

***When a Parent Is Arrested:  
Caring for the Children  
A Guide to Legal Options  
and Resources***



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## Table of Contents

Planning .....	1
Short-term Guardianship .....	5
School Enrollment .....	10
Court-ordered guardianship .....	14
Ending Guardianship .....	23
Custody by Fathers .....	25
Divorce .....	28
Child Support .....	29
Grandparents' Visitation .....	31
The Foster Care System .....	34
Support for Caregivers .....	40
Legal Aid Agencies .....	41
Early Childhood Education Resources .....	43
Short-term Guardianship Form .....	Insert



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## When a Parent Is Arrested: Caring for the Children

If you are taking care of a child whose parent is in jail or prison, you may need legal assistance. This booklet tells you about guardianship, child custody and foster care. Some legal services are listed at the end.

The law changes often. No two families have exactly the same situation. So you should talk with an attorney to answer your specific questions or to help you with court. This booklet is meant to be helpful information but it cannot replace legal aid.

### *A word about planning*

Parents who are arrested usually hope for the best. Keeping up hope helps people stay sane even in a very bad situation. The daily reality of jail is harsh. Hope can help parents do right, with the goal of being with their children someday. Even if they will not be home in the next few months or years, hope can keep them going and help them do positive things. Parents sometimes use wishful thinking to get through this time away from their children. They may believe that they will be released soon even if that is very unlikely. This is one way of coping with a stressful situation.

Some parents find it hard to be realistic about when they will take over full responsibility for their children again. Children's caregivers need to be very realistic so that they can take good care of the children while the parents are away. Is the parent's criminal charge serious or minor? Has the parent has been convicted of a crime before? Does the parent need drug treatment or other help before taking over care of the child? These questions can help you plan how long the child will be with you. Some drug charges that used to result in probation now carry a heavy prison sentence. You have to make sure that the child has stability, education, and medical care no matter how long it takes for the parent to come back.

One way to reassure the parent and the child during this difficult time is to support their relationship as much as you can. It helps if the parent feels that you are doing your best to provide communication and visits. It helps if you ask the parent's opinion in decisions about the child. If you do these things, the parent may be less likely to feel threatened or suspicious if you need to get a court order for the child.



If possible, obtain these documents: birth certificate, immunization records, Medicaid card (office locator: <http://www.dhs.state.il.us/page.aspx?module=12>), Social Security card, and Short-Term Guardianship form signed by the parent (see below).

## Children's Bill of Rights

There is a nationwide effort to help people look at parents' incarceration from the child's viewpoint. Young people whose parents were incarcerated when they were little, along with advocates, created this Bill of Rights for Children of Incarcerated Parents. It can help adults think about children's needs:

1. I have the right to be kept safe and informed at the time of my parent's arrest.
2. I have the right to be heard when decisions are made about me.
3. I have the right to be considered when decisions are made about my parent.
4. I have the right to be well cared for in my parent's absence.
5. I have the right to speak with, see and touch my parent.
6. I have the right to support as I face my parent's incarceration.
7. I have the right not to be judged, blamed or labeled because my parent is incarcerated.
8. I have the right to a lifelong relationship with my parent.

Some of these depend on the child's age and level of understanding. Some are not followed in Illinois law. Yet they can be helpful in thinking about what children need during the crisis of a parent's incarceration. For more information, please go to [www.sfcipp.org](http://www.sfcipp.org).



### ***How can I become the child's guardian?***

There are two ways that people who are taking care of children usually get authority to take care of them:

#### **Short-term guardianship and court-ordered guardianship.**

Some relatives call the Department of Children and Family Services or another foster care agency, but there are big risks in doing this. Please see the section called "*The Foster Care System*".

**Short-term guardianship** does not involve going to court. It cannot be used if there already is a court order for the child. The parent who had custody of the child prior to arrest fills out and signs an "Appointment of Short-Term Guardian". (There is a sample form at the back of this booklet. CLAIM also can provide forms and instructions.)

The short-term guardianship form gives you legal guardianship of the child for up to 365 days. If the parent will be away for longer than a year, the caregiver may need court-ordered guardianship. If you do, you should file in court several months before the short-term guardianship expires.

- Short-term guardianship gives you authority to enroll the child in school. You can keep the child in school in the parent's neighborhood. Or you may enroll the child in your neighborhood school.

- Short-term guardianship gives you authority to consent to medical care for the child and to manage the child's medical card.
- Short-term guardianship gives you authority to manage public benefits for the child such as Temporary Assistance for Needy Families (TANF) and the LINK card for food benefits for the child. A blank Short-term Guardianship form is included at the end of this booklet.

### **Do I have to be a blood relative in order to be the short-term guardian?**

No. Any adult whom the parent appoints may be the short-term guardian. However, the same restrictions apply to a short-term guardian and a court-ordered guardian:

- You must be over age 18,
- a resident of the United States,
- of sound mind,
- not a "disabled person" under the Probate Act, and
- not convicted of a felony.

See below under "Court-ordered guardianship" for exceptions to this last point.



## **Who has a right to notice of short-term guardianship?**

If one parent signs the short-term guardianship form, and the other parent is legally recognized as a parent of the child, the other parent has a right to receive written notice. If the father signs the short-term guardianship form, the caregiver must send the mother a copy unless she has died or her parental rights to the child were terminated in court, or if she also signs. The father has a right to notice, if:

- The father and mother are/were married;
- A court found that this is the legal father of the child; or
- The father signed an acknowledgement of paternity filed with the state birth parents registry and the child is less than one month old.

Simply being listed on the child's birth certificate does not necessarily grant the father legal rights. However, see below regarding right to notice in a Probate case.

It usually is better to notify both parents of the short-term guardianship. However, if the parent cannot be found after you have done your best, the signature of one parent is enough.



## ***At what age is the child no longer considered a minor?***

For the purposes of the Probate Act, a child is a minor until he or she turns 18.

## ***Why did the parent send me a "temporary custody" form from the correctional center?***

Some correctional centers still use forms other than the short-term guardianship form in the Probate Act. It is better to use an "Appointment of Short-term Guardian" form because that is backed up by Illinois law. The "temporary custody" form simply shows that there is an agreement between you and the parent. Some places will accept it for school enrollment, public aid, etc., especially if the caregiver is related to the child. However, it does not have the same legal authority as the short-term guardian form.

## ***Does a short-term guardianship form have to be notarized?***

No. The law requires two witnesses over age 18 to sign after they watch the parent sign the document. But if a notary is available it can be helpful to have one of the two witnesses notarize the parent's signature. That way, those relying on the document will know that someone checked the parent's identity and that it really was the parent who signed the short-term guardianship form.

### ***How do you end a short-term guardianship?***

Short-term guardianship forms give the date that the guardianship will terminate. If the parent knows for sure exactly when s/he can take over caring for the child again, they may use that as the termination date.

If the parent puts a termination date 365 days later and then comes home, s/he can revoke the short-term guardianship in writing. The caregiver must turn over custody of the child to the parent when the parent revokes the guardianship.

### ***What if something happens and I can't take care of the child any more?***

If a problem comes up, the parent can revoke the short-term guardianship in writing and appoint a new short-term guardian. There only can be one short-term guardian appointed for a child at a time.

### ***What if the other parent takes the child away?***

Parents have a legal right to custody of their children. If the children were living with the father and he is arrested, the mother has a right to custody of the children unless you can prove that she is unfit. If the children were living with the mother and she is arrested, the father has a right to custody of the children if he is fit to care for them and is legally recognized as the

father. If the father has never been determined, and a man who acted as the father tries to take a child out of the guardian's home, the guardian should think very carefully about what is best for the child. Is this parent trustworthy? Can he care for the child and provide stability? If not, the caregiver may call the police and show them the short-term guardianship form rather than simply allow the father to take the child.

The police might tell the parent that he needs to go to court if it is not clear that he has a legal right to custody of the child. See below for the "Best Interest of the Child" factors that courts consider when determining child custody.

### ***What about enrolling the children in school?***

You **don't** have to be the legal guardian of a child to enroll the child in public school. Children who don't have a reliable, adequate nighttime

residence can get assistance for education under the **McKinney-Vento Homeless Education Assistance Act.**

### ***Who is a "homeless student" for the purpose of school?***

Children of incarcerated parents **may** be considered homeless if they are living with a caregiver who is not their parent or court ordered guardian.



Children/youth can get help with education if they are:

- Sharing other persons' housing due to loss of housing, economic hardship, or a similar reason, such as the parent being in jail or prison.
- Living in motels, hotels, trailer parks, or camping grounds because they don't have a regular home.
- Living in emergency or transitional shelters.
- Abandoned in hospitals.
- Awaiting foster care placement.
- Children and youth who have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.
- Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.
- Migrant children who are living in any of the circumstances described above.
- The term *unaccompanied youth* includes a youth not in the physical custody of a parent or guardian. This includes runaways living in runaway shelters, abandoned buildings, cars, on the streets, or in other inadequate housing; children and youth denied housing by their families (sometimes referred to as "throwaway children and youth"); and school-age unwed mothers living in homes for unwed mothers because they have no other housing available.

### ***What rights do homeless students have?***

A homeless student is entitled to **immediate** enrollment in school. A homeless student has the right to register in school **without any of the documents usually required**. A school employee, usually the homeless liaison, can assist you in obtaining required documents like birth certificates, immunization records, and physicals after the child is enrolled.



### ***Where can a homeless student go to school?***

A homeless child or youth can attend any of the following:

- (1) the school in which the child was enrolled where s/he used to live;
- (2) the school in which he or she was last enrolled; or
- (3) any public school in the attendance area where the child is staying now.

The first two choices are called the "school of origin." Children and youth who have experienced homelessness can attend their school of origin for as long as they remain homeless. If the child gets permanent housing, s/he can stay in the school of origin for the rest of that school year. In Chicago, High School students may stay in their school of origin until graduation.



Where a homeless child or youth stays day-to-day in different attendance areas, the child may enroll in school in any of these areas.

### ***What services can a homeless student get?***

If you meet any of the definitions above, the children can get McKinney-Vento Homeless Education services to ensure that they can reach for success in school, get free lunch, waiver of all school fees, assistance with uniforms (if needed), school supplies and book bags, tutoring, referral to other services, and transportation. High school students also can get a waiver of fees for field trips, activity fees, graduation fees, summer school fees, and fees for night school or Saturday school. See the list at the end of the booklet for other resources, especially for pre-school children.

### ***Court-ordered guardianship***

Court-ordered guardianship allows you to continue to care for the child until the child reaches adulthood or until the court discharges the guardian. Caregivers usually seek guardianship in three situations:

1. If the parent has a relatively long sentence;
2. There is concern that someone will try to remove the child if the caregiver does not have a court order;



3. A service provider insists on a court order, such as a school that has had a child enrolled under a short-term guardianship for more than one year, a doctor, or a social security office when a child is eligible for benefits.



### ***How can I get a court order?***

Some legal aid agencies will help you get a court order for free. CLAIM (Chicago Legal Advocacy for Incarcerated Mothers) helps you get guardianship in Chicago as long as the incarcerated parent will consent to this and you cannot afford a lawyer. Other agencies, including a help desk for caregivers who wish to file for guardianship without an attorney, are listed at the end of this booklet. To get started, you need:

1. A copy of the child's birth certificate. This usually can be obtained for a fee from a currency exchange or the County's Bureau of Vital Records if you already have short-term guardianship of the child.
2. Your own identification.
3. An "Appearance and Consent for Letters Appointing Guardian" signed by the parent and notarized. If the parent does not consent, you must send notice to the parent of the time, date and place of the hearing. You must send a copy

of the Guardianship Petition and Exhibit A form with your notice. There is more about this below. If the parent consents to you being the guardian, CLAIM usually can have the parent sign the form.

Before the court hearing, the court requires a background check to see if you have been reported for child abuse or neglect, and to see if you have a felony conviction.

***How much is the court fee, and what if I can't afford it?***

There is a \$129 filing fee (as of 2009) for guardianship of minors in Cook County, and a similar fee in other counties. If you cannot afford it, you can file a fee waiver application (Application to Sue or Defend as a Poor Person) and the court should order the Clerk of Court to waive the fee. Your legal aid lawyer may get the fee waived for you if you're eligible.

***What are the advantages and disadvantages of court-ordered guardianship?***

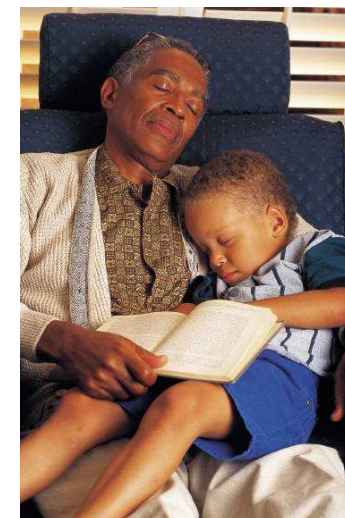
The advantage of having a court-ordered guardianship is that it gives you legal authority to do whatever the children need until they reach age 18. If



the parent is serving a long sentence, or if someone who is bad for the child may try to take custody, a court-ordered guardianship can protect the child and give you and the parent peace of mind.

The disadvantage of a court-ordered guardianship is that you have legal responsibility for the children until the court orders discharge of the guardianship or the child turns 18. If something changes in your life or health, a successor guardian must be appointed unless the parent is ready to take over full responsibility for the child. When the parent comes home and is able to care for the children again, the guardian and parent must go back to court. You cannot just send the child home and keep the court order in place.

The guardian is legally responsible for the child until the guardianship is discharged. The guardian may allow the children to have extended overnight visits at the parent's home, as long as the parent is fit and able to care for the children. But until the guardianship is discharged, the children must live at the guardian's home. If something goes wrong, the guardian is responsible for the children.



***What if I'm the only relative who can care for the children, but I have a past felony conviction or child neglect finding?***

The court will consider the best interest of the children and may appoint you as guardian if you can show that your life is stable now and that you can be trusted to take good care of the children. If you had a minor felony conviction more than ten years ago, there is a good chance the court will appoint you as the child's guardian if the parent consents and the child has been living with you. However, there are certain offenses that can prevent you from serving as guardian. The law says that a person convicted of a felony cannot serve as the guardian unless:

"the court finds appointment of the person convicted of a felony to be in the minor's best interests, and as part of the best interest determination, the court has considered the nature of the offense, the date of offense, and the evidence of the proposed guardian's rehabilitation. No person shall be appointed who has been convicted of a felony involving harm or threat to a child, including a felony sexual offense."

755 ILCS 5/11-3.

If you have been convicted of any felony involving harm or threat to a child, talk to the parent and find another family member or friend who is trustworthy to serve as the children's guardian. If the court finds that you neglected or abused a child, or contributed to neglect

or abuse, the court cannot appoint you as the guardian unless at least two years have passed and you can show that it is in the child's best interest for you to become the guardian now.

If any person involved with the case objects to the guardianship, or if you have a felony or a past child neglect charge, the court will look closely at evidence of the child's best interest. Most courts will appoint a lawyer to represent the child's best interest, called a "Guardian ad Litem". (This means that the lawyer is guardian of the child's interests in this court case, not of the child.) The Guardian ad Litem will recommend what she thinks is best for the child. The judge usually takes these recommendations very seriously.



The court might order an investigation. In Cook County the Department of Adoptions and Child Custody Advocacy will interview all parties and visit their homes. The Department will make recommendations to the judge. They will report what they think is in the best interest of the child, and the court will take their report very seriously in making the decision.

### ***Who do I need to send notice to?***

When you file a Petition for Guardian of Minor, you must send a Notice of Motion, attached to the Petition and Exhibit A (listing parties entitled to notice) to:

1. The child's mother (unless you have a signed Appearance & Consent from her);
2. The child's father or presumed father (unless you have a signed Appearance & Consent from him). If the parents have been married, or if there is any court order of parentage and/or any child support order, the father is entitled to notice. If the father is unknown, you may list "unknown" on Exhibit "A". However, if there is a father listed on the child's birth certificate, or the child has a last name other than that of the mother, the court may require notice to the presumed father.
3. Brothers or sisters of the child who are age 18 or older (unless you have a signed Appearance & Consent from them).
4. Any other relative whom the child has lived with if that relative has acted as a caregiver for the child.

The judge will ask you to show a certified mail receipt and the green card proving that you sent the required notice. If any of the above parties have died, you will need to bring a certified copy of the death certificate. If you have done your best to find the living

relatives listed above but you cannot find an address for them, you may publish notice in the newspaper. At the Clerk of Court's office, there are people available who may help with this.

### ***Does the parent have a right to visit with the child while I am the child's guardian?***

Yes. Parents have the right to visit and communicate with their children, even when you are the guardian. As much as possible, the guardian should try to make sure that the child has regular visits with the parent.

If you do not have a car to provide visits while the parent is in prison, contact an organization that provides rides. In Chicago, Lutheran Social Services of Illinois (773-783-9516) provides transportation for children of incarcerated mothers to some correctional centers and the Salvation Army (312-421-2406) has a bus service as well.



The Cook County Department of Corrections (CCDOC) is located at 26<sup>th</sup> Street and California Avenue in Chicago. You can get there on the CTA. Unfortunately, visits at CCDOC, and in most county jails, are non-contact, through Plexiglas. This can be difficult for small children. If the child's mother is in Cook County Jail, talk to her

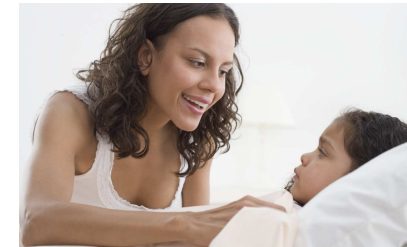
about signing up for treatment and programs with the Department of Women's Justice Services. Mothers in that program may apply to take part in a wonderful children's visit program, Bright Spaces. It has a beautiful visiting room with excellent toys and games. Mothers who participate in the program must be accepted into Division 17 and complete four weeks of parenting classes before they have contact visits with their children.

If the mother cannot get into the Bright Spaces program, then talk with her about whether the child or children can handle barrier visits. It depends on the child's age and how long it has been since the child has seen the mother. It may be better for children to see the mother and know that she is all right, even if they cannot touch, than to not see her at all. But for some very young children, it is simply too upsetting. Try to make a decision together with the parent about visits. If the child is suffering too much from being separated, you may contact Superintendent Black at 773-869-6999 and request special consideration for a Bright Spaces visit for a mother and young child.



Even though visits can be difficult, children do better in the long run if they can visit their parents regularly. Studies show that children do better in school and emotionally if they can see their parents.

Children need reassurance that the parent still loves them and that it is not their fault that the parent is away. Children may act out after visits. It is very sad to say goodbye at the end of a visit. But children who know that they will come back and see the parent soon have an easier time. They do better in life overall if they can keep up the relationship with the parent. Studies show that visits increase the parents' success after they come home, too.



If it is not possible to have in-person visits between the parent and child, do everything you can to provide telephone visits. Encourage frequent letters and home-made cards. It is important for the child to understand that it is not his or her fault that the parent is away. Children need to know that the parent still loves them. Children need to hear this reassurance again and again. That way, they know that they are loveable and won't feel rejected by the parent.

It is the legal right of parents and children to have communication and visits with each other, unless the parent's rights have been terminated by a court. This communication helps the child and parent have a better transition when the parent comes home again.

***Ending Guardianship: What happens when the parent is ready to take care of the child again?***

When the parent is ready to take over caring for the child, you and the parent should go to court together. File a Petition to Discharge Guardian. Bring evidence that the parent is ready to be fully responsible for the child. The judge might ask for proof of housing, a job, sobriety, and a relationship with the child. Examples include:

- a copy of the parent's lease or rent receipts,
- pay stubs or a letter from the parent's employer,
- clean drug tests or certificates of completion of treatment if the parent had a drug problem, etc.,
- evidence of the parent's participation in teacher conferences or school events.

You may testify as to why you believe the parent is ready to take over caring for the children, especially if the parent is living in your household with the children.



If the parent and you agree that the parent is ready to take care of the children again, usually the judge will order discharge of the guardianship, possibly on the first court date. However, if there is evidence of potential problems, the judge may appoint a Guardian ad Litem or order an investigation before discharging the guardian. It might take time.

If the parent files to discharge the guardianship and you object, the court sends you both to mediation. Mediation is a meeting where you try to reach an agreement. It is almost always better for children if the adults in their lives cooperate and agree on a plan that is in their best interest. It is very stressful for children when the adults they love are arguing, and even worse when the adults are arguing about them! The mediator will help you and the parent create a smooth transition for the children if possible. If you do not reach an agreement, then the case will go to trial.

Cases for discharge of the guardian can take a long time to complete when the parties don't agree. It takes time for a Guardian ad Litem to be appointed and more time for the lawyer to meet with everyone and make a recommendation to the judge. It takes months for the investigator to gather the information they need, appoint a social worker, and complete the study of both of your homes. In the meantime, the parent and children should visit each other regularly, and you will be going to the court dates. If the parent is maintaining sobriety, has a job and stable housing, and is not breaking any laws, eventually the court is likely to return the children to the parent.



***Fathers: How can I get legal custody of my child if the mother is incarcerated and we were not married?***

Under the Illinois Parentage Act of 1984, "The parent and child relationship, including support obligations, extends equally to every child and to every parent, regardless of the marital status of the parents." 750 ILCS 45/3.

There is a presumption of paternity -

1. if the father and mother were married when the child was conceived or born, or if they married each other after the child's birth,
2. if the parents signed an Acknowledgment of Paternity for the Illinois Department of Healthcare and Family Services under the Illinois Public Aid Code, or
3. if the parents have signed an Acknowledgement of Parentage under the Vital Records Act.



A father may file an action to determine the existence of the father and child relationship in court. The father may seek an order giving him custody of the child. The father must serve

notice of the court petition on the mother and, if the child was not already living with him, serve notice on the person who is or was taking care of the child.

If the mother signs consent to the court finding of paternity, the clerk of court generally will waive the filing fee and an order may be entered by agreement. If the mother challenges the finding, the court will order a DNA test before making a finding of paternity. If the father is fit to care for the child, he has a right to custody. However, if the father was convicted of a crime because of causing this pregnancy, he may not be awarded custody or visitation with the child under the Parentage Act without the consent of the mother or a guardian other than the father.

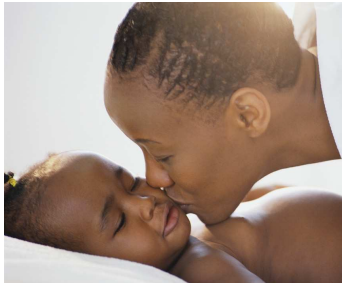
***What if the parents are married? How is child custody determined?***

If the parents are married and one parent is incarcerated, the other parent has a right to custody of the child. If one parent files for divorce while the other parent is incarcerated, the court will give the free parent custody of the child, unless there is a very good reason to award custody to someone else.

If both parents agree that joint custody of the children is in their best interest, it is possible for the

Court to order joint custody. This is rare for incarcerated parents. The parents need to show that they can communicate on decisions affecting the children despite the incarceration. The children will live with the parent who is free, who will be called the "primary residential parent".

If the case is decided after the incarcerated parent comes home the court will consider these Best Interest factors to decide custody and visitation:  
***Best Interest of Child.***



(a) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

(1) the wishes of the child's parent or parents;

(2) the wishes of the child;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school and community;

(5) the mental and physical health of all individuals involved;

(6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;

(7) the occurrence of ongoing abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, whether directed against the child or directed against another person; and

(8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. *750 ILCS 5/602*

***What if there was a divorce during the parent's incarceration and that parent wants to regain custody upon coming home?***

Courts usually keep children where they are, as long as they are doing okay. Illinois law supports this because children need stability.

For two years after a divorce judgment, the parent who does not have custody may not seek a change of custody unless:

1. the other parent agrees, or
2. the welfare of the child is seriously endangered in the home of the custodial parent, and the other parent can prove this.



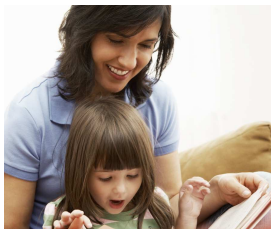


After the two-year mark, a parent may petition for a change of custody only by showing:

1. there has been a change of circumstances in the custodial parent's home so that it is in the child's best interest to change custody, or
2. that information unknown to the court at the time shows it is in the child's best interest to be in the custody of the other parent.

Visitation orders can be modified at any time based on the child's best interest. So even if the returning parent cannot petition for custody, he or she may be able to win more extensive visits with the child. Parents seeking visits need to show that they have a safe place for the visits, that they are drug-free and that they are able to supervise the children responsibly.

### ***What if the parent was ordered to pay child support before being locked up?***



The order for child support will be in effect and the parent will owe the full amount of child support. It is crucial to file a Motion to Modify Child Support in the court that ordered it.

A parent with a child support order should file a motion as soon as he or she cannot pay. This is extremely important. Otherwise, the child support will add up even though the parent is no longer working. The parent will

have to pay the back support, even after the child grows up. If the parent is found in contempt of court for not paying child support, the parent may lose his or her driver's license and professional licenses. The parent could even go to jail for not paying support.

You may want to help the incarcerated parent who owes child support by finding the case number and other pertinent information. A large child support debt may make it more difficult for the parent to attain stability. Back child support may hold the parent back from stable employment.

The parent who owes child support should file a Motion to Modify or Abate Child Support, stating the facts of the parent's incarceration. The parent must serve notice by mail to the custodial parent or their attorney and to the State's Attorney's Child Support Enforcement unit, if there was one involved in the original order.



***Grandparents' Visits: What if my child is in jail or prison and the father or mother won't allow me to visit my grandchild?***

In some cases, grandparents, great-grandparents, or siblings may petition for visits with a child over one year of age. You have to show:

1. the parent denied visits unreasonably;
2. the other parent has been in jail or prison for three months before the petition is filed; and
3. Visits are in the child's best interest.



The relative must show that the parent who has custody has no good reason to withhold visits and that visits are in the child's best interests. The petition must be filed in the child's home county. Please consult with a lawyer because this law may change soon.

***Do incarcerated parents have a right to visit with their children?***

Yes. In theory, parents have a legal right to visit with their children as long as their parental rights have not been terminated by a court. It is not always possible to enforce that right. The correctional center may put restrictions on visits. Courts make decisions about visits based on the best interest of the child. Depending on the parent's situation, the atmosphere in the visiting room,

and the child's need to be reassured by seeing the parent, courts may order or refuse to order visits inside a correctional center, especially if no contact visits are permitted. Most courts won't order visits if travel to the correctional center is too expensive for the family.

Research shows that children who have regular visits with their parents adjust better at home, in school, and in social relationships. Visits with their parents are important for kids.

Fathers' visiting rights also may depend on whether they are legally recognized as the father (please see page 25). Unmarried fathers may need to seek an order of paternity before they can enforce visitation.

Many county jails do not allow contact visits. It can be hard on children to see their parents but not be able to touch them. The court may consider this when deciding whether the visit is in the child's best interest. If there is a children's program for visits, try to help the parent sign up. See page 21 for information about the Bright Spaces program in Cook County.

State prisons usually allow contact visits between parents and children. However, the distance may limit how often you can bring the child. Contact



Lutheran Social Services of Illinois/Family Connections (312-567-9224) to see if you can get transportation to bring the children for visits through a volunteer driver or on their scheduled busses. They also have caregiver support groups.

Grandparents' rights to visits with their grandchildren are limited by the parents' rights to raise their children as they see fit. If you want to visit your grandchildren while your son or daughter is locked up, try to work out an agreement with the child's parent or guardian. If you want to bring the children to visit the incarcerated parent, you need the consent of the parent or guardian. If you bring the child to visit a prison without the parent's or guardian's consent, the prison might not allow the child in. You also may lose your own visits with your grandchildren if you act without proper consent or a court order.

Grandparents who don't live with their



grandchildren should do their very best to work out an agreement about visits. It is almost always better to do your best to work out an agreement with the custodial parent or guardian before resorting to court action.

Arguments between the adults in their lives are very stressful for children, and court cases add to the tension and hostility. As a last resort, if the child's parent is incarcerated for more than three months, grandparents may be able to petition the court for visits.

### ***The Foster Care System***

It usually is better if your family can keep your children **out** of the foster care system. You may have a situation where the children already have been placed in foster care, or where you have become their foster parent. There are two issues. First, if there is a foster care case, the state has the authority to make all decisions about the child. The family does not have that authority when the child is a ward of the court. Second, once children are in foster care, it is extremely hard for the parent to get them back. Even if the parents fully stabilize their lives, recover from addiction, and establish employment and housing, there is no guarantee. Foster care workers are under pressure to insure permanency for children within a short time-frame. If they cannot return the children to their parents safely after 15 or 18 months, they usually want to have the child adopted by someone else.



***What if I want to become the children's foster parent?***

If the children already are living with you, and they are not being neglected or abused, the Department of



Children and Family Services or other foster care agency usually will not allow you to become a foster parent. Instead, they will assist you in becoming the guardian of the children through the Probate Court as described above.

The advantage is that the parent may be able to regain custody of the child when the time is right, and that opportunity won't be denied because the parent is away for a few years. The disadvantage is that the grant from Public Aid/Temporary Assistance to Needy Families (TANF) is less money than foster families receive to support children.

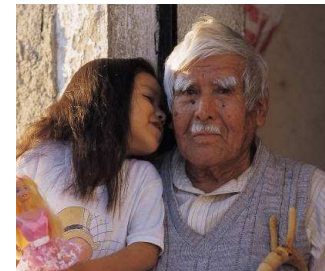
If the caregiver does become the foster parent, the agency may pressure the caregiver to adopt the children. This can happen even if the caregiver sees that the parent is working hard to turn her life around or if the caregiver only wants to care for the children temporarily. Then, when the parent comes home, even if the caregiver is unable to care for them, there is no legal process to return custody to the parent.

***What if the children are in foster care with strangers?***

If children in your family are in foster care with a non-relative and you want to take care of them, you must contact the agency as soon as possible and tell them you want to take care of the children. Foster care agencies seek out relatives to care for children when possible. It is better for children to be with someone familiar to them who can maintain their sense of family. However, the agency has to approve your home as a foster home.

It is crucial to contact the agency as soon as you hear that the children are not with the parent. If you wait, the children will get used to the foster parents. After that, it is extremely difficult to persuade the agency or a court to move them. So if you want to take care of the children, do not wait to contact the agency.

You can find the name of the DCFS worker by calling 773-989-5530 with the names and birthdates of the children and mother. Ask for the worker's name and telephone number.



## ***What should the parent be doing if the children are in foster care?***

If the children are in foster care, it is crucial for the parent to take steps to protect their parental rights if possible.

1. The parent must keep in regular contact with the foster care caseworker. Send the caseworker proof of the parent's communication with the children, progress in programming, and other evidence of their efforts to prepare to regain custody.
2. The parent must obtain the foster care service plan in writing and do everything possible to complete the tasks in the plan. Keep a log book of efforts to get into programs even if the parent cannot get in.
3. The parent should participate in the Administrative Case Review meeting every six months by asking the caseworker to arrange a phone conference or video conference with the prison or jail. If this is impossible, a relative may attend the review to update the agency on the parent's accomplishments and any of the child's needs not being addressed.
4. The parent must keep in regular contact with the public defender or other appointed counsel on the foster care case.

In many cases, the state will file to terminate the parent's rights to children in foster care while the parent is incarcerated. The parents will have to prove the ways that they are acting in the children's best interest and why they will be able to provide a safe, stable household for the child soon. If parents have a history of repeated incarceration or a long sentence, they should consult with the public defender about whether to take the case to trial or not.

If the parents lose at trial or decide to sign "specific consents" for the foster parents to adopt the children, the parents and relatives have no further rights to visit or communicate with the children. Sometimes agencies or adoptive parents will arrange for visits with siblings and extended family members.

When children reach adulthood, they often will search for their birth parents. If the parents register their names and contact information with the foster care agency and with adoption registries, and keep their addresses updated, it will be possible for the children to find them when they reach adulthood. It is always best to start with the agency that handled the adoption, if known.



Here are some adoption registries that help adult adoptees find their birth parents:

**Midwest Adoption Center**

3158 Des Plaines River Road, Des Plaines, IL 60018  
847-298-9096, 847-298-9097 fax

**Soundex Reunion Registry**

P.O. Box 2312, Carson City, NV 89702

**Adoptees Liberty Movement Association**

P.O. Box 2790, Glen Ellyn, IL 60138

**Illinois Department of Public Health**

**Office of Vital Records, Adoption Registry**

605 W. Jefferson, Springfield, IL 62702-5097  
217-782-6553

***Conclusion***

Every family is different, and legal problems require specific legal advice. This booklet cannot replace legal aid. It is too general, and the law changes too often. If you need legal assistance, please contact one of the free legal aid agencies listed on pages 41-42. This booklet cannot replace legal advice tailored for your specific situation.

Internet resources to locate early childhood education are listed on pages 43-44.

We hope that this information is helpful as your family gets through the period of incarceration and strives to reunite the family.

**SUPPORT FOR CAREGIVERS**

It can be hard caring for children of incarcerated parents. Lutheran Social Services of Illinois (LSSI) offers support to caregivers and children of incarcerated parents. LSSI provides free rides to some prisons, runs a support group for caregivers of children of incarcerated parents, case management services, counseling, and other services to support prisoners and their families.

**Lutheran Social Services of Illinois/Connections**

773-783-9516

318 East 74<sup>th</sup> Street  
Chicago, IL 60619

[www.LSSI.org](http://www.LSSI.org)

**Public Aid - Child Only Grant:** A caregiver can receive a child-only grant from Temporary Assistance to Needy Families (TANF). The care giver's income and assets are not considered in the child's eligibility for this program. Relatives up to first cousins and legal guardians, including short-term guardians, are eligible to receive this assistance. A caregiver's family, if they qualify, can also receive assistance under the LINK program, a food stamp program, and a medical card for the children. See your local Public Aid office for assistance.

## Legal Aid Agencies

**CLAIM** (Chicago Legal Advocacy for Incarcerated Mothers)

312-675-0912

70 East Lake Street, Suite 1120

Chicago, IL 60601

CLAIM provides free legal aid for Cook County guardianship cases if the incarcerated parent (mother and/or father) consents to the guardianship. We prepare all court papers, send out the notice, and represent the guardian in court. CLAIM's web site is at [www.claim-il.org](http://www.claim-il.org). Call for an appointment.

**Illinois Legal Aid Online** [www.illinoislegalaidonline.org](http://www.illinoislegalaidonline.org) For basic information about legal issues and referrals to legal aid agencies throughout Illinois.

[www.cookcountyclerkofcourt.org](http://www.cookcountyclerkofcourt.org) For information about court cases.



## Guardianship Assistance Desk for Minors

312-603-0135

69 West Washington, Room 1020

Chicago, IL 60602

The Guardianship desk helps people who represent themselves in court in seeking guardianship of a minor. Assistance is available by appointment only, 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m., Monday through Thursday. Receptionist is available 8:30 a.m. to 4:30 p.m., Monday through Friday.

## Office of the Cook County Public Defender

312-603-0600 for criminal representation.

**DuPage Bar Legal Aid Service**, 630-653-6212

**Will County Legal Assistance Foundation**, 815-727-5123

**Land of Lincoln Legal Assistance Foundation**, 877-342-7891 [www.lollaf.org](http://www.lollaf.org)

(Alton, Carbondale, Champaign, East St. Louis, Springfield)

**Prairie State Legal Services**, 815-965-2134

[www.pslegal.org](http://www.pslegal.org)

(Batavia, Bloomington, Carol Stream, Galesburg, Kankakee, Ottawa, Peoria, Rockford, Rock Island, Waukegan, Woodstock)

## Uptown People's Law Center

(prison and jail conditions & health care) 773-769-1411

### **Early Childhood Education Services**

Children from birth through age 5 may be eligible for McKinney-Vento Services as part of Early Childhood Education Programs. The Lead Liaison or School District Homeless Liaison should help you in answering questions. Early childhood tip sheets may help answer questions for caregiver families for children of incarcerated parents:

<http://ecap.crc.uiuc.edu/cgi-bin/iel/searchiel.cgi?action=searchieltips>

**Head Start**—homeless children go to the top of the list, without having to be evaluated. The child may have to wait until an opening is available. Preschool children who are homeless are eligible for immediate enrollment in Chicago schools.

**Early Childhood Special Education Program** - assistance for three to five year olds.

<http://www.isbe.net/earlychi/html/spec-ed.htm>

**Parents Educational Rights Guide for Children with Disabilities** [http://www.isbe.net/spec-ed/pdfs/parent\\_guide\\_english.pdf](http://www.isbe.net/spec-ed/pdfs/parent_guide_english.pdf)

**Kindergarten Corner resources**

[http://www.isbe.net/earlychi/html/kindergarten\\_corner.htm](http://www.isbe.net/earlychi/html/kindergarten_corner.htm)

**Early Childhood Education Resource Links**

[http://www.isbe.net/earlychi/pdf/03\\_standards\\_resources.pdf](http://www.isbe.net/earlychi/pdf/03_standards_resources.pdf)

### **"Preschool for All" Parent Fact Sheet**

[http://www.isbe.net/earlychi/preschool/pres\\_fact\\_sheet.pdf](http://www.isbe.net/earlychi/preschool/pres_fact_sheet.pdf)

**"Preschool for All" Program Contact List** with program information, address, phone for all areas in Illinois where the program is operating.

[http://www.isbe.net/earlychi/pdf/pfa\\_contact\\_list.pdf](http://www.isbe.net/earlychi/pdf/pfa_contact_list.pdf)

**Early Childhood Asset Map** <http://iecam.crc.uiuc.edu/>

for locations and contact information of early childhood programs in Illinois. See **Resource** page online for agencies that may assist you.



Please send us your comments! Was this booklet helpful? Is it clear? Is there information we did not address that should be included? Send in the *Evaluation* insert at the end of the booklet. Or e-mail [Gail@claim-il.org](mailto:Gail@claim-il.org) to evaluate the booklet. Thank you!



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

### Appointment of Short-Term Guardian

1. I, \_\_\_\_\_, currently residing at \_\_\_\_\_  
\_\_\_\_\_, am a parent of the following child: \_\_\_\_\_  
born \_\_\_\_\_.

2. I hereby appoint the following person as the short-term guardian for my child:  
(Name) \_\_\_\_\_ (Address) \_\_\_\_\_  
\_\_\_\_\_.

3. This appointment becomes effective immediately upon the date that this form is signed and dated below.  
4. This appointment shall terminate 365 days after the effective date, or on \_\_\_\_\_.  
5. This appointment is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signed: \_\_\_\_\_

6. Witnesses: I saw the parent sign this instrument, then I signed this instrument as a witness in the presence of the parent. I am not appointed in this instrument to act as the short-term guardian for the parent's child.

Witness 1 \_\_\_\_\_  
Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_

Witness 2: \_\_\_\_\_  
Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_

7. Acceptance of guardian: I accept this appointment as short-term guardian on this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

Signed: \_\_\_\_\_

## Evaluation

Please take a moment to tell us what you think of this booklet  
and help us improve our services!

	<u>Excellent</u>	<u>Very Good</u>	<u>Good</u>	<u>Fair</u>	<u>Poor</u>
1. How helpful was the information to you as the caregiver of a child whose parent is incarcerated?	1	2	3	4	5
2. Was the information clear enough? Could you understand it?	1	2	3	4	5
3. How well did the booklet address the family law issues that you need to know about while taking care of a child whose parent is incarcerated?	1	2	3	4	5

What issues, if any, would you add? Why?

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4. How helpful was the resource section?                      1                      2                      3                      4                      5

This booklet provides legal information. It accompanies a booklet of practical information for caregivers (Lutheran Social Services/Connections) and a booklet about the criminal court process (Cook County Public Defender). Given that this booklet only addresses family law questions regarding children of incarcerated parents, please make any other comments to help us improve it.

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Please send this form to:

You do not need  
to sign your name.

Thank you for your time and assistance!

CLAIM  
70 East Lake Street, Suite 1120  
Chicago, IL 60601-5950