THE ARKANSAS LEGAL HANDBOOK

FOR

INCARCERATED PARENTS OF MINOR-AGED CHILDREN

Know Your Rights and Your Responsibilities

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The handbook is also available online at www.arkansasvoices.org

Dedication

This handbook is dedicated to the children of prisoners in Arkansas. We are not certain how many children of prisoners live in Arkansas, but we do know that, nationally, 80 percent of women in prison are mothers, and 75 percent of the mothers have children under the age of 18. Of men in prison in this country, 51 percent are estimated to be fathers of minor children. Based on these figures, we can assume that in Arkansas there are 50,000 children whose parents are jailed or imprisoned here. This number does not tell us about Arkansas children in who have parents incarcerated elsewhere, including in the federal system. The most current national figures issued by the Bureau of Prisons estimate that one in every 50 children has a parent in prison. This is an astonishing statistic! We must pay attention to these children and to their parents. Families are our most valuable assets.

Child Information Form

The intent of this form is to help you keep available important information about your child or children.

Child's Name_____

Relationship (son/daughter)_____

Address_____

City_____ State_____ Zip _____

Home Phone_____

Date of Birth_____ Sex_____(M/F) SSN _____

School_____ Grade _____

Guardian_____

Relation to Guardian_____

Guardian's contact phone_____

Pediatrician_____ Phone_____

Child's Name_____

Relationship (son/daughter)_____

Address_____

City_____ State _____ Zip _____

Home Phone_____

Date of Birth_____Sex_____(M/F) SSN_____

School_____Grade _____

Guardian_____

Relation to Guardian_____

Guardian's contact phone _____

Pediatrician_____ Phone _____

Foreword

Any parent who goes to prison even for a brief period can face the risk of losing his or her children forever. Many parents will leave prison having served their time but will face a far worse sentence: the loss of all rights as parents and loss of all contact with their children. To protect their parental rights, incarcerated parents must work hard and with dedication. The barriers are difficult, both while in prison and after release. There are steps prisoner-parents must take while they are in prison in order to preserve their parental rights after they are released. Decisions made while on the inside can critically hurt a formerly incarcerated parent when he or she is released. Laws and policies make it very hard for parents in prison to stay in contact with their families or maintain their legal rights as parents. These policies must change so that imprisoned mothers and fathers are allowed to have a loving relationship with their children.

We hope that this handbook will provide important information that will help incarcerated parents in Arkansas strengthen their families. There are two versions of this handbook, one written in English and the other in Spanish. An increase in Arkansas's Hispanic population is reflected in an increase in the number of Hispanic prisoners whose primary language is Spanish. This includes the large number of federal prisoners in the Forrest City facility. You will notice there are words that appear in *italics*. These words can be found at the back of the handbook with a definition following. Also, there are form letters, references to judicial decisions concerning incarcerated parents, descriptions of public policies, and the names and addresses you may wish to use as resources.

Children of incarcerated parents carry the burden of the highest volume of risk factors among any groping of at-risk children, and are vulnerable to poor educational performance, high rates of teen pregnancy and substance abuse, higher rates of teen suicide, developmental lags, and a constellation of mental health issues due to trauma, loss, grief and the three Ss: Stigma, Silence and Shame. They are the least served in communities across the nation, and their safety and well-being are jeopardized by the loss of a parent and the common experiences of not being able to remain in contact with any ease during the incarceration period, despite the fact that most of their parents will be returning to them.

TEN MOST FREQUENTLY ASKED QUESTIONS BY CHILDREN OF INCARCERATED PARENTS

(Reprinted with permission from "Voices", a magazine publication of the Child Welfare League of American, Fall 2000.)

1. How can I contact my mother or father?
2. When can I see my mother or father?
3. Who is going to take care of me?
4. Who can I trust to be on my side?
5. Why is the system so unfair?
6. Why does it take the courts so long to make a decision?
7. How can I get my mother or father to change?
8. How will people react if I tell them the truth about my mother or father?
9. Why do I feel so angry?
10. Where can I get help?

TIPS FOR PARENTS IN PRISON

1. Stay in touch with your children through phone, visits or letters.
2. Do not let your efforts lapse because you receive no response.
3. Document all phone calls and save letters that come back.
4. Document the name, agency, and date of any agency or prison official that you talk with about your children.
5. Keep copies of every letter or document you received from DHS, a caregiver, a prison official, an attorney, or any other individual that you contact about your children, including your own letters in response.
6. Send money whenever you can. Keep documents of the transactions.

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Introduction

When mothers and fathers are sentenced to prison, their children are also sentenced; they suffer a loss through separation from their parents. When mothers or fathers must place their children in foster care, the children suffer more. They must endure the additional psychological stress of separation from familiar persons and of lack of communication with their mothers and fathers. Often, they suffer from inconsistent care. Children who are left behind with relatives or significant friends also experience similar traumas of separation from the parent, often being moved from household to household.

We have repeatedly seen problems come up between agencies and incarcerated parents. These problems are harmful to the children. Agencies are not eager to bring children to visit their mothers and fathers in prison or jail. The resulting limited contact disrupts the bonding between the mothers and children, causing pain to both. In some instances, agencies and caseworkers may not respond to incarcerated parents, out of a belief that these parents' concerns are not sincere. We recognize that some of the above problems are directly related to the fact that the foster-care system is under great stress. It must deal with overwhelming caseloads, a high percentage of caseworker turnover, underfunding, and overall crises in state budgeting. However, some of these problems also come from a lack of understanding among social service professionals about the special needs of children of incarcerated mothers and fathers and the parents themselves.

Prisoners' children in foster care must deal with many of the same issues as other foster children. They face loss, grief, separation, abandonment, fear, uncertainty, and of making sense of their parent's arrest and/or incarceration, including understanding and managing their own feelings about this experience. Additionally, these children are often negatively labeled because of their close relationship with a loved one who has been arrested or convicted, and are treated as if they, too, have done something wrong. As a result, they sometimes feel that the parent's arrest and/or incarceration is their fault. This can lead them to feel intense guilt over what has happened.

Most children of incarcerated parents are not in the foster-care system. With over two million children experiencing their parents' incarceration each year, most are left behind with *relative caregivers*, such as grandparents, aunts, and uncles. Until recently, these households and the children have been an invisible and underserved community. The increased rates of incarceration in our country should now compel agencies, lawmakers, and policy developers to acknowledge these families and begin to shape services for them.

We estimate that there are 50,000 children in Arkansas with a parent in prison, jail, or under court supervision. All of these children are at risk of future incarceration, six times more at risk than other children whose parents have not been involved in the criminal-justice system. Correctional systems are quite familiar with the *intergenerational cycle of incarceration.* Society is not as well informed. This handbook is intended as a resource for incarcerated parents, the caregivers of the children of these parents, and other professionals and advocates seeking to serve children and families affected by incarceration. Without information concerning the parental legal issues, none of these entities can go forward to help these families. Our hope is that the tools of knowledge provided here will ensure that the best interests of children and families will be served.

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What are my choices for child care during my incarceration?

POWER OF ATTORNEY
ADVANTAGES AND DISADVANTAGES

Having *power of attorney* allows another person to make and carry out certain personal decisions for you when you are not able to do these things for yourself. For example, a power of attorney would allow someone you trust to take care of your finances, cash checks payable to you, sign legal documents, etc. The reference to "attorney" does not mean a person licensed to practice law. You may give your power of attorney to someone who is not a lawyer. When it comes to the benefit of your child, giving someone a power of attorney may enable the person to whom you give power to do some things that you are unable to do because you are incarcerated. A power of attorney does not, however, make the person responsible for the care of your child.

Other people or organizations (schools, banks, doctors, day care centers) may or may not accept the power of attorney. Often, they will. A bank, of course, will likely accept a power of attorney that allows a designated person to cash checks and make withdrawals that are in your name. Schools may accept the power and allow the person with the power to register your child, give consent to go on field trips, etc. A day care center may accept the power of attorney, but may also want the person with the power to also be personally responsible for payment. Physicians' offices may accept the power to permit your chosen person to consent to giving your child the medical treatment he or she needs. Any of the people or groups may, however, refuse to act without a formal guardianship.

When it comes to consenting to major medical care for your child, other than in an emergency, a hospital or physician may be reluctant to rely on power of attorney and may want direct consent from the parent.

A power of attorney is more likely to be accepted if it specifies all of the things the power covers:

- Power to contract in your name for benefits for your child;
- Consent to medical treatment;
- Check negotiation, etc.

It should also mention your child by name, his or her date of birth, and Social Security number. Two or more witnesses over the age of 18 should confirm these facts and give their addresses, phone numbers, and Social Security numbers.

You should also consider drafting the power of attorney so that it will remain effective even if you should become completely incapacitated or disabled and unable to do anything for yourself or your child. If you decide to include this option, the power of attorney must state that it will remain effective even if you become incapacitated or disabled. This is what is known as *"durable" power of attorney.*

You can terminate the power at any time by giving notice to the person with the power. It is helpful to give notice to those who may have, or who are likely to rely on, the power – banks, schools, etc. – that the power has been terminated.

The person you decide to give the power to should be someone you trust, someone who will act in the best interest of your child. **This document of power of attorney is probably best used for when a close, trusted family member has agreed to take care of your child.**

Ark. Code Ann. 28-68-201

GUARDIANSHIP

Guardianship occurs when a court orders someone to be responsible for raising a child. To establish guardianship, a person must file a petition with the court (usually with the county court where the child resides) and ask the judge to appoint a guardian.

The petition must contain certain information:

- The name of the child.
- Why the guardianship is sought.
- Whether there is already guardianship appointed.
- The name and address of the person to be appointed guardian.
- The names and addresses of those most closely related by blood or marriage.
- The name and address of the person having custody of the child.
- What interest the person filing the petition has in the matter.

A guardian must be 18 or older and may not be a convicted or unpardoned felon. Ark. Code Ann. 28-65-205

The court usually holds a hearing to determine if a guardian is needed and if the person who wants to be appointed as a guardian qualifies.

The law provides that the parents of the minor must be given notice of a hearing to appoint a guardian. Unless the court, for good cause, orders a reduction in time, the parents must receive at least twenty (20) days advance notice of the hearing.

If you receive such a notice, you must do everything you can to attend the hearing. You also should, although you are you not required to, attend the hearing and have made such a request to the prison authorities for your release, which would allow you to attend the hearing. Send this to the clerk of the court. Send a copy to the judge and to the person who filed the petition. Ask the clerk of court to file your statement. Be sure to put the case number on all your correspondence. *Ark. Code Ann. 28-65-207*

One advantage of guardianship over simply asking someone to care for your child is that the guardian becomes legally responsible for raising your child (food, clothing, education, etc.) and becomes subject to the court's orders. The guardian cannot do certain things without the court's approval. For example, the guardian cannot consent to an abortion, consent to withholding life-saving treatment, authorize the termination of parental rights, or consent to settle a claim by or against the child. Legally, the guardian has all the authority that a parent would have with respect to the child, unless a court order is issued.

Once the guardianship is established, the parent no longer has any authority over, or responsibility for, the child. In order to regain the authority and responsibility, the parent must seek to have the guardianship terminated. Only the court can do this. Once you are released from prison, even if the guardian agrees to return custody and care of the child, the court must approve termination of the guardianship.

Even if the guardianship order says specifically "the child will be returned to the natural parent(s) after their release from incarceration" or if it says it is a "temporary" guardianship, the court still does not have to return your child to you upon your release from prison. The court will make its decision on whether to terminate the guardianship based on what is in the "best interest" of your child. The court may decide that it is not in the best interest of the child for the child to be returned to his or her parent(s).

The guardianship can be terminated if the child marries, when the child reaches age 18, or if it would be in the best interest of the child. Simply because you are the parent does not mean the court will return your child when you are released. You will have to prove to the court that it is in the child's best interest to terminate the guardianship and return the child to your care. The court may consider such things as how long the child has been under the guardian's care, the age of the child, the bond that has been established with the guardian, the contact (or lack of contact) between the natural parent and the child, the parent's rehabilitation, the parent's provision of support to the child while under the care of the guardian, and numerous other factors.

Ark. Cod Ann. 23-65-401
Hooks v. Pratte 53 Ark. App 161, 920 SW2d 24 (1996)
In re guardianship of Markham 32 Ark. App 46, 795 SW2d 931 (1996)

What can I expect if my child is placed in foster care?

Foster-Care Options

What Is Foster Care?

When a child enters *foster care*, the State has taken legal custody of your child from the Department of Human Services (DHS), and foster parents will now make all of the decisions about the care of your child.

Voluntary Placement

Voluntary placement in foster care is made when you can no longer care for your child and there are no friends or relatives available or suitable for the care of your child. Some parents who are on bail and expect to serve a sentence may decide to place their child with DHS. In this case, there are no criminal charges against you, but you no longer have decision-making powers over the care of your child. You are advised to have an attorney if you choose this option. Read ALL of the court papers before signing. It is important that you contact DHS, not relatives or friends who have physical custody of your child, if you are considering voluntary placement with DHS. If the relative or friend calls, the agency may file a dependency-or-neglect charge against you. It is much more difficult to get a new petition to recognize you as the natural parent and divert charges if the relative or friend caring for your child has made the first contact instead of you. Tell your child's caregivers that if they are unable to care for your child, to let you know, and then you can be the contact to DHS.

Involuntary Placement

Involuntary placement of a child in foster care (because of a dependency-neglect case being opened for investigation and potential criminal charges against a parent) removes the legal custody and care of the child away from the parent or parent-designated caregiver. An investigation of a report of child abuse, neglect, or abandonment may require DHS to take your child into a temporary, physical-custody arrangement until an emergency hearing is held within 72 hours. A judge will determine if there is probable cause to keep the child in foster care. If there is not, the child will be returned to parental custody. If your child is placed in the State's care for any of these reasons, there are laws and written policies that must be followed as the State seeks to decide if the case warrants further action. While your child is in foster care, the State, through the DHS worker, the DHS attorney, the attorney for the child (called an *ad litem*), and your attorney, will make their recommendations to the judge about whether or not your child should be returned to your custody.

Case Plans

DHS states in its policies that it will keep the parent informed about his or her children, arrange for special visitations, and include the parent in the CASE PLAN. This plan is reviewed at three-month intervals or at regular court hearings. The purpose of the review is to see if the plan is working and whether the parent is doing the requested activities in the plan, such as taking parenting classes, anger-management classes, or receiving substance-abuse treatment.

A *case plan* will be written by the caseworker for the court, describing what you, the parent, must do in order to reunite with your child and have legal custody returned to you. Several case conferences are to be held with you to help determine what services you need to be eligible to regain the custody of your child. A case plan can include special visitations between parents and their children, including visits to the prison where the caseworker may observe the interactions between you and your child. If DHS visits are not court-ordered, they may not happen. The case planning is the time to bring up parent-child visitations at the prison, in the hearing with your attorney, and with the judge. The same is true for being at the hearings. You must ask the judge for an "*order to transport*" because the prison will not bring you to court without a judge's order. Some hearings are merely procedural and last only a couple of minutes. An order for transport is unlikely to be issued for such an event. *See DHS Policy 9-27-402.*

Please remember that the State does not have to return your child to you if the child's best interest is decided to exist in a different placement and if your fitness as a parent is judged inadequate. There are federal and state laws that determine when a judge can return your child or terminate your parental rights. You will have to complete all of the requirements ordered by the court in order to regain custody of your child. For example, you may be ordered to take anger-management classes, parenting classes, attend counseling, find a job, and/or housing. If you do not follow these orders within the allotted time that is offered by the court or caseworker, you risk losing your child forever.

Waiting until the last minute to find the programs and services you were ordered to take will make you look irresponsible, or worse, will make it seem that you do not really care about getting your child back.

Understanding Recent Federal Laws

The 1997 Adoption and Safe Families Act (ASFA), P.L. 105-89, was passed by Congress to move children more quickly through the child-welfare system. It was intended to make Termination of Parental Rights (TPR) and adoption more easily achieved by shortening time frames for permanency and by describing when the State may terminate parental rights without having to make reasonable efforts.

ASFA requires that states must file for TPR on behalf of any child who has been in foster care for 15 months of the most recent 22 months. States must also file TPR when a parent has abandoned an infant, committed murder, or aided, conspired, or solicited to commit murder or voluntary manslaughter of any child of the parent. The Act also specifies exceptions to the mandatory filing. Exceptions can be made if:

1. At the State's option, a relative is caring for the child.
2. The state-agency documents in the case plan, available for court review, show a compelling reason why filing is not in the best interest of the child.
3. The state agency has not provided a case plan to the child's family within an alloted, reasonable time.

AFSA also establishes that a permanency hearing for children in foster care must be held within twelve (12) months of a child's entry into care. At the hearing, the determination will be made as to whether and when a child will be returned home, placed for adoption, or referred for legal guardianship or another placement living arrangement.

Bypassing Reasonable Efforts Toward Reunification

Normally, at the permanency hearing, the planning goal of choice is reunification unless reasonable efforts to reunify the family have been made and reunification has been ruled out. AFSA requires that states make "reasonable efforts" (defined variously or not defined by the state) to preserve and reunify families. AFSA emphasizes that safety, permanency, and the well being of the child are the primary concerns and defines some cases in which reasonable efforts are not required. Then the State may bypass reunification and proceed to another permanency plan. Reasonable efforts do not apply if a court finds any of the following:

1. The parent has subjected the child to aggravated circumstances as defined in state law (including, but not limited to, abandonment, torture, chronic abuse, and sexual abuse).
2. The parent has committed murder or involuntary manslaughter or aided and abetted, attempted, conspired, or solicited to commit such a murder or manslaughter of another child of the parent.
3. The parent has committed a felony assault that results in serious bodily injury to the child or to another of his or her children.
4. The parental rights of the parent of a child's sibling have been involuntarily terminated.
5. Certain drug charges have been made that involve the manufacturing of methamphetamines in the home of the child, whether the child is present or not.
6. The sentence to be served is more than 10 years, according to Arkansas statute.

The realities of the criminal-justice system present challenges for case planning with an incarcerated parent, since both sentences and time served are likely to be longer than the allowed ASFA time frames (*Gentry, 1998).* In addition, a parent may have had children in foster care and been working on a reunification plan prior to his or her incarceration, and those months would count toward the 15-month time limit. Therefore, many incarcerated parents are faced with an involuntary 15-month separation from their child, regardless of their desire or ability to parent, and with the probability that the child will experience the 15-month deadline (TPR).

TYPES OF COURT HEARINGS

You may have to go to several court hearings during the dependency/neglect case so that the judge can listen to information presented from all the parties and decide what will happen. These are the types of hearings in child-abuse and-neglect cases:

- Emergency Hearing
- Adjudication Hearing (Trial)
- Disposition Hearing
- Review Hearing
- Permanency Planning Hearing
- Termination of Parental Rights Hearing

This is a chart of the types of hearings and the time frames for when those hearings must be held.

Type of Hearing	**Time Frame**
Petition Filed	5 Working Days
Emergency Hearing	30-50 Days
Adjudication Hearing	14 Days
Disposition Hearing	6 Months or Less
Review Hearing	*
Permanency Planning Hearing	Held No Later Than 12 Months from the Date the Child Was Removed from the Home
Termination of Parental Rights Hearing	Held No Later Than 150 Days from the Date of the Permanency Planning Hearing

COURT PROCEEDINGS

TERMINATION OF PARENTAL RIGHTS

Your parental rights can be terminated after an appropriate notice and a court hearing. If you receive a notice, you MUST respond by filing a response with the circuit clerk of the court where the proceeding was filed and make every effort to attend the hearing. Be sure to include the case number on all documents you want the circuit clerk to file for you. **This may be your only chance to remain your child's legal parent.**

Notification of Termination

There are some situations where you do not have to be given notice that your parental rights are going to be terminated. It is very important to recognize these situations. Knowing of these may prevent you from needlessly falling into a trap.

Situation One

You have *abandoned* your child, which means you failed to provide reasonable support and to maintain regular contact with the child. Contact can happen either through letters or actual contact. And it must be done with the promise to continue this contact for an indefinite period in the future. If you fail to support or maintain contact for one year, it is assumed that you have abandoned your child. *9-9-207, 9-9-202*

What to do: Stay in touch with your child and give whatever financial and emotional support you can.

Situation Two

Your child is in the custody of another, and you, for a period of one year, have significantly failed, and without justifiable cause, to communicate with the child or have failed to provide for the care and support of the child. *Ark. Code Ann. 9-9-207*

What to do: Staying touch with your child and give whatever support you can.

Situation Three

You are the father of a child and you were never married to the mother and have not legitimated the minor (filed as the father with putative father registry). *Ark. Code Ann. 9-9-206*

What to do: File an acknowledgement of paternity. You must execute an acknowledgement of paternity and file it with the Division of Vital Records of the Department of Health so that your name will appear on the child's birth certificate.

Ark. Code Ann. 9-10-120, Ark. Code Ann. 20-18-408-409

The termination of parental rights usually occurs in connection with adoption proceedings but can also occur, for example, in a divorce proceeding in connection with the failure to pay support or to stay in contact with your children.

Reasons for Termination

At a hearing to terminate your parental rights, the court could terminate those rights for a number of reasons. If you are aware of these reasons at the time of your incarceration, there are things you can do that may help prevent termination of your parental rights. Most of the grounds for termination have been defined by the Arkansas legislature. In every situation, the court must determine what is in the child's best interest.

Situation One

If you fail to pay child support or visit with the child for at least one year, and if you are subject to a court order that requires you to pay child support and gives you visitation rights, this could be a basis for terminating your rights.

What to do: You may need to have the child-support order changed to reduce the amount of support you have to pay, but you should continue to pay whatever you can and should continue to stay in contact with your child, if not in person at visitation, then by phone and mail. *9-9-220(c)(1)*

Situation Two

If you have ever failed or refused to prevent the abuse of your child when you knew or had reason to know the child was or had been abused, this could be a basis for terminating your rights.

What to do: If you know your child is being abused, you must report this to the authorities.

Situation Three

If you failed to provide the necessary food, clothing, shelter, and education and this causes or threatens to cause the child's physical, mental, or emotional health – except when financial inability is the primary cause and you have not refused an offer for relief, this could be a basis for terminating your rights.

What to do: Continue to send money, clothes, books – whatever you can – while you are in prison. *9-9-202(8)*

Situation Four

If you have abandoned your child, which means you have failed to provide reasonable support and to maintain regular contact with the child either through letters or visits coupled with intent to permit this to continue for an indefinite period in the future, this could be a basis for terminating your rights. If you fail to support or maintain contact for one year, it is assumed that you have abandoned your child.

What to do: Once again, stay in contact with your child and send whatever support you can, as often as you can.

9-9-202(7)

What is involved if I choose adoption for my infant or child?

ADOPTION

There are appropriate reasons that a parent might choose adoption for the child. Adoption can be an act of love for the parent is to make a choice based on the best interest of the child. If no one in the child's family can care for the child without financial help, or, there is no friend or relative available to care for the child, adoption is a socially valued consideration.

Who May Adopt?

Anyone – even a child who has reached the age of eighteen (18) years and is then an adult – may be adopted. As for who is eligible to adopt, Arkansas law is broad, permitting adoption by a husband and wife, even though one (or both) of them is under the age of eighteen (18). It should be noted that an unmarried person seeking to adopt must be an adult (at least 18 years of age). Under certain circumstances, a married person may adopt, even if his or her spouse does not wish to adopt.

Place of Proceeding

Adoptions must be approved by the state circuit courts. In all but a few cases, the person or persons seeking to adopt (the petitioners) must file proceedings in the county in which either the petitioner(s) lives or in which the individual to be adopted resides. The petition may also be filed in the country in which the state agency having responsibility for the care of the person to be adopted is located.

Consent

With few exceptions, which will be discussed later, the consent of the biological mother of the person to be adopted is required before an adoption may take place if the person to be adopted is a minor. The father of the minor must also consent if the father was

married to the child's mother at the time the child was conceived or at any time afterward. The father must also consent if the child to be adopted is the father's child by adoption or if the father has custody of the child at the time the petition for adoption is filed. In addition, consent must be obtained from any other person who is legally entitled to custody of the child (for example, by court order) at the time of the filing of the petition. If the person to be adopted is a minor, who is eleven (11) to seventeen (17) years of age, the child's consent is also required unless the court finds that adoption would be in the best interest of the child regardless of the child's wishes. Finally, if the minor to be adopted is married, the spouse of the minor must consent to adoption.

An adoptee who is 18-years-old or older must consent to the adoption. If married, the spouse must consent as well.

Adoption without Consent

The courts have held that persons who seek to adopt a child without consent of that child's natural parent carry a heavy burden, but there are cases in which courts will permit the adoption of the child without the consent of its mother or father. If a parent has abandoned or deserted a child, consent of a parent is not required. The law defines abandonment as a parent's failure to provide "reasonable support and to maintain regular contact with the child" where the parent has no plans to support or maintain contact in the future. If a parent fails to support or maintain regular contact with the child without just cause for one year, the law states that the court can assume that the child has been abandoned. At that point, it is up to the parent to prove to the court that he or she has not abandoned the child in question.

Likewise, consent to adoption is not required from the parent of a child who is in the custody of another person if the parent has failed "significantly without justifiable cause" to communicate with the child or provide for the care and support of the child.

Arkansas courts have made it clear that not every parent who is incarcerated will be considered by the courts to have abandoned his or her child, but the courts have also made it clear that a parent's responsibilities to his or her children continue during incarceration. What that means is that incarceration cannot be used as an excuse for failure to communicate with a child by letter or telephone or to provide for care and support of a child with whatever money or other resources are available. If an incarcerated parent does not communicate or make every effort to provide for care and support of a child, a court may find that the incarcerated parent's consent to adoption is not required. In such a case, the incarcerated parent is powerless to prevent a court from permitting the child to be adopted by another person.

The consent of the father of the child is not required unless he was married to the child's mother at the time the child was conceived or at some later time or if he has adopted the child or he has custody of the child at the time the petition for adoption is filed with the court. This means that an unmarried father of a child who does not have some "substantial relationship with that child" is not entitled to notice from the court that another person is trying to adopt the child, and that father's consent to the adoption is not required.

A man who has filed a sworn statement with the Putative Father Registry maintained by the Division of Vital Records of the Arkansas Department of Health has a right to be notified by the court of an adoption proceeding involving the child he has acknowledged as his own

Ending the Parent-Child Relationship

The parent-child relationship may be ended in ways other than through adoption. A parent may voluntarily give up the right to control the child or to refuse consent to an adoption by signing a sworn statement that this is the wish of the parent. However, this is usually done as part of an adoption proceeding. The responsibility of child-support payments continues unless the child in question is adopted.

The law also sets out a number of reasons, such as neglect or abuse of the child, abandonment, and failure to pay child support, on which one parent may ask a court to terminate the parent-child relationship of the other parent. Such a petition may also be filed by an agency having custody of the child or by a person petitioning a court to adopt the child or by the guardian or legal custodian of the child.

Termination of Parental Rights of Children in Foster Care

Under federal law, the Adoption and Safe Families Act of 1997, states must file court actions seeking termination of parental rights for any child who has been in foster care for 15 of the most recent 22 months. Under this federal statute, states must also seek termination of parental rights when a parent has abandoned an infant or has been convicted as an accomplice, or otherwise, of the homicide of another child of the parent. The state does not have to petition a court for termination of parental rights if a relative is providing foster care for the child.

An exception can also be made if the state agency responsible for the care of the child convinces the court of a compelling reason why termination of parental rights is not in the best interest of the child. An exception is also made in cases where the state agency responsible for the care of the child has not provided the child's family certain services thought to be necessary to return the child to a safe home.

This federal law makes it much easier for a court to permanently terminate parental rights in cases where parents have abused the child at the time of issue or the child's brothers and sisters.

Kinship Caregiver Arrangements

Kinship care, the most common arrangement for children of prisoners (especially mothers), is second only to the placement of your child with his or her other parent. Kinship foster parents must meet the same standards as any other foster parents to have their

relatives' children placed with them while the children are in the State's custody. This type of placement is less common than it once was because of the strict requirements that must be met before a child can be placed in the home. The requirements include:

- A home study.
- An income study.
- Criminal background checks for everyone in the home.
- Child Abuse Registry for anyone in the home.

Most relative caregivers do not want the children in their custody subject to removal if the State objects to any care-giving decision. Kinship caregivers often find the training and standards for foster care challenging and are afraid they will not meet the standards. In Arkansas, less than 10 percent of children are in kinship foster-care placement, equaling 250 families in the entire State. Yet, such placements provide significant services and cash assistance badly needed by these families.

When children are in the care of relatives, it is important that caseworkers are reminded that ASFA permits the option of not filing a petition for TPR despite the time in care. Caseworkers need to understand this significant consideration clearly to make an informed permanency planning decision for the child.

Informal Arrangements for the Child's Care

The most common care-giving arrangement for a parent in prison is to leave the child in the care of a relative, a good friend, or with the child's other parent. When a father is in prison, usually the mother cares for the children, and larger custody issues are not at risk. If there is involvement of the court, as with a divorce, then custody arrangements are settled by the court. When a mother is incarcerated, it is most likely that the child will be in the care of a grandparent, usually a single maternal grandmother. Paternal grandparents often have responsibility for the children as well, especially when both parents are incarcerated, or when the free-world parent cannot care for the child. These are informal arrangements that do not have any legal formal basis.

It is wise to discuss with the informal caregiver what you hope for in terms of visits, phone calls, and letters. It is a good idea to write down the details of the visitation and other contacts that you expect while you are in prison. It is very helpful to have a clear, written agreement, but remember that such an agreement is not legally binding. The "*co-parenting" contract*, as we call it, can remind each party of their communications and other agreements, without the excuse of, "I didn't agree to that." Notarization can also be helpful, but remember, the informal arrangement has no "legal legs" to stand on if the agreement is broken.

WHEN CARE-GIVING ARRANGEMENTS BREAK DOWN

If Your Child Is in Foster Care

If your child is in DHS custody and the judge did not order visitation or contact for you with your child in the foster-parent home placement, the foster family does not have to bring the child to see you. Many judges, unfortunately, think that prison is not a good place for a child to visit a parent. The may not realize that in most cases, there is greater harm done to the child by denying visitation and/or contact while in foster care. If the judge orders visitation and DHS does not bring the child for visits, then you need to write a polite letter to the judge, as well as to your caseworker, worker's supervisor, the area manager, your *court-appointed attorney* (provided by the court when you are poor and cannot afford a lawyer), the CASA volunteer, the attorney *ad litem* for your child, and the DHS attorney. These names should be in your paperwork, especially court papers.

Your appearance at the important case hearings will not happen unless the judge orders a transport. Only then will the prison provide this. If you need a guideline for writing these letters, these are sample letters at the end of the handbook. Always write with politeness and respect. Be courteous in your conversations and face-to-face contact with judges, foster families, workers, and attorneys. YOUR ATTITUDE MATTERS.

If you are not receiving visits or phone-and-letter contact with your child, you must again write letters, expressing your concern about this. **YOU WILL NEED TO CONTINUE WRITING THE LETTERS AND PHONING, EVEN IF YOUR REQUESTS ARE DENIED OR UNANSWERED.** Keep a record of every successful and unsuccessful contact that you make or attempt to make. Copy your letters to the child, even if he or she is not receiving the letters. Keep this documentation, because it is good evidence of your efforts to stay in touch.

Child in a Guardianship or Informal Arrangement

If your child is in the care of a relative or friend, not his or her other parent, and if you have made no legal arrangement, you will have to depend on the goodwill of the caregiver to maintain contact with you. Many caregivers cannot make the trip to visit you because of costs or distance, and many do not think the children should visit the prison. Sometimes the caregivers will get angry with the parent in prison and set barriers for the child-parent contact. You cannot force a caregiver to bring a child to see you if there is not court involvement. The best you can do is to work toward improving the relationship and providing information.

If your child is in guardianship that you voluntarily initiated and you stated contact as a requirement, with the judge's blessing, and the order is not followed, then you should contact the judge by letter, always being respectful of the guardian and the judge but asking that the order be upheld. The guardian may tell the judge that there are good reasons, like distance and costs of travel that prevent the child from visiting. The final decision will be the judge's decision.

If guardianship was awarded without your agreeing to that arrangement and there were no court orders about child-parent contact, letters, phone calls, or visits, then the judge will make the decision. It is common for judges not to order visitation or contact if the guardian opposes either. Write your polite, respectful letter to the judge. You may also file a petition for visitation, but again, if the guardian has good reasons for not bringing the child, you have few options.

With this arrangement, the caregiver may move around a lot and not inform you. It is difficult to locate a family that does not want contact with you. And there is no legal requirement that they do so. Stay in contact with other family members who are in contact with the caregiver's family. They may keep you updated. If you "lose" contact, continue the letter writing and have copies to demonstrate your efforts at contact. Do not give up, and don't stop your letter writing or calling!! Your efforts mean a lot to the judge and may help you regain your children when you are home.

Suspicions of Abuse or Neglect of Your Child: What do I do?

If you become suspicious that your child is a victim of child abuse or neglect, you should contact your prison officials. They will permit you to call the Child Abuse Hotline. When you make the call, be prepared with as much information as possible. You would need an address, phone numbers, child's school, and child's Social Security number. This is a serious phone call that will possibly disrupt your child's life, so be sure the call is about your suspicions and not made out of anger toward a family member. It is clearly appropriate to call if your child tells you of abuse or neglect, if you find marks on the child, or if you observe marked changes in the child's behavior that suggest abuse. If possible, ask others in the household if they have noticed any marks or behavioral changes. It is in the best interest of your child that you take action. However, the Hotline is one of your most valuable resources to protect children, so do not abuse it, for you will be utilizing a limited resource that children in harm's way need desperately. It is a hard decision to make since imprisonment prevents your daily observations.

HOT LINE NUMBER (STATEWIDE: 1-800-422-6641)

SPECIAL ISSUES FOR PARENTS IN PRISON

CHILD SUPPORT

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

If you are served with support orders, you should immediately file an "answer" to the demand. If you are not the father of the child, this may be you 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.

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

A. The order was due to fraud.
B. Default order was entered against you based on presumed income.
C. Default judgment was based on mistaken identity.
D. The judgment was issued because of your mistake, inadvertence, surprise or excusable neglect.

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.

NOTE: Please be aware that failure to deal with your child support issues may cause you major headaches when you are released. You may lose your driver's license, or state or commercial licenses for 30 days. In dealing with Arkansas' Child Support Enforcement, you may be very frustrated. Make sure you keep track of all of your correspondence **and follow through on everything.**

PUTATIVE FATHER REGISTRY

What can I do if my name is not on my child's birth certificate?

If you think that you are the father of a child but your name is not on the birth certificate, you may apply for your name to go on the Putative Father registry by completing the form enclosed in the "FORMS" SECTION AT THE BACK OF THIS HANDBOOK. Submit this form to the Arkansas Department of Health and if the child you designate is ever placed for adoption, you will be notified and asked for a DNA testing procedure to determine if you are the child's father.

Pregnant Prisoners and the Infant Care Plan Policy

honor and integrity in public service

Arkansas Department of Correction

P. O. Box 8707
Pine Bluff, Arkansas 71611-8707
Phone: (870) 247-1800
Fax: (870) 247-3700
www.state.ar.us/doc

ADMINISTRATIVE DIRECTIVE

SUBJECT: Prenatal Care/Pregnant Inmates **SUPERSEDES:**

NUMBER: 00-06 **PAGE:** 1 of 6

APPLICABILITY: All Units/Centers Processing the Intake or Housing of Female Inmates

REFERENCE: JAR 829- Prenatal Care/Pregnant Inmates/Residents

APPROVED: [signature] **EFFECTIVE DATE:** 3/2/00

I. **POLICY:**

To ensure that pregnant inmates who enter the Department of Correction are provided appropriate and timely counseling in planning for their unborn children.

To ensure that pregnant inmates of the Department of Correction are provided comprehensive health care services necessary to reach term or to interrupt pregnancy in accordance with applicable statutes, standards and regulations.

II. **EXPLANATION:**

Comprehensive counseling and assistance shall be provided to pregnant inmates in keeping with their expressed desire in planning for their unborn children.

Counseling and social services shall be available from ADC staff and/or through community-based agencies as facilitated by ADC staff.

III. **DEFINITIONS:**

A. ADC Staff. All employees paid by or engaged by contract to provide service(s) to the Department of Correction.

B. Inmate. Any individual committed to or placed within the custody of the Department of Correction.

IV. **PROCEDURE:**

A. Initial Screening

1. At time of intake/receiving into an ADC facility, an inquiry shall be made by appropriate ADC staff as to the status of pregnancy of all female inmates. Inquiry and resultant response shall be made a permanent part of any intake screening document.

2. A female inmate who is obviously pregnant, or responds to inquiry in a manner which may suggest that the inmate may be pregnant, shall be referred to health care staff for immediate evaluation prior to placement in any institutional housing area. Intake/receiving staff shall record such health care referral as a permanent part of any intake screening document(s).

3. Upon receipt of intake/receiving referral, health care staff shall conduct an appropriate physical assessment of the inmate to determine need for immediate examination by a physician or mid-level practitioner. The assessment shall include determination as to immediate need for prescriptive medication(s), dietary accommodation(s), and/or need for special housing or physical activity restriction(s). Health care staff shall record this assessment as a special entry within the inmate's permanent health care record and made available for review by the unit/facility physician or mid-level practitioner at time of regularly scheduled intake health appraisal.

B. Health Services

1. All inmates entering ADC shall receive a complete health appraisal within seven (7) calendar days of reception into the Department of Correction.

2. As part of this health appraisal, all female inmates shall have a urine pregnancy test performed. Test results shall be made a standard entry to the ADC form MSF-100, Report of Physical Examination. Verification of early term shall be accomplished via a blood test.

3. The following shall be required of inmates identified as pregnant.

   a. examination by a physician to determine level of pregnancy term, i.e., 1st trimester, etc., and the need for supportive health services such as follow-up examinations, special

laboratory procedures, diet, vitamins, referral to obstetrical care, and/or other special needs; and,

b. referral to the unit/facility staff social worker for establishment of a post-delivery Infant Care Plan (IV.C).

4. Throughout her term of pregnancy while in the custody of the Department of Correction, a pregnant inmate shall receive appropriate prenatal care from an obstetrician and routine acute/chronic care health support by unit/facility medical staff. In addition, unit/facility health care and social service staff shall ensure that pregnant inmates are provided access to prenatal/post-partum education and counseling assistance, as may be required, to prepare the pregnant inmate for labor, delivery, and separation from her newborn after delivery.

5. As determined by and under the direction of the unit/facility physician or attending obstetrician, unit/facility medical staff shall coordinate the delivery of any required mental health services to ensure total care for the pregnant inmate. Unit/facility medical staff shall also establish and coordinate with the attending obstetrician matters related to hospital/institution discharge planning; the latter as may be necessary should an inmate be subject to release from the custody of ADC prior to or at the time of scheduled delivery.

6. Health care program managers, in conjunction with attending obstetrical staff, shall ensure that a pregnant inmate is provided a reasonable opportunity for post-delivery contact and interaction with her newborn child. For purposes of this Directive, 'reasonable' shall mean no less than 24 hours post-delivery.

7. Reasonable and prudent correctional practices shall be applied to pregnant inmates. The use of security restraint devices, such as handcuffs/shackles, etc., shall be in accordance with established policy. At no time shall any such device be applied to a pregnant inmate during the final stages of active labor, while occupying a delivery room, or if such application is determined by a physician to be a health risk to the unborn child or the health status of the inmate. In situations where there exists a valid custody concern as to the appropriate level or degree of security restraint device(s) to be applied to a pregnant inmate, the ADC Administrator of Medical Services shall be contacted. The Administrator's decision shall be final and binding on all parties.

C. Infant Care Plan

1. Upon the identification or confirmation of pregnancy, all pregnant inmates shall be referred to the unit/facility social worker who shall be responsible for development of an Infant Care Plan.

2. The plan shall be styled as a 'Patient's Living Declaration' with the following components being required:

   a. A statement by the pregnant inmate as to her desire to go full term with pregnancy and her plan for the placement of the infant post-delivery, which may include adoption should that be the desire of the inmate.

   b. Identification of that person(s) who shall assume care and custody of the infant post-delivery and until such time as the inmate is released from custody/confinement of ADC.

      (1) The person(s) identified by the inmate as post-delivery custodian(s) must meet the ADC eligibility requirements for visitation of inmates.

      (2) If the person(s) identified by the inmate as post-delivery custodian of the infant is a blood-relative of the mother or infant, a durable Power of Attorney shall be required to take custody of the inmate's child. A durable Power of Attorney is not required of a legal spouse.

      (3) If the person(s) identified by the inmate as post-delivery custodian of the infant is <u>not</u> a blood-relative of the mother or infant, or legal spouse, the custodian shall be required to petition and obtain an Order of Appointment as Temporary Guardian for a Minor.

   c. Should an inmate be unable to identify a person(s) who meets the conditions specified by Paragraph C.2.b.(2) or C.2.b.(3) herein, the ADC social worker shall make immediate referral of the case to the Division of Child and Family Services, Arkansas Department of Human Services.

   d. If the ADC staff social worker determines that the proposed custodial candidate does not meet visitation eligibility

requirements, he/she shall meet again with the inmate to determine an alternative custodian.

e. If the proposed custodian meets the visitation eligibility requirements, the ADC social worker shall refer the candidate to DHS for a background check within the DHS Child Abuse Registry. DHS shall communicate findings of such review to the ADC social worker.

f. Any custodial candidate who does not meet visitation eligibility requirements or who appears on the DHS Child Abuse Registry will not be approved as a custodian by ADC. DHS Division of Child and Family Services may, upon application by the inmate, have the discretion to approve a custodial candidate found ineligible pursuant to ADC criteria.

g. Person(s) who meet the conditions of Paragraph C.2.b.(2) or C.2.b.(3) herein, to include legal spouse, shall, in addition to any other requirements, be required to submit a notarized statement of understanding that, upon delivery of the infant from an inmate confined in ADC, the person(s) designated shall assume all financial responsibility for the infant at and after delivery; this to include any intensive care services or protracted hospitalization needs that may be required for the infant.

D. Termination of Pregnancy

1. ADC shall not intentionally be engaged in the decision-making process of an inmate to seek termination of her pregnancy.

2. Should an inmate desire to seek termination of her pregnancy, a written request shall be submitted to the unit/facility physician who shall thereafter conduct an interview with the inmate and coordinate thereafter an appointment with an appropriate community-based Family Planning Clinic.

3. ADC shall accommodate transportation of an inmate to and from any scheduled appointment with a community-based Family Planning Clinic. All costs, including transportation costs, associated with the appointment or any subsequent service(s) determined necessary and with the informed consent of the inmate shall be borne by the inmate, her family, or other third-party payer. ADC shall not authorize the expenditure of any State funds for the purpose of paying for the interruption of a pregnancy EXCEPT in

cases of saving the mother's life or as otherwise required by federal law.

E. Any pregnant inmate who determines it necessary to complain on her own behalf regarding the requirements or application of this Administrative Directive is directed to address such complaint in accordance with Administrative Regulation 835.

F. Any case, case matter or day-to-day procedure not adequately addressed by the requirements of this Administrative Directive shall be referred to the attention of the ADC Administrator of Medical Services for review and direction.

V. STANDARDS:

American Correctional Association (ACA), Adult Correctional Facilities, 3d Edition Standards 3-4387
National Commission on Correctional Health Care (NCCHC) Prison Standards #51, #55, and #58

VI. REFERENCES:

AR 001 – Administrative Regulations, Directives & Memoranda
JAR 835 – Grievance Procedure for Offenders

PregCare
000302

WHAT IS SPECIAL IMMIGRANT JUVENILE STATUS?

(Reprinted with permission from Incarcerated Parents Manual, produced and distributed by Legal Services for Prisoners with Children and Prisoner Legal Services, 2001.)

WHAT IS SIJS? WHO IS ELIGIBLE?

Special Immigrant Juvenile Status (SIJS) is a way for a dependent of juvenile court to become a permanent resident of the United States (get a "green card"0. 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?

In order to qualify for SIJS, A JUVENILE COURT IN THE U.S. MUST HAVE DECLARED THE CHILD A COURT DEPENDENT, OR HAVE LEGALLLY 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, the caseworker, or an attorney can complete the application for SIJS, which will be submitted to the Immigration and Naturalization Service (INS). The child must complete INS forms, obtains 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.

The INS will grant the applicant employment authorization as soon as the application is filed, and schedule a date for the SIJS interview. Generally, the INS 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 INS policy is to deny the case.

SELECTED CASE LAW

Termination of Parental Rights

In re Sebrina N., (60 Cal. App. 4th 996, 1/13/98). Incarcerated father's petition for an Extraordinary Writ of Mandate following termination of his parental rights was granted by the California Court of Appeals. Noting that the prospect of reunification was "dim" based on the father's drug abuse, domestice3 violence, and failure to obtain medical care for the child prior to his incarceration, the court nonetheless found that the child welfare agency failed to provide the father with reasonable reunification services as required by law. The court noted that the agency must affirmatively offer services to an incarcerated parent, inform the prison of the parent's need for services, find out what services are available in the prison, and request that those services be provided to the parent. Citing the agency's failure to communicate with the father despite receiving three letters from the father, its failure to contact the prison, and its failure to provide any visitation required by the case plan, the court found the agency failed to make reasonable efforts and ordered the trial court to reexamine the case.

***In re Angel R., 965 Cal. Rptr. 2d 311 (Ct. App. 1998).** Child welfare agency offered adequate reunification services to incarcerated father because his own actions, which resulted in his out-of-state imprisonment, placed him beyond reach of any meaningful rehabilitation services; standard at permanency hearing is not whether services were best but whether they were reasonable under the circumstances.

Matter of Oneka O, (New York, 1st Dept., 5/4/98). Termination of incarcerated father's parental rights upheld where evidence showed he made only one phone call to the child welfare agency during a six month period to inquire about the possibility of visiting with his children, and the agency made had made efforts to contact the father about the children's placement. In addition, there was no evidence that the father tried to keep in contact with his children prior to his incarceration, or that the agency had discouraged visits.

In re Treadwell (Mich. Ct. App., 10/24/95). Termination of incarcerated mother's parental rights upheld where mother sentenced to concurrent terms of five to fifteen years and her incarceration would deprive her children of a normal home for at least two years after the filing of the custody petition. Evidence supporting the decision included the mother's long-term drug abuse, failure to complete drug treatment, failure to attend the majority of visits with her children, and failure to attend counseling.

SELECTED CASE LAW

***Michael J. v. Arizona Dep't of Econ. Sec., 1999 WL 92541 (Ariz. Ct. App.)** Trial court failed to establish by clear and convincing evidence that father abandoned child; although father's incarceration hindered relationship with child, his efforts to discover child's whereabouts after child welfare agency failed to tell him and to establish visitation with child demonstrated his intent to form a relationship with his child.

***E.W.R. v. W.T.J., 702 So. 2d 1343 (Fla. Dist. Ct. App. 1997).** Even though father would be incarcerated for a long time, stepfather wanted to adopt child, and father had committed sex crimes, his parental rights should not have been terminated on abandonment grounds, since his failure to provide financial support was due to his lack of income while incarcerated and child's mother interfered with his attempts to communicate with his child.

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RESOURCES IN ARKANSAS and elsewhere

Inmate attorneys: Send a request to the Law Library to see an inmate attorney. There are two: Melodies Barnett Peacock and Sharon Draper. They can help you with civil matters, such as custody, divorce.

What You Should Know: A guide for grandparents and relatives caring for children when parents are arrested or absent. Reprinted 2002. Available for no charge by writing Centers for Youth and Families, Attn: Dee Ann Newell, 5905 Forest Place, Ste. 205, Little Rock, AR 72207 or (501) 666-6833. Also, if you are seeking resources for your children or families, please contact The Centers.

Incarcerated Parents Manual. Legal Services for Prisoner with Children and Prisoner Legal Services, 1540 Market Street, Ste 490, San Francisco, CA, 91402, (415) 255-7036 and 555-7th Street, San Francisco, CA 94103, (415) 558-2472

Directory of Programs and Organizations. For a statewide listing of programs serving children and families of offenders, see the **Directory of Programs Serving Adult Offenders, published by James W. Mustin, 1998,** and available from the National Institute of Corrections, **www.nicic.org, (800) 877-1461.**

Administrative Offices of the Court, 625 Marshall Street, Little Rock, AR 72201-1020. Contact this office if you are in a dependency-neglect case and have not been appointed an attorney or heard from your public defender.

Every Door Closed/Barriers Facing Parents with Criminal Records. Produced by CLASP Center for Legal and Social Policy and Community Legal Services, Inc., Executive Summary available at www.clasp.org This is helpful reading for parents and policymakers, describing the barriers faced by parents leaving prison.

Helpful Books for Children of Incarcerated Parents. Contact **Arkansas Voices for the Children Left Behind, 311 North Elm Street, Little Rock, AR 72205.** This is an organization of volunteers, advocates, family members, formerly incarcerated parents, and adult children of incarcerated or formerly incarcerated parents who are dedicated to serving the children of prisoners.

Child Welfare League of America, 440 First Street, NW, Third Floor/Washington, D.C., 20001-4004, http://www.cwla.org This national organization is a member of the NIC's new Federal Resource Center for Children of Prisoners, along with American Correctional Association and the National Council on Crime and Delinquency. The focus is on services and strategies for working with families separated by incarceration.

GLOSSARY OF UNFAMILIAR WORDS OR PHRASES

Abandoned: To leave a child behind without any plan for the care of the child.

Co-parenting agreement: A simply written agreement between a parent in prison and the caregiver(s) of the child/ren about what each one will do to support and help the children, including visitations, contact, school information being provided by the caregiver to the parent in prison and the caregiver setting forth what is expected for the parent after release and during incarceration. This paper has no legal power; it is just a written agreement to remind caregiver and parent of what they agreed to.

Court- appointed attorney: The court will find a lawyer to serve you, if you are unable to pay for your own lawyer.

Durable power of attorney: Giving another person the power to make decisions for you even when you have become unable to yourself for medical and other disability reasons.

Intergenerational cycle of incarceration: When prisoners have other family members older and younger than themselves who have gone to jail or prison, going to prison seems to be a family cycle between generations.

Power of attorney: Giving another person the power to make decisions for you.

Relative caregiver: A member of your family that you can show with birth certificates is related to the child who is living with that family member and is taking care of and has the child living in the household on a regular basis.

LETTER TO THE JUDGE

[month, date, year]

[your name]
[your address]
Honorable **[name of judge]**
[address of the court]

Dear Judge **[name of judge]:**

I am writing this letter to introduce myself and to request that the court issue an " Order of Produce" allowing me to attend court hearings concerning my child/ren. The next hearing is scheduled for **[date of hearing].**

My child/ren's name/s is/ are **[name/s of child/ren],** his/ her date of birth is **[date of birth of child/ren]** and the case number is **[number]**. I am very concerned about the welfare of my child/ren, and believe it is in my child/ren's best interest to return to my custody. **[Add your own reasons here.]** My release date is **[date of release]**, and I want very much to be reunited with him/her/ them upon my release from **[name of institution].**

I would also like to request that the court appoint an attorney to represent me at these hearings because I am incarcerated and I am unable to afford an attorney.

Thank you

Sincerely,
[your signature]
[your name]

FORMS, FORM LETTERS AND PETITIONS

LETTER TO YOUR ATTORNEY

[month, date, year]

[your name]
[your address]

Ms./Mr. **[lawyer's name]**
[address of the attorney]

I am writing to introduce myself and to familiarize you with my situation, since I understand that you have been appointed to represent me.

The name/s of my child/ren is/ are **[name/s of child/ren].**
Her/his date of birth is **[date of birth of child/ren]** and the case's docket number is **[number].** 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 **[name of child/ren],** I would like **[name of relative or friend],** who is my **[relationship],** to be given custody.

I am also enclosing a list of the programs I have attended and documentation. In addition, I am enclosing the names and addresses of witnesses I would like to subpoena for my court hearing. Please ask for copies of my case records and send a set of copies to me.

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

Thank you,

Sincerely,
[your signature]
[your name]

LETTER TO YOUR CASE WORKER

[month, date, year]

[your name]
[your address]

Ms./ Mr. **[last name of your case worker]:**
[address of the caseworker]

Dear Ms./ Mr. **[last name of your caseworker]:**

My name is **[your name]** and my child/ ren's name/ s is/are **[child/ren's names].** His/ her date of birth is **[date of birth of child/ren]** and the case number and /or docket number is **[number].**

I am writing to let you know that I wish to retain custody of **[name/s of child/ren]** and hope to be reunited with him/ her upon my release form **[name of institution]** on **[date of release].**

I am very concerned about the welfare of **[name/s of child/ren]** and believe it is in the child/ ren's best interest to be reunited with me when I am released from prison. **[Add your reasons here].**

I am serving a **[length of sentence]** year sentence, which means that I will be in prison for **[months/years]** and will be released. Please let me know what steps I must take to be reunited with my child/ren when I am released. We should make out a plan for visitation and the return of my child/ren upon my release.

Thank you,

Sincerely,
[your signature]
your name]

Please notify me of court hearings so that I can decide whether or not I should attend.

FORMS, FORM LETTERS AND PETITIONS

POWER OF ATTORNEY

I, **[your name],** being of sound mind and body declare the following:

1. That I am the natural mother / father of **[name/s of child/ren]**

2. That I am presently incarcerated at **[name of institution]**

3. That, during this time, my son/s, daughter/s is/ are being cared for by **[name and relationship]**

4. That I wish to give full power of attorney to **[name of attorney]** with respect to the care and custody of my son/s, daughter/s

5. That, specifically, I gave **[name of attorney]** full power of attorney with respect and custody of **[name/s of child/ren]** in matters affecting **[name/s of child/ren's]** medical needs, schooling, public assistance and legal matters, and all other matters pertaining to the well-being of my child/ren. I declare under penalty of perjury the preceding statement with full knowledge of its contents, this **[day, month, year]** in **[county, state].**

Signed before me this **[date]** day of **[month], [year].**

[your signature]
[your name]

REQUEST FOR "ORDER TO PRODUCE"

[month, date, year]

ATTENTION: Court Clerk
District Court /State of Arkansas/**[county]**
[street address] Docket **[number]**
[city, town], AR. **[zip]**
RE: **[child/ren's name/s]**

Dear Madam or Sir:

I respectfully request to be present for the hearing that is to be held on **[day, month, year],** for my child/ren, **[name/s of children].** I am presently incarcerated at **[name of institution]** which is located at the above address. Please submit an "Order of Produce" to this institution so that I may be available for this pending hearing.

I am aware that my child/ ren will be appearing before your court. I have not been informed of the date. Would you kindly notify me of the date and enter this into the record as a notice of appearance and request to produce?

I am also requesting that the court assign an attorney to represent me in the above proceeding, and that all court proceedings be adjourned until I am able to be physically present.

Notify: **{Warden's Name}**

[name and address of institution]
[name of parent]
[signature of parent]

Sworn to before me on the **[day, month, year]**
[notary public]

SAMPLE LETTER TO FAMILY COURT

COURT DIVISION COUNTY OF **[county]**
In the matter of **[name/s of child/ren]**
A child under the age of eighteen years
[xxxxxx] against **[xxxx]**
Respondent Natural Parent **[your name]**

PLEASE TAKE NOTICE, that respondent Natural Parent appears herein and requests that copies of all petitions, notices and other pleadings and papers in the above-captioned proceedings and in all related proceedings be served upon her at the address set forth below:

Because respondent is a necessary party to any court proceedings, she also requests that this Court order her production at all future hearings.

Dated: **[day, month, year]**, Arkansas
[natural parent's name]

FORMS, FORM LETTERS AND PETITIONS

TEMPORARY CUSTODY FORM

[your name], being duly sworn, deposes and says: That I am over the age of 21 and reside at **[your address];**

That I am the natural mother/father and guardian of the infant/s, **[your child/ren's name/s];**

That I make this affidavit, because due to circumstances beyond my control it will be necessary for me to have a custodian/s appointed of the person/s and property of my child/ren, **[name/s of child/ren];**

That I hereby decree that **[name/s of custodian/s]** be appointed custodian of the person/s and property of the said infant/s;

That the custodian/s collect and receive monies and property of the said infant/s and all such monies be used for the care, schooling expenses and medical expenses;

That until I am able to resume custody of my child/ren they will reside with the custoian/s I have appointed at **[address];**

That the custodian/s will keep me advised and give me an accounting as to how any money is spent;

That they will make all efforts to bring my child/ren to visit me on a regular basis;

That I hereby authorize my custodian/s to take care of the medical needs and to consult with doctors when necessary for my child/ren as well as hospitals if necessary;

That I authorize the custodian/s to enroll my child/ren in school and to take whatever actions are necessary to ensure that my child/ren receive appropriate schooling;

That I authorize the custodian/s to obtain government benefits for my child/ren, including ADC, Food Stamps, Medicaid, SSI and any other benefits to which they may be entitled;

That the custodian/s keep me advised as to the health, welfare, and monies spent on behalf of the child/ren on a monthly basis;

TEMPORARY CUSTODY FORM

(continued)

I have read the foregoing affidavit and the same is true to the best of my knowledge, except as to the matters therein alleged on information and belief and as to those matters I believe to be true.

It is understood by the parties to this agreement that when I am released I am to resume custody of my child/ren.

Sworn to before me this **[date]** day of **[month]**, **[year]**
[notary public]

[parent signature]

[person assuming temporary custody]

FORMS, FORM LETTERS AND PETITIONS

Mail to : VITAL RECORDS
AMENDMENT SECTION
4815 W. Markham St.-Slot 44
Little Rock, AR 72205

ARKANSAS DEPARTMENT OF HEALTH
BUREAU OF HEALTH RESOURCES
DIVISION OF VITAL RECORDS

PUTATIVE FATHER REGISTRY

NAME OF REGISTRANT	SOCIAL SECURITY NUMBER
ADDRESS OF REGISTRANT	
NAME OF MOTHER	SOCIAL SECURITY NUMBER (IF KNOWN)
LAST KNOWN ADDRESS OF MOTHER	
NAME OF CHILD (IF BORN)	BIRTHDATE OF CHILD (IF KNOWN)
BIRTHPLACE OF CHILD (IF KNOWN)	
DATE COMMISSION EXPIRES & NOTARY SEAL	
DATE INFORMATION RECEIVED BY VITAL RECORDS	
THIS SECTION IS FOR FATHER'S CHANGES OF ADDRESS:	

RELEVANT POLICIES

POLICY (VIII-C): TERMINATION OF PARENTAL RIGHTS

All children have a right to a safe, permanent family. The Division of Children and Family Services shall develop and implement permanency plans for children. One option is to terminate parental rights to free a child for adoptive placement, when it has been determined that reunification with the family is not a viable option.

The court shall authorize DHS to file a petition to terminate parental rights unless the: (a) The child is being cared for by a relative and termination of parental rights is not in the best interest of the child; (b) DHS has documented in the case plan a compelling reason why filing such a petition is not in the best interest of the child and the court approves the compelling reason as documented in the case plan; or (c) DHS has not provided to the family of the child, consistent with the time period in the case plan, such services as DHS deemed necessary for the safe return of the child to the child's home if reunification services were required to be made to the family.

The Division will file a petition to terminate parental rights in the following circumstances:

- **A child (of any age) has been in an out-of-home placement for 15 of the most recent 22 months; A hearing shall be held to determine whether or not DHS shall file a petition to terminate parental rights before the end of the fifteenth (15th) month if:**

  (a) The child has been in out-of of-home placement for fifteen (15) continuous months; and

  (b) At the permanency planning hearing, the court continued the goal of reunification or entered a goal of independence. Trial visits with the parents and time spent on runaway status shall not count in adding up fifteen (15) months.

- **If the court determines no reunification services are required refer to Policy VI-A. If a juvenile is the subject of an open case filed under the Arkansas Juvenile Code, OCC will file all subsequent petitions (i.e., termination of parental rights, adoption, guardianship) in that same juvenile court and case.**

If the court adopts the goal of termination of parental rights, the Department shall file a petition to terminate parental rights within thirty (30) days from the date of the entry of the order establishing such goal.

If the court finds that the child should remain in an out-of-home placement, either long-term or otherwise, the child's case shall be reviewed every six (6) months, with an annual permanency planning hearing.

Additionally, if the child has been in an out-of-home placement 15 of the last 22 months, and a termination petition has been filed by another party, the Division will seek to join the petition. Concurrent with the filing of a termination petition, the Division will identify, recruit, process and approve a qualified family for adoption.

Arkansas Juvenile Code

9-27-316. Right to counsel.

(h) PARENTS' RIGHT TO COUNSEL.

(1) In all proceedings to remove custody from a parent or guardian or to terminate parental rights, the parent or guardian shall be advised, in the dependency-neglect petition or the ex parte emergency order and the first appearance before the court, of the right to be represented by counsel at all stages of the proceedings and the right to appointed counsel if indigent.
(2) Upon request by a parent or guardian and a determination by the court of indigence, the court shall appoint counsel for the parent or guardian in all proceedings to remove custody or terminate parental rights of a juvenile.
(3) After review by the court of an affidavit of financial means completed and verified by the parent or guardian and a determination by the court of an ability to pay, the court shall order financially able parents or guardians to pay all or a part of reasonable attorneys' fees and expenses for court-appointed representation of the parent or guardian.
(4) Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client. When the first appearance before the court is an emergency hearing to remove custody pursuant to § 9-27-315, parents shall be notified of the right to appointed counsel if indigent in the emergency ex parte order.
(5) The parent's or guardian's attorney shall be provided access to all records relevant to the juvenile's case, including but not limited to, school records, medical records, juvenile court records, and Department of Human Services records to which they are entitled under state and federal law.

History. Acts 1989, No. 273, § 15; 1997, No. 1227, § 4

RELEVANT POLICIES

9-27-402. Case plans.

(a) A case plan shall be developed in all dependency-neglect cases or any case involving an out of home placement. The Department of Human Services shall be responsible for developing case plans in all dependency-neglect cases, and in FINS, or delinquency cases when custody is transferred to the Department of Human Services, pursuant to § 9-27-328.

The case plan shall be:

(1) Developed in consultation with the juvenile's parent, guardian, or custodian and, if appropriate, the juvenile, the juvenile's foster parents the court-appointed special advocate (CASA), the juvenile's attorney ad litem, and all parties' attorney(s).

(A) If the parents are unwilling or unable to participate in the development of the case plan, the department shall document that unwillingness or inability and provide this written documentation to the parent, if available. The department shall then prepare a case plan conforming as nearly as possible with the requirements set forth in this section.

(B) A parent's incarceration, by itself, does not make a parent unavailable to participate in the development of a case plan

(2) Developed and filed with the court no later than thirty (30) days after the date the petition was filed or the juvenile was first placed out of home, whichever is sooner.

(A) If the department does not have sufficient information prior to the adjudication hearing to complete all of the case plan, the department shall complete those parts for which information is available.

(B) All parts of the case plan shall be completed and filed with the court thirty (30) days after the adjudication hearing.

(3) Signed by and distributed to all parties, and distributed to the juvenile's attorney ad litem, court-appointed special advocate (CASA), and foster parents, if available.

(4) Subject to modification based on changing circumstances;

(A) All parties to the case plan shall be notified of any substantive change to the case plan;

(B) A substantive change to a case plan includes, but is not limited to, such changes as the placement of the juvenile, the visitation rights of any party, or the goal of the plan;

(b) When the juvenile is receiving services in the home of the parent, guardian or custodian, the case plan shall include at a minimum, in addition to the requirements in subsection (a) of this section:

(1) A description of the problems being addressed;

(2) A description of the services to be provided to the family and juvenile specifically addressing the identified problems and time frames for providing services;

(3) A description of any reasonable accommodations made to parents in accordance with the Americans with Disabilities Act to assure to all the parents meaningful access to reunification and family preservation services;

(4) The name of an individual whom the petitioner, parent, guardian or custodian knows is claiming to be or who is named as the father or possible father of the juvenile and whose paternity of the juvenile has not been judicially determined.

(c) When the juvenile is receiving services in an out-of-home placement, the case plan must include at a minimum, in addition to the requirements in subsections (a) and (b) of this section:

(1) A description of the permanency goal;

(2) The specific reasons for the placement of the juvenile in care outside the home, including a description of the problems or conditions in the home of the parent, guardian, or custodian which necessitated removal of the juvenile, and the remediation of which will determine the return of the juvenile to the home;
(3) A description of the type of out-of-home placement selected for the juvenile including a discussion of the appropriateness of the placement;
(4) A plan for addressing the needs of the juvenile while in the placement, including a discussion of the services provided within the last six (6) months;
(5) The specific actions to be taken by the parent, guardian, or custodian of the juvenile to eliminate or correct the identified problems or conditions and the period during which the actions are to be taken. The plan may include any person or agency who shall agree to and be responsible for the provision of social and other family services to the juvenile or the parent, guardian, or custodian of the juvenile;
(6) The visitation rights and obligations of the parent, guardian, or custodian and the state agency during the period the juvenile is in the out-of-home placement;
(7) The social and other family services to be provided to the parent, guardian, or custodian of the juvenile, and foster parent, if any, during the period the juvenile is in placement and a timetable for the provision of those services, the purposes of which shall be to promote the availability to the juvenile of a continuous and stable living environment, promote family autonomy, strengthen family life where possible, and promote the reunification of the juvenile with the parent, guardian, or custodian;
(8) To the extent available and accessible, the health and education records of the juvenile, pursuant to 42 U.S.C. § 675(1);
state agency during the period the juvenile is in the out-of-home placement;
(9) A description of the financial support obligation to the juvenile, including health insurance of the juvenile's parent, parents, or guardian;
(10) A description of the location of siblings. If siblings have been separated, a statement of the reasons for separation and the efforts that have been and will be made to enable the siblings to maintain regular contact while separated and to be reunited as soon as possible;
(11) When appropriate for a juvenile age sixteen (16) and over, the case plan must also include a written description of the programs and services which will help the juvenile prepare for the transition from foster care to independent living;
(12) A written notice to the parent(s) that failure of the parent(s) to comply substantially with the case plan may result in the termination of parental rights, and that a material failure to comply substantially may result in the filing of a petition for termination of parental rights sooner than the compliance periods set forth in the case plan itself.
(d) The case plan is subject to court approval upon review by the court.
(e) A parent's, guardian's or custodian's participation in the development or the acceptance of a case plan shall not constitute an admission of dependency-neglect.
History. Acts 1997, No. 1227, § 8.