



Staying Connected:

*Rights and Responsibilities of
Incarcerated Parents in Wisconsin*

Family Law Project of the Frank J. Remington Center,
University of Wisconsin Law School
&
Family Connections
of Wisconsin

The Family Law Project of the Frank J. Remington Center is a clinical legal education program of the University of Wisconsin Law School. In that program, law students work under the close supervision of its director, Attorney Leslie D. Shear, who is a full-time clinical professor. Students have the opportunity to help incarcerated parents by representing male and female prison inmates in a variety of family law matters, including divorce, legal custody, physical placement, guardianship, and child support. Through that work, students learn about the many barriers incarcerated parents face in their efforts to establish or maintain relationships with their children.

Family Connections of Wisconsin is a program of the Madison-area Urban Ministry in Madison, Wisconsin. It provides opportunities to maintain and strengthen family relationships affected by incarceration. The goals of Family Connections include the following: helping the child and parent meet with greater success in life by preventing the vulnerable child from following into a life of criminal activity, helping the mother work towards her earliest release without recidivism, working with both mother and child to build their reading and literacy skills, improving resources in the community, now for the children and for the mothers after their release, and supporting caretakers through the effective use of community resources.

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Chapter 1

Introduction

Just because you are a parent serving time in prison does NOT mean that you are not still a parent. Staying connected with your children is still very important to you and to your children.

Staying connected with your children helps your children develop in a healthy way, decreases the negative effects of your being separated from them, makes the separation easier to deal with, and will make your family stronger. Staying connected to your children also helps you. Studies show that staying connected with their children encourages parents to participate in programs while in prison and reduces the likelihood that they will go back to prison.

While you must face many of the same problems that other parents do in trying to stay connected with their children, you also must deal with additional challenges due to incarceration. These include difficulties communicating with courts, staying involved with your children's lives through visits or other forms of contact, and representing yourself without the assistance of a lawyer.

Staying Connected was created to help incarcerated parents in Wisconsin do their best when dealing with the legal issues and obstacles they will often face while incarcerated.

Staying Connected offers general information to help you:

- Stay connected with your child and child's caregiver
- Understand and protect your rights as a Wisconsin parent
- Know and meet your responsibilities as a Wisconsin parent
- Work well with the courts and other people or agencies who may be involved with your child
- Understand the needs, concerns and emotions your child may be experiencing
- Find community resources and programs that may help you stay in your child's life during your incarceration and after your release

Staying Connected is not:

- Step-by-step instructions on how to fix all of your relationship or legal problems
- A replacement for a lawyer - if you can afford a lawyer or can find one to represent you, that is usually the best option
- The only resource that is available to you

The following additional information can be found in your institution's library:

- Wisconsin State Statutes
- *LAIP Desk Book*, which includes sections on family law
- Forms to request either legal representation or *pro se* (do-it-yourself) materials (also in the *LAIP Desk Book*)

How is *Staying Connected* organized?

The first chapter of *Staying Connected* is the **Introduction**. Read the entire **Introduction**, as it explains words and concepts that you will find throughout *Staying Connected*.

Staying Connected is divided into the following chapters:

- Chapter 1:** Introduction
- Chapter 2:** Finding Your Situation
- Chapter 3:** Paternity Matters
- Chapter 4:** Picking a Caregiver or Guardian
- Chapter 5:** Legal Custody, Physical Placement (Visitation), and Other Contact with your Child
- Chapter 6:** Providing Financial and Medical Support for Your Child
- Chapter 7:** Divorce
- Chapter 8:** Children’s Court: Protection and Services for Your Child
- Chapter 9:** Supplemental Materials (additional helpful information and forms)

Tips for using *Staying Connected*:

Read each chapter’s overview section very carefully to know what is in that chapter.

If you are not sure if the chapter applies to your situation, read the chapter anyway, just in case.

Read all chapters you think apply to your situation. It is best to read them in the order they appear in *Staying Connected*.

Chapter 2: Finding Your Situation asks you specific questions that may relate to your situation. Use this chapter to find other chapters that may help answer your questions.

The **Appendices** are extra sections at the end of *Staying Connected* that offer general information and resources for parents, as well as forms and sample letters that may be referred to in other parts of *Staying Connected*.

Many of the issues, terms and procedures discussed in *Staying Connected* are related and are mentioned in more than one chapter. That is why you should use the **Table of Contents** and **Chapter 2: Finding Your Situation** to make sure that you have read all information that could be helpful to you.

General Tips

Keep Copies of:

- All papers you send to and receive from the court and the Court Commissioner.
- All cards or letters you send to and get from your child, child's caregiver, or other parent.
- The envelopes in which the letters from your child, child's caregiver, or other parent are mailed.
- All papers you get from your attorney (if you have one) or from the other parent's or caregiver's attorney – they may contain information you will need in the future.

Communicate and Record (Keep Track):

- Communicate with your child as much as possible – by cards, letters, phone calls, gifts, and visits.
- Write down the dates and types of contact you have with your child and child's caregiver; include times you try to contact your child but cannot (for any reason).
- After every visit or phone call you have with your child, write down what you did and talked about, how long your visit or phone call was, and if you have any concerns based on the visit or phone call.
- Even if you “never” reach your child or the child's caregiver by phone or letter, KEEP TRYING.
- Writing letters to your children reminding them that you love them, even if you are not able to send them now, may help you deal with these emotions. Save these letters so that you might be able to someday show your children how often you thought of them.
- A form to help you keep track of contacts and attempts to contact with your child is in Chapter 9.

Be Patient:

- When the court becomes involved with your family, it may take a long time for a decision to be made.
- Being incarcerated is frustrating and painful because you are not near your family. Your child, the child's caregiver, and others in your family probably experience many of the same emotions.
- Be patient as you and others in your family adjust to the changes caused by your incarceration.
- Your child may miss you and be mad at you, at the same time; your child may feel guilty and confused about those feelings.

Be Courteous and Cooperate:

- As much as possible, cooperate with the people involved in your child's life.
- If you have a lawyer, work closely with him/her to make sure that your wishes are represented and your rights are protected.
- Be courteous and respectful to all judges, court commissioners, court staff, guardians ad litem (GALs), and prison staff. They are all important to your case.
- Whenever possible, work with your child's caregiver or the county agency to address current and past-due child support obligations.

Important Courts & Agencies

There are 3 different types of courts that may affect your rights and responsibilities as a parent:

- **Family Court:** A Judge or Family Court Commissioner handles family law cases such as divorce, paternity, legal custody, physical placement (visits), child support, and grandparent visitation.
- **Probate Court:** Handles guardianship cases under Chapter 54, which could also include grandparent visitation.
- **Children's Court or Juvenile Court:** Handles cases to protect children and juveniles under Chapter 48 and 938, such as CHIPS & JIPS actions, guardianship, delinquency actions, and actions for the termination of parental rights (TPR).

Here are some agencies that also may affect your rights and responsibilities as a parent:

- **Child Support Agency:** Each county has a child support agency that works with parents and the courts to charge and collect current and past-due child support, birth costs, and other fees. The Child Support Agency is part of the Wisconsin Department of Children and Families.
- **Child Protective Services (CPS):** Each county has a CPS agency, which is part of the Wisconsin Department of Children and Families. The goals and duties of the CPS agency are to protect children from abuse or neglect, assess whether there is a real threat to a child, work with the family to keep the child safe by offering counseling, education, or other services and, if necessary to ensure a child's safety, place the child in out-of-home care. People can anonymously report suspected abuse or neglect to a local CPS agency or law enforcement agency. Certain people whose work brings them into contact with children are required by law to report any suspected abuse or neglect to a child. Some of those professionals are doctors, nurses, school staff, social workers, and therapists.
- **Wisconsin Support Collections Trust Fund (WSCTF):** Located in Milwaukee, this is where all child support payments are sent and the place from which child support funds are sent out to the person receiving child support under a court order. This office keeps track of all child support payments for the entire state.
- **Wisconsin Department of Health Services (DHS):** The DHS specializes in programs that provide financial assistance for medical care, such as BadgerCare, Medicaid, and Healthy Start.

Important People

Several people who are employed by the court or the government may become involved with your family.

People that make decisions about your case:

- Judges
- Court Commissioners



Remember that Judges and Court Commissioners will be making important decisions about you and your family. You must treat them and their staff with respect. **NEVER** interrupt a judge, a Court Commissioner or any other party when they are speaking.

Different types of lawyers may be involved with your case. It is important to understand their roles.

Type of Lawyer	Who the Lawyer Represents	Cases with which this lawyer is usually involved	What the lawyer does
Guardian ad Litem (often called "GAL")	The best interests of your child	Divorce, placement (visitation), paternity, CHIPS, JIPS, Termination of Parental Rights, Guardianship	The GAL is a lawyer appointed by the judge to represent your child's best interests. The GAL will recommend to the court what s/he thinks is best for your child. The GAL does <u>not</u> represent the parents or other caregivers, and does <u>not</u> have to recommend what the child wants.
Attorney for parent(s)	You or the child's other parent	All	If the other party has a lawyer, you should write to the other party's lawyer, <u>not</u> the other party, and send a copy of everything filed with the court to that lawyer.
Corporation Counsel or Assistant District Attorney	County (county where your child lives) or State of Wisconsin	Paternity, child support (CHIPS & Termination of Parental Rights in some counties)	Sometimes the county's lawyer files a Paternity action to collect child support if the child is receiving or received public benefits.
Attorney for Child	Your child	CHIPS, JIPS, Guardianship, delinquency, TPR (if the child is over 12 years old)	Unlike a GAL, the attorney for the child asks the court for what the child wants. In a CHIPS and TPR proceeding, a child over 12 can be appointed an attorney. In a JIPS proceeding, a child over 10 can be appointed an attorney.

Important Legal Terms

The following words will be used throughout *Staying Connected*. You should familiarize yourself with the words now so that the information in *Staying Connected* is easier to understand.

-
- **Alleged father:** A man named by the mother to be the child’s father, or a man who believes he is the father and who brings a paternity action.
 - **Arrears:** Child support payments that are overdue because they were not paid. Also called past-due support or back support.
 - **Commissioner:** A court official who performs some functions of a judge under the direction and authority of the judges in your county.
 - **Conceptive period:** The period of time when a child was likely to have been conceived (“made”). For a “normal” pregnancy (lasting from 9 to 10 months), the conceptive period is between 240 and 300 days before the baby is born.
 - **Contempt:** Willful failure or refusal to follow a court order.
 - **Contested Divorce:** A divorce with at least one issue that the spouses cannot agree on. For example: child support, custody, placement, or property division.
 - **Court order:** A written document issued by a court, which becomes effective when signed by a judge or Court Commissioner.
 - **Custody:** See “legal custody.”
 - **Default judgment:** A decision made by the court when one of the parties did not appear at the hearing.
 - **Domestic Violence:** A pattern of coercive behavior that may include physical, sexual, economic, emotional, and/or psychological abuse by a spouse, intimate partner, or family member.
 - **Divorce:** The legal termination of or end to a marriage.
 - **Establish Paternity:** Determine the man who is a child’s legal father using one of the methods allowed under Wisconsin law.
 - **Genetic test:** A test that looks at the DNA of an alleged father, the mother, and the child, to determine how likely it is that the alleged father is actually the child’s biological father.
 - **Guardian:** A person other than a child’s parent who is given legal custody of a child by a court order. Most children do not have a legal guardian; this only happens when neither parent is available or able to provide safe, appropriate care for a child.
 - **Guardian ad Litem:** A lawyer appointed by the court to represent the best interests of a child.
 - **Guardianship:** A court order that gives legal custody of a child to a person, usually someone other than the child’s parent.
 - **Hearing:** Any proceeding before the court for the purpose of resolving disputed issues through presentation of testimony, offering of evidence, and argument.
 - **Judgment:** An official decision of the court.
 - **Jurisdiction:** The legal authority or power of a court.

- **Kinship Care:** A program designed to help support a child who lives with an adult relative (not a parent), either temporarily or for the long term. Relatives can include a grandparent, brother, sister, uncle, aunt, great grandparent, among others.
- **Legal Custody:** The right and responsibility to make major decisions regarding a child. A court may give one parent (sole) or both parents (joint) legal custody of a child.
- **Major Decisions:** Decisions about a child’s physical and mental health care; non-emergency health care; education; religious upbringing; entering military service; getting a driver’s license; marrying before age 18.
- **Marital child:** Child born when the parents are married or child whose parents get married after he or she is born.
- **Mediation:** A process where opposing parties meet with a neutral third person, called a mediator, to discuss and resolve disagreements.
- **Mediator:** A neutral third person with special skills and training to help parties in reaching agreements.
- **Motion:** A document requesting that the court make a ruling or order.
- **Non Marital Child:** Child whose parents are not or never were married.
- **Paternity:** Legal fatherhood; another way of saying the child’s father is the legal parent. The process of making a man the legal father is called “paternity establishment” or determining paternity.
- **Paternity Judgment:** A court’s decision that determines a man to be the legal father of a child, and that also sets out the rights and obligations of the mother and father, such as child support, legal custody, physical placement, tax deductions, responsibility for health insurance, payment of birth costs, etc.
- **Paternity Presumption (or Marital Presumption):** The rule that the husband of a woman who has a baby is automatically the legal father of the child. Also, if a baby’s parents get married after the child is born, the husband is the legal father.
- **Periods of Physical Placement:** The time a child spends with a parent; also sometimes called “visitation.”
- **Petitioner:** The person who presents a “Petition” to a court.
- **Pro se:** To represent oneself or appear in court without an attorney.
- **Public Assistance:** Generally known as Welfare or W-2. It includes Title 19, food stamps, subsidized childcare, and cash benefits.
- **Respondent:** The person who is responding to a petition made to a court.
- **Stipulation:** A written agreement between parties about any issue in temporary orders or final judgments.
- **Uncontested divorce:** A divorce with all issues settled and set forth in a written agreement that is submitted to the court.
- **Visitation:** Time that a court orders that a grandparent, stepparent, or other person may spend with a child. For parents, see “periods of physical placement.”
- **Voluntary Acknowledgment of Paternity:** A form signed by both the mother and the father stating whom they agree that he is the child’s father. If the form is filed with the State Vital Records Office for at least 60 days, it establishes the child’s legal father.

Chapter 2

Finding Your Situation


Overview: This chapter includes—

- A. Paternity: Who is the child’s legal father?
- B. Someone besides my child’s other parent is caring for my child
- C. My child’s other parent is caring for our child
- D. I want physical placement (visits) and/or other contact with my child
- E. I have questions about Child Support
- F. I have questions about Divorce
- G. My child is involved in Children’s Court

This chapter is intended to help you find all of the information that applies to you, and to make *Staying Connected* easier to use. The following pages describe some common situations and lead you to areas in *Staying Connected* where you can find information about those situations. Note: This chapter is not a complete list of everything included in *Staying Connected*.


Paternity: Who is the child's legal father?



Even if you do not think paternity is important in your case, it is! Read this page to find the paragraph that is closest to your situation, and then go to the chapter and section indicated by the .

WHETHER YOU ARE A MAN OR A WOMAN, YOU SHOULD READ THE ENTIRE CHAPTER 3: PATERNITY MATTERS. THERE IS INFORMATION IN THERE THAT IS IMPORTANT TO EVERYTHING ELSE YOU HAVE TO DECIDE FOR YOURSELF AND YOUR CHILD.


I want to know what paternity means and why it is important to know if paternity of my child has been established:

 *Go to Ch. 3.A., 3.B.*




I want to know about the different ways paternity can be established:

 *Go to Ch. 3.C.*




I want to know what my legal rights are as the father/mother of a child:

 *Go to Ch. 3.B., 5.B.*

I believe my child's paternity has already been established (by court order, marriage or Voluntary Paternity Acknowledgment form):

- Now I question who the child's real father is:
 *Go to Ch. 3.D.*
- My child's other parent is not letting me see or talk with my child:
 *Go to Ch. 3.B., 5.B., and 5.D.*
- My child's caregiver is not letting me see or talk with my child:
 *Go to 4.B., 5.B., and 5.D.*

I do not believe that the paternity of my child has been established (by court order, marriage nor Voluntary Paternity Acknowledgment form):

- I want a court to establish paternity of my child:
 *Go to Ch. 3.C.*
- I want to establish paternity of my child and I think the other parent will cooperate by signing a Voluntary Acknowledgment of Paternity form:
 *Go to Ch. 3.C.1.b.*
- I am the mother and I am not sure if I should try to establish paternity of my child:
 *Go to Ch. 3.B., 4.A., and 4.B.*

Someone besides my child's other parent is caring for my child



If there is already a CHIPS or TPR case involving your child, Go to Ch. 8

There is no court order giving anyone else permission to care for my child . . .

- Should I get a court order giving the caregiver permission to care for my child?
 Go to Ch. 4.
- I want my child's caregiver to be able to have access to his/her school or medical records:
 Go to Ch. 4.A.1. and 4.A.2.
- The court is not involved yet, but I would like to have a court become involved:
 Go to Ch. 4.B.
- The court is not involved yet. Can someone else request court involvement?
 Go to Ch. 4.B.3., 4.B.5., 8.A.
- I want a different caregiver for my child:
 Go to Ch. 4.A. and 4.B.

There is already a court action or order for my child's caregiver to have legal authority to make decisions and care for my child. . .

- There is going to be a hearing in my case:
 - I'd like to appear (by phone, videoconference, or in person):
 Go to Ch. 4.B.3. and Ch. 9.
 - Who else can be at the hearing:
 Go to Ch. 4.B.4.
- I do not want the child's other parent interfering with the caregiver's rights:
 Go to Ch. 3.B.3. and 4.B.
- I am concerned about this caregiver and may want the court to appoint someone else:
 Go to Ch. 4.B.3.d.
- I would like the person caring for my child to get some financial support:
 Go to Ch. 4.B.6., 4.C., 6.B.
- I have more than one child and would like different people to make decisions and care for them:
 Go to Ch. 4.B.3.C.

My child's other parent is caring for our child

I am concerned for my child's safety:

☞ *Go to Ch. 5.D.*

I want someone other than my child's other parent to care for my child:

☞ *Go to Ch. 3.B.3., 4.B., 5.D.*

The other parent is refusing to let me see or have contact with our child:

☞ *Go to Ch. 5.B. and 5.D.*

The other parent wants child support:

☞ *Go to Ch. 6.*

There is going to be a hearing in my case and I would like to appear by telephone, videoconference, or in person:

☞ *Go to Ch. 5 and Ch. 9.*



I am going to be released soon and want to change physical placement of my child so that she or he can visit me or live with me:

☞ *Go to Ch. 4.D.1 and 5.E.*

I want physical placement (visits) and other contact with my child

Before I was incarcerated, there was a court order that allowed me to see my child:

- The other parent wants to change the order now that I'm in prison:
☞ *Go to Ch. 4.D.1. and 5.E.*
- The person caring for my child is not allowing me to have visits or other contact with my child (like phone calls or letters):
 - My child is with the other parent:
☞ *Go to Ch. 5.B. and 5.D.*
 - My child is with a caregiver other than the other parent:
☞ *Go to Ch. 4.*
- My child's caregiver is not letting my family see my child:
☞ *Go to Ch. 5.F.*

Before I was incarcerated there was no court order that allowed me to see my child:

- My child is with my spouse and no divorce or legal separation action has been filed:
☞ *Go to Ch. 5.D.3.*
- The person caring for my child is not allowing me to have visits or other contact with my child (like phone calls or letters):
 - My child is with the other parent:
☞ *Go to Ch. 5.B. and 5.D.*
 - My child is with a caregiver other than the other parent:
☞ *Go to Ch. 4.*
- My child's other parent or caregiver is not letting my family see my child:
☞ *Go to Ch. 5.F.*

I have questions about Child Support

If the amount of child support I am supposed to pay was ordered before I was incarcerated, can I lower that amount?

☞ *Go to Ch. 6.A.*

If the child support order was made since my incarceration and I still cannot afford to pay the amount, is there anything that I can do?

☞ *Go to Ch. 6.A.*

What are “R&D” fees and what are the rules for collecting those from my prison pay?

☞ *Go to Ch. 6.C.*

If I owe a lot of **past-due child support (arrears and interest)** and cannot pay it, is there anything I can do?

☞ *Go to Ch. 6.A.*

Is the prison allowed to take so much for child support from my prison pay and money I get from family and friends?

☞ *Go to Ch. 6.A. and 6.C.*

I would like to get some assistance with **healthcare coverage** for my child:

☞ *Go to Ch. 6.B.*

CHIPS

A CHIPS petition was just filed against me. What do I do now?

☞ *Go to Ch. 8.A.*

The CHIPS dispositional order requires me to do things that are impossible in prison:

☞ *Go to Ch. 8.A.3. and 8.A.4.*

Delinquency/JIPS

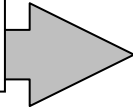
The state is alleging that my child committed a crime. What will happen?

☞ *Go to Ch. 8.C.*

Do I have to pay for my child's lawyer?

☞ *Go to Ch. 8.C.*

Be aware that failure to follow CHIPS orders can result in a TPR.



Termination of Parental Rights

What are the reasons that the state can seek to terminate my parental rights, if I do not want my rights terminated?

☞ *Go to Ch. 8.B.1.*

What process is required to terminate my parental rights if I do not agree to the termination?

☞ *Go to Ch. 8.B.1*

Can I voluntarily terminate my parental rights?

☞ *Go to Ch. 8.B.3*

Chapter 3

Paternity Matters

Overview: This chapter includes—

- A. What *paternity* means
- B. What happens after paternity is established
- C. Different ways paternity can be established
- D. What can be done if paternity has been established and one of the parents doubts that the legal father is the child’s biological father
- E. Frequently Asked Questions: Paternity

3.A. What Paternity Means

“Paternity” means legal fatherhood. Saying that a child’s *paternity has been established* is another way of saying that a certain man has been determined to be the child’s *legal father*.

Fathers must “establish paternity” in order for the courts to recognize that they have parental rights to the child.

A mother may wish to establish paternity of her child so that the father can share the rights and responsibilities of the child, and so that the child will have certain legal rights, including child support.

3.B. What Happens After Paternity Is Established

When a child is born to a woman who is not married, the mother automatically has *sole legal custody* of the child unless and until a court order awards legal custody (sole or joint) to the father, or transfers legal custody to another person or agency.

An unmarried father does not have any such “automatic” parental rights, even if he and the mother agree that he is the biological father. Unless a woman is married when she conceives or gives birth to a child, a court order or judgment is necessary to establish a father’s legal rights and responsibilities.

After a child's legal father is established, all three people involved (the father, mother and child) will have certain rights and responsibilities.

3.B.1. Both parents will have the right to:

- Ask a court for periods of *physical placement or other contact* with the child
- Ask the court to award *legal custody* (sole or joint) of the child
- Ask the court to order the other parent to pay child support
- Have a court hearing before he or she is ordered to pay *child support*, health insurance, uninsured medical expenses, birth expenses, court costs, and other fees
- Be informed of where the child lives (except in limited circumstances)
- Receive notice before the child can be moved out of the state or 150 miles away
- Get notice of court proceedings that may involve the child, such as actions for guardianship, CHIPS, JIPS, TPR, and adoption (except in limited circumstances)
- Get the child's school, medical, or other confidential records (except in limited circumstances)
- Inherit money and/or property from the child

3.B.2. Both parents will have the responsibility to:

- Pay child support to the other parent or caregiver with whom the child lives most of the time
- Share decision-making if a court awards joint legal custody
- Follow a court order that sets a physical placement schedule for the other parent
- Give the other parent notice of court proceedings involving the child
- Keep the other parent informed of where the child lives (except in limited circumstances)
- Give the other parent notice before moving with the child out of the state or 150 miles away

3.B.3. The child will have the right to:

- Receive financial support from both parents
- Develop a meaningful relationship with both parents, which includes spending time and having contact with both parents
- Tribal enrollment rights and benefits (for Native American children)
- Social Security dependent benefits if either parent dies or becomes disabled
- Access to the parents' family's health history (through the child's doctor), since many medical conditions like diabetes and sickle cell run in families
- Inherit money and/or property from both parents



FOR MOTHERS: While there may be benefits to the mother (and child) of establishing a legal father for her child, there are also serious responsibilities and obligations that result. This is because once a child's legal father is established, he could have all of the rights listed above. Therefore, before taking legal action to establish paternity of your child, you should carefully consider your situation and concerns you may have about your child, particularly if you are afraid of the father and fear for your own safety or the child's safety.

3.C. Ways to Establish Paternity

The process of making a man the legal father is called “**paternity.**” Paternity can only be established by either presumption of paternity or by court order or judgment.

3.C.1. Presumptions of Paternity

A “**presumption of paternity**” means that a man is automatically considered or assumed to be a child’s legal father, and no court action or judgment is needed to establish that man’s paternity of the child.

There are two possible presumptions of paternity: 1) by marriage; 2) by voluntary acknowledgement of paternity.

3.C.1.a. By Marriage

One presumption of paternity is based on marriage, so it is often called the “**marital presumption.**”

The marital presumption applies if either of the following is true:

- ***Child conceived or born during marriage:*** The man and the child’s natural mother were or are married to each other when the child was conceived or born;
- ***Child conceived and born before the couple marries:*** The man and the child’s natural mother were in a relationship when the mother got pregnant, but did not get married until after the child’s birth. Also, no other man can be presumed or determined by court order to be the child’s legal father.

Once the couple marries, the child becomes a “marital child” and the birth certificate can be changed to name the husband as the child’s father. There is a form the parents can sign and file called “**Acknowledgment of Marital Child**” or a “legitimation form,” which creates an official record that the child has become a “marital child.” (Even though the child was born before the parents got married.) The form is available from your local child support agency, most county register of deeds offices, and the state Vital Records office.

Vital Records
P.O. Box 309
Madison, WI 53701-0309

3.C.1.b. By Voluntary Acknowledgment of Paternity

Another presumption is created when a mother and unmarried father sign and file a ***Voluntary Acknowledgment of Paternity***, which we will also refer to as a **VAP**.

The VAP form can be signed by an unmarried mother and the man believed to be the child's father, at any time after the baby is born. If the father is present at the child's birth, hospital staff probably usually offer the parents a VAP form to sign (generally this form is blue).

For a VAP to be effective to establish paternity, it must be signed by both parents in front of a notary public and filed with the Wisconsin Office of Vital Records in Madison. The mailing address is: Vital Records, PO Box 309, Madison, WI 53701-0309. Once the VAP has been on file for at least **60 days**, the man named as the father is *presumed* to be the child's legal father.

Here are some other important things to know about using a VAP to establish paternity:

- Both parents who sign the form must be at least 18 years or older.
- The mother may not be married to another man at the time of the child's *conception or birth*. For example, if a woman gets pregnant by a man other than her husband, and the baby is born before the woman's divorce is final, the woman and the child's father cannot use a VAP to establish paternity. In that case, the husband is the presumed legal father, because the child was conceived and born to the wife during the marriage.
- A VAP can be rescinded (withdrawn) by either person that signed it within **60 days** of when the VAP was filed with Vital Records. You can request the required withdrawal form by writing to Vital Records at the address listed above.
- Filing a VAP does not automatically create a child support order, but it allows a court to hold a hearing and order support if either parent or the county child support agency files the necessary papers asking for a support order.
- A VAP does not change the mother's legal rights. Unless a mother is married to her child's father, she has sole legal custody of the child unless and until a court orders otherwise.
- Filing a VAP does not automatically give the father legal custody or periods of physical placement (visitation). The VAP allows the father to file papers asking the court to order legal custody, physical placement, and/or other contact with the child (e.g., phone calls, letters, etc.).
- **Do not sign a VAP if** either the mother or alleged father has even the smallest doubt about who the father is. You can either get DNA tests on your own or ask your county child support agency about getting **genetic tests**. **DO NOT sign the VAP until you receive the genetic test results.**

3.C.2. Court Order or Judgment of Paternity

If no presumption of paternity applies there is one more way to establish paternity – by starting a court action to determine the child’s legal father. The court action is called a “**paternity action**” or “**action to determine paternity.**” The order or judgment that is entered at the end of the action is called the **judgment of paternity**.

To get a judgment of paternity, someone must start the court action by filing a Summons and Petition to Establish Paternity with the proper court.

Any of the following persons or agencies may commence (start) a paternity action:

- The child’s mother
- A man who believes he may be the child’s father
- A man who is or was the mother’s husband when the child was conceived or born
- The state or child support agency if the mother requested their help or if the mother or child is receiving public benefits (W-2, Medical Assistance, BadgerCare, etc.)

Chapter 9 has a “*Pro Se Packet Order Form*” that you can use to request a packet with instructions and forms to represent yourself in a court action to establish paternity.



Respond to all papers and arrange to appear by phone or videoconference at hearings

If you are served with a paternity Summons and Petition, be sure to respond using the papers provided within the time allowed. If you do not respond in time, the court will hold a hearing and could determine the child’s legal father without your appearance or participation. This applies to both men and women.

Request genetic tests

Even if both the mother and the alleged father think they are sure who the father is, ask the court to order genetic tests. It is best to be absolutely certain that the correct man is determined to be the child’s legal father, since it is sometimes not possible to “undo” a paternity judgment after an order is entered.

3.C.3. Declaration of Paternal Interest

A “**Declaration of Paternal Interest**” is a form that can be completed and filed with the State of Wisconsin by a man who believes he *may* be the father of an unborn child or a very young infant or child. The man does not have to be sure he is the father, and does not even have to be sure the child was born.



A Declaration of Paternal Interest does NOT establish paternity and will not give a man any parental rights or responsibilities!

A Declaration of Paternal Interest form is not used very often, and should only be used in very unusual circumstances when a man wants to preserve his parental rights. Below are some examples:

- If a man believes a woman is pregnant with or gave birth to his baby, but he does not know the mother very well and/or has lost all contact with her and has no way of finding her or finding out the last place she lived.
- If a man is not sure a child was actually conceived or born as a result of his having sexual intercourse with a woman, but he has some reason to believe the woman is pregnant or gave birth to his baby.

If properly completed and filed, a Declaration of Paternal Interest will allow a man to get notice if someone is trying to adopt a child of which he thinks he may be the father. Once the Declaration is filed, it will be kept confidential unless or until a court action is pending or a court order requires it to be disclosed.

In most cases, this Declaration must be filed before the child’s birth or within 14 days after the child is born. But, even if you missed those timeframes, you should still file the Declaration, just in case. There is no cost to file a Declaration of Paternal Interest, but the form must be notarized when it is signed by the possible father.

The **Declaration of Paternal Interest** form (CFS-19A) may be requested by writing to:

Wisconsin Paternal Interest Registry
WI Department of Children and Families
P.O. Box 8916
Madison, WI 53708-8916

3.D. Challenging or Reopening a Paternity Determination

Sometimes, a child's mother or father questions whether the man considered the child's legal father is really the biological father. What should or can be done about that depends on how paternity was first established and when the question about paternity is raised.

3.D.1. Paternity Established by Paternity Judgment or VAP

If a man was determined to be a child's legal father by either a paternity judgment or Voluntary Acknowledgment of Paternity (VAP), the mother may now be in a position where she questions whether that legal father is, in fact, the biological father.

The only way to challenge a paternity judgment or VAP, is to file papers with the court and ask that the court *reopen* the original paternity determination and order the parties and the child to submit to genetic tests to find out who is the child's biological father.

3.D.2. Paternity Established by Marital Presumption

If a man is presumed to be a child's legal father because he is currently married to the child's natural mother, a paternity action can be started to determine if another man is the child's legal father. People who may start such an action include: the child's mother, the husband, the man who believes he is the biological father, an attorney for the state, or the child's guardian ad litem.

If the mother and her husband are getting a divorce or legal separation, either one can (and should) let the judge know that the husband may not be the child's real father and that genetic tests should be ordered to determine if the husband is the child's biological father.

There are **three** important things to consider **BEFORE** you ask a court to order genetic tests and reopen a paternity determination that was made by any of the above methods:

- The financial, emotional, and other consequences of questioning and maybe finding out that the man previously believed to be your child's father is really not the father. Think about the effects of this not only on yourself, but also on your child (regardless of how things end up).
- The sooner you ask the court to reopen the paternity determination, the better. If you file your papers within one year of a paternity judgment or VAP, the court will probably grant your request without too much trouble. The longer you wait after one year, the more difficult it will be because you will have to show very good reasons for waiting to come forward.
- The court is not required to reopen a paternity determination, and consequently, asking the court to reopen a judgment is not easy. Before anything else, the court considers the child's best interest. Some of the things the court will want to know are: whether the child is considered a "marital child"; the age and awareness of the child; how involved the legal father has been in the child's life; and whom the child considers to be her/his father. To help with its decision, the court will appoint a guardian ad litem (GAL) to investigate. The GAL will then make a recommendation about reopening based on what is in the child's best interest.

3.E. Frequently Asked Questions: Paternity

Q: What if I change my mind after I sign a Voluntary Acknowledgment of Paternity (VAP) form?

A: Either the mother or the father can file a **Request to Withdraw Voluntary Paternity Acknowledgment** form within 60 days of filing the VAP form. Once the Request to Withdraw form is filed, the court may not enter orders related to the child, including orders on child support, legal custody or physical placement. However, if 60 days have already passed, you must file papers asking the court to void (cancel) the determination of paternity. You must state facts that show that you were misled, mistaken, forced, tricked, or intimidated when the VAP was signed and during the 60 days right after it was filed.

Q: Can the father's name that is listed on a child's birth certificate be changed?

A: According to Wis. Stat. § 69.15(3), there are situations in which you may want to change the father's name that is listed on your child's birth certificate:

- Adding the father's name to a birth certificate that never listed a father
- Adding the husband's name to the child's birth certificate if the parents get married after the child is born
- Replacing the name on the birth certificate with the name of the man found by a court to be the father
- Deleting the name of the man found by a court not to be the child's father

Q: As a mother, I want to establish the paternity of my child, but the man I believe is the father doesn't want to sign anything. What can I do?

A: If you want to establish the paternity of your child, you may find that the child support agency in your county can be helpful. If you are receiving public assistance for your child, you will be required to cooperate with child support in establishing paternity for your child. You also can file your own action to determine paternity without the assistance of the child support agency.

Q: As a father, can I get help from the child support agency to determine paternity?

A: Possibly. You should contact the child support agency in the county in which you lived before your incarceration for more information. If the agency will not file an action to establish paternity on your behalf, there are forms and instructions available from the Remington Center's Family Law Project that will provide you with all the information and forms you will need to do it yourself. To receive those forms, complete the "Pro Se Packet Order Form" in Chapter 9.

Q: What is a paternity judgment?

A: A paternity judgment is a court commissioner's or a judge's decision that paternity has been established. The judgment will contain basic information about the mother, father, and child, and also will include orders for legal custody and placement, child support, payment of birth expenses and GAL fees (if any), the tax exemption for the child, and the child's last name.

Q: What are birthing expenses and why do fathers have to pay them?

A: Birthing expenses are also sometimes called "lying in" expenses. Once paternity is established, the father may be responsible for some of the costs the state may have paid for the birth of the child. However, if you are indigent (in poverty) you may not need to begin paying those expenses right away. Also, there are new limits on what you can be ordered to pay—it should be the lower of 5% of your gross income for 3 years, or one-half of the actual costs of the child's birth.

For more information about the monetary responsibilities of fatherhood,  Go to Ch. 6.

Chapter 4

Picking a Caregiver or Guardian

Overview: This chapter includes—

- A. Care arrangements that do not involve a court
- B. Care arrangements that do involve a court
- C. Kinship Care

If you were your child’s primary caregiver before your incarceration, and if your child is not now living with her/his other parent, it is up to you to make a very important decision so that your child will be properly cared for.

AS SOON AS POSSIBLE, choose another responsible adult to act as your child’s caregiver while you are in prison. It is best if the caregiver is related to your child “by blood” so that s/he will be eligible for monthly support payments from the county (☞ Go to Ch. 4.B.6. Kinship Care).

The caregiver you select should be someone who will:

- Genuinely care about your child
- Provide a stable, safe, and loving home
- Make good decisions about your child’s health, education, and general well-being
- Consider your child’s needs above his/her own
- Encourage and support your relationship with your child

Once you decide on the caregiver for your child, you will need to make appropriate arrangements allowing that caregiver to do whatever may be necessary for your child. Depending on the circumstances, you may decide to sign forms giving *informal* authority to the caregiver without involving a court, or you may decide it is best to get a court order making the caregiver your child’s *legal guardian*.

4.A. Care arrangements that do not involve a court

4.A.1. Parent’s Authorization for Placement and Care of Minor Child

Chapter 9 contains a form called “Parent’s Authorization for Placement and Care of Minor Child” (Parent’s Authorization for Placement). Signing this form and giving it to your child’s caregiver *does not* require you to file anything with a court.

The Parent’s Authorization for Placement does the following:

- Names a particular caregiver for your child to live with
- Avoids delays involving emergency care or decisions for your child
- Allows the caregiver to consent to all types of health care, including emergency treatment, hospitalization, medication, and mental health care/counseling
- Allows the caregiver to register the child for school and sign all school forms
- Allows the caregiver to request confidential records and reports about the child



You should be aware of some of the risks associated with using the Parent’s Authorization for Placement instead of a court order for guardianship:

- Signing a Parent’s Authorization will not prevent your child’s other parent from getting physical custody of your child if s/he wants that—only a guardianship order from a court can ensure that your child will be able to stay with your selected caregiver/guardian.
- If someone other than your child’s other parent (e.g., your child’s grandparent, aunt, uncle, etc.) does not agree with your choice of caregiver, that other person could ask a court to appoint him/her as your child’s guardian.

4.A.2. School, Medical and Other Records

In most cases, you are entitled to get copies of your child’s school and medical records while you are in prison. This means that even if your child is living with her/his other parent, a court-appointed guardian, or a caregiver you have chosen, you should still be able to get copies of your child’s school or medical records. Note: There are some exceptions to this and those exceptions are discussed below.

As a parent, you have a right to get your child’s medical, dental, and school records under Wis. Stat. §§ 767.41(7)(a) and 767.451(4), regardless of whether you have legal custody of the child. There are some situations where you would not, however, be able to access your child’s confidential records. These situations are:

- If a court order specifically says you may not have your child’s records
- If a court order says that you are *denied periods of physical placement* with your child

Sometimes you will need to prove that you are the child’s parent and that you have not been denied periods of physical placement with the child. To meet that demand, you can

provide a paternity or divorce judgment or another recent court order that mentions your legal custody and/or periods of physical placement.

Examples of the different kinds of records a parent may request are:

- School records [see Wis. Stat. § 118.125(2)]
- Child welfare service records [see Wis. Stat. § 48.78]
- Court or treatment records [see Wis. Stat. § 51.30(5)]
- Patient health care records [see Wis. Stat. §§ 146.82 and 146.83]

Chapter 9 includes a form letter that you can use to ask that your child's records be sent directly to you. The form letter allows you to request school records, patient health care records, protective services records (from the county human services department), court records, or treatment records. Make copies of the form if you plan to use it to request records from different agencies or providers.

If you know certain documents that you want, you must clearly describe those documents. For example, a school can send you grades, statewide test results, a list of classes your child has taken, attendance records, immunization records, special education testing and reports, individual education plans (IEP), and information about school activities.

If you do not have specific records in mind, but just want to see all records from a certain time period, clearly indicate those time period(s).

If you do not want your child's records sent directly to you from the agency or service provider, or if the provider or agency says they are not permitted to put certain documents in the mail, you can ask an adult you trust to get the records and send them to you. If that person is not the child's court-appointed guardian, you will need to complete a release/authorization form giving that person the right to inspect and copy your child's records on your behalf. This authorization form is provided in Chapter 9.

4.A.3. Other Agency Forms

Unfortunately, some agencies or organizations, such as schools, psychologists, health care providers, daycare providers, or county child welfare departments, may *not* accept the authorization forms we have provided for you in Chapter 9. If an agency or provider has its own forms, they can require that you use their forms.

Some examples of other agency forms are:

- School forms to authorize registration/enrollment
- Release forms to allow someone other than a parent to communicate with doctors and get medical information and records
- Authorization or power of attorney forms to allow someone else to get medical care for your child
- Forms to allow someone else to pick your child up from daycare or school



Note: Parents who have been *denied* periods of physical placement with a child do not have the same rights as other parents regarding school, health, and dental records. This applies to you if you have been a party to a divorce, legal separation, annulment, or paternity action and the court has denied you periods of placement (visits) with your child. If those circumstances, the school or health care provider is *not required* to give you access to your child's records.

4.A.4. Special Considerations and Warnings About Authorization Forms:

- Any person or organization has the right to refuse to accept your authorization or release form. This could result in a situation where your child does not receive needed medical attention or the caregiver cannot put your child on his/her health insurance.
- All forms should be filled out completely and accurately to avoid being rejected.
- Be sure your signature is either witnessed or notarized, as the form requires.
- The Parent's Authorization for Placement form should include an expiration date or termination event (such as your release from prison).
- Ask your child's health care provider, school staff, and/or daycare provider if they will accept your form or if they have special authorization forms they prefer. If you must use their forms, ask them to send the forms to you.
- Only a guardianship order can ensure that your child will be able to stay with the caregiver you have selected. If you use the Parent's Authorization for Placement form and the other parent or relative of your child does not agree with your choice of caregiver, that other person could ask a court to appoint him/her as your child's guardian.



REMEMBER: KEEP COPIES of everything you send and receive, especially papers you sign!

4.B. Care arrangements that do involve a court

- Change of Physical Placement
- Guardianship: Overview
- Guardianship under Chapter 54
- Guardianship under Chapter 48
- Kinship Care

4.B.1. Change of Physical Placement

Remember that “physical placement” refers to the time a child spends with one of her parents. If you had a court order for primary physical placement, or if your child was living with you right before your incarceration, your child's other parent could try to get a court order giving him/her primary physical placement of your child.

(For more information related to periods of physical placement, [Go to Ch. 5.](#))

If your child's other parent is not unfit or dangerous to your child, the court probably will give that parent primary physical placement. Be sure to attend any hearing that is held, either by telephone or videoconference, and be sure to ask for specific days for placement (visits) between you and your child, as well as other types of contact with your child (e.g., phone calls, letters, gifts, etc.).

If you are concerned for your child's safety with the other parent and believe you can prove that the other parent is unfit or unsafe to be your child's primary parent, or if the other parent has not been around or shown any interest in your child, you can file a guardianship action so that the court can appoint someone else as your child's guardian.

4.B.2. Guardianship: Overview

There are a number of circumstances where a legal guardianship may be the best arrangement for your child. Some of those are:

- If the Parent's Authorization of Care form you used to name someone as your child's caregiver is not accepted by the school or health care provider (schools and health care providers should cooperate fully with a guardian who provides proof that he/she has been appointed by the court).
- If you have reason to believe that your child's other parent will attempt to get physical custody of your child but will not provide a safe home for your child (you will need to be able to prove the other parent is unfit or unsuitable to care for your child, or that there are special circumstances involving your child).
- If you want to take action to have a court appoint the person you prefer as the caregiver for your child. (If more than one person is nominated (*proposed*) as a guardian, the court will consider both parents' opinions about who should be the child's guardian, and will then decide whom to appoint based on the child's best interest.)

However, before you ask the court to appoint a guardian for your child, consider any problems you may have once you are released and want your child to live with you. Be aware that if the guardian will not agree to terminate (end) the guardianship after your release, you will have to convince the court that a guardianship is no longer necessary because you are able to care for your child again. Among other things, you will want to be able to show the court that you have a place to live and a means of supporting yourself and your child.

While it may be scary when you cannot predict what will happen upon your release, you must do what is best for your child right now. That is why you should discuss your concerns with the guardian before you agree to the guardianship. You also should insist that the Guardianship Order include a requirement that you will have visits and other contact with your child as much as possible.

In Wisconsin, there are two different ways a guardian may be appointed for a minor:

- Guardianship of a minor under **Chapter 54** of the Wisconsin Statutes: Guardianship under Chapter 54 is filed by an adult, other than the child's parent, who can act on the child's behalf.
- Guardianship of a minor under **Chapter 48** of the Wisconsin Statutes: Guardianship under Chapter 48 is when an outside party (either a District Attorney or Corporation Counsel) files to request that another person be appointed to act as guardian for a child who is in need of protection or services.

4.B.3. Guardianship of a Minor under Chapter 54

A “minor” is considered any unmarried person under the age of 18. Any person can petition the court to appoint a person to be the guardian of a minor’s “person” and/or “estate.” The court may consider appointing two adults to act as co-guardians of the person or the estate of a minor.

A guardian of the person of a minor is an adult who is appointed by the Probate Court to make major decisions for the child. These decisions may include all or some of the following:

- Education and child care
- Medical and psychiatric treatment, including surgery and medication
- Moving the child’s residence within or out of the state
- Drivers license
- Consent to marry before age 18
- Travel
- Employment
- Release of confidential records

A guardian of the estate of a minor is an adult who is appointed by the court to make decisions regarding the child’s finances. If the child receives government benefits, child support or other funds, the court may appoint a guardian of the estate and require annual reports to prove that the funds are being spent on the child and not wasted. The guardian of the estate can (but does not have to) be the same person as the guardian of the person.

Be aware that the guardianship law is very complex. Some helpful information is presented here. However, you may find you need an attorney to assist you with the process. For example, if your child is developmentally disabled, a Petition for Protective Services or Protective Placement may be necessary. If your child needs special living arrangements or other additional services that can only be provided by the county, this type of petition can be filed at the same time as the guardianship petition. Wis. Stat. Chapter 55 applies to a petition for services for a developmentally disabled child.

4.B.3.a. Naming a Guardian

You should nominate (propose to the court) one guardian and one alternate (Standby Guardian) for each child. The alternate will automatically take over as guardian if your first choice cannot serve or decides not to serve.

4.B.3.b. Questions to consider when choosing a guardian:

- Have you confirmed that the person is willing to serve as guardian?
- Is the potential guardian at least 18 years old?
- Does the potential guardian genuinely care about your child's welfare?
- Is the potential guardian physically able to handle the job?
- Does the potential guardian have the time to take care of your child?
- Is the potential guardian related to your child so that s/he could receive kinship care payments from the county?

- Can you supply enough money to help raise the children? If not, can your potential guardian afford to support the child(ren) on his or her own?
- Does the potential guardian share your moral beliefs?
- Would your children have to change schools?
- Would the potential guardian support your child's relationship with you, including allowing your child to visit and have telephone calls with you?

If you are having a hard time selecting a guardian, take time to talk with the people you are considering. You should make sure they are willing and able to accept the responsibility. You should also make sure that they see eye-to-eye with you on the issues that are most important to you. In particular, you should discuss whether they will agree to terminate the guardianship as soon as you are released and able to care for your child.

4.B.3.c. Choosing Different Guardians for Different Children

Most people want their children to stay together, if possible. If you want your children to stay together, ask the court to name (appoint) the same guardian for all of your children.

However, you can name different guardians for different children. You may wish to do this if your children are not close in age or have strong attachments to different adults. You should choose the guardian you believe would be best able to care for each child.

The proposed guardian will need to complete a form entitled "Statement of Acts." This form asks the proposed guardian several questions to determine if the guardian has a history of criminal conduct or involvement in bankruptcy actions. The proposed guardian will need to sign this form before a Notary Public and submit the form to the court and the GAL before the Guardianship Hearing.

4.B.3.d. Frequently Asked Questions: Guardianship under Chapter 54

Who can file for guardianship?

Either parent or another interested person can file a petition for guardianship.

What happens to my parental rights when a legal guardian is appointed?

Technically, the child's parents retain the option to reclaim all of their rights, including rights to legal custody and placement, during the guardianship. A guardianship does NOT terminate a parent's rights. However, unless the Guardianship Order says so, the guardian is not required to keep you informed about what is happening with your child, or to allow you to have contact or visits with your child while you are in prison. In some cases, you may need to get a separate order from a Family Court.

If you are agreeing to guardianship of your child, you should be sure the order requires the guardian to cooperate with you to provide information about your child, and to have visits, telephone and written contact with your child on a regular basis. If you are concerned that the guardian may not arrange the phone calls or visits, you should ask the court to include specific times for calls and visits in the initial order. If the order is not specific and contact becomes less and less frequent, you may need to contact the court again and request an amendment to the order to include a more specific visitation

schedule. The order could also state that the order will be reviewed within 6 months of your release from prison to assure that the court understands, from the beginning, that you plan to resume your parental responsibilities soon after you are released.

How much does a guardianship cost?

There is no fee for filing a petition for Ch. 54 guardianship. However, some things will cost money. For example:

- Certified copies of the “Letters of Guardianship” cost about \$4 each. Ordinary (non-certified) copies of the Letters cost about \$1 each. (Insurance companies, school officials, and health care providers often ask guardians for a certified copy of the Letters of Guardianship so you will need these.)
- In addition, the child's parents (or the Petitioner) are responsible for a fee (of at least \$200) for the GAL. The GAL fees have to be paid by the child's parents or the Petitioner. If you need to ask the court to waive (excuse) your GAL payments because you have no income due to your incarceration, do that before the hearing is completed and the Order is entered in the court's records. It is more difficult to ask the court to waive your fees after the Order has already been written and entered.

How do I get started?

The Probate Court in each county should have forms available for a small fee. If you are the Petitioner, write to the Probate Court office in the county in which your child resides and request the “packet” of forms for “Permanent Guardianship of a Minor.” If you tell the court that you are incarcerated and have no income, and the court may not charge you the fee for the packet.

Once you get the packet, read through everything. Then, complete the Petition and sign it before a Notary Public. File the Petition by mailing it to the Probate Court in the county where the child lives. You must send copies to the child's other legal parent, as well as other “interested persons.” (“Interested persons” will be explained to you in the instructions included in the packet.) The only form required to start the court process is the Petition. However, some courts may want you to complete the top parts of some other forms, such as the “Order and Notice of Hearing” and the “Order Appointing Guardian ad Litem”.

An additional consent form can be signed by any involved adult who has not signed the Petition and agrees with the Petition. These forms can be filed with the court any time before the hearing.

When and where will the hearing be held?

The hearing should be scheduled within a few weeks after the Petition is filed. If written consents are on file, a hearing can be held sooner. Most uncontested hearings last about 20 minutes. If a parent or other party contests the guardianship, a longer evidentiary hearing will be scheduled to allow the judge to decide whether to appoint a guardian, and whom to appoint. All interested persons listed on the Petition will receive a copy of the Order and Notice of Hearing showing the hearing

date and time. Notices will be mailed by the court or the person who filed the Petition.

The hearing will be held at the courthouse in the county in which the child lives. However, the person who has custody of your child may request that the hearing be held in a location more accessible to him or her.

Who will conduct the hearing?

If no one disagrees with who you (or the Petitioner) has selected to be the guardian of your child, the hearing will be held in front of a Probate Court Commissioner. If anyone disagrees, the case will be rescheduled and heard before a judge.

Who should attend the hearing?

You should attend all guardianship hearings, whether in person, by telephone or videoconference. The court will usually allow you to appear by telephone or videoconference. Those arrangements should be worked out ahead of time through your prison social worker or the records office.

In addition to you, all interested parties as defined by Wis. Stat. § 54.01(17)(a) should attend, if they are able. If there are adults who agree with the petition but cannot attend the hearing, they should try to file written consents to the guardianship. If someone cannot attend the hearing and does not agree to the appointment of the proposed guardian, that person should contact the court or the GAL *before* the hearing.

What if you and the guardian disagree about how to handle an issue concerning your child's health, education, or well-being?

If you and the guardian disagree about a major decision affecting your child (*see* 4.B.3), you can request a hearing and ask the court to resolve the dispute. If you feel the guardian has done something wrong and you are concerned for your child's safety or emotional wellbeing, you can request that the guardian be replaced with a different guardian. But note: You would have the burden of proving that the current guardian is not acting in your child's best interest and/or is acting in a manner that is harmful to your child.

How long does a guardianship last?

A "permanent" guardianship lasts until the child turns 18, gets married, or the court terminates the guardianship. A "temporary" guardianship lasts for 60 days, but can be extended once by court order, for another 60 days. A "temporary" guardianship is used in emergency situations, does not require a hearing or advance notice, and may be converted to a "permanent" guardianship.

How can you end a guardianship?

You can request that the guardianship be terminated when you are released and can demonstrate that you are able to provide a safe and secure home for your child. You will need to file a "Petition to Terminate the Guardianship." Before holding a hearing

on your Petition, the court will appoint a Guardian ad Litem (GAL) to evaluate your ability to provide for your child’s safety and wellbeing and then to make a recommendation to the court. At the hearing, you will have an opportunity to explain why you feel the guardianship is no longer necessary and should be terminated. If the current guardian and/or the GAL believe that you are not yet able to take care of your child, the court will give serious consideration to their opinions and may continue the guardianship until you meet certain conditions.

4.B.4. Guardianship of a Minor under Chapter 48

Another type of guardianship can be ordered after a district attorney or corporation counsel begins a CHIPS action because your child is in danger or is not receiving adequate care. (☞ Go to Ch. 8.A. for more information on “CHIPS.”)

In a CHIPS case, the Children’s Court may find your child to be in need of protection or services and may appoint a guardian under Chapter 48. There are many reasons a child may be found to be in need of protection or services and a guardian appointed. One situation is when the child is receiving inadequate care because the parent(s) is incarcerated. See Wis. Stat. § 48.13(8).

If you do not first appoint a guardian under Chapter 54, and your child is not receiving adequate care, a child welfare agency may become involved. That could lead to the appointment of a guardian under Chapter 48, who might be a person you did not select and/or do not want as your child’s guardian. (☞ Go to Ch. 8.A.).

Under Chapter 48, a district attorney, corporation counsel, or other government official starts a CHIPS action and asks the court to appoint a guardian for your child. This process is very different from a Chapter 54 Guardianship, in which you (or another person) may ask the court to appoint someone you think would be an appropriate guardian of your child. Once an action for guardianship under Chapter 48 is started, you will have much less control over the person appointed to be your child’s guardian.

4.B.5. Kinship care

Kinship Care (formerly AFDC-NLLR) is a program to help support a child who lives with a relative outside either of his or her parent’s homes. Some examples of relatives who may provide Kinship Care include the child’s adult brother or sister, cousin, uncle, aunt, grandparent, or great-grandparent. Kinship Care arrangements can be temporary or for a long time. The Wisconsin Department of Children and Families will provide a monthly payment (about \$200) to a relative caregiver who meets Kinship Care eligibility requirements.

4.B.5.a. Qualifying for Kinship Care Payments

An adult relative caring for a child under a court order is automatically considered eligible for Kinship Care payments, but no court order appointing the relative as the child’s guardian is necessary (except in Long-term Kinship Care, as described below at 4.B.6.c.).

Under Kinship Care rules, a **relative** can be a stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, second cousin, nephew, niece, uncle, aunt, step-uncle, step-aunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any of the above people, even if the marriage is terminated by death or divorce. See Wis. Stat. § 48.02(15).

A relative caregiver may apply for the Kinship Care payments if the child needs the kinship living arrangement for any of these reasons:

- The child faces potential abuse or neglect
- The parent cannot care for the child for mental health reasons
- The parent has drug or alcohol issues
- The parent is incarcerated
- The basic needs of the child can be better met with the relative than with the parent

To be considered eligible for Kinship payments, the applicant must be able to:

- Prove that the child lives with him/her and that the housing is adequate
- Provide evidence of his/her relationship to the child
- Apply for all public assistance for which the child or relative may be eligible
- Cooperate with referral of the parents to the child support office, unless an exception is granted by the Kinship caseworker
- Provide information for a criminal background check on the applicant and any other adult who lives or works in the home and may have contact with the child
- The relative caregiver and any adult who lives or works in the home must have no history of contact with a child protective agency or arrests or convictions that could negatively affect the child or the relative's ability to care for the child

4.B.5.b. Application and Reporting Requirements for Kinship Care Benefits

A relative caregiver who wants to receive Kinship Care payments must complete an application and submit it to the Kinship Care Coordinator located in the relative's county. The child welfare agency for the county or tribe where the child or family currently lives can provide information about how to contact the Kinship Care Coordinator for that county.

At the time of application, the relative agrees to cooperate with the application process, as well as with a yearly review that will be conducted by the caseworker. The relative also agrees to inform the Kinship caseworker every time a person moves into or out of the relative's home, and of any other major changes in the relative's living arrangements. After the application is submitted and reviewed, the Kinship caseworker will arrange a home visit.

If the Kinship Care provider is approved, the Kinship caseworker will review the placement each year.

4.B.5.c. Requirements for Long-Term Kinship Care

State law also allows Long-Term support for Kinship Care providers under many of the same rules as for regular kinship care. However, for Long-Term Kinship care, the relative must be appointed as the child's guardian. The relative must also sign an agreement to provide care

for the child until the age of 18, or until the child is placed outside the relative's home, ceases to live with the relative, or the guardianship ends.

4.B.5.d. Frequently Asked Questions: Kinship Care

Q: How long does it take before the first check is received by the Kinship Care Provider?

A: About 30 days, depending on return of the background check information and the Application for Medicaid (also called Medical Assistance).

Q: Will the agency pursue child support from the parents?

A: Yes, unless an exception is granted by the case worker.

Q: Do relative caregivers need to apply for legal guardianship in order to receive Kinship payments?

A: No, if the relative caregiver is only seeking temporary payments.

Q: Do Kinship Care providers need to report Kinship payments as income?

A: No, Kinship payments are not subject to federal or state income tax.

Q: What if Kinship Care is denied or terminated?

A: Denials or terminations of Kinship Care payments may be appealed by requesting a fair hearing from:

Division of Hearings and Appeals (DHA)
P.O. Box 7875
Madison, WI 53707

In cases of terminations, if the appeal is filed within 10 days of receiving the discontinuation notice, benefits should continue until the hearing decision is issued.

Denials based on the criminal background check can only be appealed in writing, and the relative caregiver is not entitled to a hearing before an Administrative Law Judge or review by a court. While the relative caregiver is waiting for an answer to his or her appeal, benefits are not continued if the denial was based on the criminal background check.

4.C. Eligibility for Other Programs and Assistance

Kinship Care providers should apply for other programs such as Medicaid and food stamps. Kinship Care providers who are working or in school may also receive help with child care costs. Note: Kinship Care payments are not considered when determining the child's Medicaid or child care eligibility.

For more information on other benefits,  *Go to Ch. 6.*

Chapter 5

Legal Custody, Physical Placement (Visits) and Other Contact With Your Child

Overview: This chapter includes—

- A. Why keeping in contact with your child is important
- B. Your legal rights as a parent
- C. Ways to stay connected with your child
- D. How to seek periods of physical placement and other contact with your child
- E. What will matter to the court and guardian ad litem
- F. Visitation rights for grandparents and other people close to your child
- G. Frequently Asked Questions

Depending on the amount of contact you had with your child prior to your arrest, your incarceration can have a dramatic impact on your relationship with your child. This section is intended to help you understand what you can and should do to maintain contact with your children.

Letters, phone calls, and visits can be vital in maintaining a parent-child relationship while you are incarcerated.

Being able to show that you have tried to keep in contact with your child is also essential to defend your parental rights if they are challenged. If you are not able to have *regular and meaningful contact* with your child, you may risk losing your parental rights.

For more on Termination of Parental Rights [☞ Go to Ch. 8.](#)

5.A. Why contact with your child is important

Some parents in prison were living with their children right before their incarceration, while others saw their children once a week or once a month. Still other parents had very little or no contact with their children for many years.

No matter what your situation, and no matter what your child's age, your child will almost always have a need to know that you love him/her and think about him/her, and that s/he is not responsible in any way for your absence from his/her everyday life.

Even if you are only able to write letters or send cards to your child during your time in prison, those *letters and cards are very important to your child's well being*. That is true even if your child does not write back, or if you do not know whether or not your child is getting your letters. By writing and/or calling, you are letting your child know that you think about and love him/her.

For more information about the emotional needs of a child of an incarcerated parent, [Go to Ch. 9](#).

5.B. Your legal rights as a parent

As a parent, you may have certain rights to *legal custody* (decision-making) and *periods of physical placement* with your child. (For definitions of legal terms, [Go to Ch. 1](#)).

5.B.1. Periods of Physical Placement

Periods of physical placement (what sometimes are called “visits” or “visitation”) are those times that a child spends with a parent based on a court order. Usually, the parent with whom the child resides most of the time is said to have “primary physical placement,” and the other parent has “secondary” or “non-primary” placement. When a parent is incarcerated, the placement might occur once a month, every three or four months, or perhaps just once a year. No matter what the physical placement schedule is, it is very important for placement to be consistent and predictable so that the child knows that s/he will have time with both parents.

Here are some important things you should know about your rights to periods of physical placement under Wisconsin law:

- A child should have **regularly occurring, meaningful** periods of physical placement with each parent, and should **spend as much time as possible** with each parent. The schedule itself will depend on things such as the distance between the parents' homes, the parents' and the child's schedules, the child's age or special needs. [Wis. Stat. § 767.41(4)(a)]
- If the parents live very far apart, the court may also order that the non-primary parent have “electronic communication” (e.g., **telephone calls**) with the child, in addition to any in-person visits ordered by the court. [Wis. Stat. § 767.001(1g)]
- A court cannot deny all periods of physical placement to a parent without first holding a hearing. At that hearing, the parent who wants the court to deny all contact or visits between the child and the incarcerated parent has the burden of

proving that physical placement (in-person visits) would **endanger the child’s physical, mental or emotional health**. [Wis. Stat. § 767.41(4)(b)]

- If a court order **denies** a parent’s periods of physical placement and it remains in effect without being changed for 12 months or more, it can be used as a basis for terminating that parent’s parental rights. (For more information on termination of parental rights, ☞ *Go to Ch. 8.B.*)
- If you think the other parent may be able to show a court that having in-person visits or other contact between you and your child could harm your child in any way (physically, mentally or emotionally), consider agreeing to contact with your child by letters, gifts, and/or phone calls—at least for some time. If your child is or should be seeing a counselor, you may be able to arrange for letters and/or phone calls to your child through the counselor.
- A court cannot deny periods of physical placement to a parent just because that parent has failed to meet financial obligations to the child, such as paying child support, medical insurance, or birth costs. [Wis. Stat. § 767.41(4)(c)]
- A court may not grant physical placement to a parent if s/he has been convicted of 1st or 2nd degree intentional homicide of the child’s other parent, unless the court finds that the placement would be in the best interests of the child. [Wis. Stat. § 767.44]
- You are entitled to receive copies of your child’s school and medical records, as long as you have not been denied periods of physical placement. (For more information on access to a child’s records, ☞ *Go to Ch. 4.*)
- If both parents have been awarded periods of physical placement, they must give written notice to the other parent if they intend to move with the child out of the state (or more than 150 miles from the other parent in the state). The notice must be served by certified mail, at least 60 days in advance, and provide details about when and where the other parent wants to move. If you object to the move, you should object in writing within 15 days (send a copy of your objection to the court). [Wis. Stat. § 767.481]

5.B.2. Legal Custody

Legal Custody means the right and responsibility to make major decisions concerning the child. “Custody” does not refer to parent with which the child is living. (Also, please do not confuse “legal custody” with “custodial parent” or “CP,” which is often used by the Child Support Agency. (☞ *Go to Ch. 1* for complete definitions of legal terms.)

Wisconsin law assumes that joint legal custody (joint decision-making by parents) is in a child’s best interest. [Wis. Stat. § 767.41(2)(am)] Therefore, most of the time the court will order parents to have **joint legal custody**. This means that the parents must be able to communicate and cooperate with each other to make major decisions about their child. Neither parent has more rights or responsibilities in decision making than the other parent.

However, if one of the parents objects to *joint* legal custody, the court can award *sole* legal custody to that parent if:

- The other parent is not capable of performing parental duties and responsibilities
- There are conditions that substantially interfere with the exercise of joint legal custody
- The parties will not be able to cooperate in joint decision-making

Some courts will say that just being in prison interferes with the parents' ability to communicate and reach agreements about major decisions for their child. That is because being in prison makes it difficult to communicate with family and to be actively involved in your child's life on a daily basis, especially if you and the other parent have a history that makes it difficult to work together cooperatively. As a result, joint legal custody could be denied simply because the court considers your incarceration a condition that substantially interferes with the exercise of joint legal custody.

Sole legal custody to one parent is also likely when the other parent has abused alcohol or drugs, or has engaged in a *pattern or serious incident of domestic battery or domestic abuse*. If domestic violence occurred in your relationship with your child's other parent, then the court could assume that it is not in the child's best interest to award joint or sole legal custody to the parent who committed the battery or abuse (unless the parent who committed the battery or abuse has successfully completed treatment for batterers). [Wis. Stat. § 767.41(2)(d)]

5.C. Ways to stay connected with your child

There are several ways to stay connected with your child during your incarceration:

- Periods of physical placement (in-person visits)
- Telephone calls
- Visits by video conference (see Chapter 9 for more information)
- Cards, letters, gifts
- Audio or video recordings of parents reading books/speaking to their children that are made by an approved prison program

Each of the above types of contact presents challenges and possible obstacles. You should consider and, if possible, be prepared to offer solutions when you discuss your desire for placement and contact with your child's other parent/caregiver, the court, or the GAL.



MAKE SURE YOU ARE NOT VIOLATING A PRISON RULE OR COURT ORDER THAT RESTRICTS YOUR CONTACT WITH YOUR CHILD OR THE OTHER PARENT OR CAREGIVER.

5.C.1. Physical placement (in-person visits)

The court usually will not order the other parent/caregiver to bring the child to the prison if that parent/caregiver does not want to do so. However, if s/he used to bring the child and stopped for no good reason, the court might order the person to bring the child to visit you if you have no one else to transport the child to the prison.

When requesting physical placement with your child, consider the distance between your child's home and the prison, as well as the cost of travel. You should find a responsible adult to drive your child to and from the prison, and make sure that person:

- Is willing to bring your child to visit you and will follow through with scheduled visits

- Has access to a reliable vehicle
- Has a valid driver’s license and no criminal record
- Is someone your child knows well and is comfortable with, especially if your child is young and not used to being away from the other parent/caregiver

Before each visit, plan what you will talk about and do with your child during the visit (e.g., play cards and board games, do math problems, read books, draw and color, etc.). During the visit, avoid asking “nosey” questions about the other parent/caregiver. Stay focused on your child, and answer his/her questions about you and your situation as honestly and age-appropriately as possible. Whenever possible, have pictures taken at visits and send your child copies.

For more information on age-appropriate activities for visits, ☞ Go to Ch. 9 for excerpts from *“Parenting from Prison: A Resource Guide for Parents Incarcerated in Colorado”* by Barbara S. Bosley, Christie Donner, Carolyn McLean, and Ellen Toomey-Hale (2002).

5.C.2. Telephone calls

Phone calls can be a good way for you and your child to stay connected, especially if you do not get visits with your child very often. Here are some tips about phone calls to help you in your attempts to arrange phone calls, either with the other parent or through the court:

- Phone calls should be scheduled for a certain day and time. Always have a “back-up” plan in case the call does not go through at the scheduled time for any reason. For example, make a plan that you will call back the next day at the same time.
- Cost can be a problem for the primary parent or caregiver, so courts will usually not require the primary parent/caregiver to pay for collect phone calls from the incarcerated parent. You may need to ask a friend or family member to help you pay for the phone calls or to set up a pre-paid phone call account through Correctional Billing Services.
- Most young children, especially those under the age of 5 or 6, do not have the ability to have long telephone conversations. Set realistic expectations based on your child’s age and your prior relationship with him/her. Do not insist on your child staying on the phone longer than his/her interest allows.
- Phone calls should let your child know that you love and care about him/her. They are not intended for you to gather information about, or pass messages to, the other parent/caregiver. **DO NOT PUT YOUR CHILD IN THE MIDDLE** of your problems with the other parent.
- Ask your child about: things s/he mentioned in previous phone calls or letters; things s/he enjoys doing; people s/he spends time with (friends, family, etc.); school projects or reports; sports; hobbies and extracurricular activities; holiday celebrations; favorite books and movies; what s/he likes to do on weekends, etc.
- Be on time for your phone calls. If you do not make a call as scheduled, immediately write a letter apologizing to your child’s other parent/caregiver and to your child, and propose another day and time for the call (if you do not already have a “back-up” plan in place).
- Keep a record of your phone calls, even if you do not reach your child every time. (☞ Go to Ch. 9 for a form you can use to keep track of your contacts.)

- Be polite and express appreciation to the other parent/caregiver if and when s/he answers the phone.

5.C.3. Cards, letters, gifts

Children love to get mail! Sending frequent cards and letters will let your child know that you love and think about him/her, even if you do not get to see him/her or talk by phone. From your child's point of view, getting cards, letters, and gifts from you may be even better than phone calls, since they can hold onto your letters, put them in a special place, and read them when they want. Below are some suggestions to help you stay connected to your child by mail:

- Write to your child on a schedule, such as every Thursday, every other Monday, or the first Wednesday of each month. Whatever day you pick, stick with it. Frequent cards and letters are good, but it is most important to show your child and the other parent that you are consistent and dependable.
- Have realistic expectations: do not expect your child to write back to you very often. If s/he does, write back immediately to say how happy you were to get a letter from him/her.
- Consider your child's age and level of understanding as you write your letters and cards. (☞ Go to Ch. 9 for more information about age-appropriate communications.) For very young children, draw pictures (in color, when possible), use the child's name a lot, and maybe even tell short stories that can be read to your child.
- Tell/remind your child about things you enjoyed doing together before you went to prison.
- Send self-addressed, stamped envelopes so that it is easy for your child to write back, and to make it easy for the child or other parent/caregiver to just put a letter to you in the mail.
- If possible, send a gift for holidays your child celebrates (birthdays, Christmas, Easter, Halloween, etc.). Even a very small gift will be appreciated, including something you have made. For older children, money is always appreciated.
- Plan in advance to get your child on your visiting list, or whatever else may be required prior to sending gifts. You may need to explain to your child's other parent/caregiver that simply putting your child on the visiting list does not mean your child *MUST* visit you at the prison - it only means that your child is *ABLE* to visit you at the prison.
- Keep a record of your cards, letters and gifts to your child. If possible, keep copies of the cards and letters. (☞ Go to Ch. 9 for a sample "Record of Contacts.")

5.C.4. Audio or video recordings

Audio (sound only) or video recordings are excellent ways to help your child remember you. Some institutions have programs that allow parents to record themselves reading books to their children. Look into any such programs available at your institution and sign up right away. You may have to complete a parenting course before you can make a video or audio recording, so get on the waiting list for the parenting class right away, even if you do not know at that time if you will be able to send a recording to your child.

5.D. Seeking periods of physical placement and other contact with your child

The “rights” discussed above in this chapter must be set out in a court order if you want to ask the court to enforce those rights. That means that if your child’s other parent or caregiver is not allowing you to see or communicate with your child as you wish, you will need to seek a court order spelling out your rights to placement (visits) and other communication with your child. Getting such an order does not always mean things will go exactly as you want, but if there is no court order, it is as if you have no rights at all.

The following chart is to help you understand the steps you may have to go through to get periods of physical placement and/or other types of contact with your child. The sections following the flow chart explain the different steps referred to in the chart. Those sections are:

1. Modifying (Changing) an Order on Physical Placement
2. Enforcing an Order on Physical Placement
3. Establishing a Physical Placement and Legal Custody Order



STOP! Before you proceed to the flow chart and the rest of this Chapter, be sure you have read carefully through sections 5.B. and 5.C.

How to seek periods of physical placement and other contact with your child

Has “physical placement” ever been included in a judgment or order in a family law action (paternity, divorce, legal separation) involving your child?

YES ↓

Was current placement order made before incarceration or before other circumstances changed?

YES

NO



The section on **modifying (changing)** an order for physical placement applies to you.
☞ Go to Ch. 5.D.1



Are you satisfied with the current order and want the other parent or caregiver to follow it?

NO

YES



The section on **enforcing** a physical placement order applies to you.
☞ Go to Ch. 7

NO ↓

Are you married to your child’s other parent?

YES

NO



To get a court order, you may need to file an action in family court for divorce, legal separation or for periods of physical placement.
☞ Go to Ch. 7



Paternity was either not established or was established only by Voluntary Acknowledgment of Paternity (i.e., there is no order for child support or placement).
☞ Go to 3.C.1.b

5.D.1. Modifying (changing) an order for physical placement/other contact

Before you can *modify* or *change* a physical placement order, you must have a physical placement order. If you already have an order or judgment for divorce, legal separation, or paternity, it probably says something about your and the other parent's legal custody and physical placement to your the child(ren).

If that order or judgment was made before your incarceration, and if the other parent/caregiver is now not allowing you to have visits or other contact with your child, you may want to ask the court to modify that order so that you can have periods of physical placement (visits) and/or other contact with your child during your incarceration.

Below are some important things you will need to know as you decide whether to ask a court to modify (change) your current physical placement order.

5.D.1.a. Try to reach an agreement with the other parent/caregiver

The first step before you ask a court to change an order for physical placement is to see if you and the other parent can reach an agreement on the changes you want. **CAUTION:** *Do not violate any prison rules or court orders prohibiting you from having contact with the other parent.*

You can either attempt to reach an agreement with the other parent/caregiver *before* you file your motion papers with the court, or you can file the papers first and then ask the court to order "mediation" between you and the other parent/caregiver.

Mediation is the process of talking with the other parent in an effort to reach an agreement about disputed issues, with the help of a person trained in that process. Mediation is required in court cases when parents cannot agree on placement and other issues related to their children.

A court will order mediation unless it finds that it is not appropriate for some reason. Some mediators say that incarceration alone makes mediation inappropriate because they believe that when one person participates by telephone, rather than in person, mediation is not as likely to succeed. In addition, a history of domestic violence in your relationship with the other parent may be another reason mediation is not appropriate.

Sometimes parents just need to talk and communicate calmly. It may take one mediation session, or two or three, to work out your disagreements about your contact with your child. If you think mediation could help you and the other parent reach an agreement, explain to the court or mediator that you think it would be helpful and that you could participate by telephone if the court orders the prison to allow and arrange that participation.

The first mediation session is usually free or at a low cost, depending on the county. If more sessions are necessary, an additional fee will be charged. During mediation, both parents should be prepared to make some compromises in order to reach an agreement. In the end, it is better for the parents to agree on what they think is best for their child, rather than to

leave everything up to a judge or court commissioner, who does not know the child as well as the parents do.

5.D.1.b. Timing is everything: the 2-year rule

If you need to change the placement or legal custody portion of a *final judgment* of divorce, legal separation, or paternity within two (2) years of when the judgment was originally entered, you may have some trouble.

The “**2-year rule**” means that during the first two years after the final judgment, a court cannot substantially change the time a parent may spend with a child unless the parent requesting the change can show that it is necessary because the current conditions are “physically or emotionally harmful to the best interest of the child.” In other words, you have to be able to show that your child will suffer harm unless the court orders the placement or other contact you are requesting. [Wis. Stat. § 767.451(1)(a)]

This “**2-year rule**” most often affects incarcerated parents who get a divorce or paternity judgment while they are in prison, and then are released in less than 2 years after that judgment is entered by the court. In those cases, formerly incarcerated parents may be “stuck” for 2 years with the placement (visits) or other type of contact they had while they were in prison, *unless* they can show that changing legal custody or increasing their physical placement is necessary to prevent physical or emotional harm to the child.

In the reverse situation, if your original divorce or paternity judgment was entered *before* your incarceration, and it is still within 2 years of that final judgment, you will probably be asking for less time with your child than the final judgment provides. If that is the case, the court could decide to modify (change) the original physical placement schedule based only on a finding that the modification is in the best interest of the child. In other words, the 2-year rule might not apply if you are asking for the same or less contact with your child. [Wis. Stat. § 767.451(3)]

NOTE: The “2-year rule” does not apply to every single court order on physical placement with a child. It only applies to the final order or judgment determining legal custody or physical placement. Final judgments are most often entered in divorce, legal separation, or paternity actions.

5.D.1.c. Substantial change in circumstances and best interest of the child

If two (2) years have passed since the original judgment of paternity, divorce, or legal separation, or if other placement orders have been entered since the original judgment and you want the court to modify the previous placement order, you will first have to show that there has been a ***substantial change in circumstances*** since the prior placement order.

Below are two examples of a substantial change in circumstances (there are many other possibilities):

- **Example 1:** Your child’s paternity judgment allows you to have “reasonable periods of physical placement upon reasonable notice.” For several years, before your incarceration, you were able to call the other parent a day or two before you

wanted to spend time with your child, and it usually worked out. However, since you went to prison over one year ago, the other parent's phone has been blocked, and s/he does not answer your letters asking her/him to let your sister bring your child to visit.

- Example 2: A court order was entered soon after your incarceration. At that time, your child was very young, and you were at a prison that was far away from where your child lived. As a result, the court ordered visits once every 3 months. You are now at an institution that is much closer, and your child is much older and you have been communicating with her/him by phone and letters on a regular basis. You would like your child to visit at least once a month, but the other parent or caregiver will not agree.

To request a new court order for placement and other contact between you and your child, you first must identify at least one important thing that has changed since the previous court order. That is called a *substantial change in circumstances*. In Example 1 above, the changes are that you are now incarcerated and you have had no contact at all with your child for over one year. In Example 2, your child is older, you have a stronger relationship with your child, and the distance to the prison is much less.

Once you identify a substantial change since the prior court order, you must show that what you are requesting is *in your child's best interest*. ☞ Go to Ch. 5.B. and 5.E. for information that will help you show what is in your child's best interest.

5.D.1.d. Filing Fee

There is a court filing fee of \$50 for a motion to modify legal custody or physical placement. If you are unable to pay the fee at the time you file your motion, you can file papers asking the court to waive (excuse) **prepayment** of the filing and service fees. This means that you will be able to file your papers right away, but you will not have to pay the filing fee up front. However, you will have to pay the filing fee over time - the prison will freeze your canteen account and/or take money from your prison account and send that money the Clerk of Circuit Court.

If you want to ask the court to waive the prepayment of court fees, you can use the "Pro Se Packet Order Form" in Chapter 9 to request the "PLRA Fee Waiver" packet from the Family Law Project.

5.D.2. Enforcing an Order on Physical Placement/Other Contact

"Enforcing" an order means getting the court to require someone to follow what the existing court order says. If you have a placement order that you would be satisfied with if the other parent or caregiver would just follow it, then you may be able to use the special procedure and forms to *enforce* that physical placement order. To be sure that enforcing the order is right for you, you must be able to answer "YES" to either one of the following two questions:

- Do you have a placement order that was entered after your incarceration and the judge considered your incarceration when the order was made?
- or -
- Does the placement order have general language (for example, "reasonable placement upon reasonable notice" or "placement as agreed between the parties") and the other

parent/caregiver had been bringing your child (or allowing someone else) to visit you in prison, but recently stopped those visits *for no good reason*?

If you **cannot** answer YES to one of the above questions, you *should not* file a motion to enforce a physical placement order. Instead, you should read and follow Chapter 5.D.1. on modifying (changing) an order on physical placement.

If you can answer YES to one of the above questions, then you may be able to file a motion to enforce the physical placement order you already have. Before you do, carefully read Wis. Stat. § 767.471, about enforcement of placement orders. This will help you decide whether or not a motion to enforce physical placement order will work in your case.

One of the things the court must find in order to grant your motion for enforcement is that the other parent has intentionally and unreasonably denied you one or more periods of physical placement or that s/he has intentionally and unreasonably interfered with one or more of the petitioner's periods of physical placement. [Wis. Stat. § 767.471(5)(b)]

If a judge thinks that your child's other parent's actions are either *not intentional* (not on purpose) or *not unreasonable*, the court might deny your motion. For example, the other parent might say that the reason s/he has not been bringing your child for visits is that s/he cannot afford the gas or s/he does not have a reliable vehicle.

Your likelihood of succeeding in court will be much better if you can show that you have made efforts to work with the other parent *before* you filed your motion for enforcement, since that can help you demonstrate that the other parent has been unreasonable. For example, maybe you wrote a letter offering to pay for the other parent's gas; or perhaps you told the other parent that your sister would bring your child for visits. If the other parent still refuses, those offers might show the court that the other parent is being unreasonable.

It is difficult to predict how a judge or court commissioner will rule on motions to enforce a physical placement order. That is why it is important for you to document and show your efforts to work with the other parent to meet that parent's concerns about or objections to the visits (if possible).

If you want to represent yourself in a Motion to Enforce Physical Placement, you can use the "Pro Se Packet Order Form" in Chapter 9 to request the "Motion to Enforce Physical Placement order" packet from the Family Law Project.

5.D.3. Establishing a physical placement and legal custody order

If your child's other parent has your child in her/his physical custody and care, and there is no existing court order concerning your child, your ability to get a court order setting your rights to physical placement and other contact depends on whether you are presently married to your child's other parent.

5.D.3.a. If you are married to the child’s other parent

If you are married to the child’s other parent, and if there is no order setting your physical placement or visitation rights from any other court, you need to file an action for *divorce* or *legal separation* in order to be able to request a court order that will establish your rights to placement and other contact with your child. (☞ *Go to Ch. 3 and 7.*)

If you do not want to file for either divorce or legal separation, you may be able to file an action “concerning periods of physical placement or visitation rights to children.” See Wis. Stat. § 767.001(1)(k). However, this type of court action is more difficult to file on your own because there are *no prepared court forms available*.

5.D.3.b. If you are not married to the child’s other parent

If you are not married to the child’s other parent, and you and the other parent signed and filed a Voluntary Acknowledgment of Paternity, you will need to file a Petition for Custody, Placement, and Child Support, Paternity Acknowledgment Action under Wis. Stat. § 767.805. In this situation, the mother of the child has sole legal custody (decision-making authority) until a court order says otherwise.

If you are not married to your child’s other parent, and paternity of your child was never established in any of the ways described in Chapter 3 of *Staying Connected*, you will need to file an action to determine paternity of your child.

If you are not married and you are the child’s mother, you have sole legal custody *unless*: either paternity was established in one of the ways described in Chapter 3 of *Staying Connected* or paternity was established by Voluntary Acknowledgment of Paternity and no court order was entered after that. Therefore, if you have sole legal custody, even if your child’s father has your child, you are the only parent who has the right to make major decisions for the child, such as where your child should live, go to school or daycare, etc.

If you have serious concerns for your child’s safety or wellbeing with the father, you may not want to bring a paternity action right away, since the court could give the father primary placement of the child. You may want to first try using one or more of the forms in Chapter 9 to designate a caregiver for your child. However, be aware that those forms are not court orders, so they may not do what you want them to. For example, even if you sign a form selecting someone else as your child’s caregiver, the father may not be willing to turn the child over to that person. Even if your selected caregiver brings the form(s) to the police for help to get the child from the father, it is hard to predict if the police would “enforce” your written request. They may just allow the child to stay with the father (unless there was obvious cause for concern about the child’s safety).

If you have good reason to be concerned for the safety and welfare of your child, no matter who is the caregiver, you should keep notes and records of your concerns and the facts that support your concerns. Ask your prison social worker for assistance contacting the appropriate county child protection agency.

If you want to represent yourself in any of the court actions mentioned in this chapter, you may use the “Pro Se Packet Order Form” in Chapter 9 to request the appropriate packet.

If you want to ask the Family Law Project for representation in any of the court actions mentioned in this chapter, fill out the appropriate questionnaire in the *LAIP Desk Book* located in your prison's library.

5.D.4. Guardian ad Litem (GAL) May Be Appointed

In any court case where a child's parents or caregivers cannot reach an agreement, either by themselves or through mediation, the court may have to appoint a Guardian ad Litem (GAL) to look out for and represent the child's best interest.

The GAL is an attorney who will investigate the situation, and talk to the parents and the child (if the child is old enough). Eventually, the GAL will report to the court what the GAL believes is in the child's best interest in terms of placement and/or other contact with the parents. The GAL reports to the court what the child's wishes are, but neither the GAL nor the court is required to follow what the child says s/he wants.

If both parents are indigent (very low income or on public assistance), the court will order the county to initially pay the GAL fees. HOWEVER, the parents will eventually have to repay the county for those fees.

5.E. Considerations for the court and the GAL

If you and your child's other parent/caregiver are unable to agree on the type and amount of contact you should have with your child, you may want to file papers in court seeking an order for visits and other contact, such as phone calls and letters.

In most cases, as your child's legal parent, you have the right to periods of physical placement (in-person visits) and other kinds of contact with your child, such as phone calls, letters, and gifts. Children also have the right to "regularly occurring" and "meaningful" periods of placement with both parents.

Especially if you are representing yourself, you should be prepared, organized, and ready to give the court information that will be important and relevant to its decision. Below are some things the court and the guardian ad litem will consider as they decide your placement/contact with your child:

5.E.1. Information about your relationship with your child prior to your incarceration

In deciding the amount of placement and contact you can have with your child, the court and the GAL will consider some of the following:

- Whether you and your child lived together, and when
- Whether you provided a safe and healthy environment for your child when your child was with you
- Whether you and your child had a positive, healthy relationship
- How involved you were in your child's education, medical care, and other activities

- Your child’s current age and your child’s age when you went to prison or last saw him/her
- Whether your child remembers you or other members of your family
- How your child feels about visiting or having other contact with you at this time
- How much time you spent with your child
- Whether your child was the victim of your crime (Note: In this situation, it is unlikely that the court or the prison will allow you to have contact with your child.)
- Whether your child was present when you committed any crimes or when you abused drugs or alcohol
- Whether another child or relative was the victim of your crime
- Whether you were violent toward your child’s other parent or caregiver
- Whether the other parent was violent toward you or the child

5.E.2. Information about your relationship with your child since your incarceration

- How often you write to your child (keep copies or a written record of what you send - For a sample “Record of Contacts” sheet, [Go to Ch. 9.](#))
- Whether your written communications are appropriate for your child’s age and developmental level
- If you say things in your letters or phone calls that could be considered angry or negative toward the child or the other parent/caregiver
- How often you have had phone calls (or attempts at phone calls) with your child
- Efforts you have made to get information about your child from the other parent or caregiver, relatives, schools, etc
- If you do not know where your child is living, efforts made by you and/or your family to locate your child or the other parent/caregiver
- Whether you have offered to help pay for the costs of phone calls or transportation to and from the prison
- Whether you have sent holiday or birthday cards or gifts, or if you have sent video or audio recordings of you reading books to your child
- If you (or your family) have sent money for support or gifts to your child
- Whether your family members on the outside have maintained contact and a positive relationship with your child (and if not, why not)
- Whether your child is on your visitor list, or whether you have sent the other parent/caregiver forms to put your child on your list
- If the other parent/caregiver used to bring or allow your child to visit but suddenly stopped for no good reason

5.E.3. Information about what you have done in prison to improve yourself as a person and a parent

- What programs you are required to take and whether you have completed them

- What programs you have voluntarily participated in (e.g., parenting classes; AA/NA meetings; GED or HSED courses; restorative justice or victim-impact classes; technical school or college level correspondence classes)
- Any psychological counseling you have sought out and how that has helped you understand yourself and your responsibility for your past behavior

Note: A person who has been convicted of the intentional homicide of the child's other parent is almost never granted placement rights. However, in some rare cases, a court might consider phone calls, letters, and/or visits to be in the child's best interest. In addition, depending on the circumstances of the crime, the prison may refuse to add certain individuals to an inmate's visitor's list if those individuals are considered victims or close family members of the victim.

5.F. Frequently Asked Questions: Visitation rights for Grandparents and other people close to your child

This section answers common question concerning the visitation rights of persons other than the child's parents, such as grandparents, great-grandparents, stepparents, and people who have been like parents to a child.

Q: Do my child's grandparents have the right to see him or her?

A: Grandparents do not automatically have the right to see their grandchildren. But, in some situations, they can file papers with the court and ask for visitation rights. **Grandparent visitation cases can be complicated and difficult to win; whenever and as early as possible, a grandparent who really wants to get visits with his/her grandchild should hire an attorney to provide advice and representation.**

- If your child is living with his/her other parent, there would have to be either a divorce, legal separation or paternity action already filed in the family court. The statute that sets out the rights and procedures for grandparents and others in family law actions is found at Wis. Stat. §767.43.
- There are different requirements and procedures for grandparents of a marital child, as compared with grandparents of a child whose parents were never married to each other. (Again, having an attorney represent the grandparents can greatly improve the chances of success.)
- If your child is living with someone other than his/her other parent and there is a guardianship order, your parents should be able file for grandparent visitation. Grandparents can request visitation under Wis. Stat. § 54.56, based on the type of guardianship order that is in place.
- As with any other rights related to a child's father, *paternity must be established* before the court will consider granting visitation to a child's grandparent on his/her father's side.
- When a court decides whether to give a grandparent a right to visitation, the most important thing it considers is whether visits are in

the child's **best interest**. The court also will consider the child's wishes, if possible.

- A court will not order visitation if there was a termination of parental rights of the grandparent's child.
- In addition, if you were convicted of the 1st or 2nd degree intentional homicide of your child's other parent, your parents are not entitled to grandparent visitation, unless the court determines that the visitation would be in the best interests of the child

Q: What should my parent(s) do to get visits with my child?

A: The first step is for your parent to try to talk with the person who has legal custody and physical placement of the child in an effort to reach an agreement. Usually, that means talking with the child's other parent. It may be hard to talk to the other parent, but it is usually easier and less expensive to work together than it is to file court action.

- If the person with custody and placement of your child refuses to allow visitation, the grandparent should keep detailed records of all of the times efforts were made to see the child. (☞ Go to Chapter 9 for contact log)
- If no visits are permitted, your parent (the grandparent) may file a petition for visitation with either the family court, probate court or children's court. A GAL will also be appointed, and the GAL will make a recommendation as to whether visits are in the child's best interest. The court will then make such a determination and order on the request for visitation.
- Filing for grandparent visitation can be complicated. If legal action is necessary, a grandparent may want to hire an attorney.
- Some county court commissioners have forms and instructions designed for grandparents who want to represent themselves in an action for visitation. Be sure to tell your parent(s) to check with the Family Court Commissioner or Probate Register in the county of your divorce, paternity, or guardianship case.

Q: Do stepparents have any rights to have visits with their step-children?

A: Yes, under Wis. Stat. §§ 767.43 and 54.56 stepparents may request a court order giving them visitation rights. The law recognizes that stepparents often have close relationships with their stepchildren. Stepparents do not automatically have a right to visits with stepchildren, but may petition the court for visitation rights.

- The best way to get visits from stepchildren is with the cooperation of the child's other parent. Contacting the other parent may seem hard to do, but it is much easier and less expensive than going to court.
- If you do decide to file a petition, it would usually be filed in family court in the county where the child lives. If your child is not living with his/her other parent and is under an order that gives guardianship to another caregiver, the stepparent would have to file a petition for visitation in the guardianship action.

5.G. Frequently Asked Questions for Parents

Q: Do I have a right to contact my child while I am in prison?

A: Yes, unless your parental rights were terminated or there is a specific court order limiting your placement or contact with your child.

Q: Do I have a right to have my child visit me while I am in prison?

A: Generally yes, but it depends on everyone's circumstances before and during incarceration. If you were ordered to have periods of placement with your child before incarceration (either you had visits or your child lived with you) you still have those rights while in prison. However, it is likely that your placement order will be modified now that you are incarcerated.

Pay close attention to any papers you get from the court about any divorce or paternity cases. You may need to work to maintain your right to placement, and you must respond to all paperwork and ask to appear (by phone or in person) in all court proceedings.

Q: Do I have to get a court order before I can contact my child?

A: No. You do not need a court order to contact your child unless there is already an order that says you may not contact your child in the way you want to (e.g., by phone or letter). If there is an order limiting or denying contact, you should review the section above called "Modifying an Order on Physical Placement" to see if you would be able to request a change in the current order.

If a current court order does not deny or limit your contact with your child, but your child's other parent or caregiver is resisting your efforts to have contact with your child, a court order setting out specific rights and contact schedules may be helpful. Review the sections of *Staying Connected* on Modifying an Order and Enforcing an Order for Physical Placement.

Q: What can I do if my child's other parent or caregiver is preventing me from having contact with my child?

A: If you are the child's mother, or if you are the father and paternity has been established, you have the right to request contact with your child (unless your criminal record prohibits such contact). However, exactly what you can do depends on whether there is already a court order. Please read the all of Chapter 5 to understand your rights and the court procedures you will have to follow.

Q: Are my visitation rights different if my child is in the care of the state?

A: If your child is in the care of the state, the Child Protection Agency *must* help you maintain a relationship with your child. However, you may find that you do not

have regular visits with your child due to the Agency's lack of funds and the time commitment involved in arranging visits. Communicate with your child's caseworker on a regular basis so the caseworker understands how important the visits are to you and your child. Ask you social worker if a community program exists in your county similar to Family Connections of Wisconsin, a program that arranges visits once a month for children from Dane County with a parent at Taycheedah Correctional Institution or the John C. Burke Correctional Center.

Chapter 6

Providing Financial and Medical Support for Your Child

Overview: This chapter includes—

- A. Child Support
- B. Medical Assistance
- C. Frequently Asked Questions

6.A. Child Support

6.A.1. Overview

Most incarcerated parents either have a child support order when they begin incarceration or receive an order sometime before release.

A Child Support order can include orders to pay any/all of the following:

- A monthly support payment, usually to the child’s custodial parent or caregiver
- Birth costs or “lying-in” expenses, usually to the state
- Receipt and Disbursement (R&D) fees, to the state
- Past-due child support, called “arrear”, to the other parent/caregiver and/or the state
- Interest on the amount of support arrears (charged at a rate of 1% per month)

6.A.1.a. Setting Child Support

Child support is set by calculating a dollar figure, based on a percentage of the payer’s gross income. The percentage that is applied depends on the number of children living with the custodial parent. For example, if you earn \$1000 per month, and have one child living with the other parent, you would be ordered to pay \$170 per month, which is 17% of \$1000. If you had two children living with the other parent, you would pay \$250 per month (25% of \$1000).

In setting support, the court looks at the payer’s earning capacity. Usually that is what a person is actually earning. However, if the court is setting your child support at a time that

you are not working full-time and the court thinks you could be, even if it is because you are incarcerated, the court is permitted to set child support based on “imputed income.” That is the amount a parent could earn if s/he was not in prison and was working full time at minimum wage.



If you were disabled and getting Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) prior to your incarceration, you should provide your paperwork to the Child Support Agency and the court. In most cases, you should not have a child support order if you were entitled to SSI or SSDI payments.

6.A.1.b. Modifying Child Support

Unless you are on work release, you will likely not be able to pay a child support order that was set before your incarceration. Although your incarceration *can* be a basis for asking the court to reduce or eliminate your child support payments, the court is not required to do so.

Child support orders are not automatically reduced at the time of incarceration. There are two possible ways to have your child support lowered or set at zero (\$0). One way is to file a motion with the court asking that your support be set based on your prison income. However, because courts do not always grant that request, the better way to modify your support payments, including arrears and interest that may have accumulated, is by written agreement with the person to whom the support is owed.

If you want to represent yourself in a child support matter, you can use the “*Pro Se* Packet Order Form” in Chapter 9 to request the “Child Support Modification Packet” from the Family Law Project.

6.A.2. Relevant Statutes and Administrative Code

The following statutes and administrative code sections related to child support law in Wisconsin may help you with your case. This information may also be helpful to you if you are involved in a paternity, divorce, or other child support case and a child support order has not been set.

6.A.2.a. Child Support, Wis. Stat. § 767.511, and DCF Chapter 150

Child support will either be set based on an agreement between the parties or it will be set by the court based on a percentage of the payer’s income, but expressed as a fixed dollar amount. If the court finds that ordering support based on the percentage standards is unfair to either party or the child, it can set support at a different amount. To do that, the court must consider the factors listed at Wis. Stat. § 767.511(1m):

- The financial resources of the parents and the child
- The child’s physical, mental, and emotional health needs
- The child’s educational needs
- Any extraordinary travel or other expenses related to placement with the child
- The child’s best interest

- The earning capacity of each parent
- The needs of each party in order to support him/herself at a level at least equal to the federal poverty guidelines
- Any other factors which the court determines relevant in the particular case.

Chapter 150 of the Wisconsin Administrative Code, Department of Children and Families (DCF), contains the standards and guidelines for setting amounts of child support. Chapter 150 also contains worksheets to determine the amount of support that should be ordered in special circumstances, such as a payer with more than one family, or a payer with unusually high or low income.

6.A.2.b. Revision of Child Support, Wis. Stat. § 767.59

Support can be changed by written agreement of the parents. If that does not occur, a request to the court to modify support can be made if there is a “**substantial change in circumstance**,” which includes any or all of the following:

- A change in the child's needs
- A change in the payer's earning capacity
- Any other factor the court determines is relevant

Whether or not the court will decide to reduce your support based on your prison income is very difficult to predict, since the statutes and case law (see below) give the court a lot of discretion. This means that the court can take a lot of things into consideration, not just your low prison income. Courts also must consider the needs of the parent who is caring for the child with no support from you, and the high cost of raising children. Courts want to make sure that incarcerated parents do not “forget” their obligation to provide for their children.

Look to the relevant case discussed below for more information about what a court might consider when deciding whether or not to modify support for an incarcerated parent.

6.A.3. Relevant Case Law

There is one Wisconsin Supreme Court decision where an incarcerated parent asked the court to lower his child support based on his incarceration. That case is *Rottscheit v. Dumler*, 2003 WI 62, 262 Wis. 2d 292, 664 N.W.2d 525. In that case, Mr. Dumler asked the circuit court to lower his child support based on his incarceration. The court refused, and Mr. Dumler appealed his case to the Wisconsin Supreme Court, which agreed that the trial court judge did not do anything wrong by keeping Mr. Dumler's child support at the same amount it was set at before his incarceration.

The Wisconsin Supreme Court said that incarceration is only one factor that allows a trial court to review a child support order; there are many other factors the court should consider when deciding whether to modify a support order for an incarcerated payer. Incarceration alone is not enough to justify a modification. The decision said that perhaps if Mr. Dumler's situation had been different, it might have been appropriate to reduce his support.

Based on this court case, the important factors for a court to consider when deciding whether to modify a child support order are:

- If the payer has a lot of time left on his/her sentence (at least 5 years)
- If the payer already owes a lot in child support arrears
- How much the payer will owe at the end of incarceration if support is not reduced
- The nature of the crime and whether it seems that the payer was trying to avoid paying child support
- The needs of the child and how old the child will be when the payer can begin paying support again

For more information about child support, refer to the *LAIP Desk Book* in your prison library, or write to your County Child Support Agency.

6.B. Medical Assistance: Medicaid, BadgerCare & Healthy Start

6.B.1. Overview

The Wisconsin Medical Society has information about low and no-cost medical care in Wisconsin. Contact your child's city, county, or tribal social service agency for specific information about the services in your child's area.

6.B.2. Medicaid

Medicaid is the largest children's health program in the country. It is also the primary source of health care for low-income families and elderly and disabled people. One in six Americans under age 65 is insured through Medicaid. Medicaid covers a broad range of health care services with few costs paid by the family. Medicaid covers all services identified as "medically necessary," including doctor and hospital visits, well-child care, health screening, vision care, and dental services.

6.B.2.a. Medicaid eligibility

A person is eligible for Medicaid if he or she is a U.S. citizen or a qualifying immigrant, meets certain financial requirements, and is in one of the following categories:

- A relative caretaker of a **deprived child** (a deprived child has one or both parents absent from the home or has both parents in the home but one parent is incapacitated, unemployed, or an offender working without pay. Note: The caretaker must be a relative of the child to be covered by Medicaid.)
- Pregnant
- Under age 19
- Age 65 or older
- Blind or disabled

6.B.3. Wisconsin's Badgercare

BadgerCare provides insurance for low-income families (185% or below of the federal poverty level). It fills the gap between Medicaid and private insurance. In communities where there are Medicaid HMOs, BadgerCare recipients are required to participate in one of the HMOs.

For a family with an income below 150% of the poverty level, BadgerCare coverage will be free. A family with an income between 150% and 185% of the poverty level will be required to pay a premium to participate.

6.B.3.a. BadgerCare eligibility

All of the following are required for a person to be eligible for BadgerCare:

- You must have children under age 19 living with you
- Your income must be within the guideline limits
- You must not be covered by other health insurance

There are many ongoing changes with BadgerCare, including State and Federal efforts to provide coverage for more children. For the most current coverage and eligibility information, your child's caregiver should contact the Wisconsin Department of Health Services at (800) 362-3002.

6.B.4. Healthy Start Program

Healthy Start is part of Medicaid. It pays for medical care for pregnant women, babies, and children. It covers most babies until they are one year old, even if the family's income goes up. Families with health insurance may be eligible if they are under-insured or do not have coverage for prenatal care or the birth of the baby.

6.B.4.a. Healthy Start eligibility

Eligibility is based on a family's gross (before taxes) income. This includes income from all sources. There is no asset test. Families with higher incomes may qualify if they have childcare, work-related, or medical expenses.

If you have questions about child support that are not answered below, [Go to Ch. 6.A.](#) and read the child support section of the *LAIP Desk Book* located in your institution's library.

6.C. Frequently Asked Questions: Child Support

Q: Does the Child Support Agency know which prison I am in?

A: Not necessarily. If you have a child support order, you should contact the child support agency in your county every time you move to a new facility. You should also contact the child support agency if you are not receiving your Monthly Statement of Account. Not receiving statements does not mean that you do not owe support.

Q: Does my child support obligation stop while I am in prison?

A: Not automatically. To eliminate or reduce the amount of your support obligation while you are in prison, you must file a motion in court.

Q: How can I reduce my child support arrearages (debt)?

A: You may be able to reduce your arrears (debt for past support) if the person or agency to whom you owe support agrees to erase all or part of your debt. The court cannot order the debt to be erased without a written agreement or “stipulation.”

If the other parent has received public assistance (W2), some or all of your arrears may be owed to the state and the other parent will not be able to agree to erase any debt owed to the state.

Q: How much can be taken from my paycheck to pay for child support?

A: Between 50% and 65% of your prison paycheck and other funds you may receive can be taken to pay your child support debt. Usually, the prison will only take 50% of your prison income and other funds. Sometimes the child support agency or court will suspend collection or only collect from your prison income (that is called a “pay only” order).

Q: What are Receipt and Disbursement (R&D) fees for?

A: If you have a child support order or arrears, an R&D fee is charged every year to cover of tracking, collecting, and disbursing payments. The total amount of the fee is \$65 per year (as of Jan. 1, 2008). R&D fees may be deducted from your prison wages four times per year, but no more than 50% from the first paycheck after the prison receives the R&D fee notice from the state

Q: Are the procedures different if the child support order is administered by a Native American tribe?

A: Yes. Contact your tribal child support office or your County Child Support Agency for more information.

Chapter 7

Divorce

Overview: This chapter includes—

- A. Introduction to Divorce
- B. Legal Separation (An Alternative to Divorce)
- C. Considerations Before Divorce Proceedings
- D. Responding When Your Spouse Files for Divorce
- E. Special Considerations for Parents During Divorce
- F. Paternity Issues In Divorce
- G. Domestic Violence and Divorce
- H. Frequently Asked Questions

7.A. Introduction to Divorce

Divorce can have a large impact on you and your children, including your rights and responsibilities as a parent. This section is intended to give you an overview of the divorce process, as well as some specific considerations for incarcerated parents. This section is not intended to give you all the information you need to file or respond to a divorce action.

Wisconsin is a “**no fault**” divorce state. This means there is no need to prove that the breakup of the marriage is anybody’s fault. It is only necessary for one spouse to state that the marriage is “**irretrievably broken.**” “Irretrievably broken” means there is no reasonable hope that the marriage will work out. In some cases, one spouse might not want a divorce. However, if the court finds that the marriage is irretrievably broken, it will grant a final divorce even if only one party wants the divorce.

Wisconsin has residency requirements for divorce. To be eligible to file for divorce, you must have lived in the state for at least six months before your incarceration. You also must have lived in the county of filing for at least thirty days. Prisoners should either file in the county where they lived before their incarceration or in the county their spouse has lived in for at least 30 days.

7.B. Legal Separation (An Alternative to Divorce)

Some couples prefer a legal separation for personal or religious reasons. Legal separation is the same as divorce except that neither spouse can remarry after a decree of legal separation. A legal separation decree can be converted to a divorce decree if both parties agree or a certain amount of time passes.

7.C. Considerations Before and During Divorce Proceedings

7.C.1. Getting a Lawyer

Most people in Wisconsin get divorced without a lawyer (called “*pro se*”). [Packets with instructions for doing your own divorce are available from Family Law Project (FLP) and may also be available from the Clerk of Courts in your county. You can use the “*Pro Se Packet Order Form*” in Chapter 9 to request a *pro se* divorce packet from the FLP.]

However, when minor children are involved, divorce can be more complicated. This is because the court must determine legal custody and physical placement issues, and also must enter a child support order. Therefore, you may want an attorney to help you with those issues and protect your interests as a parent.

The more you can work with your spouse in deciding what to do about your children, the more likely it is that you will not need an attorney. If you cannot agree, however, you may need a lawyer to help you.

It would also be a good idea to get an attorney if you have property or significant debts. In general, Wisconsin law presumes that property obtained during a marriage should be divided evenly when the spouses divorce. However, there are a few exceptions. If you own property, have a pension or retirement plan, have an inheritance, or have other assets, you might want to speak to a lawyer. If you and your spouse have debts, a lawyer might be able to help to make sure each party is only responsible for his or her fair share.

If you think there will be disagreement about the children, property, or debts, you should apply for the Family Law Project (FLP) of the Remington Center. Applications for the FLP are available in the *LAIP Desk Book* located in your institution’s law library. If the FLP cannot represent you, it will provide additional information to help you proceed *pro se*.

7.C.2. Costs of Divorce

Filing for divorce requires a filing fee, currently around \$184.50 (add \$3.50 for Milwaukee County). There are three options for paying this fee:

1. From your inmate account
2. By having a friend or family member outside of prison pay the fee
3. By asking the court to order payments from your prison accounts over time until the fee is paid in full

There are many other fees involved in a divorce, such as the cost of service of papers on your spouse, or the fees of the Guardian ad Litem (GAL). Upon request, the court will usually waive your up-front payment of those costs, and enter orders allowing payment in the future, as you are able to pay.

7.D. Responding When Your Spouse Files for Divorce

Regardless of whether or not you want a divorce, you need to respond if your spouse files for divorce. If you have been served with a Summons and Petition for divorce, you should file an answer with the court. Your answer does not need to be formal. You simply need to write a letter to the court that says whether you agree with the divorce or not, and whether there are any issues you think will be important in the divorce. For example, you may think there will be issues resolving legal custody or placement of your children. You should tell the court about those issues in your response.

In general, if one spouse wants a divorce, the court will grant it even if the other spouse wants to stay married. In Wisconsin, it is only necessary for one spouse to show that the marriage is irretrievably broken for a court to grant a divorce.

7.E. Special Considerations for Parents During Divorce

As a parent going through a divorce it is very important that you and your spouse try to resolve issues about to your child(ren). Resolving these issues will have a direct effect on your rights and responsibilities as a parent, including child support and your rights to visits and phone calls with your child(ren).

Remember, divorce can be hard on children. If possible, you and your spouse should try to agree on the following issues:

- Physical Placement (visits), while you are incarcerated
- Legal Custody (decision-making)
- Child Support

For more in-depth discussion of these topics, [Go to Ch. 5 and Ch. 6.](#)

7.F. Paternity Issues in Divorce

The court will presume that a child born during the marriage or born to the couple before they are married is a “marital children.” In the event either spouse disputes the husband is the father, the court may order genetic tests. First, however, the court will appoint a GAL and hear his/her recommendation as to what is in the child’s best interest.

Note: If the wife is pregnant during divorce proceedings, the court will not allow a paternity action to be pursued before the child is born. The paternity action can be filed and served, but will be postponed until after the child is born. Wis. Stat. § 757.80(3). The divorce action will also be put on hold. [Go to Ch. 3.C. and 3.D.](#) for more information on the marital presumption of paternity.

7.G. Domestic Violence and Divorce

If there was domestic abuse in your family, it might not be appropriate to discuss issues with your spouse. The judge will consider any history of domestic abuse in making any decisions regarding your children. If the court finds that a parent has engaged in a pattern or serious incident of interspousal battery or domestic abuse, the safety and well-being of the child and the parent who was the victim of the battery or abuse will be the most important concern in determining legal custody and periods of physical placement.

☞ *Go to Ch. 5 for more information on the impact of domestic violence on legal custody and physical placement.*

The court's default presumption is to not award sole or joint custody to the parent who committed the battery or abuse. The parent can refute that presumption, however, by showing evidence of all of the following:

- The parent has successfully completed treatment for batterers provided by a certified treatment program or provider;
- He/She is not currently abusing alcohol or any other drug;
- It is in the child's best interest for the parent who committed the battery or abuse to be awarded custody based on the seventeen factors listed in the previous section.

Chapter 8

Children's Court: Protection and Services for Your Child

Overview: This chapter includes—

- A. Children in Need of Protection or Services (CHIPS) Proceedings
- B. Termination of Parental Rights Proceedings
- C. Juvenile Delinquency Proceedings
- D. Juveniles in Need of Protection or Services (JIPS) Proceedings

8.A. CHIPS Proceedings

CHIPS stands for Child In Need of Protection or Services. These are court proceedings that usually begin because a child has been hurt or neglected by a parent or because a parent cannot take care of the child for some other reason. The county child protection agency investigates complaints against a parent or other caregiver and decides if a child needs to be removed from the home. If so, a CHIPS case is filed.

8.A.1. Reasons for CHIPS Proceedings to Begin

A court can become involved with your child, through a CHIPS action, when there are allegations (charges) that your child needs protection or services to prevent neglect or harm. In order for CHIPS proceedings to begin, a complaint must be filed saying that your child needs protection or services because that child:

1. Does not have a parent or guardian. [Wis. Stat. § 48.13(1)]
2. Has been abandoned. (This means that you have not provided adequate care for the child.) [Wis. Stat. § 48.13(2)]
3. Has parents who have relinquished custody or given up a child within 72 hours of the birth. [Wis. Stat. § 48.13(2m)]
4. Is the victim of abuse, including injury that is self-inflicted or inflicted by another. [Wis. Stat. § 48.13(2m)]

5. Is at substantial risk of becoming the victim of abuse based on credible information that another child in the home has been victim of abuse. [Wis. Stat. § 48.13(3)]
6. Has a parent or guardian who signs a petition saying that person cannot or needs assistance to care for the child. [Wis. Stat. § 48.13(4)]
7. Is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized, or institutionalized. [Wis. Stat. § 48.13(8)]
8. Has a parent who has neglected, refused or is unable, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the child's the physical health. [Wis. Stat. § 48.13(10)]
9. Is suffering emotional damage that a parent has neglected, refused, or been unable to help the child get treatment for. [Wis. Stat. § 48.13(11)]

These are not the only reasons for beginning of a CHIPS case, but they are the most common ones. The rest of the grounds can be found in Wis. Stat. § 48.13.

If a CHIPS petition has been filed with the court, you have a right to be given notice of all hearings. This means that you can be present at the hearings—either in person, by phone or by videoconference. If you receive notice of a hearing and would like to appear, you should immediately contact the court to request arrangements be made for your appearance. Note: You will also have to make arrangements with your social worker if you intend to appear in person, by phone, or by videoconference.

8.A.2. Getting an Attorney in CHIPS Proceedings

Unlike many other court proceedings, a parent does not have a right to counsel (a lawyer) in a CHIPS case. As a result, the Wisconsin State Public Defender's Office will not appoint counsel to represent you even if you are indigent (poor). However, courts can appoint counsel for parents involved in CHIPS cases, but you must ask for a lawyer. *Joni B. v. State*, 202 Wis.2d 1, 549 N.W.2d 411 (1996). The court must listen to the reasons why you need a lawyer, and then provide reasons why the court is or is not appointing a lawyer for you. *State v. Tammy L.D.*, 2000 WI App 200, 238 Wis. 2d 516, 617 N.W.2d 894. Note: If an attorney is appointed, you may have to contribute some money toward the costs of the attorney representing you or your child during the CHIPS action.

In CHIPS proceedings, children over 12 years of age, are entitled to have an attorney represent them, if they want. That attorney is the child's "adversary counsel." Wis. Stat. § 48.23(1m). In addition, the court may appoint a Guardian ad Litem (GAL) to represent the best interests of any child in a CHIPS case. You should remember that your child's attorney, the GAL, or the prosecutor/corporation counsel *do not represent you*. If you expect that you will have a lawyer for yourself, you should not discuss the case with any other parties until you discuss it with *your* lawyer first.

8.A.3. What Happens in a CHIPS Case

After a CHIPS petition is filed, there will be a plea hearing where you will either admit or deny what is being said in the CHIPS petition. This is the hearing where you should ask for an

attorney if you do not already have one. If you do not want to admit what is being said in the petition, you can ask for a trial in front of either a jury or a judge to determine if the information in the petition is true.

Because a CHIPS jury trial is not a criminal trial, only 10 of the 12 jurors would have to agree that the facts in the petition are true. Also, the State only has to prove that these facts are true by clear and convincing evidence (this is lower than the criminal standard of “beyond a reasonable doubt”). In order to prove whether or not the facts are true, there would be witnesses called by the State and by you. The only question at this trial is whether the facts in the CHIPS petition are true. This is not the time to discuss what should happen with you and/or your child.

After either a trial or an agreement that your child is in need of protection or services, the court will decide what should happen with you and your child to make sure that the child gets the protection and the services that the child needs, and so that you and your child can be reunited, if possible. The social worker must write a report telling the judge what you need to do to be able to provide a safe home for your child in the future.

You can ask for a copy of that report if you would like to see the recommendations. There may be some parts of the report that you are not allowed to see, but the judge will make the final decision. In making that decision, the judge may hear ideas and recommendations from the social worker, the attorneys, the GAL, the parents, any foster parents or caretakers, and from your child (if old enough).

8.A.4. Outcome of a CHIPS Case

Once the judge hears all of the different ideas, the judge will order a disposition, which will include a plan for you and your child. This plan may include orders about:

- **Placement:** Where should the child live – either with a parent, relative, in a foster home, group home, or residential treatment facility.
- **Treatment:** Whether you and/or your child have to participate in treatment, including AODA or mental health treatment.
- **Programs:** Whether you have to participate in classes or groups to learn skills to keep the child safe.
- **Rules or Other Conditions of Return:** What other requirements you and/or your child should follow. This could include how much contact you may have with your child, a restriction on your use alcohol or drugs, a requirement that you provide a safe place for your child to live, that you have regular contact or visits with your child, that you follow all of the rules of your extended supervision, parole or probation once you are released from prison; and any other rules that the judge believes are fair and necessary to keep your child safe.

Courts will expect you to meet the conditions of a CHIPS order even while you are incarcerated. This may mean taking parenting or AODA classes while you are still incarcerated. It is important to pay attention to CHIPS orders and proceedings because if you do not follow what the court orders as part of a CHIPS disposition, the State can use that as a reason to try to terminate your parental rights. However, if it is impossible for you to follow a CHIPS order, due to prison limitations, write a letter explaining that to the court and the social work, and keep a copy of your letter for your records.

CHIPS orders generally last for one year. Even if an order is only for one year, it can be extended at a hearing. If the child is living outside of the home, the CHIPS order may last until your child turns 18 years of age. If an order is extended, the order will be reviewed every six months to make sure that all of the requirements of the order are necessary to provide your child with protection and services. You should receive notice of those hearings and have the chance to attend them, even if you are just on the phone.

As with any other notice that you receive from a court, if you receive notification about a CHIPS petition being filed in your child's case, you should immediately request to be present for any court hearings. The court may allow you to appear in person, by phone or videoconference.

8.B. Termination of Parental Rights (TPR)

One of the most serious consequences for a parent involving your child is a termination of your parental rights. If your parental rights are terminated, you and your child no longer have any legal connection to one another. This means you and your family will no longer have any rights or responsibilities associated with your child, including:

- Your child's right to inherit from you (unless you have a Will naming the child as a beneficiary)
- Your right to inherit from your child
- Your child's right to receive Social Security dependent or survivor benefits
- Your right to seek periods of physical placement (visitation), legal custody, and other contact with your child in the future
- The opportunity to have the child live with you if, for some reason, he or she no longer is able to live with his /her other parent or caregiver
- Your parents' right to seek grandparent visitation with your child
- Your obligation to pay child support in the future

One of the most important things to remember is that if you receive notice of any court hearings related to TPRs or any other family or Children's Court proceeding, you should immediately request to attend, either in person, by phone, or by video conference.

If you are a member of a Native American tribe, the Indian Child Welfare Act (ICWA) applies and changes the rules that apply to your TPR action. If you are a tribe member and a TPR is filed, you should contact your tribe immediately and notify the court of your tribal membership.

There are **two types** of TPRs: **Voluntary** and **Involuntary**.

8.B.1. Involuntary Termination of Parental Rights

An involuntary TPR is when someone else wants to terminate your parental rights and you do not agree to have his or her rights terminated. In this case, a jury and the court will determine if your rights can and will be terminated.

TPR actions begin with the filing of a petition. Wis. Stat. § 48.42(1). A petition can be filed by the government or another party including a parent, a relative who your child has been placed with, or a stepparent with whom your child and the child's other parent are living with. Wis. Stat. § 48.42(1).

8.B.1.a. Your TPR Attorney

Getting an Attorney to represent you in a TPR

TPRs are complicated and permanent, so if an action to terminate your rights is filed, you have the right to an attorney. Wis. Stat. § 48.23(2). If you are indigent and cannot afford one, an attorney can be appointed by the Wisconsin State Public Defender. Wis. Stat. § 977.08(2)(g). If you received notice of a TPR, you should **immediately** contact an attorney, either hiring one on your own or contacting the Public Defender to have an attorney appointed. If you are unable to have an attorney appointed to your case before the first hearing, you should request one the first time you are in court or in front of the judge.

The Attorney's Job in an Involuntary TPR Case

An attorney representing you in a TPR has a similar job to an attorney in a criminal case. Your attorney's job is to do his/her best to advocate for your interests and defend against the termination of your parental rights. You should expect your attorney to do certain things as he/she represents you, including:

- Communicate with you throughout the TPR process
- Explaining the case against you and answer any questions you may have
- Discuss your options and defenses with you
- Investigate any defenses you may have
- Compile information that may help your case – including getting relevant documents, talking with witnesses, and attempting to negotiate with the other parties
- Prepare with you for your trial

If an attorney is appointed to represent you and you do not believe that your attorney is properly representing you, you should try to talk with him/her immediately. If you cannot resolve your differences, you should write a letter to the Wisconsin State Public Defender's Office in the county where the TPR has been filed. If the attorney has done something that you think will have a very negative effect on your case, you can also send a copy of the letter to the Judge. TPRs move very quickly so if you have concerns about the attorney appointed to represent you, you should request to have a new lawyer appointed to your case as quickly as you can.

8.B.1.b. What Happens in a TPR Case

There are two steps in an involuntary TPR. The first step is the grounds phase or the fact-finding phase. The second is the disposition phase. The purpose of the grounds phases is to determine if there are reasons and proof of those reasons that support terminating your parental rights. Wis. Stat. § 48.424. During the grounds phase, protecting your rights is the most important consideration for the court.

If you request it, the grounds phase can be a trial with a jury. While there are different considerations than a criminal trial, it can be a similar process. A jury or a judge will hear testimony and facts to determine if grounds exist to terminate a parent's rights to a child. If a jury or a judge finds that grounds exist for a TPR, then the judge will find a parent unfit. Wis. Stat. § 48.424(4).

8.B.1.c. What the Court Must Find to Terminate a Parent's Rights

There are specific grounds that must be proven by clear and convincing evidence. This is a lower standard than in a criminal trial. In order to prove that grounds exist to terminate your parental rights, the State would have to prove one of the following:

1. **Abandonment** means that you have not provided for the care and support of your child either for the past 60 days or that your child has been left in a place or conditions that expose the child to substantial risk of great bodily harm or death
 - Abandonment can also occur if your child has been placed out of home by a court order and you have failed to visit or communicate with the child for at least **3 months**.[Wis. Stat. § 48.415(1)]
2. **Relinquishment** occurs when you gave up your child when the child was 72 hours old or younger.
[Wis. Stat. § 48.415(1m)]
3. **Continuing need of protection or services** is one of the most common grounds for a TPR. Proving this requires showing a number of things:
 - Your child has been placed outside a home on a court order (CHIPS or JIPS) for at least 6 months;
 - As part of the court order, there are things that the court has required you to do in order to get the child back within 12 months of the court making those requirements and that you cannot or will not do those things. The responsible agency must help you meet those requirements.[Wis. Stat. § 48.415(2)(a)]
4. **Continuing need of protection or services (3 strikes)** means that your child has been removed from your home 3 or more times by a CHIPS order and that the reason that the child has been removed is your fault.
[Wis. Stat. § 48.415(2)(am)]
5. **Continuing parental disability** means that for at least two of the past five years, you have been in a mental health treatment facility and the condition that placed you there is likely to continue indefinitely.
[Wis. Stat. § 48.415(3)]
6. **Continuing denial of periods of physical placement or visitation** means that you have asked a court to give you periods of physical placement (visits) with your child, but, for at least 1 year, the court has denied that request.
[Wis. Stat. § 48.415(4)]

7. **Child abuse** means that:
- You have exhibited a *pattern* (one act is not enough) of physically or sexually abusive behavior, which is substantial threat to health of your child; and
 - You have caused death or injury to a child resulting in felony convictions; and
 - Your child has previously been removed from your home through a CHIPS action.
- [Wis. Stat. § 48.415(5)]
8. **Failure to assume parental responsibility** is when you have never had a substantial relationship with your child or someone you think may be your child.
- Substantial relationship means that you took responsibility for the daily supervision, education, protection, or care of a child.
 - To determine whether you have a substantial relationship with a child, the court can consider anything, but generally will focus on:
 1. Whether you have ever expressed concern for or interest in the support, care, or well-being of the child;
 2. Whether you neglected or refused to provide care or support for the child;
 3. Whether you are a father or potential father and expressed concern or interest in support, care, or well-being of the mother during her pregnancy.
- [Wis. Stat. § 48.415(6)]
9. **Incestuous parenthood** means that the child was conceived by incest (i.e. the child is also related by blood or adoption to the child's other parent).
- [Wis. Stat. § 48.415(7)]
10. **Homicide of parent** means that the person whose parental rights are being terminated has been convicted of 1st or 2nd degree intentional homicide or 1st degree reckless homicide of the child's other parent.
- [Wis. Stat. § 48.415(8)]
11. **Parenthood as a result of sexual assault** means that the child was conceived as a result of sexual assault that you committed. This may be proven by criminal conviction or evidence that the possible father committed sexual assault against the child's mother during the possible time of conception.
- [Wis. Stat. § 48.415(9)]
12. **Serious felony against the child** means that the child has been the victim of a serious felony that you committed. Serious felonies include:
- first-degree intentional homicide (§ 940.01)
 - first-degree reckless homicide (§940.02)
 - felony murder (§ 940.03)
 - second -degree intentional homicide (§ 940.05)
 - substantial battery (§ 940.19(2), (4) or (5))
 - first-degree sexual assault (§ 940.225(1))
 - second-degree sexual assault (§ 940.225(2))
 - first-degree sexual assault of a child (§ 948.02(1))
 - second-degree sexual assault of a child (§ 948.02(2))
 - repeated sexual assault of the same child (§ 948.025)
 - intentional physical abuse of a child (§ 948.03(2)(a))
 - reckless physical abuse of a child (§ 948.03(3)(a))
 - sexual exploitation of a child (§ 948.05)

- incest with a child (§ 948.06)
 - soliciting a child for prostitution (§ 948.08)
 - neglecting a child resulting in death (§ 948.21)
- [Wis. Stat. § 48.415(9m)]

13. **Prior involuntary TPR:** This means that your rights have been involuntarily terminated in 3 years before the CHIPS order in this case was entered. This does not apply to a voluntary TPR.

- This ground should be a very important consideration when you are deciding whether or not to fight a TPR that has been filed against you. If your rights are involuntarily terminated, that fact can be used against you for 3 years as a ground to terminate your rights to another child. This will not be the case if you decide to voluntarily terminate your parental rights and the court agrees with that decision.
- [Wis. Stat. § 48.415(10)]

8.B.1.d. Outcome of a TPR Case

After the grounds phase of TPR proceedings, if the court has determined a parent to be unfit (i.e. the judge or jury found that there were grounds to terminate a parent's rights) there is the disposition phase. Wis. Stat. § 48.427. This is where the court determines what action is in the best interest of the child. Wis. Stat. § 48.426(2).

At the disposition phase, when determining what is in the best interest of a child, the judge can consider many different factors including:

1. The likelihood that the child will be adopted after a TPR;
2. The age and health of the child at the time of the disposition and when the child removed from the home;
3. Whether the child has a substantial relationship with parent or other family members and whether it would be harmful to the child to sever those relationships;
4. The wishes of the child;
5. The amount of child that the child and parent have been separated;
6. Whether the child will be able to enter into a more stable and permanent family relationship.

[Wis. Stat. § 48.426(3)]

8.B.2. Appealing a Termination of Parental Rights

If your rights have been terminated and you want to appeal the decision, you should tell your attorney immediately. If a parent's rights have been terminated, that parent has a chance to appeal the decision. Wis. Stat. § 809.107. An appeal must begin within 30 days, by filing an intent to pursue post-disposition or appellate relief with the clerk of circuit courts. Copies of this notice should be sent to any other interested party (including the State, the GAL, the child's parent, or guardian). Wis. Stat. § 809.107(2). The timeline for appealing a TPR is quicker than it would be for appealing a criminal conviction, so expect the process to move fast.

8.B.3. Voluntary Termination of Parental Rights

Voluntary TPRs are when a parent agrees to a termination of parental rights. Wis. Stat. § 48.41. If you want to agree to having your rights terminated, the judge will determine if you fully understand what you are agreeing to. If the judge believes that you fully understand that you are terminating your rights, then the judge may immediately move to determine if that termination is in the best interest of the child. Wis. Stat. §48.41(1). You can file for a voluntary termination of parental rights using form JC-1630.

If you decide to voluntarily terminate your parental rights, you should consider talking with an attorney to make sure that you fully understand all of the rights and responsibilities that you are giving up. When deciding whether or not to voluntarily terminate your parental rights, you should think about what would be best for your child and for you.

There are two major factors that the court will look at when deciding whether to allow you to voluntarily terminate your parental rights: child support and the likelihood of the child's adoption.

1. ***Child support:*** To voluntarily terminate your parental rights, you must show that you are not just doing this in order to avoid having to pay child support. In addition, Wisconsin law does not allow one parent to promise to expunge (erase) past-due child support debt in exchange for terminating your parental rights. Wis. Stat. § 948.24. If this is something you are considering, remember that some or all of your child support arrears and interest may be owed to the state and it is extremely unlikely that the Child Support Agency (the State) would agree to eliminate or expunge your interest, arrears or expenses owed to the state. You should not agree to voluntarily terminate your parental rights only to expunge your child support arrears because there is no way to guarantee that the arrears will actually be expunged.
2. ***Likelihood of adoption:*** The second major factor that the court will consider is the likelihood that your child will be adopted. *In re termination of parental rights to Michael I.O.*, 203 Wis. 2d 148 (Ct. App. 1996). This is an important consideration for the court because the adoptive parent will assume the legal, moral, and financial obligations for the child that you are giving up. The court is unlikely to voluntarily terminate a parent's rights unless it is likely that an adoptive parent will replace the parent whose rights are being terminated.

Sometimes, if an involuntary TPR is filed, a parent may begin fighting the TPR, but after consulting with an attorney, may choose to voluntarily terminate his/her parental rights. Just because you begin by fighting the TPR does not mean you cannot later change your mind and voluntarily terminate your rights.

8.C. Juvenile Delinquency Proceedings

A delinquency is when a child, under the age of 17 but older than 10, is accused of doing something that if the child was 17 years or older would be considered a crime. These proceedings look a lot like criminal proceedings, but with a few key differences. First, all of the court proceedings are closed to the public. Second, because you are the child's parent,

you are allowed to attend. If you would like to attend, you can request that the court make arrangements for your appearance by phone or videoconference.

In addition, as a part of delinquency proceedings, your child will be appointed an attorney by the State Public Defender's Office. The child (and you) can also hire your own attorney if you do not want a public defender. It is important to remember that this attorney represents your child, not you. The attorney's job is to do what your child requests. Some attorneys will consult with you, but they are not required to consult with you. Their responsibility is to the child. You have no right to an attorney for your child's delinquency proceedings and it is very unlikely that the court would appoint someone to represent you.

Every time that a child is in court on a delinquency petition, the court can and will consider where the child should be placed. The possible options for where a child can be placed are: with the child's parent or guardian, in the home of another relative, in a foster home, in a group home, in a shelter care facility, in the home of a non-relative (for no more than 30 days), or in a secure facility (like a juvenile detention center). Wis. Stat. § 938.207. The only time that a juvenile may be held in secure custody is if the juvenile presents a substantial risk of physical harm to another person or presents a substantial risk of running away. Wis. Stat. § 938.208(1).

Just like in criminal proceedings, your child could request a trial – the main difference is that children in Wisconsin cannot have jury trials. Instead, a judge will hear the evidence and decide if the State has proven that your child committed this crime. Just like a criminal trial, your child's lawyer may attempt to negotiate a plea bargain with the district attorney. If your child does not want to have a trial, the child may plead guilty (or admit) to the charges.

If a child has been adjudicated delinquent (the equivalent of being found guilty in Criminal Court), there are also a number of different options about where the child can be placed as part of the child's disposition (the equivalent to a sentence in Criminal Court). These options range from placing the juvenile on probation and requiring the juvenile to meet certain conditions to sending the juvenile to a correctional facility (Ethan Allen School or Lincoln Hill School for boys or Southern Oaks Girls School).

At any time during a juvenile's disposition, any party can ask the court to change or extend the order. There will be a hearing to decide whether the change or extension should be granted. If your child wants to contest the revision or extension, the child may do so, with the help of an attorney. Also, if the child is not following the rules imposed as part of a disposition, the court may sanction the child. These sanctions may include: up to 10 days in a secure detention facility, suspension of the child's driver's license, home detention/arrest for up to 30 days, community service for up to 25 hours, or additional programming.

8.D. Juvenile in need of protection or services (JIPS)

JIPS proceedings can be started when a child under 10 years old is alleged to have committed a crime, is uncontrollable, or is habitually truant from school. Wis. Stat. § 938.13. If a parent needs the help of the court to control a child, a parent may file a JIPS petition on their own. However, if you would like to file a JIPS petition, you will still have to meet the legal requirements to show that your child is in need of protection or services.

JIPS proceedings and procedures are almost the same as for delinquencies. The child is entitled to a lawyer who will protect the child's rights. Children under 12 years of age may also have a GAL appointed to represent the child's best interest.

Just like in delinquency proceedings, there are procedures in place to protect the child's rights. The state must also prove that the juvenile is in need of protection or services or that the juvenile is delinquent. As in delinquency findings, the court will then make a disposition to address the court's concerns and address the child's needs, while protecting the community. The major difference is that a child cannot be placed in a secure facility (like detention or a correctional facility) as a result of a JIPS disposition.

Chapter 9

Supplemental Materials

Overview: This chapter includes—

- A. Educational Materials Specific to Incarcerated Parents and Children of Incarcerated Parents
- B. Frequently Asked Questions On Handling Legal Proceedings From Jail or Prison
- C. Forms and Sample Letters
- D. Referral Organizations and Agencies
- E. Department of Corrections Rules and Regulations

9.A. Educational Materials Specific to Incarcerated Parents and Children of Incarcerated Parents

A lot of information is available about how children develop and grow, and how children are affected by the incarceration of a parent. The following resource is included so that you can learn more about interacting with your child so s/he can be emotionally, physically, and developmentally healthy.

Excerpts from *“Parenting from Prison: A Resource Guide for Parents Incarcerated in Colorado”* by Barbara S. Bosley, Christie Donner, Carolyn McLean, and Ellen Toomey-Hale (2002).

Parenting From Prison

Despite the large number of families separated due to incarceration, the majority of parents who are incarcerated are able eventually to reunite with their children.

Even though there are challenges in continuing your role as a parent, it is very important both for you and your children. Both mothers and fathers play very important roles in their children's development of a sense of identity, security, and belonging which will affect them throughout their lives.

The major concerns for most parents who are incarcerated are:

- 1) dealing with the emotions of being separated from their children,
- 2) making decisions regarding the placement and care of their children,
- 3) maintaining contact with their children during their incarceration, and
- (4) reuniting with their children once they are released from prison.

Parenting from prison isn't easy. However, it is possible to play an active role in your children's lives. Unfortunately, many parents in prison lose contact with their children. This does not have to happen.

To avoid losing contact with your children, it will take effort on your part, the part of the children's caregiver, and maybe even the court.

You will probably get frustrated or feel overwhelmed at times. Communicating with state agencies, courts, your children, or their caregiver can be very difficult, especially from prison. Some family relationships may be strained. Transportation problems may prevent you from having regular visits with your children. Sometimes, it may feel like it is impossible to stay in touch with your children.

All of these challenges are real and must be overcome. It will require patience, creativity, and persistence on your part. Always remember that being a parent is the most challenging and rewarding job you'll ever have.

You, your children, and the person who is taking care of your children are all affected by your incarceration. This section offers information on how you can deal with your own feelings around being separated from your children so that you can parent most effectively.

This section will also help you understand how your incarceration affects your children and how to establish a working relationship with the person who is taking care of your children during your incarceration. It also offers some practical suggestions on what you can do to make the most of this difficult situation.

Being a Parent Who is Incarcerated

How does being in prison change how I parent?

Being physically separated will obviously limit your ability to parent in the same way as you did before you were incarcerated. Even though you are still a parent, you will probably not be handling many of the day-to-day decisions and activities normally involved with raising children, including providing for their daily needs and even discipline. This change may leave you with a sense of loss and confusion, especially if you were living with your children before you went to prison.

Even though you may not be involved in the day-to-day care of your children, you can still provide them with emotional support and guidance that is very important to them.

You may also be actively involved in making important decisions regarding their lives, including who you want to take care of them

while you are away. For both you and your children, it is important to understand that you can still be an active and caring parent, even though you are in prison. It is also important for you to understand that your children are coping with a lot, too, and they will need time and support to adjust to someone else providing for their daily needs.

What if I didn't have much contact with my children prior to my incarceration? Is it too late to try and establish a relationship with my children now that I'm in prison?

Even if you didn't have much or any contact with your children prior to your incarceration, it is never too late to try and have a relationship with your children. As one father put it, going to prison caused his "priorities to change" greatly. However, trying to start a relationship with your children after you are in prison may be complicated and may require you to take several smaller steps rather than just one big leap.

Before you take any steps to make contact with your children, it is important that you really think about the commitment you can make to your children and what you are willing to do on a consistent basis. It is very hard on children to have a parent drop in and out of their lives.

Once you have decided that you really want to see if starting a relationship with your children is possible, the next thing you will need to consider is what steps you might need to take. Unless you've been ordered by a court not to have any contact with your children or their other parent (or caregiver), you might consider writing a letter to the children's caregiver and see if they are open to the idea of you trying to establish a relationship with your children.

If you had a pretty good relationship with the other parent or caregiver, they may be willing to help you establish a relationship with your children. If you don't have a very good relationship with your children's other parent or caregiver, you may need to try and resolve some of the issues between the two of you before you can move forward with establishing a relationship with your children. It's important to remember that building any relationship takes time and trust. You might need to move forward slowly and gently. Hopefully, you and the children's other parent or caregiver will try and work together to find out what's best for your children, even if you are unable to resolve all of the problems between the two of you.

If the other parent refuses to allow you to have any contact with your children, you may need to go to court and ask for visitation or other contact with your children. This is more fully discussed on page 29 ("Allocation of Parental Responsibilities").

What can I do to emotionally cope with being separated from my children?

How well you deal with your incarceration will have a direct influence on how well your children cope.

You may have feelings of regret, loss, depression, guilt, anxiety, or helplessness because you are separated from your children. You may also be afraid of being rejected by your children or resentful that your children are bonding to someone else while you are in prison. You may also feel angry that you are in prison or feel that you were treated unfairly by the criminal justice system. Because your reactions will affect your children, it is important that you start with yourself and try to deal with these emotions so that you can best help your children in their adjustment.

The following are some things you can do to help you deal with your separation from your children:

- **Acknowledge your feelings.** It is okay to express your feelings whether you have contact with your children or not. If you deny your feelings, you may just shut down and not be able to be there for your children.
- You may want to **write down your thoughts and feelings** on a regular basis in a journal.
- **Make a list of your personal strengths** and how you have survived so far.
- **Talk with other parents who are incarcerated about their experiences.** They may feel the same way or have a different perspective that might help you.
- **Create and use your support system** of family, friends, or a spiritual counselor. It is OK to reach out to others for help.
- **Learn as much as you can about child development and parenting** from books in the prison library or through parenting programs offered at the prison.
- **Set realistic goals for yourself** about what you can do to be involved in your children's lives and do those things.
- **Try to find ways to reduce your stress** whenever possible. Regular exercise, prayer, or meditation may help.
- **Be patient with yourself, your children, and their caregiver.** You are all going through a stressful time.

One incarcerated mother said, "I shut all my feelings up ... I didn't want to get attached. The first time I held my daughter she was 9 months old."

Although it can be very difficult and painful, trying to work through some of these feelings might help you adjust better, which will strengthen your ability to help your children adjust.

As one incarcerated mother said, "It's OK to express your feelings about being away from your kids." Another said, "It made me feel better to know everyone else was feeling like I did [about missing my kids]."

Even as you work through some of these feelings, it is important that you are careful about sharing all of your emotions with your children. Although it is very important to be honest with your children and to explain how you are feeling to them, remember that children will take your feelings personally. So, if you are angry and express that in front of your children, even if you aren't angry with your children, they will think you are mad at them. Also, if you are really sad when you are with your children, it may make them feel helpless and overwhelmed.

It is OK for you to be angry, sad, or depressed, but it is better to use your support system to help you deal with your feelings—not your children. They can't handle all their stress and your stress, too.

Remember that your children are affected by what you say *and* how you say it. Try to prepare yourself before a visit or phone call with your children. If you are upset right before a visit with your children, take a few moments to prepare yourself. Taking a few deep breaths or counting to ten may help you get in a better frame of mind to be around your children.

Maintaining a Relationship with Your Child.

What are some of the factors that may affect how my children react to my incarceration?

The way your children may react to your incarceration is based on a number of complicated factors. Each child is different and will react differently. Their feelings and behaviors may also change over time.

Some of the factors that may influence their reactions include:

- Their age
- Their relationship to you prior to your incarceration
- Whether they were living with you prior to your incarceration
- The length of your prison sentence,
- Their feelings about the crime for which you were convicted
- Their relationship to their current caregiver and the stability of their current homelife
- Whether they are separated from their brothers or sisters
- Whether older children are taking responsibility for caring for younger brothers or sisters
- How other people treat them because you are in prison
- The amount and quality of contact you have with them while you are in prison

Incarceration of a parent, like other forms of separation (divorce or military service), can be a very traumatic experience for a child.

You, your children, and their caregiver will have to adjust to changes in your relationship in three major phases:

- 1) the initial separation at the time of your arrest and the resulting loss of contact between you and your children,
- 2) the enduring or ongoing separation between you and your children during your period of incarceration, and
- 3) the reunification period upon your release.

How are children affected by having a parent in prison?

This is a very difficult question. Although every child and every situation is different, studies have found that children separated from a parent due to incarceration have some common emotional and behavioral reactions.

Emotional reactions: (common feelings children may have)

- Sadness, grief, low self-esteem, loneliness, or depression because of being separated from you or feeling rejected because you went away. Children, especially younger children, may believe they did something wrong to make you go away or that you went away because there is something wrong with them.
- Confusion or feeling helpless because they don't understand what has happened or don't know how to change it to make it better
- Fear, worry, anxiety about your safety and their safety
- Anger at you, "the system," and/or their caregiver for being separated from you
- Guilt because children may think that they did something to make you go away
- Difficulties in trusting people or fear of getting close to people

- Expectation of being rejected in other relationships
- Shame or embarrassment if other people make fun of them for having a parent in prison or otherwise speak badly of you

Behavioral reactions: (how children may act)

- May withdraw from friends and family
- May have problems sleeping or have bad dreams
- May have problems in school, including: difficulty concentrating, lower grades, missing classes, dropping out of school, becoming disruptive in school, or getting into fights
- May start making up stories or not telling the truth
- May abuse drugs or alcohol
- May get in trouble with the law
- May have developmental problems (for example, have trouble learning language skills)
- May “regress” and start acting younger than their age (for example, wetting the bed, clinging)
- May have difficulties bonding to their own children later in life

In addition to coping with the separation from you, children may also have to deal with the stress of adjusting to someone new taking care of them, living in a new house, going to a new school, and/or meeting new friends. Also, most children experience what is called “enduring trauma” due to the ongoing period of separation caused by incarceration.

What are the most important things that I can do to help my children adjust to having a parent in prison?

All parents and children have strengths and ways of getting through separation due to incarceration. Things that you can do to help your children the most are:

- Make sure your children have a stable living arrangement while you are in prison
- If possible, keep your children together in one home during your incarceration
- Choose a good caregiver to take care of your children while you are in prison
- Make sure your children have enough emotional support from family, friends, teachers, and others
- Have consistent and frequent communication and contact with your children while you are in prison

The most important messages you can tell your children over and over while you are in prison is that you love them, that you are OK, and that they are going to be taken care of.

How do I talk to my children about being in prison? What do I tell them?

As one incarcerated father said, “The main thing is that line of communication—you got to keep it open.”

Your children will probably have many questions. Some of the questions you may need to be prepared to answer include:

- “What is going on?”
- “Why did you go away?”
- “Where will I live?”
- “Is it my fault you went away?”
- “Who will take care of me?”
- “When will I see you again?”

What can I do to help my children adjust during my incarceration?

When first incarcerated

- Reassure them about your safety and well being. Tell them about your day, and describe where you live. If children have some idea about what your life is like, it might help calm their fears about your safety.
- Answer any questions your children may have. Reassure them that they are OK and that they will be well cared for. Depending on the age of your children, you might want to discuss how long you will be in prison.
- Help make arrangements or know where your children are going to live while you are in prison.
- Talk with your children about how often you can call, write, or visit with them so they know what to expect. Above all else, be as consistent as possible.
- Know the hours and regulations for visitation so that you help the caregiver make arrangements for visits, if possible.

During your incarceration

- Find out as much as you can about your children's day-to-day life, including how they are doing at school (you can ask either the teacher or the caregiver to mail you copies of report cards), who their friends are, and what activities they are involved in. That way, you'll have things to talk about either during visits or through letters and telephone calls. This will also help you feel more connected to what is going on in their lives. Let them know you are still a part of their lives.
- Have regular and consistent contact with your children through visits, phone calls and letters. Tell your children often that you love them and how important they are to you.
- Have close contact with your children's caregiver to see if they need your assistance with anything regarding your children.
- Find out if the prison offers any special programs for parents (if the prison has a program where you can read a book to your children into a tape recorder and send the tape to your children; or if the prison has games in the visiting room.) If the prison doesn't, you might talk to officials to see if it's possible to start a program.
- Seek outside support for your children if you think they need it from teachers, spiritual counselors, or community programs.

During visits

- Be creative with your children. Play games, tell stories, read books, or draw pictures. Before the visit, plan activities - it can make the visits more fun.
- Tell your children that you love them and talk about what's going on in their lives. Consider following up the visit with a letter or phone call to thank them for coming for a visit and to follow-up with anything you talked about during the visit. For example, "Let me know how your test goes on Monday."
- Encourage your children to discuss their feelings with you - both good and bad. They look to you for understanding and guidance. Be a good listener.
- Above all, be patient! This is a difficult situation for everyone involved. Children have good days and bad days, too. Not all visits are going to go well. It doesn't mean that your children don't love you or that you shouldn't have future visits.

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“What do I do if people say mean things to me?”

“When will things be normal again?”

“What if something bad happens, and you’re not here to help?”

“Are you safe?”

Some questions are easier to answer than others. One of the hardest questions to hear and to answer will probably be, “When are you coming home?”

Your answers to these questions, and other questions your children may have, will depend mostly on their age. As your children get older, they may ask you more complex questions or want more detailed information. Be prepared to discuss and answer questions about your incarceration and any concerns your children may have. It’s important to remember that their fears are real. Uncertainty causes a lot of stress for children.

Try to provide them with answers that they can understand. After talking to your children, you might want to ask them whether they understood what you said. One way to see if your children understand what you are saying is to ask them to repeat what you said, using their own words.

Children of all ages will sometimes have difficulties in talking about their feelings. They may be confused about their feelings or may not know how to express how they feel. It’s important to remember that your children are trying to cope with a lot, too. Their emotions are real for them - even if they may not make sense to you.

Remember to listen to your children closely. If you don’t understand what they are trying to say to you, you can always ask them questions. In addition to listening to your children, it is important to **watch what they are doing**. If

you ask them how they are, and they say they are doing “fine,” but they are skipping school, getting into fights, using drugs or alcohol, or withdrawing from their family and friends, you can tell they aren’t “fine.” You may want to talk to them, their caregiver, or others close to them to find out what you can do to help them.

Although every child matures at his or her own pace, the following examples may help you figure out how to talk to your children and answer questions they may have.

For younger children (5 years old and under)

At this age, children will probably be most concerned about where you are, when they will see you again, and when you are coming home.

This is how one family answered the questions of a young child whose father will be in prison for a very long time:

The child asked her grandmother, “Where is my Daddy?” The grandmother told her, “Your Daddy lives far away in a big house with lots of friends.” When the child asked, “When is Daddy coming home?” the grandmother told her, “Daddy has to live there for a long time, but don’t worry, you’ll be here with me. He can’t come visit us, but we will go visit him.”

Try to use words that your children can relate to and understand. For example, one incarcerated father told his young child that, “Daddy is in grown-up time-out.” This child was too young to understand what a prison is, but since they used “time out” as a way to discipline the child, the child could relate to those words. One incarcerated mother whose child lives in another state told her child that she was away at school and couldn’t come home for a while. Another mother who is incarcerated told her son that she had to go away because, “Mommy hurt someone.”

At this age, children don't generally understand what a prison is, or why someone is sent to prison, or even what "time" is. You want to answer your children's questions, but you don't have to give them details they won't understand. You can give them more information as they get older and mature. As a general rule, you can tell that your children are ready for more detailed information when they start to ask you more complicated questions.

Children in elementary school (6-10 years old).

At this age, children may begin to want more information and start to ask more questions. From about 7-8 years old, children are beginning to develop a sense of right and wrong. Children may begin to understand what a prison is and that people are sent to prison because they did something wrong.

If your child asks you why are you in prison, you could tell them, "Mommy did something wrong and can't come home for a while." One incarcerated father told his child, "Daddy made a mistake and has to pay for that mistake."

Children at this age are also starting to have an understanding of what time is, so if your child wants to know when you are coming home, you can answer that question more specifically, if you know. It will help them understand how long you will be apart if you relate it to something in their lives. If you just say, "Daddy is coming home in ___ years," they may not understand that as easily as if you said, "Daddy will be home when you are in ___ grade or when you will be ___ years old." Again, the important thing to remember is to use words that your children can understand and relate to in their own lives.

Your children may be asked questions or teased by other children because you are in prison. Talking about this issue with your

children in advance may help prepare them if they are faced with questions they may not know how to answer. You could ask your child, "Do people ever ask where your Daddy is?" If the child says, "yes," you can ask them, "What did you say?" If your child says, "no," you could ask them, "If someone asks you where your Daddy is, what would you say?"

By asking some questions and finding out what's going on in your children's lives, you can help prepare your children so that they feel comfortable about what they say to other people or friends. It's common in elementary school for teachers to schedule "parents day" events where children share information with other students about what their mother or father does for a living.

Talking with your children ahead of time can help them prepare for these types of situations which otherwise might be awkward or uncomfortable for them. For example, one incarcerated father works in the kitchen at the prison. When his daughter is asked what kind of work her father does, she tells people that he is a cook.

Special Considerations in Parenting Teenagers While Incarcerated

Research shows that 40 percent of teenagers who have an incarcerated parent visit them less frequently during their teenage years. Although this can be understood as "normal" teenage behavior, it makes parenting a teenager from prison a little more challenging.

During the teenage years, children are developing a sense of their own identity (separate from their parents) and becoming more independent. Although teenagers need parental guidance and structure, being more independent is normal and a part of healthy development. Even if you were living at home with your teenager, you would probably be

seeing less of him or her because they want to spend more time with their friends. Looking at the situation this way may help you if your teenager seems less interested in having the same kind and level of contact with you when they he or she were younger.

As a parent, finding the balance between letting your teenager have enough freedom to mature but having enough rules to protect them is quite a challenge, especially since you are in prison. With teenagers, it is particularly important to let them know what your expectations of them are. For example, if it is important to you that your teenage graduate from high school - you need to let them know that and encourage them in this goal. If you have rules around curfew, drug or alcohol use, or sexual activity, you need to have a serious conversation with your teenager.

The challenge for all parents who have teenage children is to figure out how to enforce the rules. Since you are incarcerated, the rules will need to be enforced primarily by the children's caregiver. You can play a very important role in supporting the caregiver so that the children are getting the same message from you and the caregiver.

The teenage years can be a turbulent time. Creating a sense of identity, self-esteem, and preparing for adulthood can be very stressful, and teenagers can make mistakes or poor decisions that can affect the rest of their lives. Having significant attachments with adults in their life and having consistency in their living arrangement will be the two major factors contributing to their successful adjustment.

Early teenage years (11-14 years old).

During the early teenage years, teenagers are entering puberty and are developing a sense of their own identity. In doing so, they want more control of their lives and will start testing limits

and boundaries. They are becoming more emotionally aware, are beginning to think about life goals and are starting to want to spend more time in group activities with their friends.

Sometimes they will act very dependent on you (more like they did when they were younger) and sometimes they will try to be very independent of you and even seem like they are pushing you away. This is normal. The most important thing you can do at this time is to talk with them and make sure the lines of communication stay open. This will be a challenge. At this age, you can probably talk pretty straight with them in answering their questions. You'll know that they are ready to handle more details by the questions they ask. The most important thing is to let them know that they can ask you any question.

Throughout their teenage years, your children's friends will be very influential in their lives - sometimes even more influential than the adults in their lives. It's important to always know who their friends are and what they do when they are together.

Later teenage years (15-18 years old).

During the later teenage years, children are developing a deeper sense of their own identity, want more independence, have more mature problem-solving abilities, are exploring sexuality and relationships with others, are more sensitive to being "different," and are thinking more seriously about their future and life goals. It is a great time to encourage your teenager to be thinking about their future and what they hope to accomplish.

It's very important for teenagers to have goals that they help to create. Teenagers that don't have a sense of a future or goals can easily feel lost. Teenagers who feel lost or feel that they don't have a future can easily get into deep trouble in school, at home, or with the law.

Sadly, many teenagers today don't have a sense of hope for their future.

As their parent, there are two primary areas where you can have the greatest influence in their lives:

- Encourage them to have hope and self-esteem; let them know they are important people to you, their family, and the wider community; and,
- Help guide and support them in developing goals and life skills they will need in their adult lives.

Your teenager may be getting their first job and need guidance on how to spend and save the money they earn. They may be preparing to live on their own in the near future. Learning how to get a job, how to manage money and pay bills, how to find an apartment, how to be in a healthy relationship, how to solve problems—all of these are important life skills they need to learn as they prepare to live on their own.

Staying in contact with your teenager is the most important thing you can do. As one mother in prison said, "Talk, ask questions, and listen, listen, listen to your teenagers." If you think your teenager is having problems, don't ignore them. Try to think of ways you can get extra support for them from other family members, the school, churches, or other community groups (like Big Brothers/Big Sisters). It is healthy for teenagers to pull away from their parents - it doesn't mean that other adults can't play important roles in their lives.

Being a teenager is a lot like being on a rollercoaster and their moods and attitudes can change a lot from month to month, week to week, day to day, or hour by hour. This is normal, even though it is probably one of the most frustrating and confusing things about trying to parent a teenager. One week they are

angels - the next week they will test your last nerve. Try to be patient and understanding. It will help if you can stay grounded. Just because they are on a rollercoaster doesn't mean you have to be on one, too.

All children, but especially teenagers, are particularly sensitive to criticism. Although it is important to talk to your teenagers about mistakes you think they are making, it is also very important that you be positive and encouraging with your teenagers. Tell them you love them and compliment them on their accomplishments. Even though you might think that your teenagers don't care what you think - they do. They especially care about what you think of them.

What can I do to make sure my children are getting the help they need?

One of the most important things you can do as a parent while you are incarcerated is to make sure that your children's needs are being met. There is an African saying that, "It takes a whole village to raise a child." Try and be as active a parent as possible, but don't be afraid to ask for help from others if you think it will help your children. Because you are in prison, there are some limitations on what you can do yourself. That doesn't mean that there is nothing you can do. For example,

- If you think your children are having problems in school, don't be afraid to write or call your child's teacher or school counselor to see what can be done to address the problem.
- If you think your children are having some emotional difficulties, you could try and find a therapist you trust to counsel them.

One mother in prison said that the best thing she did was to get counseling for her child. You may ask your relatives or friends

to be a little more involved in their lives so that your children have a strong support network.

- If your children are having medical problems or don't have medical insurance, you can see if they would qualify for health insurance under Medicaid so that they can see a doctor (see page 35).
- If your child expresses an interest in an activity (music, sports, computers, etc.), see if you can find an after-school program in their neighborhood.
- It is very important to have a good working relationship with the children's caregiver so that you can work together as a team.

The best thing you can do is be an active parent. Because you are in prison, this may require creativity and patience on your part. Not only will your efforts help meet your children's needs, they will also help you be well informed about your children so that you are better prepared to meet their needs when you are released.

What can I do While in prison that would help me be a better parent?

Many prisons offer parenting classes. Some prison libraries may also have reading materials available on child development and parenting. Educating yourself and strengthening your parenting skills can only help you and your children. It's important to remember that anything you do to help yourself also helps you be a better parent. Many prisons offer GED, alcohol/drug treatment, anger management, or job training that might help you build your skills so that you are better prepared to care for the needs of your children once you are released from prison.

Also, some prisons have more child-friendly visiting rooms at the prison than others. If the prison you are in does not have a special visiting area for children with games and books available, ask the Warden if it would be possible to create one.

If you are artistic, offer to paint a mural on the visiting room wall that would be cheerful for children. Having a child-friendly environment for visiting can help make your children feel more comfortable and make the visits more fun. If you have ideas for other programs that would help parents in prison, talk with prison officials to see if it would be possible to start a new program.

How important is visitation with my children while I am incarcerated?

Some people believe it is too traumatic for children to visit with a parent who is in prison.

Research shows, however, that most children benefit from contact with their parent even if it occurs in a prison.

It has also been found that the sooner children can have contact with their parent following a separation, the better. Although visiting a parent in prison can be emotional for children, the long-term benefits usually outweigh the difficulties. The first visit is usually the hardest, and visits with your children usually become easier when they are as regular and as frequent as possible.

It may be helpful to prepare your children for the visit through letters or phone calls so they will know what to expect. For example, you can let your children know what the visiting room is like, what activities you can do together, and how long of a visit you can have. It is also important for you to let the caregiver know of the prison rules regarding visitation, like dress codes, so you don't have problems with the visit.

Suggestions for Making the Most of Visits

Infants & Toddlers (0 - 3 Years Old)

Play Peek-a-boo, patty cake, talk; hold and cuddle them (if allowed)

Draw pictures, count with them, play the face game. Example: happy face, sad face, surprise, etc.

Tell them a story.

Tell them you love them.

Preschoolers & Kindergarten (4 - 6 Years Old)

Draw pictures for your children to color.

Make up short stories using their names as the main character.

Recite poems and nursery rhymes.

Have them practice their numbers and the alphabet.

Read them a story.

Talk about favorite things you've shared with them.

Listen, Listen, Listen, Listen.

Tell them you love them.

School Age (7 - 10 Years Old)

Make up word puzzles.

Develop ongoing games and stories for both you and your children to participate in.

Play cards, dominoes, Legos, read books, use material available at the prison.

Draw pictures, and encourage your children to do the same.

Listen, Listen, Listen, Listen.

Tell them you love them.

Early Teenage Years (11 - 14 Years Old)

Talk with them. Communication is one of the most important things you have to offer.

Ask them about what's going on in their life. (School, friends, activities)

Ask how they are feeling, what you can do to help support them, especially if they help care for younger siblings.

Participate in games, cards, whatever is furnished by your facility.

Listen, Listen, Listen, Listen.

Tell them you love them.

Later Teenage Years (15 - 18 Years Old)

Ask about how they are doing in school and any plans for college

Talk with them about their future plans for work, living on their own, and other "real life" issues, like drugs or alcohol and relationships

If possible, you might try and visit with your teenager alone so that you have some time to talk privately with them.

Listen, Listen, Listen, Listen.

Tell them you love them.

Continued from page 18

Obviously, visits allow you and your children to be together, which is very important. In addition to providing closer contact and fuller communication, visits can also make the separation a little easier on you and your children. Frequent, consistent, and quality contact with an incarcerated parent has also been shown to help families successfully reunite after a parent is released.

What can I do if my children are not able to visit me very often?

Even if you aren't able to have regular visits with your children, there are still lots of things you can do to make your interaction together more fun. One father in prison draws a picture that he sends to his daughter so that she can color it and send it back to him. Another father and his daughter write a children's story together. You could write part of it and send it to your child to write some more. This could go back and forth until the story is done. Then you could start another story. You can also do crossword puzzles together by mail - where you do part and then your child does part. With some creativity, there are lots of ways to have fun with your children.

What if my children have difficulties during or after a visit?

It is normal for children to have emotional and/or behavioral reactions during or following a visit. This is most often due to the difficulty in reconnecting and then separating again. It is very similar to what children experience when custody is shared between parents who are divorced.

If you are having a visit with your children and they won't talk to you or seem withdrawn, don't push it. You can continue to have a visit with the adult who is there with them and create an opportunity for your children to join the conversation. Don't take it personally if your children are showing some strain during the

visit. Your children probably aren't rejecting you; they are just trying to manage their feelings the best way they know how. Be patient - your children are stressed out, too. If your children are having a really tough time with the visit, you may want to cut it short. Adults have bad days, and children have bad days, too. Try to be flexible and adaptable.

If your children get really upset when it is time to end a visit, the best thing you can do is tell the children that you love them, that you will see them again, and go ahead and leave. Let the caregiver take care of comforting your child at that point. Try to stay calm, and don't prolong the process. If your child is really upset, you could call or write later that night to say you love him or her and see if he or she wants to talk about it. It's OK if they don't want to talk about it. They may in time.

What are the legal reasons I should have regular visits with my children?

Visits are very important for legal reasons. If you do everything possible to keep up regular contact, including asking for visits with your children, you reduce the chances of losing custody of your children permanently. Child welfare authorities consider parent-child visitation as one of the most important indicators of parental interest in a child. Courts consider regular visits as one factor in evaluating your ongoing relationship with your children and whether it is in their best interest to be with you.

Should I keep records of my contact with my children?

If you are involved in a legal case involving custody of your children, you should keep a written record or log of the type and frequency of contact you have with your children. You may need this evidence in court. Having a record might also help you later when you are

released from prison and need to show a court that you are ready to take care of your children or have contact with your children. Write down a list of all visits, letters, and phone calls. Be sure to note the date and any other important information. See page 81 for an example.

What can I do if the caregiver will not, or cannot, bring my children for a visit?

Consider the reasons the caregiver gives for not being able to bring the children for a visit, such as not having the time, money, or transportation to the prison. Be both patient and persistent in finding ways to make the visitation possible. You may want to contact family, friends, or community groups to see if they can assist the children's caregiver in making visits with you possible. See page 76 in the resource section for groups that help with transportation.

If you can't work something out with the caregiver, you may also need to consider filing a "Motion for Allocation of Parental Responsibilities" to ask a judge to order that you have visits or telephone calls with your children. See page 29 for more information on Allocation of Parental Responsibilities cases.

If you are currently involved in any type of case involving your children (allocation of parental rights; divorce; Dependency & Neglect; paternity), you can request any time the judge orders visits with your children. (See sample letter on page 55. However, a judge is not likely to order visits if it is a hardship for the caregiver. In that situation, you can increase your chances that the court will order visits if you can make arrangements for someone else to transport the children.

Even if you aren't able to have visits with your children, don't forget that you can always stay in contact with your children through regular telephone calls and letters.

9.B. Frequently Asked Questions On Handling Legal Proceedings From Jail or Prison

What happens if I don't appear for a hearing?

If you don't appear for a hearing, a default judgment will be the likely result. A default judgment means the judge or court commissioner will decide in favor of the other party. For example, if the custodial parent asks for an increase in child support and you do not appear, the judge or commissioner is likely to grant that request.

How can I arrange to appear for a hearing?

You can request to appear in person, but it is not likely that the prison will allow this in a family law case. Instead, you can appear by phone. You should send a written request to the court to appear by phone (a sample letter is included in Chapter 9). You also need to send copies of your request to everyone involved in the case.

In addition, you should schedule the phone call with your prison. Each prison may have different rules about placing a phone call to the court for a hearing. Contact your social worker as soon as you know the date of your hearing and ask what you need to do.

Why won't the judge answer my questions?

Judges and people who work for the court cannot give you any legal advice so the judge might not answer your question because he or she is not allowed to. The reason for this rule is to protect you and the other parties involved from the judge being unfair to either of you.

People who work for the court can explain basic procedures and answer questions about deadlines, but you should not ask them for legal advice.

How do I file court papers from prison if I do not have a lawyer?

There is a certain procedure you must follow any time you file documents with the court. You must follow these steps whenever you file an official request (for example, a motion or petition):

- Submit the original and three (3) to five (5) copies of the documents, depending on how many people need to be sent or served a copy of the paperwork.
- Ask the clerk to return at least two stamped copies of the documents to you.
- The court will keep the originals and return the copies to you.
- Provide a postage-paid envelope for the court to use to return the copies to you.
- After you get the copies, you are responsible for serving the other party with a copy of the documents.
- If a Guardian ad Litem (GAL) has been assigned to the case, you will also want to mail a copy of all papers to him or her.
- If the documents may affect child support, you will also need to mail a copy of the documents to the Child Support Agency in the county where your child lives or in the county in which the case is held (if the case is for child support arrears).

When I send other letters (not petitions, motions, etc.), is there anyone else to whom I need to send copies?

Anytime you send a letter to the judge, you must send a copy of the letter to all of the other parties (including the other parent, Child Support Agency, GAL, etc.). If a GAL is assigned to your case, you should send the GAL a copy of all letters you send to the other parties.

If I have a trial, what evidence can I submit to the court?

You can ask witnesses to testify on your behalf. If they are not willing to testify for you, but you think they will help your case, you can have the court subpoena the witness (order the witness to come to court).

- Note: If you need to subpoena a witness, you must contact the clerk's office well in advance of the hearing and ask for a subpoena form.

You can also submit documents to the court (for example, a certificate showing that you completed parenting classes). However, you must send the documents to the court in advance of your trial and send additional copies for the other parties.

How do I make sure that I am heard if I cannot appear in person?

Many people get nervous when they have to be in court and they tend to speak softly. Judges and the other parties will need to hear everything you say. Since you will likely appear over the phone, you should speak clearly and slowly so that everyone understands you.

Do not be afraid to tell the judge or a lawyer if you do not understand what is going on or if you do not understand a question. Sometimes you will only have one chance to answer a question so it is important that you understand the question that you are answering.

Again, it is very important that you DO NOT interrupt the judge or any other person who is speaking.

How do I arrange for an interpreter if I am not a native English speaker?

You may use Form GF-153 to request an oral interpreter or a real-time translator (see Ch. 8.C.). Note: Form GF-153 is also used for other "disabilities" that must be accommodated under the ADA (see the next question). Not speaking the English language is recognized as a language disability.

How do I request an "accommodation" for a disability I have?

The American Disabilities Act (ADA) requires the court to provide reasonable accommodations to disabled persons. Reasonable accommodations may include:

- wheelchair access
- an assistive listening device
- American Sign Language interpreter

You may use Form GF-153 to request an accommodation (see Ch. 8.C.).

9.C. Sample Forms and Letters

The following forms and sample letters are referenced throughout *Staying Connected* and are included here for your convenience. Some of the forms were created by the authors of *Staying Connected*; others were provided by the Wisconsin courts. All of the forms and sample letters will be most effective if they are not modified (changed). In fact, some of the court forms must not be modified. Please note that the included court forms were current as of the publication of *Staying Connected* (March 2011), but updated forms may have become available since that date.

- Authorization for Placement and Care of Minor Child
- Authorization to Release Health Records to Patient's Caregiver
- Authorization to Release School Records to Student's Caregiver
- Authorization to Release Social Services Records to Child's Caregiver
- Parent's Letter Requesting Records of Minor Child
- Communication Resources
 - Record of Efforts to Contact Child
 - Correctional Billing Services Friends & Family Telephone Service Guide
- Letters and Court Forms
 - Written Request to Appear by Phone
 - *Pro Se* Packet Order Form
 - GF-153 - ADA Accommodation Request

AUTHORIZATION FOR PLACEMENT AND CARE OF MINOR CHILD(REN)

I, _____ (parent's full name), an adult resident of the State of Wisconsin, hereby willingly, voluntarily and knowingly execute this Authorization, and state as follows:

1. I am the mother / father (circle one) of the following minor child(ren):

Name	Date of Birth
_____	_____
_____	_____
_____	_____

2. My current address is: _____

3. I am hereby placing the above-named child(ren) in the care of the following person(s): _____

(print full name and address)

4. Because I am currently incarcerated and may not be easily reached by telephone, and because I am unable to be present in person, I hereby authorize the above caregiver to do any of the following (initial all that apply):

___ Consent to health care treatment, including but not limited to, necessary medical, dental, optical, psychological, psychiatric, surgical, emergency medical and/or mental health treatment, medication and hospitalization;

___ Consent to counseling services, AODA or other mental health treatment, tutoring services and/or evaluation for these types of services;

___ Sign all school registration and authorization forms, including but not limited to special services records and IEP records;

___ Receive reports from persons holding confidential information.

5. The above caregiver and I have discussed and agree that my child(ren) should have as much in-person, written and telephone contact with me as possible.

6. This Authorization shall continue in effect until _____, unless sooner revoked by me in writing. A copy/facsimile of this form shall be as effective as an original.

Signature of Parent

Date

Signed and sworn to before me
this _____ day of _____, 20 ____.

Notary Public, State of Wisconsin
My commission: _____

AUTHORIZATION TO RELEASE HEALTH RECORDS

(Fill in name and address of health care provider)

I, _____ (*parent's name*) hereby authorize the above service provider to permit _____ (*name of authorized person(s)*) to examine and/or copy all records, in any way related to the child whose name appears below. This authorization includes the release of mental health, alcohol and/or drug treatment records.

THIS AUTHORIZATION IS NOT LIMITED TO FURNISHING EXISTING RECORDS. IT AUTHORIZES THE HEALTH CARE PROVIDER NAMED ABOVE TO PREPARE REPORTS FOR, PROVIDE OPINIONS TO, OR DISCUSS THE PATIENT'S CONDITION OR TREATMENT WITH, THE PERSON(S) NAMED ABOVE.

This consent shall remain effective for two years, unless revoked by written notice to the specific health care provider named above. A photocopy of this consent with the name of the health care provider added shall be considered effective as an original.

(Note: DISCLOSURE NOTICE TO RECIPIENT OF PSYCHIATRIC, ALCOHOL AND/OR DRUG TREATMENT RECORDS: This information has been disclosed to you from records whose confidentiality is protected by federal law. Federal regulations, (42 CFR Part 2), prohibit you from making any further disclosure of it without the specific written consent of the person to whom it pertains to or as otherwise permitted by such regulations. A general authorization for the release of medical or other information is NOT sufficient for this purpose.)

Signature of Parent (or Guardian)

Date

Print name of Parent (or Guardian)

Print name of child (patient)

Child's date of birth

Signed and sworn to before me this _____ day of _____, 20____,
by _____ (name of parent),
known to me to be the person who executed this form.

Notary Public, State of Wisconsin
My commission: _____

AUTHORIZATION TO RELEASE STUDENT RECORDS

(Fill in name and address of school)

I, _____ (*parent's name*) hereby authorize the above service provider to permit _____ (*name of authorized person(s)*) to examine and/or copy all records, in any way related to the child whose name appears below. This authorization includes the release of mental health, alcohol and/or drug treatment records.

THIS AUTHORIZATION IS NOT LIMITED TO FURNISHING EXISTING RECORDS. IT AUTHORIZES THE SCHOOL SERVICE PROVIDER NAMED ABOVE TO PREPARE REPORTS FOR, PROVIDE OPINIONS TO, OR DISCUSS THE STUDENT'S PERFORMANCE OR NEEDED SERVICES WITH, THE PERSON(S) NAMED ABOVE.

This consent shall remain effective for two years, unless revoked by written notice to the specific school named above. A photocopy of this consent with the name of the school added shall be considered effective as an original.

(Note: DISCLOSURE NOTICE TO RECIPIENT OF PSYCHIATRIC, ALCOHOL AND/OR DRUG TREATMENT RECORDS: This information has been disclosed to you from records whose confidentiality is protected by federal law. Federal regulations, (42 CFR Part 2), prohibit you from making any further disclosure of it without the specific written consent of the person to whom it pertains to or as otherwise permitted by such regulations. A general authorization for the release of medical or other information is NOT sufficient for this purpose.)

Signature of Parent (or Guardian)

Date

Print name of Parent (or Guardian)

Print name of child (patient)

Child's date of birth

Signed and sworn to before me this _____ day of _____, 20____,
by _____ (name of parent),
known to me to be the person who executed this form.

Notary Public, State of Wisconsin
My commission: _____

AUTHORIZATION TO RELEASE SOCIAL SERVICES RECORDS

(Fill in name and address of social worker or social services department)

I, _____ (parent's name) hereby authorize the above service provider to permit _____ (name of authorized person(s)) to examine and/or copy all records, in any way related to the child whose name appears below. This authorization includes the release of mental health, alcohol and/or drug treatment records.

THIS AUTHORIZATION IS NOT LIMITED TO FURNISHING EXISTING RECORDS. IT AUTHORIZES THE SERVICE PROVIDER NAMED ABOVE TO PREPARE REPORTS FOR, PROVIDE OPINIONS TO, OR DISCUSS THE CHILD'S PERFORMANCE OR NEEDED SERVICES WITH, THE CAREGIVER NAMED ABOVE.

This consent shall remain effective for two years, unless revoked by written notice to the specific service provider named above. A photocopy of this consent with the name of the service provider added shall be considered effective as an original.

(Note: DISCLOSURE NOTICE TO RECIPIENT OF PSYCHIATRIC, ALCOHOL AND/OR DRUG TREATMENT RECORDS: This information has been disclosed to you from records whose confidentiality is protected by federal law. Federal regulations, (42 CFR Part 2), prohibit you from making any further disclosure of it without the specific written consent of the person to whom it pertains to or as otherwise permitted by such regulations. A general authorization for the release of medical or other information is NOT sufficient for this purpose.)

Signature of Parent (or Guardian)

Date

Print name of Parent (or Guardian)

Print name of child (patient)

Child's date of birth

Signed and sworn to before me this _____ day of _____, 20____,
by _____ (name of parent),
known to me to be the person who executed this form.

Notary Public, State of Wisconsin
My commission: _____

Parent's Letter Requesting Records of Minor Child

(Date)

(Insert name of school, health care provider, or other service provider)

(Street Address)

_____, WI _____
(City) (Zip Code)

Re: _____
(Child's name and date of birth)

To whom it may concern:

My name is _____ (your name). The above-referenced child is my son/daughter (circle one). I am writing to request that you provide me with the following (check one):

- School records:** All records you have concerning the above child, including but not limited to records concerning my child's attendance; grades; discipline; behavior; special education/needs; and contact or interaction with counseling, social work and/or nursing personnel. [See Wis. Stat. § 118.125(2)].
- Patient health care records:** All records you have concerning the above child, including but not limited to clinic and progress notes; scheduled appointments; therapists' notes; prescriptions; immunization records; lab results; and all other emergency and non-emergency health care records, including mental health and AODA care treatment. [See Wis. Stat. §§ 146.82 and .83].
- Court or treatment records:** All records you have concerning the commitment and treatment of the above child. [See Wis. Stat. § 51.30(5)].
- Child protective services records:** All records concerning the above child, including reports and investigations related to abuse or neglect of the child. [See Wis. Stat. § 48.78].

If the box below is checked, you may restrict the records you provide to the specified dates:

- I want all records for my child from** _____ (start) to _____ (end date).

Thank you in advance for your cooperation. To contact me with questions regarding my request or to send me the requested documents, you may reach me at the address below.

Sincerely,

(Signature)

(Name) (Inmate #)

(Name of Institution)

(Street Address)

_____, WI _____
(City) (Zip)

Signed and sworn to before me this _____ day of _____, 20____,
by _____ (name of parent),
known to me to be the person who executed this form.

Notary Public, State of Wisconsin
My commission: _____

RECORD OF EFFORTS TO CONTACT CHILD(REN)

Case No. _____

County: _____

Child(ren)'s names: _____

	<u>Person who attempted to make contact</u>	<u>Type of attempted contact</u> (check one)	<u>Date</u>	<u>Description of efforts:</u> - For <i>phone calls</i> , include the number of times you called, if anyone was reached, and summary of your message or conversation. - For <i>letters</i> , state to whom it was sent, and if it was a letter, gift, card, etc. - For <i>visits</i> , state who brought the child and the length of the visit. (Attach extra pages if needed.)
Sample	<input type="checkbox"/> Self <input checked="" type="checkbox"/> Other: <u>My mom</u>	<input type="checkbox"/> Call <input checked="" type="checkbox"/> Letter <input type="checkbox"/> Visit	02/12/09	My mom sent Joe and Mary each a Valentine's Day Card by certified mail.
1.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
2.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
3.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
4.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
5.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
6.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
7.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
8.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
9.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
10.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
11.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		

12.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
13.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
14.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
15.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
16.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
17.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
18.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
19.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		
20.	<input type="checkbox"/> Self <input type="checkbox"/> Other:	<input type="checkbox"/> Call <input type="checkbox"/> Letter <input type="checkbox"/> Visit		

Instructions

NOTE: To receive calls from a correctional facility, you must use a touch-tone telephone.

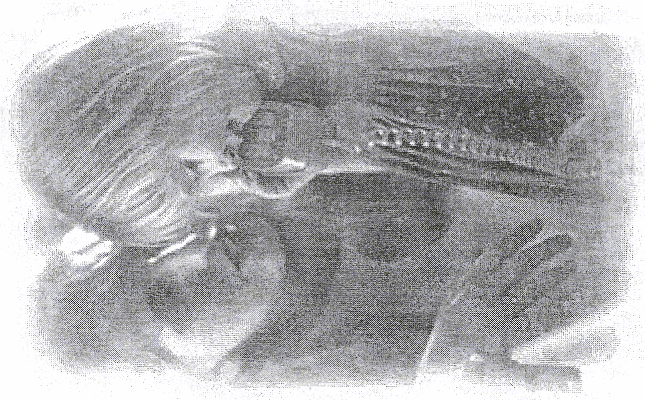
1. When you answer a call from a correctional facility, you will hear a computerized voice. Wait for the voice to finish speaking, and then follow the instructions to accept, decline or block the call.
2. If you do nothing or select the option to decline the call, the phone will hang up without a charge to your telephone number.
NOTE: The facility reserves the right to limit the number of times a called number may be declined or accepted within a given time period.
3. If you choose to accept the call, begin speaking after selecting this option.
NOTE: To protect you and provide equitable telephone access for all inmates, the correctional facility may place a time limit on calls. Many facilities provide a warning tone 30 seconds before a call is terminated.
4. The call will either appear on your local telephone company bill or an invoice directly from Correctional Billing Service. If using a prepaid account you will not receive an invoice, the charge will be deducted directly from the money you prepaid.
NOTE: If you do not pay this bill within 30 days, your telephone number may be blocked from receiving calls from any facility served by Correctional Billing Service.
5. If you do not wish to receive calls from a correctional facility, contact Correctional Billing Service's Customer Service at 1-800-844-6591 or www.CorrectionalBillingServices.com.

... A Helping Hand When You Need It Most



P.O. Box 1010
Selma, AL 36702

Friends & Family Telephone Service Guide



Part of the SECURUS Family

About Us

Correctional Billing Services (CBS), a division of Evercom Systems Inc. and T-Netix Inc., is the only nationwide provider to offer Customer Care and Account Activation Centers solely dedicated to the friends and family members of inmates.

CBS represents over 3,100 correctional facilities nationwide. We provide customer service information through e-mail, website, Friends & Family Assistance Centers (Kiosk) in select facility lobbies and by toll-free number.

To assure families are able to stay in contact, our billing support department provide multiple account servicing programs to fit any requirement.

1-800-844-6591

Representatives Available (Central Time)

Mon-Fri: 7 AM to 9 PM

Sat/Sun: 8 AM to 6 PM

Visit Our Website at:

www.CorrectionalBillingServices.com

Email us at:

customer_service@CorrectionalBillingServices.com

Payments: Correspondence:

Correctional Billing Services Correctional Billing Services
P.O. Box 2022 P.O. Box 1010
Mechanicsburg, Selma, AL 36702
PA 17055-0700

Prepaid Accounts

You can avoid interruption of your service and control costs at the same time with our Prepaid accounts. By paying for your calls in advance you can manage your spending and ensure that the line is open so long as funds are kept in the account. To establish and maintain a prepaid account, you can use our automated system or speak to a Customer Service Representative using a credit card or check. Western Union Quick Collect and payments by mail are also available. If payments made by mail, we also accept money orders, cashiers checks and other forms of guaranteed payments.

We also offer you the opportunity to obtain account information 24 hours a day, 7 days a week through our AUTOMATED SYSTEM.

Policy and Procedures

1. Each account is assigned a payment verification point (PVP). This is your spending limit for a rolling 90 day period. If you exceed your PVP within the 90 days the line will be blocked from receiving calls until the earlier calls have dropped off. You will receive an automated COURTESY CALL when you near 75% of the PVP. Note: If you would prefer not to have a PVP or the 90 day timeframe, we recommend using our Prepaid account.
2. For your protection we have placed a \$50.00 limit on the total cost of calls that may be accepted within a 24 hour time period. This is called a HIGH VELOCITY restriction. You may be able to have this restriction lifted by calling CBS and doing one of the following:

- A. You can pay the unbilled charges that have not already been sent to your local phone company via Credit card (if available).
- B. If you are directly billed by CBS, you can make a payment by speaking to a Customer Service Representative or sending your payment through Western Union.

To Avoid Being Disconnected

To protect witnesses and legal personnel, some calling deterrents could be present on our phone system. To talk on the phone with someone confined in a correctional facility, you must use a touch-tone telephone. If you do any of these things during the call, you could be disconnected, so....

DON'T:

- transfer the call
- put the call on Hold
- use or answer Call Waiting
- use a cell phone & / or cordless phone (static could cause a disconnect)
- press extra (additional) numbers on the touch-tone keypad
- stop your conversation for any length of time (a period of silence may cause a disconnect)
- try to make any kind of 3-way call



Written Request to Appear by Phone

(Date)

Honorable Judge/Court Commissioner _____
(circle one) (Last Name of Judge or Commissioner)

(Name of County) County Courthouse

(Street Address of Courthouse)

_____, WI _____
(City) (Zip Code)

Re: _____
(Case Name)
Case No. _____

Dear Judge / Court Commissioner _____:
(circle one) (Last Name of Judge or Commissioner)

I respectfully request permission to appear by telephone/videoconference (circle one) at the hearing in the above case scheduled to take place on _____ (date), at _____ a.m./p.m. (time).

I cannot appear in person because I am currently incarcerated at _____.
(name of correctional institution)

(Check one)

- The rules of my institution prohibit me from placing telephone calls except for collect calls unless special arrangements are made with prison staff. However, I can be made available at the following telephone number: _____.
- Arrangements for my appearance by telephone/videoconference can be made by contacting the following staff person: _____ at _____.
(Name of staff person) (Staff person's phone number)

Thank you for your consideration of my request. Please provide me notice of your decision on this request by returning a copy of this letter to me in the enclosed self-addressed, postage-paid envelope.

Sincerely,

(Signature)

(Name) (Inmate #)

(Name of Institution)

(Address)

_____, WI _____
(City) (Zip)

Return Completed Form to:
Frank J. Remington Center
975 Bascom Mall
Madison, WI 53706-1399

These pro se packets are for use **in Wisconsin only**.
To use any of these packets, you must know where the other party is so you can serve that person with legal documents.

Pro Se Packet Order Form

Inmate name: _____ Institution number: _____
Institution: _____
Address: _____

WHICH PACKET(S) DO YOU WANT?

- Divorce with Minor Children** [use if: (1) you and your spouse have children under the age of eighteen together OR if a minor child was born to the Wife during the marriage and that child is or may not be the Husband's biological child; (2) you can agree on most issues in the divorce; and (3) neither you nor your spouse owns any real estate]

- Divorce with No Minor Children** [use if: (1) you and your spouse have no children under 18 together and no minor child (not the Husband's) was born to the Wife during the marriage ; (2) you can agree on most issues in the divorce; and (3) neither you nor your spouse owns any real estate]

FOR DIVORCE:

County of filing: either the county in which your spouse has resided for at least 30 days before filing, or the county in which you resided for at least 30 days immediately before your incarceration.

State Residence: you must have been a resident of the state of Wisconsin for at least 6 months before your incarceration, or your spouse must have resided in Wisconsin for at least 6 months before filing for divorce.

- Paternity Establishment** [use if there is not already a court order determining who is the child's father, OR no light blue Acknowledgment of Paternity form was signed by both parents after the child's birth]

County of filing: the county in which the child or the alleged father resides or is found; If possible, it is preferred that the action be filed in the county where the child resides.

- Child Support Modification** [use to file a motion to ask the court to reduce or suspend your child support obligation or monthly payment if there is no agreement with the custodial parent, OR to get a court order reflecting an agreement between you and the person to whom you owe child support]

County of filing: the same county circuit court that entered the most recent child support order you want to modify.

- Modification of Physical Placement Order** [use to request visits or other contact with your child, and you already have a Paternity or Divorce Judgment, or a Decree of Legal Separation]

County of filing: the same county circuit court that entered the placement order you want to modify.

- Motion to Enforce Physical Placement Order** [use if you already have a court order that clearly gives you the right to visits or other contact with your child during incarceration and the contact has been unreasonably denied]

County of filing: the same county circuit court that entered the placement order you want to enforce.

- Petition for Physical Placement (Visitation) in Paternity Acknowledgment Action** [use to ask a court to order visits and other contact with your child if paternity of the child was established by both parents signing a light blue Acknowledgment of Paternity form after the child's birth]

County of filing: If possible, the petition should be filed in the county where the child resides.

- Motion to Reopen Paternity** [use to ask a court to reopen a paternity action because you believe the person adjudicated or presumed (if married to the child's mother) to be the father is not the biological father] **NOT CURRENTLY AVAILABLE.**

County of filing: The same county that entered the Paternity Judgment you are seeking to reopen.

- PLRA Fee Waiver Packet** [to request waiver of prepayment of filing and service fees; fees will be deducted from your canteen and/or release account as the funds become available]

In what county will you be filing your motion or petition? _____

ADA Accommodation Request

Case No. (if any) _____

1.

Name of Person Requesting Accommodation		Address
Telephone/TTY Number	Date Request Submitted	

2. The person who needs the accommodation is a:
 party witness juror attorney
 other: _____

3. The accommodation will be needed:
 on (date) _____ at (time) _____ a.m. p.m.
 for all proceedings related to this case.

4. The accommodation needed is:
 Wheelchair space
 American Sign Language (ASL) interpreter(s): _____
 Other sign language interpreter(s) (specify): _____
 Oral interpreter
 Realtime (videotext) translation
 Assistive listening device
 Large print/enlarged materials
 Breaks for medical reasons (state reason/frequency): _____
 Other (specify): _____

(Complete the following, if different from number 1 above.)

5. Name of person completing this request: _____
 Telephone/TTY Number: _____
 Mailing Address: _____

APPROVAL

This accommodation request is approved.
 This accommodation request is denied because: _____

BY:

 Court Official/ADA Coordinator

 Name Printed or Typed

 Date

- Distribution:
 1. Judge
 2. Clerk of Court
 3. Counsel/party
 4. Other:

9.D. Referral Organizations and Agencies

The following organizations may be able to assist you during and after your incarceration.

Services for Prisoners and Families of Incarcerated Parents

<p>Name of Organization: Community Connections, Inc. Types of Services: Visitation activities for family prison visits, Read-to-Me videotaped reading program, parenting books, discussion groups Contact Information: www.communityconnectionswi.org Counties or Institutions Served: Oakhill Correctional Institution (OCI)</p>
<p>Name of Organization: Family and Corrections Network Types of Services: Provides information for incarcerated parents and families Contact Information: 93 Old York Rd., Suite 1 #510, Jenkintown, PA 19046 Phone: (215) 576-1110 Website: www.fcnetwok.org Counties or Institutions Served: General Public</p>
<p>Name of Organization: Family Connections of Wisconsin Types of Services: Referral to local human and social services organizations Contact Information: PO Box 259533, Madison, WI 53725 Counties or Institutions Served: Taycheedah Correctional Institution</p>
<p>Name of Organization: Justice 2000 Types of Services: Center for Driver's License Recovery and Employability helps Milwaukee residents restore their driver's licenses after suspension or revocation Contact Information: 8th Floor, 700 W. State St. Milwaukee, WI 53233 (414) 297-7526 Counties or Institutions Served: Milwaukee County</p>
<p>Name of Organization: Madison-area Urban Ministry Types of Services: Mentoring program for children of incarcerated parents; re-entry services Contact Information: 2300 South Park St., Suite #5, Madison, WI 53713, (608) 256-0906 Counties or Institutions Served: Dane County</p>
<p>Name of Organization: Project RETURN Types of Services: Employment, housing, and other assistance to ex-offenders Contact Information: 2821 N. 4th St. Suite 202, Milwaukee, WI 53212 Phone: (414) 374-8029 Website: www.projectreturnmilwaukee.org Counties or Institutions Served: Milwaukee County</p>

Name of Organization: St. Rose Youth & Family Center, Inc.
Types of Services: Family reunification services for children of incarcerated parents who are involved in a CHIPS case in Milwaukee County
Contact Information: Bridgett Brown, Program Coordinator, 3801 N. 88th St. Milwaukee, WI 53222
Counties or Institutions Served: Contact program for more information

**United Way - 211 - Referral Phone Numbers for
Wisconsin Human and Social Services**

Name of Organization: Brown County United Way
Types of Services: Referral to local human and social services organizations
Contact Information: 2-1-1
Counties or Institutions Served: Brown County, Kewaunee County, Marinette County, Outagamie County

Name of Organization: United Way of Dane County
Types of Services: Referral to local human and social services organizations
Contact Information: 2-1-1
Counties or Institutions Served: Dane County, Columbia County, Green County, Iowa County, Richland County

Name of Organization: United Way Fox Cities
Types of Services: Referral to local human and social services organizations
Contact Information: 2-1-1
Counties or Institutions Served: Winnebago County, Calumet County, Outagamie County, Waupaca County, Manitowoc County

Legal Services for Low-income Individuals

Name of Organization: Community Justice, Inc.
Types of Services: Legal services for low-income individuals and families
Contact Information: 222 South Hamilton Street, Suite 22, Madison, WI 53703
Phone: (608) 204-9642
Website: www.communityjusticeinc.org
Counties or Institutions Served: Dane County

Name of Organization: Family Law Project of the Frank J. Remington Center
Types of Services: Legal services for incarcerated individuals
Contact Information: 975 Bascom Mall, Madison, Wausau WI 53706
Counties or Institutions Served: Inmates within the Wisconsin Dept. of Corrections

Name of Organization: Legal Action of Wisconsin, Inc.
Types of Services: Legal services for low-income individuals and families
Offices Contact Information:
Milwaukee: (414) 278-7722
Madison: (608) 256-3304
Racine: (262) 635-8836
Green Bay: (920) 432-4645
Oshkosh: (920) 233-6521
La Crosse: (608) 785-2809
Website: <http://badgerlaw.net>
Counties or Institutions Served: Wisconsin residents

Name of Organization: Legal Aid Society of Milwaukee
Types of Services: Legal services for low-income individuals and families
Contact Information: 521 N. 8th Street, Milwaukee, WI 53233
Phone: (215) 576-1110
Website: www.fcnetwork.org
Counties or Institutions Served: Milwaukee County

Name of Organization: Nonprofit Legal Services of Southeastern Wisconsin Inc.
Types of Services: Legal services
Contact Information: PO Box 757, Milwaukee, WI 53201
Phone: (877) 619-8944, (414) 435-0636
Counties or Institutions Served: Milwaukee County, Racine County, Kenosha County, Ozaukee County, Waukesha County, and Washington County

Name of Organization: Wisconsin Judicare, Inc.
Types of Services: Legal services for low-income individuals and families
Contact Information: P.O. Box 6100, Wausau WI 54402-6100
Phone: (715) 842-1681 or (800) 472-1638
Website: www.judicare.org
Counties or Institutions Served: The 33 northern most counties in Wisconsin

9.E. Department of Corrections Rules and Regulations

9.E.1. Visits

- Wis. Admin. Code § DOC 309.08 sets forth rules about adding visitor's to an inmates visiting list, including that:
 - An inmate's child who is under 18 years old will not count towards the 12-person limit on a visiting list. To be added to a visiting list, the child needs to have approval of a non-incarcerated custodial parent or legal guardian, or have a court order directing the visit.
 - A custodial parent or another authorized adult who is on the inmate's visiting list must accompany a child who is under 18 years old.
- Family members in the Milwaukee area may set up visits by video conference (tele-visits) to Stanley Correctional Institution and Wisconsin Secure Program Facility from the Milwaukee Secure Detention Facility. Visitors must be on the inmate's visitors list. Visits are 15 minutes, and each inmate is limited to one visit per week. A maximum of five people may be present for the tele-visit (a newborn or toddler counts as one person). As of the writing of this information, tele-visits can be scheduled for inmates in WSPF on Thursdays, Saturdays, and Sundays. Tele-visits can be scheduled for inmates in Stanley on Tuesdays or Fridays. To schedule a visit, the friend or family member should call (414) 212-4979 from Monday through Thursday, between the hours of 8:00 a.m. and 11:00 a.m.

9.E.2. Legal Information and Services

- You have certain rights to access legal services, including the following [see Wis. Admin. Code § DOC 309.155]:
 - The Department of Corrections should provide reasonable access to the judicial process and legal materials and reasonable opportunity to prepare legal documents.
 - If you do not have sufficient funds to pay for mailing and copy expenses related to your legal matters, you may receive a loan of up to \$200 from your institution. You should not be charged more than 15 cents per page of photocopy or more than 2 cents per sheet of paper.
 - The Department of Corrections shall make reasonable efforts to ensure that adequate legal services are available to indigent inmates.
- The library at your institution contains legal materials, and the library staff will assist you with the legal materials in the library if you are unfamiliar with them. Inmate law library clerks also provide assistance in some institutions. Services are extended to inmates in restricted status. Photocopy and notary services are provided by the library or other staff within each institution.

9.E.3. Telephone Calls

- You should be allowed to make telephone calls to individuals on your visiting list and to an attorney [see Wis. Admin. Code § DOC 309.39].
- All calls you make must be made collect unless you have approval for payment from your general account.
- The institution staff should not monitor your phone calls with an attorney. If an institution staff person learns that he or she recorded or monitored your phone call with an attorney, he or she should notify you and your attorney.

- Limits on length and number of phone calls do not apply to your phone calls to your attorney.
- You are allowed to make telephone calls to an attorney regardless of your security status.

9.E.4. Personal Property

- Wis. Admin. Code § DOC 309.20 sets a limit on the amount of personal property that an inmate may store.
- However, if you have an ongoing legal case or anticipate filing a motion or petition with the court about your family law matters, you may store legal materials in your cell or room in a container no larger than 20” by 20” by 20” or 8000 cubic inches. The types of documents that you may need to store as legal materials include court documents; letters to and from another party or attorney; letters to and from children, if needed for court proceedings; photos of you with your children; and reports from county or state agencies.

9.E.5. Mail

- You should be allowed to communicate with family, friends, and attorneys [See Wis. Admin. Code § DOC 309.04].
- Under this rule, all incoming mail from family and friends can be opened and searched by the Department of Corrections if the inmate consents to receiving incoming mail through institution mail services.
- Institution staff are not allowed to open and read mail that you send to or receive from an attorney.