you can contact a lawyer directly. If you go to [www.advokatenhjelperdeg.no](http://www.advokatenhjelperdeg.no) you can easily find a lawyer who lives nearby you and works with the subject you need help with.