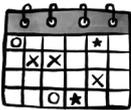




A Guide for Parents in Maine: **How can I protect my children when I can't care for them myself?**



Created by Pine Tree Legal Assistance
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Introduction

This guide is for parents in the state of Maine who need someone else to take care of their children if they cannot. You might need someone to take care of your children if you know you'll be unable to care for them because you need to leave the country, have medical issues, or are facing a jail sentence.

This guide will review some steps you can take to make sure your children's needs are met, including their medical, educational, and financial needs.

If you are a parent in a custody dispute with your child's other parent, this guide is not for you. You can learn more about parental rights and custody in Maine on our website, PTLA.org.

Why is it important to have a plan for my children's care?

It's a good idea for every parent to have a plan in case they cannot care for their child. It can avoid confusion and reduce stress and uncertainty for your child.

If you don't have a plan, it could mean there won't be someone responsible for making sure your child gets to school and the doctor and has a safe, stable place to live. It can also mean that the person caring for your child won't be able to talk with your child's school and doctor's office. This could interrupt your child's education and medical care.

If a child's basic needs are not being met, it's possible someone could make a report to the state that the child is being neglected. The state can open an investigation, and the child could be taken into state custody.

But there are steps you can take to protect your children!

What steps should I take to protect my children if I can't care for them?

These are some of the most important steps you can take to make a good plan for how your child will be taken care of if or when you can't care for them yourself.

The steps covered here will work best if you can't care for your child for a short period of time, like a few weeks or months.

If you know you may be away for longer, or are not sure, you can read more about making long-term plans to protect your children on page 18 of this guide.

Make a plan

The first and most important part of making a plan is deciding who you want to care for your child if you can't. That person should be:

- Someone reliable and trustworthy;
- Someone who will be able to meet your child's needs like getting them to school and the doctor and providing a good home and care;
- Someone who will stay in touch with you; and
- Someone your child knows and is comfortable with.

You should think about how long you will be separated from your child and when and how you will be reunited. If you need to leave the country and you would like your child to follow you, it's important that the person caring for your child can make the arrangements needed to send them to you at a later time.

Make sure you talk to the person and that they understand the plan and agree to help.

It is also important that you talk to your children to let them know that you have a plan in case someone needs to take care of them. You can explain this in a way that is appropriate for your child's age.

Give the person who will care for your children authorizations and information

Once you have decided who will care for your child if you can't, you'll want to make sure everything is ready if that needs to happen.

You should talk to your child's school and doctor to let them know who will care for your child if you can't. They may have special forms for you to fill out about the caregiver. The forms will allow the school and doctor to talk to the caregiver and allow the caregiver to make decisions about your child.

You should also put together important information about your child and keep it in a safe place. You can give a copy to the caregiver or let them know where to find the information. You should include:

- Names and contact information for your child’s school, teachers, and all health care providers
- Any allergies or special medical needs
- Any benefits or medical coverage for your child
- Other information about important things in your child’s life, or about their needs

You can use this Important Children’s Information form or just make a list for each of your children.



(<https://ptla.org/court-form/important-childrens-information-chart>)

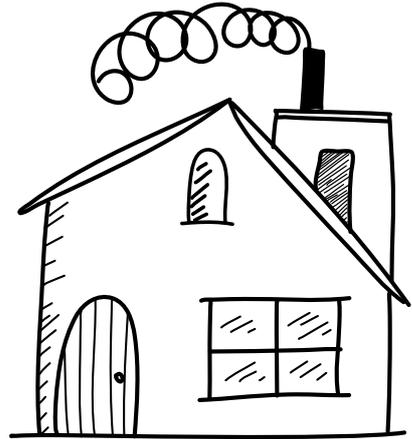
You should also include important information about you, like your location, the name of your attorney, your “A” number (your registration number found on your immigration documents from ICE), if you have one. Family members and your emergency contact can use the ICE detainee locator to find someone in ICE custody.

(<https://locator.ice.gov/odls/homePage.do>)

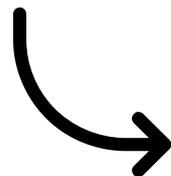
You may also want to fill out a legal form called a Delegation of Parental Rights, also called a Power of Attorney. There are pros and cons to using this form. It can be extra proof that you want the person to care for your child. You can cancel or ‘revoke’ it at any time, and you don’t give up any of your own rights. But it can only be in effect for up to 12 months from when you sign it, and some providers may not accept it.

Even if you decide to use the form, it is best to work with your providers first to make sure that they will work with the person you choose to care for your child.

How will having someone else care for my child affect our benefits and housing?



This will depend on your situation, and who will be caring for your child. We will try to cover some of the most common cases here.



What about public benefits my children and I get?

Most public benefit programs like TANF, SNAP, and Mainecare require you to let them know if there is a change in who is in your household. If new adults are caring for your children, you should make sure they let the benefit programs know about the change. They may be eligible for more benefits because the household is bigger.

If the household your child joins is not eligible for a benefit, your child might be eligible on their own. Your child can apply for a child-only TANF grant or Mainecare coverage.

If you are no longer in your household, you should make sure no one spends your benefits until the household changes are straightened out with the benefit program and they say it is ok to spend them.

If your child or the household's application for benefits is denied or their benefits are terminated, they should call Pine Tree Legal Assistance for help. Sometimes these benefits programs get things wrong or make mistakes. You have the right to ask for a hearing to argue their decision was wrong.

What about my rental housing?

Subsidized Housing

If you live in subsidized housing, it is important to talk to the public housing authority and/or your landlord about changes in your household. If you are the "head of household" but there are other adults in your household, they can ask your landlord or public housing authority to make them the new "head of household." If there are no other adults in your household but someone moves in to care for your children, that person can also ask to be added to the household as the "head of household." Your landlord or the public housing authority will need to know information about them and their income and assets.

Your landlord or public housing authority do not have to let the new person be the “head of household.” But they should not evict your family or terminate your voucher just because you are no longer in the household. If the request to change “head of households” is denied or if the household is threatened with eviction or termination, they should call Pine Tree Legal Assistance. Learn more about eviction and your rights as a renter in Maine at PTLA.org.

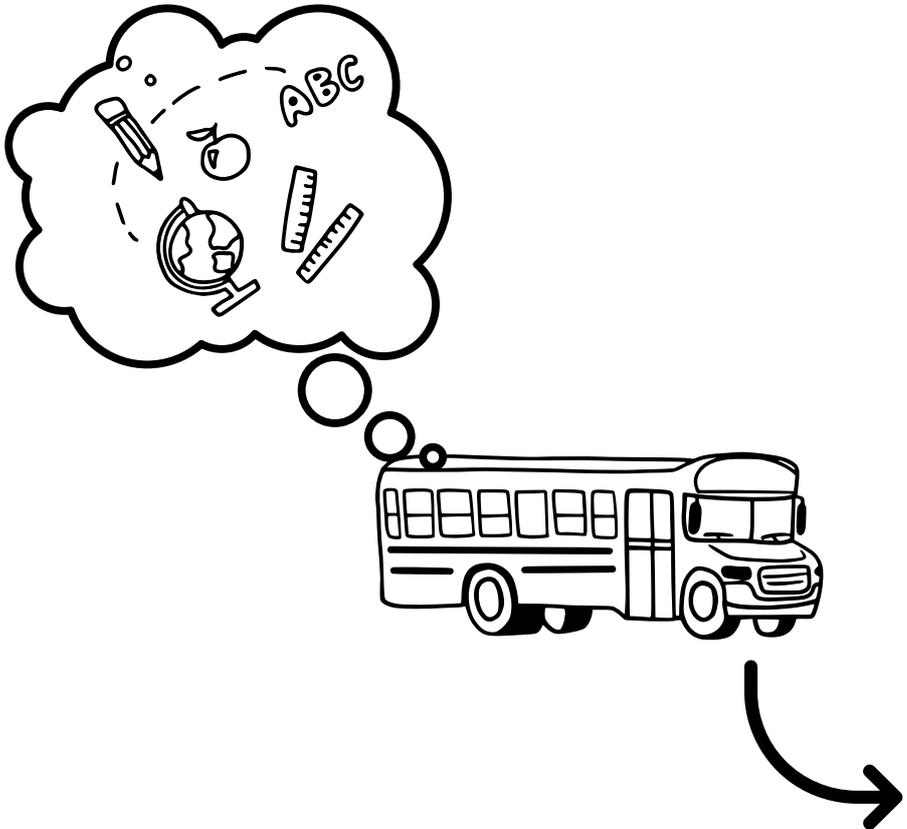
Private Housing

If you live in private housing, the adults left in your household or an adult who moves in with your children, should let your landlord know about the change in the household.

If you have a lease, your household can only be evicted if you violate the lease. Your lease may only allow certain people to live in your unit. This might give the landlord the ability to say no if someone new is moving in. Without your landlord’s permission, your household might be able to be evicted if someone new moves into the unit, including someone who moves in to care for your children.

If you do not have a lease and your landlord is unhappy with changes in your household, they can give a 30-day eviction notice.

Your remaining household members should call Pine Tree Legal Assistance if they are threatened with eviction, or the landlord is not willing to work with them. Learn more about eviction and your rights as a renter in Maine at PTLA.org



Where can my child go to school if they are with a caretaker?

Children have the right to a free and appropriate public education in Maine no matter their immigration status (or yours).

If a student moves in with someone other than their parent or guardian in a different school district they may be able to go to the school in the new district. This can happen without the student getting a legal guardian. They may also be able to stay in their current district.

- To enroll the child in a new school district, the adults caring for your child should help them do this at the school they would attend.
- If a child is living in a new district but would like to stay in their district, it is important to tell the school about the change of address.

The superintendent of the district where the child wants to go will decide whether to accept their enrollment in a new district or allow them to stay even if they are living somewhere else.

In both cases, the adult the student is living with should write the superintendent a letter to support their enrollment. The letter should explain why they are not living with their parents and why the child is living with them. The letter should also ask the superintendent to decide that it is in the student's best interest to go to that school.

The superintendent must decide that it is in the student's best interests to go to that school. When making this decision, the superintendent must find that:

- The student is not living in that school district just to go to school there, and
- It is “undesirable and impractical” for the student to live with either of their parents because:
 - There is a safety reason why they are not living with their parents,
 - There are other reasons that explain why they need to live in the school district, like their parents not being able to care for them.

If your child is living with a different adult and can't live with their parents, that should be enough reason for the school.

Someone at the school must try to contact one of the student's parents to let them know that this request was made. The superintendent may also call the school where the student used to go to find out more about the student and their situation.

The superintendent has 10 days from when they get the request to make their decision.

The superintendent must say yes or no. If the superintendent says no, they must give the person who asked a written denial.

The notice must say:

- The reasons why the superintendent said no, and
- That there is a right to appeal to the Commissioner of the Maine Department of Education.

If your child is not allowed to enroll in a school, they or an adult caring for them should call Pine Tree Legal Assistance.

What if my child is a teenager? Are there different steps I can take to protect them?

If your child is at least 16 years-old and wants to live on their own and make their own decisions, they may be able to under Maine's "Emancipation" law. To be able to live independently, they must be able to take care of their own basic needs. Your child could file a petition for Emancipation in court. If they file a petition, the court would need to assign them a free lawyer.

In the court case, they would need to show:

- They are 16 years-old;
- They cannot live in a home with their parents or another legal guardian;
- They are able to take care of their basic needs like food, shelter, medical care, and school;
- They have the maturity to make decisions for themselves; and
- It is in their best interest to be emancipated.

If the petition for Emancipation is denied or your teenager does not file and they are living on their own, it's possible DHHS Child Protective Services will get involved. If there is no one else to care for your child, DHHS might become your child's guardian and take over decision-making for your child.

If your child would like to file for Emancipation or has other legal questions while they are living on their own, they should call Pine Tree Legal Assistance.

What if I cannot care for my child for a long time, or do not know how long I will be away?

The steps covered so far will work best if you can't care for your child for a short period of time, like a few weeks or months. But if you know you will be away for a longer or unknown time, the person caring for your child might need to have more legal power to serve as the caregiver.

If the person needs to use most or all the powers of a parent, like making decisions about your child's medical, educational, social, and financial needs, they may want to consider going to court to ask to become the child's legal guardian.

Should I agree to allow someone to become the Guardian of my child?

There are benefits and risks to allowing someone to be the guardian of your child.

The benefits are that you can be sure the person will have all of the parental power they need to meet your child's needs. They will be a substitute parent. But when the court makes someone the guardian, it usually means you have fewer rights as the parent.

This is different from the Delegation of Parental Rights or Power of Attorney, which you can cancel at any time. To end a guardianship, you have to file a petition with the court, and the court is not going to agree just because you ask it to.



When is Guardianship a good idea?

Guardianship is best when the other steps in this guide won't be enough to make sure the person can care for your child, like enrolling them in school or getting benefits for them. For example, some jails and prisons require a guardianship order to allow a non-parent to bring a child for visits with an incarcerated parent.

It is very important that you trust the person not to exclude you from your child's life.

How does someone become a guardian for a child in Maine?

The person who wants to become the guardian will file a petition with the court, usually the probate court of the county where the child is living. This person must give notice to the child's parents, even if they do not live in the state or country. You can either agree to them becoming the guardian or let the court know you disagree and do not want them to be made the guardian.

If you do not want them to be made the guardian for your child, it is very important to let the court know right away. You can also ask the court for a lawyer if you cannot afford one.

The judge will hold a hearing to decide whether to make the person the child's guardian. You have the right to get notice about this and go to the hearing.

What are other important things to know about letting another person care for my child?

Even if you are not living in the same town, state, or country as your child, it's very important that you stay in regular contact with them and the person caring for them. Be sure to memorize the phone number of the person who will be caring for your child. If possible, talk with your child on the phone or do video calls. At a minimum, send your child cards or letters. Make sure that you get updates about their health and medical care as well as how they are doing in school.

This regular contact will help your child adjust to your absence. It is also a way to show that you want to stay involved and informed as a parent. This will stop anyone from saying later that you abandoned the child. This will also mean that if you think something is wrong or the child's needs are not being met, you can take steps to fix those issues.



Need legal help in Maine? Call us!

(207)-942-8322



**Learn more about your rights
at PTLA.org**

Pine Tree Legal Assistance, 88 Federal Street, Portland, ME 04101

NOTES/QUESTIONS

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