

INCARCERATED PARENTS MANUAL: YOUR LEGAL RIGHTS AND RESPONSIBILITIES

PRODUCED AND DISTRIBUTED BY

LEGAL SERVICES FOR PRISONERS WITH CHILDREN

&

PRISONER LEGAL SERVICES

Creator: Ellen Barry

Copy Writing: Christiane M. Higgs
Cassie M. Pierson

Contributions: Susan Arding
Kerry K. Doyle
Chanda Gibson
Nicholas Gregaratos
Kristen Hoadley
Melissa Kanas
Ari Leichtman
Kristin Lynch
Ida McCray
Jill McInerney
Maureen McKee
Hali Papizan
Dominique Quevedo
Karen Shain
Virginia “Jenny” Weisz

Legal Services for Prisoners with Children and Prisoner Legal Services wish to thank the parents in jail and prison who have contacted us and asked questions about the law and what you can do to help your families. This manual has been revised and updated for you.

Table of Contents

	Page
Introduction	1
Arrest: What happens to my child?	2
Placement: Where will my child live?	4
Foster Care & Dependency: How can I keep my family together while I'm in jail or prison?	6
Family Reunification: How do I get my child back?	11
Making a Record: What can I do while I'm in jail or prison?	14
Paternity: How do I show I'm the dad?	15
<i>De facto</i> parent: What is it?	16
Child Support: How can I pay when I don't have any money?	17
Special Immigrant Juvenile Status: What is it? Who qualifies?	21
Conclusion	22
Glossary: What do these legal words mean?	23
Samples: Forms and letters to use	
Resources: Helpful groups to contact	

Dedication

When staff members from Legal Services for Prisoners with Children first met Lydia Watkins¹ it was her birthday and she was imprisoned at Valley State Prison for Women in Chowchilla, California. She had a court hearing that day to determine custody arrangements for her three-year-old daughter Geneva whom Lydia had not seen in over a year. She thought we were there to take her to court and was deeply disappointed when she found that was not true. (We were there for a totally different reason that is not relevant to this story.) Geneva was being cared for by an acquaintance of Lydia's. This acquaintance refused to relinquish custody of Geneva so that mother and daughter could be reunited at a community mother-infant facility. For the next year-and-a-half, Lydia fought for custody of her daughter. Her insistence on protecting her own rights and those of her daughter's paid off and Lydia and Geneva were eventually reunited.

We have met hundreds of women and men in prison who have been just as dedicated as Lydia, who have truly fought for the "best interests of the child." For your determination, for your perseverance, but most of all for your love of your children, we dedicate this manual to all of you.

Legal Services for Prisoners with
Children
1540 Market Street, Suite
San Francisco, CA 94102
415/255-7036, Ext. 310
Fax: 415/552-3150
info@prisonerswithchildren.org
www.prisonerswithchildren.org

Prisoner Legal Services
555 7th Street
San Francisco, CA 94103
415/558-2472
Fax: 415/558-2490

¹Lydia's and Geneva's names are fictional but their story is true.

Introduction

If you are a parent in prison or jail, you probably have many questions and concerns about your children and about your legal rights as a parent. Your children may be with relatives or they may be in foster care or a group home. If your children are in foster care, you may have questions about your legal rights and the Juvenile Court proceedings involving your children. If your children are with a divorced spouse or if a legal guardianship has been established, you may have questions about how to reunify with your children once you are released from prison.

This booklet is designed to answer many of the legal and practical questions that incarcerated parents have about custody of their children, both during and after the time they are in prison or jail. It is not intended to replace your lawyer. If you have a lawyer, use her/him: ask questions, give information, tell her/him what you want for your family.

The booklet is based on California law as of March 2007. Laws are different in other states, but many of the suggestions may be useful. *Be sure* to check the relevant legal codes to make sure that the information and forms are up to date.

A note about formatting: Any time you see a word or phrase typed in ***bold italics***, the legal definition of that word or phrase is in the glossary at the back of this booklet.

Arrest: What happens to my child?

The law does not *require* the arresting officers to let you make arrangements for your child at the time of arrest. The arresting officer may let you make a phone call to make sure that your child is with a responsible relative or close friend.

If you're unable to make a call, ask the first attorney assigned to you to get a *court order* allowing you to make emergency phone calls to locate your child and arrange for her care. If you do not have family who can care for your child, contact a trusted friend to care for your child or help you talk with your child.

What if my child is with me?

If your child is with you when you're arrested, the arresting or booking officer may allow you to arrange care for your child before being booked. If so, call **as soon as possible**:

- ❖ The child's other *parent*;
- ❖ A responsible relative of the child; or,
- ❖ A responsible friend—someone your child knows and trusts.

What if my child is not with me?

If your child is **not** with you, let the school, day care center, or other *caregiver* know:

- ❖ That you will not be able to pick up your child; and
- ❖ That your relative/friend/babysitter will be picking up the child; or,
- ❖ Whom they can call to care for your child.

What if my child is not picked up?

If your child is not picked up by a relative or friend, s/he will likely be placed in an *emergency shelter* through the county *Child Protective Services* (CPS) agency. (Welfare & Institutions Code §§300(g) & 306)).

What if my child goes to CPS?

If your child is brought to CPS, act as quickly as possible:

- ❖ Call a relative immediately; or,
- ❖ Have your relative call CPS immediately; and,
- ❖ Tell your relative to bring any proof that exists about their relationship (birth certificate, signed letter from you, passport).

CPS will release your child to a parent, guardian or responsible relative who poses no risk or danger to your child. (Welfare & Institutions Code §309(a)).

CPS will initiate an **emergency assessment** of relatives who come forward to care for the child. This assessment includes a criminal background check, verification of their relationship to the child, and a visit to the home to ensure that the environment is safe. CPS may also consider a “nonrelative extended family member” as a caregiver. (Welfare & Institutions Code §309(d))

If CPS does not place your child with a relative within 48 hours, CPS must file papers in court to make your child a **dependent of the court**.

BE PERSISTENT: ask your public defender, chaplain, community services or medical staff for help.

How do I get to Juvenile Court?

NOTE: Jail Mail Moves Slowly. You cannot depend on receiving hearing **notices** in time to get to court. Keep track of your child's **hearing** dates. Ask your lawyer and social worker to let you know of any changes in court dates. If you have an attorney be sure to tell her/him that you want to be present at the hearings so that s/he can ask the court to issue an order to have you transported to the hearing. If you are not represented by an attorney you should write to the judge and ask to be transported to the hearing. The court must send a copy of the order to the warden not less than 15 days from the date the prisoner is to be transported. (Cal. Penal Code §2625)

Try to get a transport order:

1. 1. Call or write your lawyer or the judge.
2. 2. Ask that the court issue an order to transport you to the hearing. (Cal. Penal Code §2625).
3. 3. Ask for a stamped, filed copy of the judge's order to the warden or sheriff where you are incarcerated and to the county sheriff where the **Juvenile Court** is located. (See **Samples**)
4. 4. Ask your lawyer to meet with you at the local jail (where you will be held directly before and after the hearing) to discuss your child's case.
5. 5. Write to your child's social worker and ask to meet with her/him at the local jail.
6. 6. Ask to visit with your child while there.
7. 7. Keep a copy of every letter that you write. If you cannot get to a copy machine, write out a second copy of the letter with the date and at the top write: “I did not have access to a copy machine. This is an exact handwritten copy of my original letter.”

Placement: Where will my child live?

If CPS is involved, you have a right to a lawyer. Otherwise, you may have to get help from the county *Family Law Facilitator* or other legal aid office. If you need help, see the **Resource Guide** in the back of this manual to get started.

No Court Involvement

If CPS does not become involved, then you will be able to arrange care for your child with a relative or friend without the court's involvement.

Caregiver's Authorization Affidavit (See Forms) (Family Code §§ 6550 & 6552)

This is a two-page form signed by a *qualified relative* to ensure your child's medical and educational needs are met. It allows your relatives to enroll your child in school and consent to school-related medical care on behalf of your child. It is good for one year and can be renewed.

Limitations:

- ❖ This authorization is for temporary situations.
- ❖ The caregiver is not automatically eligible for *Aid to Families with Dependent Children (AFDC)* or other benefits.
- ❖ It can be revoked at any time.
- ❖ It does **not** give the caregiver legal custody of your child.

Power of Attorney (See Forms)

This form lets the caregiver make decisions about your child for you until you are released. A *Power of Attorney* authorizes both relatives and friends to act as a caregiver to your child. An *immediate relative* may receive AFDC or *CalWORKS*; *distant relatives* and friends cannot.

Limitations:

- ❖ The form must be *notarized*.
- ❖ Even notarized forms are not legally binding *custody* agreements.
- ❖ The form is **not** a court order.

Court Involvement

Legal Guardianship

Legal Guardianship transfers legal rights of your child to another person indefinitely. It is a *legal custody* court order. Legal guardianship orders may be voluntary (through Probate Court) or through CPS placement (juvenile court). A legal guardian may be a relative, partner, friend or *foster parent*. Once the court appoints a legal guardian, she has full legal responsibility for your

child including making education, health and medical decisions. A legal guardian can apply for Kin-GAP, CalWORKS or other benefits for your child.

Limitation: Voluntary (Probate Court) Legal guardianships must be done and undone through the courts without a right to a lawyer. A legal guardianship suspends a parent's rights, but does not *terminate* them. Circumstances may change a lot while you are unable to care for your child. Once you are released from jail or prison, you will have to prove your fitness as a parent AND that it is in your child's best interest to terminate the guardianship and return the child to you.

If the guardianship was done through the juvenile court as part of a CPS case, then you may have a lawyer appointed to represent you at a termination of guardianship hearing. You will have to prove that you have housing, a job and are "rehabilitated" and that it is in the best interests of the child to terminate the guardianship. (See **Reunification** section)

Foster Care

In some situations, it may be better to use the courts to get financial help and services through CPS. Relatives who care for a child who is a dependent of the court can get financial help and services through CPS. Parents have a right to counsel in Dependency Court. The **Foster Care and Dependency** section of this manual describes your rights in detail.

If you or your child are of Native American heritage, you must tell the social worker immediately. The procedures for handling Indian child custody cases are under the jurisdiction of the *Indian Child Welfare Act (ICWA)*. ICWA covers any temporary placement and includes placement in a foster home or in the home of a guardian. It also applies to court proceedings that result in adoption or termination of parental rights. ICWA does *not* apply to disputes between parents in a divorce action. (25 U.S.C. §1901 et seq.)

Foster Care and Dependency: How can I keep my family together while I'm in jail or prison?

If you are unable to arrange placement for your child, then CPS will attempt to place her with the other parent, or other relative. In the meantime, CPS may place your child in an emergency shelter or *foster care*. If CPS cannot place your child with relatives or believes your child is at risk of harm, CPS will file a *Juvenile Dependency Petition*.

Call or write CPS and let them know where you are and that you want a lawyer as soon as you know there is a case regarding your child. Even though you are in jail, you can protect your child and your rights.

Make sure you let CPS know the names of **all** relatives on both sides of the family (maternal and paternal) who may be available to care for your child. If your child's placement changes, this will help ensure that s/he remains in family care.

Important Suggestions

- ❖ Ask to be present at every court hearing.
- ❖ Ask relatives and close friends who know your child to be present in court.
- ❖ Talk to your lawyer: tell her what you want for your child and ask questions.
- ❖ Give your lawyer all the information you can to support your child.
- ❖ Talk to your child's social worker: make sure s/he knows you care.
- ❖ **Go to whatever parenting, counseling, AA/NA meetings, or other classes are offered.**

If a *petition* is filed, you have:

- ❖ A right to be notified,
- ❖ A right to be present, and,
- ❖ A right to a lawyer at each of the following court hearings:
 - Detention
 - Jurisdiction
 - Disposition
 - Status Review
 - Permanent Plan

Detention Hearing

A Juvenile Dependency Petition is filed if CPS believes that "there is a substantial risk that the child will suffer serious physical harm or illness, by the inability of the parent or legal guardian to provide regular care for the child." (Welfare & Institutions Code §300)

A ***Detention Hearing*** is scheduled within 48 hours (excluding weekends and holidays) of CPS making an ***emergency response*** to provide care and placement for your child. This hearing is to decide whether the child is to continue to be ***detained*** in custody. (Rules of Court 5.670(e)).

At the Detention Hearing, the court will appoint lawyers for the parents, and sometimes for the child. The court will order a CPS social worker to write a report about your family. Make sure you talk to the Social Worker so that s/he can get to know you. The court will set a ***Jurisdiction Hearing*** date for 15 ***court days*** later. (Rules of Court 5.670(f)). The court will also consider whether visitation should occur between the child and others, including the child's siblings. (Rules of Court 5.670(g)).

At this hearing the parent, the child, and the guardian have the right to confront and cross-examine the people who prepared any police report, probation or social work report, or any other document submitted to the court. You cannot be forced to testify against yourself. (Rules of Court 5.674(d)(1)).

The court may rely solely on the written reports mentioned above. Those reports must include:

1. A statement of reasons why the child was ***removed*** from the parent's custody;
2. A description of the services that have been provided, and of any available services that would prevent the need for the child to remain in custody;
3. Identification of the need for the child to remain in custody; and
4. Information about a ***non-custodial parent*** or any relative with whom the child might be placed.

(Rules of Court 5.676(b))

The court may consider ***detention alternatives*** including placement with a relative or a nonrelative extended family member. If a relative or nonrelative is to be considered, the court will listen to the recommendations of the social worker who has made an emergency assessment of the relative or nonrelative (including a criminal records check and any prior report of alleged child abuse). (Rules of Court 5.678(e)).

Jurisdiction Hearing

At the Jurisdiction Hearing, the Juvenile Court reads the ***dependency petition*** and the social worker's report and decides whether or not to make your child a dependent of the court. Your child will become a dependent of the court if the judge finds that the ***allegations*** in the petition are true ("***sustains*** the petition"), and that these allegations show that your child is at a risk of harm.

You have the right to disagree with the statements and:

1. Present your own evidence;
2. Cross-examine witnesses;

3. Bring witnesses to court; and
4. Remain silent.
(Rules of Court 5.682(b))

If the judge finds the allegations to be true, the court takes legal custody of your child and decides where s/he should live and with whom—also known as disposition.

Disposition Hearing

The court decides where your child will live and what services CPS needs to provide to you and your child and what you need to do to *reunify* with her if s/he is not with you at a ***Disposition Hearing***. At this hearing, CPS recommends a *case plan* for you and your child.

You have the right:

1. To review the CPS plan for you and your family, and for your lawyer to object to any false claims or unproven statements in the report. (Rules of Court §5.690(2))
2. To ask that your child be placed either in your home county, in the county where you are incarcerated, or in the county where your child's other parent or guardian lives. (Welfare and Institutions Code §§361.2(1) and (f)(1)(2));
3. To stay in touch with your child unless the court has specifically found otherwise. You can request that the court specifically order:
 - ❖ Collect phone calls between you and your child on a regular basis
 - ❖ Visits with your child
 - ❖ A plan to transport your child for visits
 - ❖ Counseling for you
 - ❖ Counseling for your child
 - ❖ Other services for you or your child
 - ❖ Services for extended family or Family Preservation Services
(Welfare and Institutions Code §361.5(e)(1)).
4. To say what you want about where your child should live.
5. To ***Family Reunification Services***, unless your child is placed with her other parent, or you fall under one of the listed exceptions found on page 11 of the **Family Reunification** section of this manual.

If your child is under the age of 3 years old when s/he was removed from your ***physical custody***, court-ordered services are limited to a period of six (6) months. (Welfare & Institutions Code §361.5(a)(2))

If your child was 3 years old or older when s/he was removed from your physical custody, court-ordered services are limited to a period of twelve (12) months. (Welfare & Institutions Code §361.5(a)(1))

Court-ordered services *may* be extended up to a **maximum of 18 months** from the date the child was removed from your physical custody, if it can be shown at the ***Status Review Hearing*** that there is a substantial probability that the child will be returned to the parent or guardian within the extended time period **or** you can show that reasonable services were not provided to the parent or guardian. (Welfare & Institutions Code §361.5(a)(3)).

NOTE: It is important to object to and refute any false allegations or unproven statements that are in the report because the information in the report is used as a basis to require a reunification plan.

Status Review Hearing(s) (Six/Twelve/Eighteen Month Review)

The court must review your child's case every six months. At this hearing, the social worker will write a progress report and make recommendations. The first ***review hearing*** is the most important because the court really looks at what you and your family has done to deal with the situation that brought you before the court. You have a right to have a copy of the report at least 10 days before the hearing. ***READ the report.*** Tell your lawyer if you do not agree with the report.

The court may:

- ❖ Order 6 more months of services
- ❖ Order family reunification services terminated and set a ***Permanent Plan Hearing***
- ❖ Continue the case

The court will look at your progress to reunify with your child. The court considers how hard you have worked at meeting the reunification requirements in your case plan for past six months. The court is more likely to return your child if you do **ALL** of the following during this six month period:

- ❖ Follow the case plan (reunification requirements)
- ❖ Visit your child as often as possible
- ❖ Live in a safe place
- ❖ Get a job that you can support your family on
- ❖ Follow all probation or parole rules

(Welfare & Institutions Code §366.21(e), Rules of Court 5.710(c)(2))

If the court does not return your child to you at this time, you have the right to a trial and a right to appeal that decision.

Permanent Plan Hearing (Welfare & Institutions Code §366.26)

If you have not reunified with your child or were not offered Family Reunification, the court will set a Permanent Plan Hearing (also called a “26 Hearing”). At this hearing, the court will read the social worker’s recommendations for a long-term plan for your child, so that she will have a permanent, stable place to live. This hearing usually takes place between 12 and 18 months after your child was detained. If no Family Reunification services have been offered, this hearing may take place much earlier.

The court will consider three permanent plans in order of legal preference:

1. ***Adoption***: Ending your rights as a parent and beginning the adoption process. This may happen if a child has been in foster care for over 12 months and reunification efforts have failed. If your ***parental rights*** are terminated, you no longer have any right to care for or even visit your child in the future.
2. **Legal Guardianship** with a relative, friend or stranger.
3. ***Long-Term Foster Care***.

Post-Permanent Plan Hearings

These hearings are held every six months if your child is in long-term foster care. You have a legal right to attend this hearing unless your parental rights have been terminated. If you are unable to get to court, try to send a relative in your place. (Welfare & Institutions Code §366.3(d))

Family Reunification: How do I get my child back?

You must prove to the court that you are a good parent. In the eyes of the court, this means that you have completed your reunification requirements and your child is not at risk of harm. *Keep in regular contact with your child and do everything possible to meet these requirements.*

Take advantage of any classes, groups or programs that your jail or prison offers, such as anger management, N.A., A.A., parenting, creative arts, GED, etc. The court may order reunification for up to 18 months. However, these court-ordered services can be limited to six months if your child was under the age of three years old when s/he entered foster care.

Reunification Services help you to remain in contact with your child through:

- ❖ Collect phone calls
- ❖ Transportation services
- ❖ Visitation services.

When Reunification Services Will Not be Offered

The court can decide not to offer these services in any of the following situations:

- ❖ The court cannot find you or doesn't know where you are.
- ❖ The court finds that you have a mental disability that prevents you from taking care of your child (2 psychiatric evaluations are necessary here).
- ❖ The court has already taken a child away from you due to physical or sexual abuse, returned the child to you and the child or her sibling is again being removed for physical or sexual abuse.
- ❖ The court has found that you caused the death of a child through abuse or neglect.
- ❖ The child is under the age of five and has suffered severe physical abuse by you or someone you know.
- ❖ The court finds that you have severely abused a child, and decides that your child would not benefit from reunification services with you.
- ❖ The court finds that you willfully abandoned your child and that the abandonment placed the child in serious danger.
- ❖ The court terminated reunification services on another child.
- ❖ You have a history of drug or alcohol abuse and have resisted treatment.

- ❖ You have lost custody and your parental rights of another child and you have not dealt to the court's satisfaction with the reasons you lost custody of that child.
- ❖ You have told the court that you do not want reunification services and that you do not want custody of your child.
- ❖ The court finds that you have taken a child from a placement, and have refused to return the child or tell the social worker where the child is.
- ❖ You have been convicted of a violent felony as defined in Penal Code 667.5(c).

The court will not offer you reunification services if it finds your relationship with your child to be detrimental. To find detriment, the court looks at:

- ❖ Your child's age
- ❖ The strength of your relationship
- ❖ Your sentence
- ❖ Your crime
- ❖ Treatment
- ❖ Effect on your child if no services are offered
- ❖ Your child's wishes if s/he is older than 10
- ❖ Any other factors parties want the court to consider.

Getting Your Child Back After You Are Released:

After you have been released from custody, the process that you follow to get your child back will depend on how much the court was involved in the placement of your child.

Foster Care:

You have the right to a free, court-appointed lawyer. To help your lawyer work for you, you should:

- ❖ Write to your lawyer asking that s/he set up a review hearing after your release.
- ❖ Ask your social worker to set up a revised visitation schedule to take effect as soon as you are released.
- ❖ Arrange to have a safe place to stay and get a job, education or training as soon as possible after you are released.
- ❖ Keep records of every contact with your child. (**See Making a Record**).

- ❖ Meet with your lawyer to let her know about your progress during incarceration: show her your records.

Legal Guardianship:

You must get the court's permission to get your child back. To do this, you should ask the court to terminate or *rescind* the legal guardianship. **If you take your child without the permission of the legal guardian or the court, you could be prosecuted for child stealing. Your probation or parole could also be revoked.**

If legal guardianship is done through CPS, you may have the right to a free lawyer. If not, you should try to obtain legal assistance once you are released from jail or prison. Call the local Bar Association to find out what free legal representation services are available in your county. You can also call the Family Law Facilitator to do the process on your own, *pro per*.

Caregiver Affidavit:

You are still the legal caregiver of your child. Your child can live with you as soon as you are released. However, you should *revoke* the caregiver affidavit and the Power of Attorney. You do not have the right to a free lawyer. You should try to obtain legal assistance once you are released from jail or prison. Call the local Bar Association to find out what free legal representation services are available in your county.

Post-release review

If your child is not returned to you at the first court date after your release, **do not give up!** This is an important time for you and your family. Your child will want you to keep trying.

- ❖ Continue to follow your case plan, even if Family Reunification has been terminated.
- ❖ Visit with your child as often as possible.
- ❖ If you must miss a visit, call the social worker and foster parent both, at least 24 hours before, or as soon as you know you can't make it.
- ❖ **Go to whatever parenting, counseling or other classes the court orders. Do not miss these appointments.**

Work towards gradually increasing your visits with your child and making her feel comfortable with you. Once the court sees that your *supervised visits* are going well, you may be able to take your child for an afternoon, then an entire day, then an overnight visit, and then a weekend visit.

Making a Record: What can I do while I'm in jail or prison?

After you are released, you will have to prove to the judge that you can safely parent. Keep records of all of your efforts to visit your child and follow and complete rehabilitation programs. Write down the time and date of everything you do for you and your child. This means keeping track every phone call and visit with your child, your child's caregiver, the social worker, or your lawyer. By keeping track of these calls and visits, you can prove that you care about what happens to your child. A judge is much more likely to believe that you called your child every Sunday if you show her your written record than if you simply tell the judge that you made the calls.

Steps to make a record:

1. Get a notebook or special pad of paper and use it only for your child's case. Write down the *date and time of*:
 - ❖ Each call you make to or about your child
 - ❖ Each visit you have with your child
 - ❖ Each call you make to your child's caregiver, and what the call was about
 - ❖ Each call you make to the social worker, and what the call was about
 - ❖ Each meeting you have with the social worker, and what the meeting was about
 - ❖ Each call you make to your lawyer
 - ❖ Each meeting you have with your lawyer
2. Write letters to your child and save copies of those letters;
3. If your child is too young to understand letters, draw pictures to her, and save copies of the pictures, or write down the date sent;
4. Ask to see your child's report cards;
5. **Go to any available classes, meetings or programs that your detention facility offers and write down the dates and time;**
6. Keep copies of certificates, or other proof, showing that you attended classes, groups or meetings (whether the court ordered you to attend or not);
7. Ask the teachers and counselors of any programs you complete to write a letter about how you did.

Paternity: How do I show that I am the dad?

If you and the child's mother are, or were, legally married, then it is "presumed" that you are the father of the child as long as the child was born during the marriage or within 300 days after the marriage ended due to death, divorce, or a judgment of separation. (Family Code §7611)

If you are not married to the child's mother you can file a Voluntary ***Declaration of Paternity*** to establish that you are the child's father. Before she leaves the hospital, the child's mother shall be provided with a voluntary declaration. You both sign the form and a hospital staff person acts as a witness to your signatures. The hospital then forwards the signed Declaration to Child Support Services within 20 days of the date it was signed. (Family Code §7571)

As an alternative to signing the declaration while the mother is still in the hospital, both the mother and father can sign the declaration and have it notarized anytime after the child's birth. (Both the mother and the father must sign at the same time in the presence of a Notary Public.) After the form is signed and notarized, it is then sent to the Child Support Services. (Family Code §7571).

The law provides that a Declaration of Paternity establishes paternity and has the same force and effect as a judgment of paternity issued by a court. The voluntary declaration is recognized as a basis for custody, visitation and child support. (Family Code §7573).

Either the mother or the father may rescind the declaration by filing a ***rescission*** form within 60 days of the date on the declaration, unless a court order for custody, visitation and/or child support has already been entered into by one of the parties seeking the rescission. (This means that you (the father) or the mother will not be allowed to rescind the declaration if the court has already used the declaration to grant custody, visitation or child support to either of you). (Family Code §7575).

If the declaration is signed by ***minors*** it does not establish paternity until 60 days after ***both minor parents*** turn 18 years old or are emancipated, whichever comes first. The declaration can be rescinded by either the mother or the father until 60 days after the minors turn 18 or are emancipated. (Family Code §7577).

What if we're not married or we can't use the Declaration of Paternity?

If you and the child's mother are not married and you can't agree or are unable to use the Declaration of Paternity, then you will have to file an action in court to establish that you are the father. You may seek custody, visitation and/or child support orders as part of the same action. You will have to file a Petition to Establish Parental Relationship and several other forms (it depends upon whether you are trying to get visitation or custody or just establish paternity), pay a filing fee (this can be waived), set a hearing date, have the child's mother served with the documents, and then get to court.

***De facto* Parent: What is it?**

In some instances, a relative or a foster parent who has cared for a child, who is a dependent of the court, can file a petition in the juvenile court asking the court to declare them ***de facto* parents**. A *de facto* parent is one who has assumed the role of a parent on a day-to-day basis. This means that the person has provided emotional support, taken care of the child's physical needs, and given the child affection for a substantial period of time just as the natural parent would do. (Rules of Court 5.502(10)).

In order to be considered a *de facto* parent a person files an application for *de facto* parent status with the juvenile court. On the application, the person tells the court how long s/he has been caring for the child and about the relationship s/he has with the child. It is important to tell the court all the ways you have cared for the child's needs. For example, you made sure the child went to school or day care, you spoke with the teacher about the child's progress, you took the child to the doctor for regular check-ups, you helped them with homework, you read stories to them before bedtime, etc. In other words, the person caring for the child wants to show the court all the ways s/he has been a "parent" to the child. A sample **Application for *De Facto* Parent Status** is in the **Forms** section of this manual.

Child Support: How can I pay when don't have any money?

What do I do if I am served Child Support papers while incarcerated?

If you are served with a Summons and Complaint from the Department of Child Support Services (DCSS), you should file an "Answer" to the Complaint within 30 days from the date you were served with the complaint. If you are not the father of the child, this is your only chance to contest paternity. If you are the father, you will need to make the court aware that you are incarcerated and have no source of income. Your Answer should be sent directly to the court having jurisdiction in your case not to the DCSS.

The instructions and proper form for answering the complaint will be attached to the Summons and Complaint. It is very important that you do not ignore these papers, because if you fail to file the Answer (or make an appearance in court), the court can enter a *default judgment* against you. If you need assistance you should contact/write to the Family Law Facilitator in the county in which the complaint was filed. (See Resource list). You are entitled to a court-appointed attorney only in cases where there is an issue of paternity or in a contempt proceeding.

What do I do if there is a default judgment against me?

If you think the support order was entered against you inappropriately, you may be able to have the order "set aside"(disregarded). There are four ways to set aside a support order, depending on the type of order and why you need it set aside. An order **may** be set aside for one of the following reasons:

1. **The order was due to fraud, perjury, or lack of notice.**

If you can show the order was based on fraud or perjury, you **must** bring an action to set aside within *six months* after you learned of the fraud or perjury. If you want to set aside based on lack of notice, the action must be brought within *six months* after you knew or should have known of the order. (Family Code §§3690-91).

2. **Default judgment was entered against you based on presumed income.**

If box number 3 on the Judgment Regarding Parental Obligations was checked, then the court did not have information about your actual income or income history and presumed you make enough money to meet your child(ren)'s minimum basic needs. There is an easy way to set aside a default judgment based on presumed income. File a Notice of Motion to Cancel Set-Aside Support Order Based on Presumed Income and Proposed Answer with the court within *90 days* after (1) child support is collected from you **or** (2) you are served with notice of collection, whichever happens first.

3. **Default judgment was based on mistaken identity.**

You must file a claim with the county DCSS along with supporting documents. *They must investigate and resolve your claim within 30 days.* If they think your claim has merit, they must immediately terminate enforcement proceedings and ask the court to set aside the support order. If the DCSS rejects the claim or fails to follow the required steps to terminate the order, you may file an action in the Superior Court to establish his or her mistaken identity. (Family Code §§17433, 17530, 17800).

4. **The judgment was issued because of your mistake, inadvertence, surprise or excusable neglect.**

You may ask the court to set aside the default judgment for up *to six months* after it was entered if it was issued because of your mistake, inadvertence, surprise, or excusable neglect. (Code of Civil Procedure §473(2)(b)).

What do I do if I know I have a current child support order?

One of the basic rules in child support cases is that the court cannot make retroactive modifications. This means that your child support obligation continues while you are incarcerated unless you request the court to change the order. While the court cannot legally eliminate your past due child support, it can and will reduce your current payment to zero while you are incarcerated. There are two different modification procedures available to you: (1) have the county DCSS modify the order, or (2) do the ***motion for modification*** yourself.

1. **How do I have the county DCSS do the modification?**

You should write to the county DCSS office directly and tell them that you are in custody, how long you expect to be incarcerated, and that you need to have the order modified. The DCSS **must** get a modification for you within 6 months if your case meets certain requirements. The DCSS services are free to you.

2. **How do I file a request for modification on my own?**

To request a modification you should contact the Family Law Facilitator in the county in which you owe the child support (see Resource list). Write to the facilitator and ask for the proper forms to fill out for a modification (see Note below). After you have the forms filled out, make three (3) copies of everything. Send the originals and two copies to the facilitator and ask her/him to please file the papers for you and send you a stamped copy (be sure to enclose a self-addressed stamped envelope so the facilitator can return the stamped copy to you). (See **sample letters**).

NOTE: it is very important to take the above steps as soon as possible because the court will only reduce your payment to zero as of the date you file the request for modification. The forms you will need are: Notice of Motion (FL-301), Application for Order and Supporting Declaration (FL-310), Financial Statement (Simplified) (FL-155), Application for Waiver of Court Fees and Costs (FW-001), and, Order on Application for Waiver of Court Fees and Costs (FW-003).

What do I do if my current order is zero but I have an arrearage (owe a past due amount)?

As stated above, the court cannot make retroactive modifications. There are two programs within the DCSS to help parents pay off arrearages (past due child support). One program is the *Compromise of Arrearages-Family Reunification Program* that is for parents who owe past due child support because aid was paid while child was in foster care or living with a legal guardian or relative caregiver. You can apply for this program if your child is still a minor and now living with you, and your net income is less than 250% of the federal poverty level.

The second program is called the Compromise of Arrears Program (COAP) and is available to parents who owe arrearages of \$5,000 or more. There are additional criteria to be eligible for COAP.

You should contact the county DCSS for more information on both of these programs.

What do I do if I think my child support case has been handled improperly?

You have the right to file a complaint with the county DCSS office if you think your case has been handled improperly. If your complaint is about customer service, the timeliness of the service, payment and billing issues, or a decision to close a child support case, you should contact the county DCSS office and request a Complaint form. Your complaint must be filed within 90 days of the date that you knew, or should have known, about the subject of your complaint.

The county DCSS office is required to respond to your complaint, in writing, within 30 days. If the complaint cannot be resolved within 30 days, DCSS will mail you a notice that they are extending the time for an additional 30 days. If they fail to respond to your complaint in writing, you must request a State Hearing within 90 days from the date of your complaint to the county DCSS office.

Some complaint decisions can be appealed by requesting a State Hearing. The only decisions you can appeal are: denial of child support services, services that were not provided in a timely manner or in the manner required by law, an incorrect or missing support payment, an incorrect amount of past due support, and decisions to close a case.

If you need to request a State Hearing you should contact the county DCSS office and ask for a State Hearing form. You must request this form within 90 days of the date of the decision of the county DCSS on your complaint.

The county DCSS office cannot resolve any complaints on actions taken by the court such as the amount of your child support order, custody, visitation or spousal support orders. Only the court can resolve those matters. You should contact the Family Law Facilitator, an advocate or an attorney for assistance.

When writing to the county DCSS office or the Family Law Facilitator, don't forget to:

- ❖ Include your mailing address (and phone, if applicable) on all letters.
- ❖ Date and sign your letters.
- ❖ Keep copies of all letters.

NOTE: Please be aware that failure to deal with your child support issues may cause you major problems when you are released from jail or prison. If you fall behind in your payments at least 30 days, your driver's license or state commercial or business license can be denied (new issue or renewal). If you are more than four (4) months behind in payments, these licenses can be revoked. Commercial/business licenses include licenses to practice law, medicine, construction contracting, commercial truck driving, and auto repair. (Family Code §17520)

Whether you have a current order, owe an arrearage or owe nothing, it is important that you contact the law facilitator or the county DCSS office upon your release to make sure that you have no problems in the future.

Dealing with the county DCSS office can be a frustrating process. Make sure you keep track of all your correspondence and follow through on everything (see **How To Make a Record**). Giving up is no way to deal with child support issues; the problem will not go away.

Special Immigrant Juvenile Status: What is it? Who qualifies?²

What is Special Immigrant Juvenile Status?

Special Immigrant Juvenile Status (SIJS) is a way for a dependent of juvenile court to become a permanent resident of the United States (i.e., get a “green card”). If the juvenile applies for this status and is successful, s/he may remain in the U.S., work legally, qualify for in-state tuition at college, and in five years apply for U.S. citizenship. However, if the application is denied, the child might be deported.

Who qualifies for SIJS?

In order to qualify for SIJS, a juvenile court in the U.S. *must* have declared the child a court dependent, or have legally committed the child to a state agency or department. The court must have found the child “eligible for long-term foster care” (which in this context means that parental reunification is not possible), and that it is not in the child’s best interest to be returned to the home country. The child should have proceeded to long-term foster care, adoption, or guardianship and the court must have made its findings based on the abuse, neglect or abandonment of the child.

Who can complete the application?

The child, a caseworker, or an attorney can complete the application for SIJS, which will be submitted to the Citizen and Immigration Service (CIS) bureau of the Department of Homeland Security (DHS). The child must complete forms, obtain a special medical exam, and provide fingerprints, a photograph, and proof of age. The application must include an order from a dependency court that the child is eligible for long-term foster care due to abuse, neglect or abandonment. There is a fee for the application process, but a fee waiver is available. The-CIS will grant the applicant employment authorization as soon as the application is filed, and schedule a date for the SIJS interview. Generally, the CIS will decide the case at the time of the SIJS interview.

NOTE: It is important to apply for SIJS as soon as possible while the child is a juvenile court dependent because the process may take from 6 to 18 months after submitting the application to get an SIJS interview. If the child is emancipated before the interview takes place, the current policy is to *deny* the case.

²For more information on this issue, consult an attorney who specializes in Immigration law or an Immigration Resource Center.

Conclusion

We hope that this manual will aid you in answering some of your questions about what happens to your children when you are incarcerated and what you can do to regain legal custody or reunify when you are released. In many cases prisoners are not given access to information regarding their legal rights as parents and struggle to do all that they can from inside. Our goals for this manual are to help you make a workable plan for your child while you are incarcerated, to keep you informed on current California family law, and to highlight your legal rights. The forms in the back of the manual should give you a good start in beginning to fight for your rights as a parent and we encourage you to get started as soon as possible.

We know that the process can be painful and discouraging at times, but always try to keep in mind the end result of your struggles—reunifying with your family!! This manual can do no more than answer your questions and guide you through the process, but you must have the strength to endure and persevere in your efforts. As advocates, we wish you the very best and support you in your fight.

Definitions: What do these legal words mean?

Adoption - permanent legal custody of another individual's child; adoption takes place after the parents' rights have been terminated by the court or voluntarily relinquished by the parents.

Affidavit - a written declaration under oath or a statement of facts in writing signed by the party, and sworn to or confirmed by declaration before an authorized magistrate.

Aid to Families with Dependent Children (AFDC) - division of the county/state/federal government that presides over the welfare subsidies allocated to dependent children.

Allegation - a declaration or claim concerning the behavior or actions of an individual.

CalWORKS- California Work Opportunity and Responsibility to Kids Act; a division of state government that provides for aid and medical assistance.

Caregiver - the person who takes care of a child when the parent is incarcerated.

Caregiver Authorization Affidavit - an affidavit that has the primary purpose of declaring that an individual will receive a certain amount of authority for a child.

Case Plan - the court-approved plan written by the social worker; it describes your reunification requirements including: visitation, classes, counseling or treatment you must follow before you can get your child back.

Child Protective Services (CPS) - county office responsible for the welfare of children who have allegedly experienced abuse and/or neglect from their primary caretakers. We have used this term generally throughout the manual to mean Department of Social Services (DSS), Department of Health Services (DHS), and Department of Family and Children Services (DFCS).

Compromise of Arrearages-Family Reunification Program - a program through the Department of Child Support Services (DCSS) for parents who owe past due child support because aid was paid to a foster care family or a legal guardian or relative caregiver. If the child is still a minor and is now living with his/her parent and the parent's income is less than 250% of the federal poverty level, the parent can apply for relief under this program.

Compromise of Arrears Program (COAP) - a program through the Department of Child Support Services (DCSS) available to parents who owe \$5,000 or more in past due child support. There are additional criteria on who is eligible for this program.

Court Day - days when the judge is in the courtroom. This is usually Monday through Friday, except holidays and weekends.

Court Order - a direction from the court on some matter.

Custody - the caregiver who has daily responsibility for a child either temporarily or permanently (see legal custody and physical custody below).

Declaration of Paternity - a legal document that, when signed by both parents, says the man is the natural father of the child; signing the Declaration is voluntary.

Default judgment - a judgment entered against a defendant when the defendant fails to respond to a plaintiff's action or fails to appear in court.

Dependency petition - a petition filed by the Juvenile Court claiming that the child should be made a dependent of the court.

Dependent of the court - when the court finds that the child is at a risk of harm and a parent or relative cannot make decisions for the child; instead, the court steps in to make these decisions about what happens to the child.

Detained - what happens to a child who has been temporarily removed from parent(s) through Child Protective Services.

Detention - removing a child temporarily from parent(s) through Child Protective Services (CPS).

Detention Alternatives - a child detained in custody can be placed in any of the following: emergency shelter, a suitable licensed home or facility, a place exempt from licensure designated by the juvenile court, a certified family home, or in the assessed home of a relative or nonrelative extended family member (**Welfare & Institutions Code §319(f)**)

Disposition Hearing - the hearing held once the court sustains the dependency petition and your child becomes a dependent of the court. At this hearing, the court will recommend a plan for your child.

Distant relative - any relative who is not the child's parent, sibling (brother or sister), aunt, uncle, or grandparent.

Emergency Assessment - an evaluation by a social worker of a child's relative. The social worker will determine whether the relative's home is a proper placement for the child. The assessment includes: an in-home visit to assess the safety of the home and the relative's ability to care for the child, a criminal records check, and an investigation of any allegations of prior child abuse or neglect by that relative or any adult living in the relative's home.

Emergency Response - the actions taken by CPS immediately after they are told that a child is without her parent to make sure that someone is caring for the child.

Emergency Shelter - the temporary housing where CPS places a child while they locate relatives or arrange for a more permanent place for the child (and her siblings) to live.

Family Law Facilitator - a neutral office in the family courts which assists people through the court process when they do not have lawyers.

Family Reunification Services - services provided to the child and his/her parent(s) when the child is not living with you. It is designed to address the problems that led to dependency.

Foster parent - persons given temporary placement of a child from Child Protective Services. Foster parents are sometimes *De Facto* Parents.

Foster Care - out-of-home care provided to children whose parents cannot care for them and who need temporary or long-term substitute parenting; both the person (foster parent) and the home are licensed by the state or county and are monitored by licensing workers and/or social workers.

Hearing - a judicial investigation that assesses abilities of the child's parents and determines the future living arrangements of a child.

Immediate relative - any relative who is one's parent, sibling, aunt, uncle, or grandparent.

Indian Child Welfare Act - federal law that tells how to handle an Indian child custody case.

Jurisdiction hearing - a hearing to determine whether your child should be made a dependent of the court based on allegations in the *Dependency Petition*.

Juvenile court - a branch of the Superior Court that deals with children under the age of 18. The Dependency court deals with abuse and neglect cases, usually because of the parent's behavior. Delinquency court deals with acts by a youth that would be criminal if the youth was an adult.

Kin-GAP - (Kinship Guardianship Assistance Payments) means the aid provided on behalf of children in kinship care. "Kinship guardian" means a relative who has been appointed the legal guardian of a dependent child pursuant to §366.26 of Welfare & Institutions Code.

Legal Custody - the right to make decisions about a child's well being including the child's health, education and welfare.

Legal guardianship - court-ordered custody that gives a caregiver legal custody of your child.

Long-term foster care - long-term custody arrangement where Child Protective Services supervises the child's care with the foster parents.

Minor - anyone under the age of 18.

Motion for Modification - (also known as a 388 Petition) is a paper you can file to ask the court to look at changes in circumstances.

Non-custodial Parent - the parent who does not have physical custody of his or her child.

Notice - legal information about a hearing in your child's case: when and where it will take place.

Notarized - swearing that statements are true under oath, before an official "Notary."

Parent - the lawful mother or father of a child. This may be by blood, marriage or adoption.

Parental rights - the legal rights of a parent to raise a child as s/he sees fit.

Permanent Plan Hearing - hearing to decide the best permanent situation for a child when a parent cannot raise her/his child.

Petition - a written request for specific court action and a hearing on the request.

Physical custody - refers to where the child actually lives; the person the child lives with is the one with physical custody.

Power of Attorney - a written agreement between the parent of child and the caregiver that gives the caregiver responsibility and authority over certain matters concerning the child (e.g., medical needs, schooling, public assistance and Medi-Cal, legal matters, etc.)

Pro per/ pro se - appearing on your own behalf without an attorney to represent you.

Qualified relative - a family member who the court recognizes as able to take care of the child.

Removed - when the court takes the child from her parent's custody.

Rescind/Rescission - to revoke or annul an agreement, law, or judgment.

Respite care - services that offer care (i.e. child care or temporary foster care) to relieve the caregiver or parent of childcare responsibilities for a specific length of time.

Reunify/Reunification - the goal in dependency to bring the child and her parent or parents together again.

Review Hearing - hearing held in order to review the previous decisions made by the court and consequently, to decide whether to retain or to change these decisions.

Revoke - to cancel or repeal

Rules of court - the rules that tell California courts what is supposed to happen in court hearings.

Status review hearing - a hearing held every six months by the Juvenile Court in order to review your child's case and to order a CPS plan for your child.

Supervised Visits - visits between a parent and child where a social worker is present.

Sustain - when the court finds a petition true.

Terminate - when the court cuts off or ends a course of action. Most often used with services, rights, or visits.

Welfare & Institutions Code - The group of laws dealing with dependency, delinquency, CPS, and drug possession and use.

Samples: Forms & letters to use

- I. Caregiver's Authorization Affidavit
- II. De Facto parent application
- III. Power of attorney
- IV. Letter to attorney
- V. Letter to social worker
- VI. Letter to probation officer
- VII. Letter to judge
- VIII. Letter to Family Law Facilitator
- IX. Letter to court clerk

Caregiver's Authorization Affidavit

Use of this affidavit is authorized by Part 1.5 (commencing with Section 6550) of Division 11 or the California Family Code.

Instructions: Completion of items 1-4 and the signing of the affidavit is sufficient to authorize enrollment of a minor in school and authorize school-related medical care. Completion of items 5-8 is additionally required to authorize any other medical care. Print clearly.

The minor named below lives in my home and I am 18 years of age or older.

1. Name of minor: _____
2. Minor's birth date: _____
3. My name (adult giving authorization): _____
4. My home address: _____
5. I am a grandparent, aunt, uncle, or other qualified relative of the minor (see back of this form for a definition of "qualified relative").
6. Check one or both of the following boxes (for example, if one parent was advised and the other cannot be located, you check both boxes).

 I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.

 I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.
7. My date of birth: _____
8. My California driver's license or identification number: _____

Warning: Do not sign this form if any of the statements are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____

Signed: _____

Notices

1. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody, and control of the minor, and does not mean that the caregiver has legal custody of the minor.
2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

Additional Information

TO CAREGIVERS

1. "Qualified relative," for purposes of item 5, means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or great," or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.
2. The law may require you, if you are not a relative or a currently licensed foster parent, to obtain a foster home license in order to care for a minor. If you have any questions, please contact your local department of social services.
3. If the minor stops living with you, you are required to notify any school, health care provider, or health care service plan to which you have given this affidavit. The affidavit is invalid after the school, health care provider, or health care service plan receives notice that the minor no longer lives with you.
4. If you do not have the information requested in item 8 (California driver's license or I. D.), provide another form of identification such as your social security number or Medi-Cal number.

TO SCHOOL OFFICIALS

1. Section 48204 of the Education Code provides that this affidavit constitutes a sufficient basis for a determination of residency of the minor, without the requirement of a guardianship or other custody order, unless the school district determines from actual facts that the minor is not living with the caregiver.
2. The school district may require additional reasonable evidence that the caregiver lives at the address provided in item 4.

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS

1. A person who acts in good faith reliance upon a caregiver's authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, is not subject to criminal liability or to civil liability to any person, and is subject to professional disciplinary action, for that reliance if the applicable portions of the form are completed.
2. This affidavit does not confer dependency for health care coverage purposes.

Clerk stamps below when form is filed.

The address of any licensed foster family home must remain confidential unless the judge or the foster parent authorizes release of the address. Court clerks should not send this page to the parties without a court order or authorization of the foster parent. (Welf. & Inst. Code, § 308(a).)

Court name and street address:

Superior Court of California, County of

Case Number:

① My/Our name(s): _____

My/Our address: _____

City: _____ State: _____ Zip: _____

My/Our phone #: (____) _____

② I am/We are asking that I/we be appointed de facto parent(s) of
(Child's name): _____

Date: _____ *Type or print your name* ▶ *Signature of person requesting de facto parent status*

Date: _____ *Type or print your name* ▶ *Signature of person requesting de facto parent status*

Date: _____ *Type or print attorney's name* ▶ *Signature of attorney (if applicable)*

Attorney's address: _____

City: _____ State: _____ Zip: _____

Attorney's phone #: (____) _____

Clerk stamps below when form is filed.

Court name and street address:

Superior Court of California, County of

Case Number:

1 My/Our name(s): _____

2 The child's name: _____

Boy Girl

3 Child's date of birth: _____ Age: _____

Relationship to child (grandparent, foster parent, etc.):

4 The child has lived with me from:

(date) _____ to (date) _____

(date) _____ to (date) _____

5 I have had responsibility for the day-to-day care of the child

from:

(date) _____ to (date) _____

(date) _____ to (date) _____

6 Information the judge should know about my relationship with the child. (This part must be completed).

a. Amount of time I spend with the child (daily, weekly, etc.):

d. I have have not attended court hearings about the child.

e. I have have not sent a written report to the court about the child.

b. Activities I do with the child: _____

c. Kinds of information I have about the child that others may not have (medical, educational, behavioral, etc.):

7 I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct to my knowledge. This means if I lie on this form, I am committing a crime.

Date: _____

Type or print your name



Signature of person requesting de facto parent status

Date: _____

Type or print your name



Signature of person requesting de facto parent status

POWER OF ATTORNEY

I, _____, being of sound mind and body, declare the following:

1. That I am the natural mother/father of _____ who was born on _____, _____.

2. That I am presently incarcerated at _____ located in _____.

3. That, during this time, my child, _____, is being cared for by _____.

4. That I wish to give full Power of Attorney to _____ with respect to the care and custody of my child _____.

5. That, specifically, I give _____ full Power of Attorney with respect to the care and custody of _____ in matters affecting his/her medical needs, schooling, public assistance, Medi-Cal, CalWORKS, legal matters, and all other matters pertaining to the well-being of my child.

6. I understand that this Power of Attorney is not a legal custody order and that I am not giving up my parental rights by signing this agreement.

7. This agreement will remain in effect until _____ or until revoked in writing.

I declare under penalty of perjury that the preceding statement is true and correct, and that I signed this statement with full knowledge of its contents, this _____ day of _____, 20____, in _____, California.

Signature

Signed before me this _____ day of _____, 20____.

Notary Public

SAMPLE LETTER TO YOUR ATTORNEY

(Your name)
(Your address)
(City, CA zip code)

(Date)

Ms./Mr. (Lawyer's name)
(Address of the attorney)

Dear Ms./Mr. (Lawyer's name):

I am writing to introduce myself and to let you know that I would like to attend the court proceedings regarding the custody of my child. The hearing is scheduled for **(date of hearing)**.

I understand that you have been appointed to represent me and help me retain custody of my child, **(name of your child)**. **(Her/his)** date of birth is **(date of birth)** and the case number is **(#)**. I intend to be reunited with **(her/him)** upon my release from **(name of institution)**. If I am not granted physical and/or legal custody of **(child's name)**, I would like **(name of relative)** who is my **(relationship)** to be given custody.

I understand that I have a right to attend any hearings held under Welfare & Institutions Code section 300 where my child may be made a dependent of the court or under section 366.26 where my parental rights may be terminated. I am requesting that you file a motion with the court to have me transported from **(name of facility)** to the hearing.

I look forward to speaking with you about my case so that I will know how I can work to reunite with my child(ren) and to prevent the court from terminating my parental rights.

Thank you for your attention to this matter.

Sincerely,

(Your signature)
(Print your name)

SAMPLE LETTER TO YOUR SOCIAL WORKER

(Your name)
(Your address)
(City, CA zip code)

(Date)

Ms./Mr. (Name of social worker)
(Address of social worker)

Dear Ms./Mr. (Name)

My name is (your name) and my child's name is (child's name). (Her/his) date of birth is (birth date here) and the case number is (#).

I am writing to let you know that I wish to regain custody of (child's name) and hope to be reunited with (her/him) upon my release from (name of institution) on (release date). I am very concerned about the welfare of (child's name) and I believe it is in the child's best interest to be reunited with me when I am released. (Add reasons why they should be with you).

I am serving a (length of sentence) sentence, which means that I will be away from my child for (months/years). Please let me know what steps I must take to be reunited with my child when I am released. It is important to me that I have visits with my child while I am away from (him/her).

I have written to the court to ask that I be transported to the hearing scheduled for (date of hearing). If I am not granted custody of my child, I would like my relative, (name of relative), who is my (relationship), to be given custody.

Thank you for your attention to this matter.

Sincerely,

(Your signature)
(Your printed name)

SAMPLE LETTER TO YOUR PROBATION OFFICER

(Your Name)
(Your address)
(City, CA zip code)

(Date)

Mr./Ms. (Name of probation officer)
(Street address)
(City, state, zip code)

Dear Mr./Ms. _____

I am writing to introduce myself and to let you know that I wish to regain custody of my child when I am released from (**name of institution**) on (**date of release**). I am very concerned about the welfare of my child and I believe it is in the best interest of my child to be reunited with me when I am released from prison. (**Add your reasons as to why the child should be returned to you**).

During my incarceration, my child was in the care of (**name of person**), who is my (**mother, aunt, etc.**).

Please let me know what steps I must take to be reunited with my child. My release date is only (____ days from now; ____ months from now) and I want to have a plan and start working on the plan before I am released.

Thank you for your attention to this matter.

Sincerely,

(Your signature)
(Your printed name)

SAMPLE LETTER TO THE JUDGE

(Remember to send a copy of this to the other parent and/or any other persons who are parties to this action. If you fail to send copies to the other parties or their attorneys, the court will consider this an *ex parte* communication and may not consider the information).

(Your name)
(Your address)
(City, CA zip code)

(Date)

Honorable **(name of judge)**
Superior Court of California
County of (_____)
(Address)
(City, CA Zip code)

Dear Judge **(Name)**:

I am writing this letter to introduce myself and to request that the court issue an order allowing me to attend court hearings concerning my child pursuant to Penal Code Section 2625. The next hearing is scheduled for **(date of hearing)**.

I would also like to request that the court appoint an attorney to represent me at these hearings because I am an indigent and cannot afford an attorney.

My child's name is **(name of child)**, **(her/his)** date of birth is **(child's date of birth)** and the case number is **(#)**. I am very concerned about the welfare of my child, and I believe that it is in my child's best interest to return to my custody. **(Add your reasons here)**.

My release date is **(date)**, and I want very much to be reunited with **(name of child)** upon my release from **(name of institution)**.

Please send a copy of the Order for Transport to the director at **(name of institution)** or the sheriff for **(county where the prison/jail is located)** county and to the sheriff for **(county where juvenile court is located)** county.

Thank you for your attention to this matter.

Sincerely,

(Your signature)
(Your printed name)

SAMPLE LETTER TO THE FAMILY LAW FACILITATOR

Date

Family Law Facilitator
Superior Court of California
County of _____
(Address)
(City, CA Zip code)

Re: (child support, custody, visitation, etc)
Case number (if you have one)

Dear Family Law Facilitator:

I am incarcerated and do not have an attorney to assist me. I would like your help with this _____ (child support, custody, visitation) matter. Please send me the forms I need to respond to the court (or the information you need about the proceeding). I will also need your help in filing the paperwork so please tell me what I need to do.

Thank you for your attention to this matter.

Sincerely,

(Your name)
(Your address)

Be sure to include a stamped, self-addressed envelope so that the facilitator can send you what you've requested. Many of the family law facilitators can only provide information and forms for child support-related matters. You may have to write to the "forms clerk" to request forms for child custody, visitation, and other matters. See sample letter to the court clerk that follows.

SAMPLE LETTER TO THE COURT CLERK

Date:

Clerk of the Court
Superior Court of California
County of _____
(Address of court)
(City, state, zip code)

Re: (Child support, child custody, visitation, dissolution of marriage, etc)
Case No. _____

Dear Clerk:

I am incarcerated and do not have an attorney to assist me with this paperwork. I am asking for your assistance with these documents.

Enclosed please find:

1. One original and two (2) copies of the following:
LIST THE DOCUMENTS YOU ARE SENDING, USING ALL UPPER CASE LETTERS [for example: PETITION TO ESTABLISH PARENTAL RELATIONSHIP; RESPONSE; APPLICATION FOR FEE WAIVER]
2. A self-addressed, stamped envelope

Please file and stamp these documents for me and return one copy to me in the envelope enclosed with this letter. I am also requesting that you provide me with a hearing date on this matter at least six (6) weeks after the date of this letter ***[only include this if you are the petitioner and there is no scheduled hearing in the case]***

Thank you for your attention and assistance.

Sincerely,

Sign your name

(Print your name, include your prison/jail number)
(Name of prison/jail facility)
(Address)
(City, State, Zip code)

[Note: keep a copy of this letter until you receive a stamped copy of your paperwork back from the clerk]

Resources: Helpful groups to contact

Family Law Facilitators in California

Current as of February 2007 (from www.courtinfo.ca.gov/selfhelp/)

COUNTY	ADDRESS	PHONE
Alameda	1225 Fallon Street, Room 240 Oakland, CA 94612	510/208-4969
	224 West Winton, Room 179 Hayward, CA 94544	510/670-5150
Alpine	1354 Johnson Blvd., Suite 2 South Lake Tahoe, CA 96150	530/573-3066
Amador	108 Court Street Jackson, CA 95642	209/754-1443
Butte	1931 Arlin Rhine Drive Oroville, CA 95965	530/532-7004
Calaveras	Government Center 891 Mountain Ranch Road San Andreas, CA 95249	209/754-1443
Colusa	547 Market Street Courthouse Annex Colusa, CA 95932	530/458-0601
Contra Costa	751 Pine Street Martinez, CA 94553	925/957-7887
Del Norte	625 "F" Street, Suite B Crescent City, CA 95531	707/465-3894
El Dorado	495 Main Street Placerville, CA 95667	530/621-6433
	1354 Johnson Blvd., Suite 2 South Lake Tahoe, CA 96150	530/573-3066
Fresno	255 N. Fulton Street, Suite 106 Fresno, CA 93701	559/497-6500

Glenn	526 W. Sycamore Street Willows, CA 95988	530/934-6380
Humboldt	825 5 th Street Eureka, CA 95501	707/269-1210
Imperial	939 Main Street El Centro, CA 92243	760/482-4739
Inyo	699 W. Line Street Bishop, CA 93514	760/872-4146
Kern	1215 Truxtun Avenue Bakersfield, CA 93301	661/868-4815
	132 E. Coso Street, Room A Ridgecrest, CA 93555	661/868-4815
	1775 Highway 58 Mojave, CA 93501	661/868-4815
	1122 Jefferson Street Delano, CA 93215	661/868-4815
	325 Central Valley Highway Shafter, CA 93263	661/868-4815
Kings	12022 Calle Main Lamont, CA 93241	661/868-4815
	1426 South Drive Hanford, CA 93230	559/582-1010, ext 3093
Lake	485 N. Main Street Lakeport, CA 95453	707/263-9024
Lassen	145 S. Lassen Street Susanville, CA 96130	530/251-8353
Los Angeles	111 N. Hill Street, Room 428-F Los Angeles, CA 90012	213/974-5004
	600 S. Commonwealth Avenue Room 1617 Los Angeles, CA 90005	213/637-8470

	12720 Norwalk Blvd., Room 202 Norwalk, CA 90650	562/807-7300
	300 E. Olive Street, Room 100 Burbank, CA 91502	818/557-3583
	200 W. Compton Blvd., Rm 1001 Compton, CA 90220	310/603-3218
	42011 Fourth Street West, Rm 3575 Lancaster, CA 93534	661/974-7348
	415 West Ocean Blvd., Room 43B Long Beach, CA 90802	562/491-6432
	300 E. Walnut Street, Room 100B Pasadena, CA 91101	626/356-5030
	400 Civic Center Plaza, Room 114 Pomona, CA 91766	909/620-3150
	900 Third Avenue, Outside Dept. J Torrance, CA 90503	310/222-1714
	6230 Sylmar Avenue, Room 212A Van Nuys, CA 91401	818/374-7108
Madera	117 South Lake Street Madera, CA 93638	559/674-5600
Marin	3501 Civic Center Drive, Rm C-27 San Rafael, CA 94903	415/473-3062
Mariposa	5092 Jones Street, PO Box 839 Mariposa, CA 95338	209/966-5320
	5081 Buillion Street Mariposa, CA 95338	209/966-3007
Mendocino	100 N. State Street, Room 212 Ukiah, CA 95482	707/463-5666
Merced	1901 "G" Street Merced, CA 95340	209/725-4165
Modoc	201 S. Court Street, #28	530/233-2008

	Alturas, CA 96101	
Mono	452 Old Mammoth Road Mammoth Lakes, CA 93546	760/924-3740
Monterey	1200 Aguijito Road Monterey, CA 93940	831/647-5800
Napa	825 Brown Street Napa, CA 94559	707/299-1137
Nevada/Sierra	201 Church Street, Suite 10 Nevada City, CA 95959	530/470-2567
Orange	341 The City Drive Orange, CA 92863	714/935-6568
Placer	11545 "B" Avenue Auburn, CA 95603	530/889-7465
Plumas	89 Court Street Quincy, CA 95971	530/283-4792
Riverside	880 N. State Street Hemet, CA 95243	909/600-6443
	4175 Main Street Riverside, CA 92501	909/955-1583
	46--200 Oasis Street Indio, CA 92201	760/863-7880
Sacramento	3341 Power Inn Road, Room 113 Sacramento, CA 95826	916/875-3400
San Benito	440 Fifth Street Hollister, CA 95023	831/636-4079
San Bernardino	351 N. Arrowhead Avenue San Bernardino, CA 92415	909/387-3060
	14455 Civic Drive (Tuesday, Thursdays, Fridays) Victorville, CA 92392	760/243-8757
	8303 N. Haven Ave., Basement Level	909/948-4679

(Mondays and Wednesdays)
Rancho Cucamonga, CA 91730

6527 White Feather Road 760/366-4100
Joshua Tree, CA 92252

San Diego Main: 220 W. Broadway, Rm 4001 619/531-3234
San Diego, CA 92101

Family Court 619/531-3234
1555 Sixth Avenue
San Diego, CA 92101

East County: 250 E. Main Street 619/531-3234
El Cajon, CA 92020

North County: 325 S. Melrose Drive 760/940-4952
Vista, CA 92083

South County: 500 Third Ave., Rm 390 619/531-3234
Chula Vista, CA 91910

San Francisco 400 McAllister Street, Room 402 415/551-3991
San Francisco, CA 94102

San Joaquin 222 E. Weber, Room 361 209/468-8280
Stockton, CA 95202

San Luis Obispo 1120 Mill Street, Suite A 805/788-3418
San Luis Obispo, CA 93408

San Mateo 400 County Center, 2nd Floor 650/363-4590
Redwood City, CA 94063

Santa Barbara 1100 Anacapa St, 1st Fl 805-568-3133
Santa Barbara, CA 93101

201 S. Miller, Suite 208 805/346-1476
Santa Maria, CA 93454

Santa Clara 99 Notre Dame Avenue 408/882-2900
San Jose, CA 95113

Santa Cruz 701 Ocean Street, Room 110 831/454-2422
Santa Cruz, CA 95060

	1430 Freedom Blvd. Watsonville, CA 95060 (Thursdays only)	831/454-2422
Shasta	1500 Court Street, Room 115 Redding, CA 96001	530/245-6900
Sierra/Nevada	201 Church Street, Suite 10 Nevada City, CA 95959	530/470-2567
Siskiyou	500 N. Main Street Yreka, CA 96097	530/842-0157
Solano	600 Union Avenue Fairfield, CA 94533	707/207-7348
Sonoma	600 Administration Drive Room 233-J Santa Rosa, CA 95403	707/565-2841
Stanislaus	800 11 th Street, Room 220 Modesto, CA 95353	209/525-6304
Sutter	430 Center Street Yuba City, CA 95991	530/822-8330
Tehama	756 Rio Street Red Bluff, CA 96080	530/529-1263
Trinity	101 Court Street Weaverville, CA 96093	530/623-1208 or 530/623-1369
Tulare	1612 W. Mineral King, Room C Visalia, CA 93291	559/737-4422
Tuolumne	41 W. Yaney Avenue Sonora, CA 95370	209/533-5697
Ventura	800 S. Victoria Avenue, Rm 30 Ventura, CA 93009	805/662-6661
Yolo	725 Court Street Woodland, CA 95695	530/406-6794
Yuba	120 Fifth Street Marysville, CA 95901	530/749-7685

California Statewide Prisoner Resources

Friends Outside administers a network of prison visitor hospitality centers at all California State prisons. The centers offer respite from travel, transportation from the nearest public transit to the prison, crisis intervention, information and referral, emergency clothing, and snacks.

Friends Outside Agency Contact Information:

Main Office: PO Box 4085, Stockton, CA 95204
(Phone): 209/955-0701
(Fax): 209/955-0735
(Email): info@friendsoutside.org

Executive Director: Gretchen Newby; Email: gnewby@friendsoutside.org

Visitor Centers Programs

Program Administrator: Maria Rocero
(Phone): 209/955-0701
(Email): mrocero@friendsoutside.org

Friends Outside also has a Case Manager Specialist at each of the prisons to assist prisoners. The Case Manager Specialists may conduct parenting classes and other classes or groups and may be able to assist the prisoner with his/her pre-release plans.

Avenal State Prison (ASP)	559/386-0587, ext. 6825
CA Correctional Institution (CCI)	661/822-4402, ext. 4383
Calipatria State Prison (CAL)	760/348-7000, ext. 5720
CA Correctional Center (CCC)	530/257-2181, ext. 4587
Central CA Women's Facility (CCWF)	559/665-5950
Centinela State Prison (CEN)	760/337-9594
CA Institution for Men (CIM)	909/597-1821, ext. 4389
CA Medical Facility (CMF)	707/448-6841, ext. 2829
CA Institution for Women (CIW)	909/597-1771, ext. 7005
CA State Prison Corcoran (COR)	559/992-8800, ext. 7719
CA Men's Colony (CMC)	805/547-7900, ext. 7589
CA Rehabilitation Center (CRC)	951/737-2683, ext. 3385
Correctional Training Facility (CTF)	831/675-3328
Folsom State Prison (FSP)	916/985-2561, ext. 4689
CA State Prison-Represa (SAC)	916/985-8610, ext. 7779
Chuckawalla Valley State Prison (CVSP)	760/922-5300, ext. 6354
High Desert State Prison (HDSP)	530/251-5100, ext. 5710
Deuel Vocational Institution (DVI)	209/835-4141, ext. 5640
Ironwood State Prison (ISP)	760/921-3000, ext. 5813
CA State Prison-Los Angeles (LAC)	661/729-2000, ext. 7590
North Kern State Prison (NKSP)	661/721-2345, ext. 6332
Kern Valley State Prison (KVSP)	661/721-6300, ext. 6816

Mule Creek State Prison (MCSP)	209/274-4911, ext. 5983
Pelican Bay State Prison (PBSP)	707/465-1000, ext. 5435
Pleasant Valley State Prison (PVSP)	559/935-4900, ext. 6576
Richard J. Donovan Corr. Facility (RJD)	619/661-6500, ext. 5666
San Quentin State Prison (SQSP)	415/456-6702
CA State Prison Solano (SOL)	707/451-0182, ext. 5472
CA Substance Abuse Treatment Fac. (CSATF)	559/992-9092
Wasco State Prison (WSP)	661/758-8400, ext. 5674
Sierra Conversation Center (SCC)	209/984-5291, ext. 5591
Valley State Prison for Women (VSPW)	559/665-6100, ext. 5365
Salinas Valley State Prison (SVSP)	831/678-5500, ext. 5718