

**INCARCERATED PARENTS MANUAL:
A GUIDE TO YOUR LEGAL RIGHTS AND
RESPONSIBILITIES IN ARIZONA**

PRODUCED AND DISTRIBUTED BY

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Introduction

If you are a parent and are in prison or in jail, navigating the different possibilities of what may happen to your child/children while you are incarcerated may be extremely difficult. After passing the *Adoption and Safe Families Act*, the federal government incentivized states, including Arizona, to place children who are in foster care up for adoption as quickly as possible. The intention of the policy is to provide children with a permanent and stable home as quickly as possible. However, this type of policy highly affects the parental rights of incarcerated parents, especially those who are single-parents, and who are unable to find proper care for their children during their incarceration. If you are incarcerated in Arizona, your inability to provide a stable home may lead to the termination of your parental rights.

This manual has been created to help guide you as to what may happen to your parental rights while you are incarcerated. The hope is that if you wish to keep your parental rights, you take active steps in doing so. Likewise, the manual is aimed at helping you understand the legal processes' that can potentially take place if the State becomes involved with the care and custody of your child/children. While there is **no way** to guarantee that your parental rights not be terminated, there are steps you can attempt to take to help prevent this.

This manual is not meant to be legal advice and you should still consider consulting with an attorney regarding these matters. The manual is based on Arizona law as of July 2020. All of the code sections refer to Arizona law. It is important to note that laws in other states may be different, although many of them may be similar. **Even though the information in this manual is current as of July 2020, it is your responsibility to check relevant legal codes, court rules, and forms when using this manual.**

Dictionary- What do these legal words mean?

Abandonment

The failure of a parent to provide reasonable support and to maintain regular contact with their child, including providing normal supervision. Failure to maintain a normal parental relationship with a child, without just cause, for a period of six months constitutes evidence of abandonment even if the parent is incarcerated.¹

Adjudication hearing

An adjudication hearing is a trial where the judge makes a legal decision after hearing all of the evidence.

Adult

For this manual, adult means a person who is eighteen years of age or older.

Child

A minor who is eighteen years of age or younger. For purposes of this manual, whenever the word child is used, it includes all of your children.

Clear and Convincing Evidence

Evidence indicating that the thing to be proved is highly probable or reasonably certain. This is a *higher* standard of proof than preponderance of the evidence *but less* than beyond a reasonable doubt.

Consent

To approve/give permission.

DCS

The Department of Child Safety. This is an Arizona State department, which means that if DCS is involved in a case, then by definition the State is involved in that case. DCS will usually get involved if a child has no other guardian to claim him/her, or in cases where the State may believe the child is in danger or in need of appropriate guardianship.

Dependency

A dependency decision is a decision made by the Juvenile Court that a child is in need of effective care and control and that all parents are unable or unwilling to provide proper care and control. Because a child must first be labeled dependent before they can be adopted, DCS is usually the party who requests that the State file a dependency petition to obtain legal and physical custody of a child. However, any interested party can file a dependency petition. For example, your child's other parent or grandparent can file a dependency petition.

***Ex Parte* Communication**

¹ A.R.S. § 8-531(1).

For purposes of this manual an *ex parte* communication is any communication between the judge and one party about the case, outside of the presence of the opposing party. For example, the state's attorney talking to the judge who is in charge of your case, about your case, without you present would be considered *ex parte*.

Guardian *ad litem*

A person appointed by the court to protect the interest of a child in a particular court case. For example, if you want to remove your child from an appointed guardian the court will appoint your child a guardian *ad litem*, a separate person to represent your child's interests.

Guardianship of a minor

A legal guardian of a minor has the duty and authority to make important decision in matters that affect the minor including, but not limited to:²

- Authority to consent to marriage, enlistment in the armed forces of the United States and major medical, psychiatric and surgical treatment, to represent the minor in legal actions and to make other decisions concerning the child of substantial legal significance.
- When the natural parent's rights have been terminated by the court, or when there is no living parent, a guardian has the authority to consent to the adoption of the child and to make any other decision concerning the child that the child's parents could make.

Indigent

The term Arizona uses for a person who is unable to pay filing fees and court costs. Usually, a person has to submit information to the court in order for the court to label them indigent.

In Loco Parentis

A person who has been treated as a parent by a child and who has formed a meaningful parental relationship with a child for a substantial period of time.

Judicial Finding

The result of the deliberations of a jury or a court after hearing the evidence.

Jurisdiction

A court's power to decide a case or issue. If a court has jurisdiction over your case, then it has the legal power to hear the case and make legal decisions over that case.

Juvenile Court

The juvenile division of superior court. Most matters involving custody, guardianship, child welfare, termination of parental rights, etc. will be handled in juvenile court.

² A.R.S. § 8-531(8).

Kinship caregiver

An adult relative or person who has a significant relationship with the child and who is caring for the child under the care, custody and control of the DCS.

Legal-decision-making

The legal right and responsibility to make all nonemergency legal decision for a child including those regarding education, health care, religious training and personal care decisions.³

Neglect

The inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare.

Notarize

To have a document legally notarized requires the document to be certified by a notary public. The notary public is an official who verifies the identifies of everybody signing the document and marks the document with a stamp or seal.

Notice

Legal notification required by law. Notice requires that a party be provided with sufficient knowledge concerning legal issues that affects them. In the context of dependency and termination of a parent-child relationship, you have a legal right to be notified whenever a petition is filed against you.

Out-of-home placement

The placing of a child in the custody of an individual or agency other than with the child's parent or legal guardian. This includes placement following a temporary removal and placement of a child, voluntary removal and placement of a child, or placement due to dependency actions.⁴

Parent

For purposes of this manual parent strictly means the natural or adoptive mother/s or father/s of a child.

Parent-child relationship

Includes all rights, privileges, duties and obligations existing between parent and child.

Parties

Any person that is involved in the same case. Common parties in these types of proceedings include parents, the child/children and DCS.

³ A.R.S. § 25-401(4).

⁴ A.R.S. § 8-501(9).

Permanency Goal

A goal established by DCS when a child enters the system. It is what the Department hopes to accomplish through its services. The main objective of DCS when setting this goal is to place children in a safe nurturing forever home. In Arizona the initial permanency goal is family reunification, *unless* the Department is considering the termination of parental rights due to other circumstances in the case. Other common permanency goals are adoption and permanent guardianship.

Petition

A written statement that includes facts and allegations as grounds/reasoning for a desired court ruling. Common petitions in these cases are dependency petitions and petitions to terminate a parent-child relationship.

Power-of-Attorney

A person who has the legal authority to act for another person.

Preponderance of the Evidence

This is the burden of proof in most civil trials. The decision maker in a case (either judge or jury) is instructed to rule in favor of the party that, on the whole, has the stronger evidence.

Prima facie

At first sight; on first appearance. May be rebutted with further evidence or information. For example, not speaking to your child for six months constitutes *prima facie* evidence of abandonment, but you can try to rebut this evidence if you can provide other evidence that shows you had good cause for not speaking to your child, such as having been in a terrible accident, etc.

Relative

For this manual, a relative means a child's grandparent, great-grandparent, brother or sister of whole or half blood, aunt, uncle or first cousin.⁵

Reunification

The return of a child who has been removed from his or her parents and is currently in out-of-home placement. In most instances, the State's primary goal when dealing with an out-of-home child is family reunification.

Revoke

To take back or withdraw. For example, revoking a consented guardianship means that you are withdrawing your consent and taking back the rights you had delegated.

Sentence

The amount of time you will be incarcerated or placed on probation.

⁵ A.R.S. § 8-501(14).

Standard of proof

The degree or level of proof demanded in a specific case. Some examples are, “beyond a reasonable doubt” or “by clear and convincing evidence.”

Statute

A written law that is passed by a legislature at state or federal level.

Statutory grounds

Legal grounds that are established by a written law.

Severance

The action of ending a connection or a relationship.

Key Points

- Arizona uses the word indigent for someone who cannot financially afford certain legal services and fees.
- If you cannot financially afford an attorney, you have a right to a court appointed attorney, in the event that a petition to terminate your parental rights or a petition to declare your child dependent is filed. When you receive notice of one of these petitions being filed, you must notify to the court in writing that you are incarcerated and that you request an attorney be appointed to you.
- Speak to your criminal attorney before contacting your child. Especially, if your child is part of the criminal investigation.
- Speak to your criminal attorney about your reunification goals before taking a plea deal.
- If your child is not part of your criminal investigation, or if your child is part of your criminal investigation and your attorney has told you that speaking to your child will not affect you, you should try to maintain contact with your child during the entire time you are incarcerated.
- If your child has no other parent, and you will be incarcerated for a period longer than 6-months, it is in your best interest to help establish guardianship for your child, with a close family relative or friend with no criminal background.
- If you receive notice that your parental rights are being challenged, you cannot disregard this notice simply because you are incarcerated. It is important that you do not miss any hearings, because missing a hearing can be used as evidence that you voluntarily waive your parental rights and give the court the power to legally terminate them

Quick Questions & Answers

What do the § symbols and numbers at the end of the pages in this manual mean?

Whenever you see something like “A.R.S. § 8-533” at the bottom of the page it is referring to an Arizona law that related to the information being cited.

What do the case names at the end of the pages in this manual mean?

Whenever you see a footnote with a case name, it means that the particular rule, phrase, or fact pattern comes from that particular case.

If I am arrested and have children what steps should I take to ensure my parental rights are not terminated?

Although the steps you take depends on many different factors, such as whether your children are with you at the time of arrest, your number one priority is to ensure that your children have a safe place to stay either with a relative or your child’s other parent. To see what urgent steps you should take after being arrested look at the information starting on page 14.

What can I do while in prison/jail to avoid being found to have abandoned my child?

Arizona law does not have an official list of what you can do while you are incarcerated in order for you to defend against a claim of abandonment. However, the Court will look at all the facts and all the actions you take while incarcerated to determine whether you have abandoned your child. Some things you should do is send letters; call regularly; learn about what your child is doing; provide support, however minimal it may be; if possible, send gifts;⁶ if available at your prison/jail engage in parental classes; and if available at your prison/jail begin counseling. Look at page 34 for more information and for guidance on how to maintain a record of all the things you do concerning your parental rights while incarcerated. *Note that, if you are in jail for an ongoing criminal case, it may be in violation of your criminal case to have contact with your children if they are involved in the criminal investigation.* Make sure to let your criminal attorney know that you plan to keep contact with your child to ensure you won’t be in violation of any conditions in your ongoing criminal matter.

If I try really hard to maintain a parent-child relationship, will this guarantee that my parental rights are not terminated?

No. Taking the actions involved in the question above (sending letters, calling, etc.) does not guarantee that your parental rights will not be challenged, especially if your child is receiving services from DCS. There are certain situations when DCS can decide that offering you reunification services will be ineffective and, instead of working towards reunifying you with your child, select a plan that will lead to your parental rights being terminated and your child being adopted.

Who may file a petition to terminate my parental rights?

⁶ *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246 (2000).

Anyone who has a legitimate interest in the well-being of your child. This includes, but does not limit, a relative, a foster parent, a physician, DCS, or a private licensed child welfare agency.⁷

What are the most common statutory grounds alleged to terminate the parental rights of incarcerated parents?

The most common grounds alleged to be committed by incarcerated parents are:

- that the parent has abandoned the child
- that the parent's sentence is long enough that it will deprive the child of a normal home for a period of years
- or that the child has been in out-of-home care for a period of 15 months and the child is unlikely to reunify with the parent in the near future.

Look at page 26 for more information.

If the Court finds that one of the statutory grounds have been proven does this automatically mean that my parental rights will be terminated?

No. In order for a court to terminate your parental rights it must find that the evidence presented proves both, one of the statutory grounds in the Arizona statute⁸ *and* that terminating your parental rights is in the best interest of your child. However, note that each of these requirements have a different standard of proof. Statutory grounds must be proven by *clear and convincing evidence*, and the requirement that terminating your parental rights be in the best interest of your child must be proven by a *preponderance of the evidence*.

For this reason, it is “*easier*” to prove that terminating your parental rights is in the best interest of your child, because it requires a lower standard of proof. Look at page 26 of the manual to see at examples of what evidence a court may view as acceptable to meet both of these requirements.

If a legal case is filed to terminate my parental rights, do I have the right to a court appointed attorney?

It depends. If a case is filed to terminate your parental rights, you have the right to an attorney. If you are considered an indigent person, because you cannot afford an attorney, you have the right to a court appointed attorney to defend your case. If you are not considered indigent, you must search and pay for your own attorney. Remember that jail mail runs very slowly, if you receive notice that someone has filed a petition to terminate your parental rights, and you cannot afford an attorney, it is important that you act quickly by contacting the court appointed to your case to request that the court appoint an attorney to you. Look at page 44 for a sample letter.

⁷ A.R.S. § 8-533(A)

⁸ A.R.S. § 8-533

Do I have the right to a court appointed attorney for my child’s dependency proceedings?

It depends. If you are considered an indigent person, because you cannot afford an attorney, you have the right to a court appointed attorney during these proceedings.⁹ However, if you are not found to be indigent you must contact and pay for your own attorney. Remember that jail mail runs very slowly, if you receive notice that a dependency petition for your child has been filed, and you cannot afford an attorney, it is important that you act quickly by contacting the court appointed to your case to request that the court appoint an attorney to you. Look at page 44 for a sample letter.

Does being in prison/jail constitute just cause for failing to maintain a normal parental relationship with my child?

It can be. But the length of your prison sentence may also be used as evidence that your child will be in need of a normal home life for a period of years. Especially, if you are incarcerated for longer than fifteen-months, and your child has no other parent/relative to look after him/her.

What sentence is considered to be long enough for the Court to determine that my child will be deprived of a normal home for a period of years?

Arizona law does not have a bright line definition of when a sentence is sufficiently long to deprive a child of a normal home for a period of years and will consider each case based on its particular facts. In some cases, a 20-year sentence may be insufficient basis for terminating an incarcerated parent’s rights, and in other cases a 3-year sentence may be enough.¹⁰ Your child having another parent to look after him/her is usually beneficial when answering this question. Look at page 30 to see a more descriptive list of what the court will look at to determine the answer to this question.

Does the length of my sentence matter when DCS determines whether to provide reunification services?

Yes. Under Arizona policy, DCS must make every reasonable effort to offer your child permanency within twelve months of entering out-of-home care. Additionally, under federal law,¹¹ the government promotes and incentivizes the adoption of children in foster care. If your child is foster care for a period that is longer than 15 months and the Department believes you will be unable to remedy the reason that caused your child to be there in the near future, the Department will likely determine that reunification services will be ineffective and adopt a plan that is able to give your child a permanent home sooner (adoption). This is especially true for single parents.

If your sentence is longer than 15 months and if you are able to, it is important that you take active steps to find stable care for your child. The best way to do this is by asking a relative or a close family friend. Look at section II and section V for more information on placement and the process to terminate parental rights.

⁹ A.R.S. § 8-221.

¹⁰ *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246 (2000).

¹¹ Adoption and Safe Families Act (1997).

When there are grounds for abandonment, does there need to be an adoption plan in place in order to terminate my parent-child relationship?

No. An adoption plan does not have to exist to terminate your rights on the ground of abandonment. Even though an immediate adoption plan may be useful evidence to argue that termination of your parental rights is in the best interest of your child, it is not necessary. *The purpose of the Arizona statute is to free children for adoption who have no hope of being returned to their natural parents in the near future.*¹²

Are there certain felonies that will likely lead to me being considered an unfit parent, regardless of their length, resulting in my parental rights being terminated?

Yes. Under Arizona and federal law there are certain types of crimes that being convicted of them is enough evidence to determine you are an unfit parent. These include being convicted of murder,¹³ manslaughter of any other children you may have,¹⁴ and physical or sexual abuse of any other children you may have.¹⁵ Note, is important that you talk to your criminal attorney about your reunification goals prior to entering into any plea agreement for a criminal case.

Is DCS required to provide me with reunification services while I am incarcerated?

It depends. In most cases DCS is required to provide you with reunification services while you are incarcerated, assuming your parental rights have not been terminated prior to this. However, DCS is not required to provide you with reunification services if the Department gets permission from the court. This generally happens if the Department claims your case holds certain circumstances that makes giving you services ineffective.¹⁶

When is a child considered to have entered foster care?

A child is considered to have entered foster care 60-days after the child was removed, or on the date the court determines that the child has been subject to child abuse or neglect, whichever date is first.

If my parental rights have been terminated by a court order while I am in prison is there any way that I can get my rights back?

Although it is extremely rare, when a parent-child relationship has been terminated a parent may be able to get these rights restored. The limited ways to do this are described in section VII.

¹² *In re Appeal in Pima County Juvenile Action*, 162 Ariz. 156 (1989).

¹³ *In re Appeal in Pima County Juvenile Severance Action*, 162 Ariz. 536 (Ariz. Ct. App. 1989).

¹⁴ A.R.S. § 8-533(4).

¹⁵ *Pima County Juvenile Action No. S-2462*, 162 Ariz. 536 (Ariz. Ct. App. 1989).

¹⁶ Policy and Procedure Manual, *Chapter 3: Section 10.2 Services for Incarcerated Parents*, ARIZONA DEPARTMENT OF CHILD SAFETY.

I. Arrest: What happens to my child?

Arizona *does not* have a statute or special policy that requires an arresting officer to let you make arrangements for your child at the time of arrest. Policies and practices depend on the police department that you are being arrested by.

What happens to my child if my child is with me when I am arrested?

If your child is with you when you are arrested, and there is no other parent or adult present to take your child, police will usually either provide you with time to contact a family member or report your child to DCS. If the officer allows you to make arrangements before contacting DCS, act quickly to find a safe place for your child to stay. Not contacting DCS means you can make accommodations without the State's involvement for the time being. If this happens call one of the following:

- Your child's other parent;
- A responsible relative of your child;
- If neither of the above are available call a responsible friend that your child knows and trusts.

What happens if my child is with me but the arresting officer contacts DCS?

If your child is with you when you are arrested, and the arresting officer contacts DCS, your child will most likely go into DCS care. If possible, provide the arresting officer with contact information for your child's other parent or relative so that the officer can provide this information to DCS.

What happens if my child is not with me when I am arrested?

If your child is not with you when you are arrested it is important that you try to find reliable and safe care for your child quickly. Let either the school, day care center, or other caregiver know the following:

- (1) That you will not be able to pick up your child; and
- (2) That your relative/friend/babysitter/other parent will be picking up your child; and
- (3) Whom they can call to care for your child in case of an emergency.

Providing an emergency contact for your child is super important. If the school, day care center, or other caregiver does not have a way to contact you and has no other emergency contact, DCS will likely be contacted.

What happens if my child is at school or daycare and is not picked up by anyone?

If your child is at school or at daycare and is not picked up by a relative or a friend, the school will likely call DCS. Your child will likely then be taken into DCS care, and the Department will likely try to find an emergency out-of-home placement for your child.

What happens if my child goes to DCS?

If your child is in the care of DCS and there is no other parent to claim your child, then DCS will likely attempt to conduct an emergency out-of-home placement.

Act quickly by doing the following:

- (1) Call a relative immediately; or
- (2) Have a relative call DCS immediately; and,

- (3) Tell your relative to take any proof that exists about their relationship with your child to DCS. Proof can be a birth certificate, a signed letter from you, or a passport.

In doing so it is likely that DCS will release your child to this person under a temporary placement.

II. Placement: Where will my child live and who will have legal control over my child?

To protect your relationship with your child, it is in your best interest to find proper care for your child quickly and to participate in this arrangement as much as possible. If you are to be incarcerated for longer than 15-months, you are a single-parent, or your child's other parent is unable to take custody, and you do not have immediate family or qualified friends who are willing to take care of your child, there is a *high chance* that your child will go into state custody; in which case, the State of Arizona will likely file a dependency petition for your child and a petition to terminate your parental rights. The State will likely claim that you are unfit and unable to care for your child due to your incarceration and try to find an adoptive family for your child.

What happens to my child if there is no DCS involvement?

If DCS does not become involved, then you may be able to arrange care for your child on your own, without any involvement by the State. You can arrange your child be cared for by the other parent, another relative, or a responsible and trustworthy friend that is 18 years-of-age or older. If your child's other parent is able to care for your child, he/she may simply take custody of your child without having to get the court involved.

If your child does not have another parent, or the other parent is unfit and unable to carry out their parental responsibilities, your next best choice is to arrange care for your child with another relative or friend. In order for this individual to properly act as a guardian for your child you should consider delegating your legal rights to them. There are three ways to do this which are listed below.

- (1) *Establishing a Revocable Parental Power of Attorney to a Relative or Friend Over Your Child*
Arizona law allows you to transfer to another person your powers regarding the care, custody, or property of your child.¹⁷ You may do this by creating a power of attorney.¹⁸ Parental rights may not be transferred for a period that is longer than *six months*, but a power of attorney *may be renewed* every six months after it is created.¹⁹ You may end a power of attorney *at any time*.

The power of attorney form must be notarized. You can arrange for this by speaking to your attorney or asking if this may be done at the facility where you are incarcerated. Make sure you make copies for each person involved. To see a sample power of attorney form look at appendix 3.

¹⁷ Except the power to consent to marriage or adoption of the minor.

¹⁸ A.R.S. § 14-5104.

¹⁹ *In Re Appeal in Maricopa County Juvenile Action*, 173 Ariz. 634 (Ariz. Ct. App. 1993) (noting that the parties have renewed the revocable power of attorney every six months since its execution).

Although you may transfer your parental rights to another individual by creating a power of attorney, it is a temporary *non-guardianship* arrangement. This means that if DCS takes custody of your child in the future, or someone wants to adopt your child, and a dependency petition is filed, the petition will give the juvenile court authority that is superior to your rights to award temporary custody of your child through the power of attorney. This allows the Court to still make a legal determination of dependency for your child. Look at section III for more information on what happens in a dependency court.

Real Life Example: Father was murdered, and mother was arrested for having allegedly been involved in his murder. Child was left with maternal grandmother. Paternal grandparents filed a dependency petition in juvenile court and were awarded custody pending a dependency hearing. The mother created a “Revocable Parental Power of Attorney” and delegated her parental rights to her mother, the child’s maternal grandmother. The Court found that a revocable power of attorney is a temporary non-guardianship arrangement and that the Court may still make a legal determination as to the child’s dependency status since the paternal grandparents filed a petition.²⁰

Nonetheless, in most situations where you believe the custody of your child will not be questioned, a revocable power of attorney is sufficient for you to transfer your legal power as a parent to a temporary caregiver for your child. In doing so the person will be able to act on your behalf for parental matters such as school registration, health visits, etc.

(2) *Having a Relative or Friend Petition for Legal Guardianship of your Child*

Under Arizona law you can consent to appoint a permanent guardian for your child.²¹ Usually, both parents must consent to the permanent guardianship. However, if either parent objects to a motion for permanent guardianship, the court may schedule a settlement conference or mediation or remove the motion and continue with a dependency petition. If your child’s other parent’s whereabouts are unknown, the court may make an exception for the consent requirement and grant the permanent guardianship.

If all the party’s consent to the guardianship the court will consider whether the prospective guardianship is in your child’s best interest. Note that Arizona law requires your child to be in the custody of the prospective permanent guardian for at least nine months prior to giving them legal guardianship. However, this time requirement may be waived for good cause. If your child has not been in the potential guardian’s custody for more than nine months, and your child’s other parent is unable to care for your child, the potential guardian may argue to the court that your incarceration status is good cause to waive the nine month requirement.

You will have to contact the party you wish to petition for guardianship of your child as they have to be the one to submit the petition to the court. After the potential guardian files the petition with the court, he/she must serve notice of the guardianship hearing and a copy of the motion to all required parties, including you. At this point if you cannot afford an

²⁰ *In Re Appeal in Maricopa County Juvenile Action*, 173 Ariz. 634 (Ariz. Ct. App. 1993).

²¹ A.R.S. § 8-871.

attorney you may request one from the court.²² See Appendix 2 for a sample letter requesting an attorney.

In order to grant the appointment of a permanent guardian the court must find that the likelihood that your child would be adopted is not likely or that termination of your parental rights would not be in your child's best interest. Before the final hearing, the court will appoint an officer to conduct an investigation to determine whether the potential guardian is fit and whether the best interest of your child will be served by granting the permanent guardianship.²³ Note, if the potential guardian has a criminal history or a criminal case of their own, it is unlikely that the court will grant the guardianship.

Courts have specific forms that must be filled and submitted to establish a permanent guardianship. Look for the form that your court requires by looking for it online at your assigned court's website.

Things to keep in mind:

- The form must be notarized.
- The prospective guardian will have to prove by *clear and convincing evidence* that the prospective guardianship is in your child's best interest.²⁴ This may require the potential guardian to seek the advice of an attorney.
- If your child is 14 years or older, he/she may object to the appointment.²⁵
- There are steps that the person seeking to become guardian must complete, including taking necessary state mandated trainings and obtaining fingerprint clearance.
- There is a fee to file the petition. A list of current fees is available from the Self Service Center and from the Clerk of Court's website. As of the date this manual was created, the fee was set at \$ 280 in Maricopa County. This fee may be waived if the potential guardian cannot afford it, by applying for a deferral (payment plan) or a waiver with the court. See Appendix 5 for a fee waiver sample.
- Even if the court approves the appointment, you should still actively act as a parent as much as you possibly can while you are incarcerated. If you fail to take actions that show you're interested in maintaining a relationship with your child, it is possible to use this to try and terminate your parental rights at a future time.
- If the court finds that grounds exist for a permanent guardianship the court may also include provisions for visitation with you and other relatives in the final order. Having an attorney to advocate for you gives you a greater chance to get visitation privileges with your child. For this reason, it is important that you request the assistance of counsel as soon as the potential guardian files the initial petition.

²² A.R.S. § 8-872.

²³ The court may charge a fee for this investigation, but the fee may be waived for good cause.

²⁴ A.R.S. § 8-872.

²⁵ A.R.S. § 14-5203.

(3) *Having Relative or Friend Petition for Legal Decision-Making of your Child*

Under Arizona law a person other than a parent may petition for legal decision-making authority or placement of your child **if** that person stands in *loco parentis* to your child.²⁶ A person is considered to be in *loco parentis* of a child if, that person has been treated as a parent by the child and has formed a meaningful parental relationship with the child for a long period of time. Grandparents are often in *loco parentis*.

If your child's other parent also wants control of your child, then the court will have to find that it would be very harmful for your child to be in the care of the other parent. This option also requires that you not be married to your child's other parent.

Things to keep in mind:

- The Court may still decide to involve DCS
- This is generally done when parents are obtaining a divorce and cannot agree on decision-making of the child.
- For more information on legal decision-making visit:
<https://www.azcourthelp.org/finder/child-custody/32-things-to-know-about-parenting-time/file>

What happens to my child if there is DCS/Court involvement?

If your child is taken to DCS it is likely that the department will conduct an investigation to determine whether your child is safe. This investigation is likely to lead to court involvement. If this is the case, two things are likely to happen: (1) DCS will contact the other parent; (2) if the other parent's whereabouts are unknown, is incompetent, or is unable to fulfill their parental responsibilities, DCS will begin a dependency petition and look for an out-of-home placement for your child.

(1) DCS will contact the other parent

The first thing DCS is likely to do is attempt to contact your child's other parent. If DCS does this successfully, your child is likely to get released into the care of that parent without any more government involvement. However, there is also a probability that DCS will initiate an investigation which can potentially lead to the removal of your child from the other parent and lead to an out-of-home placement or a petition for termination of parental rights. If your child's other parent is unavailable because he/she is dead, incompetent, incarcerated, or unfit to fulfil his parental obligations, your child will likely be placed in an out-of-home placement until the DCS decides on a permanent plan for your child.

(2) DCS will look for an out-of-home placement for your child

If your child is in DCS custody, the department will seek to provide your child with an out-of-home placement that addresses his or her unique needs and that is consistent with your child's best interest.²⁷ The order of preference for potential placement is:

- (1) The other parent.
- (2) A grandparent.

²⁶ A.R.S. § 25-409.

²⁷ Policy and Procedure Manual, *Chapter 4: Section 5 Selecting Out-of-Home Care Provider*, ARIZONA DEPARTMENT OF CHILD SAFETY.

- (3) In kinship care with another member of your child's extended family, including a person who has a significant relationship with your child.
- (4) In licensed family foster care.
- (5) In therapeutic foster care.
- (6) In a group home.
- (7) In a residential treatment facility.

For Native American Children, the order of placement preference is according to the requirements of the Indian Child Welfare Act (ICWA). The placement preference is the following:²⁸

- (1) A member of your child's extended family.
- (2) A foster home licensed, approved or specified by your child's tribe.
- (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.
- (4) An institution approved by the Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

If your child is re-entering out-of-home care the Department will likely place your child in a foster home which your child has previously lived in. If there is more than one child, the Department will attempt to place all of them together *unless* there is documented evidence that continued contact would not be in the best interest of one of your children.

What does DCS consider in determining whether a placement is in the best interest of your child?

Remember that the Department considers order placement preference as well as your child's best interests. The following are considered in determining whether a placement is in the best interests of your child:

- The caregiver's interest in providing permanency, usually in the form of adoption, for your child if reunification efforts with you or your child's other parent fail.
- Your voiced wishes and the voiced wishes of your child, unless the wishes are contrary to law.
- The relationship of the caregiver with your child and your child's family.
- The closeness to your home and your child's home school or school district.
- The strength and parenting style of the caregiver in relation to your child's behavior and needs.
- The caregiver's willingness to communicate and interact with your child's birth family to support visitation and the reunification process.
- The caregiver's ability and willingness to accept placement of your child and all or any siblings; and to provide or assist in maintaining frequent visitation or other ongoing contact between your child and siblings if they are not placed together.
- Your child's fit with the family with regard to age, gender and sibling relationships.
- If your child has behavioral health needs:

²⁸25 U.S.C. § 1901 et seq.

- Whether your child’s behavior will place other children in the home at risk; and
- The caregiver’s ability to provide the necessary level of supervision to prevent harm to your child or to prevent your child harm others.
- Whether the caregiver is a member of your child’s extended family, an adult sibling, or an adult with a significant relationship to your child.
- If the caregiver is currently providing care to minor siblings (unless it is contrary to your child’s or a sibling’s safety or well-being).
- If the caregivers can communicate in your child’s language.

If the Department Tries to Establish Kinship Foster Care for your Child

If the Department tries to establish kinship foster care services, the department will try to keep families together by finding and assessing relatives and persons, who have a significant relationship with your child, for the placement. *Remember if you have someone in mind, it is important that both of you contact DCS to let them know.*

The process to establish a kinship caregiver is similar to the process taken to appoint a legal guardian. The main difference is that a kinship caregiver is caring for your child on behalf of the care, custody and control of the Department, and the Department will make all the necessary paperwork and reporting to the juvenile court for approval of the placement. A kinship caregiver must be:

- 18 years or older,
- be fingerprinted and cleared by a criminal history records check,
- be cleared by a Department’s records check of child abuse and neglect reports and history,
- and be able to pass an evaluation that includes a visit to their home

Note that this process also requires that all adult household members complete a fingerprint-based background check. A positive reason for establishing a kinship is that there are many financial and non-financial services available to kinship caregivers. The Department will notify the caregiver of what these services are.

Things to keep in mind:

- Placing your child with a kinship caregiver does not terminate your parental rights, but it also does not guarantee that your parental rights will not be terminated in the future. You should still continue to try and maintain a parental relationship with your child in order to avoid terminating your rights in the future. Look at section V for more information.
- Should your sentence be longer than fifteen months it is likely that DCS will seek to find either a permanent guardian or place your child up for adoption in the future.
- Putting your child in an out-of-home for more than 72-hours will result in DCS filing a dependency petition. Appointing a kinship caregiver usually means that the dependency process has already begun. Look at section III for more information.
- DCS will likely create a reunification plan and continue with the dependency process even after appointing a kinship caregiver. If DCS conclude that there are statutory grounds to terminate your parental rights, and that termination is in your

child's best interest, then DCS will likely file a petition to terminate your parental rights. Look at section V to learn about the process of terminating a parent-child relationship.

What happens to my parental rights if there is no DCS/Court involvement, I do not appoint a legal guardian/parental power of attorney, and my child's other parent takes temporary custody of my child?

If your child's other natural parent takes full temporary custody of your child without involving the court your parental rights remain as they are. However, you must attempt to maintain a parental relationship with your child in whatever way that you can while you are incarcerated to avoid creating legal grounds that may be used to prove that you have abandoned your child.

If the other parent files a petition to terminate your rights, you will receive notice of an initial hearing. You cannot disregard this notice simply because you are incarcerated. It is important that you do not miss any hearings, because missing a hearing can be used as evidence that you voluntarily waive your parental rights and give the court the power to legally terminate them. See section V for more information.

III. Dependency Court Process: What happens in Dependency Court?

If DCS takes custody of your child,²⁹ it is likely that the Department will file a dependency petition. A dependency petition may also be filed by someone other than DCS. A common example of this is when a step parent wishes to adopt a child, the step parent must first file a dependency petition so that the court legally determines the child is able to be adopted.

If you are incarcerated the court is likely to grant DCS the dependency petition in which case the Department will create a permanency goal for your child. A permanency goal is what the Department hopes to establish for your child, and for your family, through the process and under its services.

Do I have the right to an attorney in a dependency case if I cannot afford one?

Yes. If the court finds that you are indigent you have the right to a court appointed attorney.³⁰ The judge will usually inform you of this during the initial dependency hearing. Because you are incarcerated, when you receive notice of your initial hearing it is important you request a transport. You must *also* notify the court *in writing* that you are incarcerated, that you have requested to be transported and that you request an attorney be appointed to you. A sample letter that you can send to your judge can be found on page 43.

²⁹ This includes DCS being the one that places your child in an out-of-home placement.

³⁰ A.R.S. § 8-843(B)(1).

What happens if I am unable to get transport to a hearing?

If you know you will be unable to get transported to a court hearing, try to contact the court to order your transport or to let you attend the hearing over the phone. Make sure you keep a record of your attempt to get to the hearing.

What does it mean that my child is “dependent”?

By labeling your child as dependent, the court is essentially saying that your child is in need of parental support or care, and that your child is able to get adopted.

What does the court look at when making a determination that my child is dependent?

The court looks at whether your child:³¹

- a. Is in need of proper and effective parental care and control or has no parent or guardian willing to exercise or capable of exercising such care and control.³²
- b. Is not provided the necessities of life, including adequate food, clothing, shelter or medical care.
- c. Is living in a home that is unfit because of abuse, neglect, cruelty or abandoned by a parent, a guardian or any other person having custody or care of your child.

What may happen if my child is declared dependent?

If a court declares that your child is dependent, and DCS was the one who made the petition to the court, then DCS will either decide to provide you with reunification services, or to seek a different permanency goal such as adoption. If the petition was filed by someone seeking to adopt your child, then this holding makes your child eligible for this adoption.

How will DCS select the Permanency Goal for my child?

Unless aggravating circumstances exist, DCS will determine your child’s permanency goal in the following order:³³

- Family Reunification
- Adoption
- Permanent Guardianship
- Another Planned Permanent Living Arrangement (For youth age 16 years or older)

What happens if the court finds aggravating circumstances?

If the court finds aggravating circumstances than DCS is not required to give you and your child with reunification services.³⁴ This means the Department may choose adoption as the permanency goal for your child from the very beginning.

³¹ A.R.S. § 8-201.

³² This will likely be the grounds for finding that your child is dependent if you are incarcerated.

³³ Policy and Procedure Manual, *Chapter 3: Section 3.1 Selecting the Permanency Goal*, ARIZONA DEPARTMENT OF CHILD SAFETY.

³⁴ A.R.S. § 8-846(D).

What are the aggravating circumstances the court will look at?

The court will look at one or more of the following circumstances:³⁵

- (a) You have expressed no interest in reunification with your child, or someone has attempted to locate you within three months after the filing of the dependency petition but was unable to find you.
- (b) You are suffering from a mental illness or mental deficiency that makes you unable to benefit from the reunification services.
- (c) Your child has previously been removed and found dependent due to physical or sexual abuse, was returned to you, and then removed within eighteen months of being returned again for physical or sexual abuse.
- (d) You have committed a dangerous crime against a child, or have cause a child to suffer a serious physical or emotional injury, or you should have known that another person has committed either. This does not require a criminal conviction.
- (e) Your rights to another child have been terminated, you have not successfully addressed the issues that led to the termination and you are unable to perform your parental responsibilities now.
- (f) If your child is dependent and all of the following apply:
 - a. Your child has been removed from you on at least two previous occasions.
 - b. You were offered reunification services.
 - c. You are unable to perform your parental responsibilities.
- (g) Your child is under six months of age and was exposed to drugs and the following are true:
 - a. You're are unable to perform your parental responsibilities because of a history of chronic abuse of dangerous drugs or controlled substances.
 - b. A licenses health care provider has determined that you are likely to continue under this condition for an a long undetermined amount of time.

What is the standard of proof needed to prove that aggravating circumstances exist in my case?

A court must find by *clear and convincing* evidence that one of the aggravating circumstances above exist. A conviction for the conduct listed above is enough for clear and convincing evidence.

When does DCS consider adoption as the permanency goal instead of family reunification?

DCS will change the goal from family reunification to adoption when it is in your child's best interest and there are statutory grounds to terminate your parental rights. Look at section V to learn which statutory grounds may terminate your parental rights.

When does DCS determine that permanent guardianship is the appropriate permanency goal for my child?

DCS selects a permanency goal of permanent guardianship when family reunification and adoption are unlikely and/or there is a compelling reason not to terminate your parental rights.

³⁵ A.R.S. § 8-846(D).

If you are likely to be incarcerated for longer than a 15-month period, establishing a permanent guardianship will likely be the best option to avoid your parental rights being terminated and your child being given up for adoption in the future. If you have a family member or a friend that is willing to take permanent guardianship of your child, act quickly to inform DCS. Nonetheless, it is important to keep in mind that in Arizona, DCS is asked to make every effort to minimize the length a child lives in out-of-home care by actively working on a permanency goal that gives a child long-term stability.³⁶ Because appointing a permanent guardian is revocable and is not the most permanent home/family option for a child it is usually not the first choice, especially if there is someone who seeks to adopt your child.

Can DCS recommend to the court that the permanency goal for my case be changed if there is no evidence of aggravating factors and the Department originally recommended family reunification?

Yes. DCS will recommend that the court change the permanency goal from family reunification to another option if the Department concludes that:³⁷

- No available services or interventions will allow you and your family to address the safety and risk factors that prevent your child from living safely at home within a time frame that meets the needs of your child.

This usually happens if your sentence is longer than fifteen months and there is no other person to take care of your child.

What happens if DCS does recommends a permanency goal of adoption and obtains a court order approving the goal?

DCS will likely petition to have your parental rights terminated. Look at section V for more information.

IV. What services may I receive from DCS while I am incarcerated?

Unless a court gives DCS permission not to, the Department shall provide you with reunification services so long as DCS is a party to the dependency case.³⁸ The Department should also communicate to you and the correctional service staff about your case plan, service needs, and determine what reunification services may be given to you at the correctional facility. The Department is also responsible for providing you with the name and addresses for the court and assigned attorney that is handling the dependency proceedings for your case.³⁹

³⁶ Policy and Procedure Manual, *Chapter 4: Section 1 Out-of-Home Dependency*, ARIZONA DEPARTMENT OF CHILD SAFETY.

³⁷ Policy and Procedure Manual, *Chapter 3: Section 3.1 Selecting the Permanency Goal*, ARIZONA DEPARTMENT OF CHILD SAFETY.

³⁸ A.R.S. § 8-843 (If your child is not in custody of the Department and the Department is not a party, the court shall not require the Department to provide services).

³⁹ Policy and Procedure Manual, *Chapter 3: Section 10.2 Services for Incarcerated Parents*, ARIZONA DEPARTMENT OF CHILD SAFETY.

Can DCS find that reunification services are not required while I am incarcerated?

Yes. The assigned case specialist to your case will consult with the Assistant Attorney General to decide whether your criminal history and/or the length of your incarceration justifies pursuing an order waiving reunification services and/or pursuing a permanency goal other than reunification for you and your child.

When will DCS decide that reunification services are not available for my case?

DCS will decide that reunification services are not available for your case if they believe you are unable to fix the risk factors in your case in a time frame that meets the permanency needs of your child. If this is the case, the Department will ask the Attorney General to file a motion with the court requesting a judicial finding that reunification services do not have to be provided.

What are things that DCS looks at to decide whether the State will file a motion to have the court relieve them of their obligation to offer you services while you are incarcerated?

- The age of your child and the relationship between your child's age and the likelihood that incarceration will deprive your child of a permanent living arrangement;
- The relationship between you and your child prior to you being incarcerated;
- The degree to which your parent-child relationship can be continued and nurtured during incarceration;
- The effect of no parental presence on your child;
- The nature of the felony you have been incarcerated for;
- The length of your sentence;
- The availability of another parent or caregiver to provide a normal home life.

Things to consider:

- You may only receive DCS services if the Department is involved in your child's dependency case. If there is no involvement by the Department then you may have to contact local organizations such the legal aid to assist you with your parental rights.
- DCS may decide that reunification services should not be provided to you as early as the filing of the dependency petition.

Specific Example:

- Parent was sentenced to concurrent terms of 5.5 and 5 years in prison. Daughters were found dependent prior to parent being incarcerated. Following the incarceration DCS filed a motion to terminate the parent's parental rights. The Court granted the motion finding that the parent's sentence length would deprive the children of a normal home and that the termination was in the best interest of the children. Parent argued that prior to seeking termination the Department was required to provide reunification services. The Court held that the Department is not obligated to provide reunification services when the cause of the severance is the length of a prison sentence.⁴⁰ The Court found that nothing the Department could offer would change the reality created by the forced physical separation.

⁴⁰ *James G. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 1 (2005).

V. How can my parent-child relationship be terminated?

In Arizona, DCS is asked to make *every effort to minimize the length of time* that a child lives in out-of-home care. Therefore, the department is asked to pursue a second permanency goal for children that are unlikely to achieve family reunification within 12 months of the child's initial removal.⁴¹ Adoption is viewed as a permanency goal that provides enough benefits that are in the best interest of children, such as stability, care and safety.⁴² Should your *incarceration sentence be longer than 15 months*, it is likely that the Department will pursue a permanency goal of adoption. In order to do so the Department will likely file a petition to terminate your parental rights.

After a petition is filed with the court, your parental rights may be terminated if two things are met: (1) statutory grounds for terminating your rights are proven, and (2) that terminating your rights is in the best interest of your child.

Who can file a petition to terminate my parental rights?

Anyone who has a legitimate interest in the welfare of your child can file a petition to terminate your parental rights. This includes a relative, a foster parent, a physician, DCS, or a private licensed child welfare agency.⁴³

What statutory grounds may the person filing for petition to terminate my parental rights allege?

A person filing a petition to terminate your parental rights has to present evidence of any one of the following:⁴⁴

- (1) That you have abandoned your child.
- (2) That you have neglected or willfully abused your child, or that you knew or reasonably should have known that someone else was abusing your child either physically, sexually or emotionally.
- (3) That you are unable to complete the responsibilities of a parent because of mental illness, mental deficiency, or a history of chronic abuse of dangerous drugs, controlled substances, or alcohol and that you will likely continue to do so for a long period of time.
- (4) That you have been convicted of a type of felony that proves that you are unfit to have future custody and control of your child, or that your sentence is of such length that will deprive your child of a normal home for a period of years.
- (5) If you believe that you are the father of a child and have not established paternity, that you have failed to file a paternity action within thirty days of receiving notice that your potential child is planned to be adopted.
- (6) If you believe that you are the father of a child and fail to file notice of claim of paternity.

⁴¹ Policy and Procedure Manual, *Chapter 4: Section 1 Out-of-Home Dependency*, ARIZONA DEPARTMENT OF CHILD SAFETY.

⁴² *Demetrius L v. Joshlynn F.*, 239 Ariz. 1 (2016) (noting that adoption can provide sufficient benefits to support a best-interest finding in private and state action severances).

⁴³ A.R.S. 8-533.

⁴⁴ A.R.S. § 8-533(B).

- (7) That you relinquished your rights to your child to an agency or that you have consented to adoption.
- (8) That your child is being cared for in an out-of-home placement under the supervision of juvenile court, a welfare agency, that the agency responsible for the care of your child has made good efforts to provide you with appropriate reunification services and that one of the following exists:
 - a. Your child has been in an out-of-home placement for a total period of nine months or longer and you have neglected or willfully refused to fix the circumstances that cause your child to be there.
 - b. If your child is under three years of age and has been in an out-of-home placement for a total period of six months or longer based on a court order and you have neglected or willfully refused to fix the circumstances that cause your child to be there, including your refusal to participate in reunification services.
 - c. Your child has been in an out-of-home placement for a total period of fifteen months or longer based on a court order or voluntary placement, you have been unable to fix the circumstances that cause your child to be in an out-of-home placement, and it is really likely that you will not be capable of giving proper and effective parental care and control in the near future.
- (9) That your identity as the child's father is unknown and continues to be unknown following three months of serious efforts to identify and locate you.
- (10) You have had had your parental rights terminated for another child within the last two years and you are currently unable to take on your parental responsibilities due to the same cause.
- (11) Your child was placed in out-of-home care based on a court order, the agency responsible for the care of your child made strong efforts to provide you with reunification services, your child was returned to you, and within eighteen months of being returned to you, your child is again in an out-of-home placement and you are unable to take on your parental responsibilities.

What happens after a petition has been filed?

Once a petition has been filed a time and place will be set for the first hearing. You will then receive notice of the first hearing and a copy of the petition. It is really important to attend all hearings; failure attend may be seen as you waiving your parental rights.

What happens at the first hearing?

At the first hearing the court schedules a pretrial conference or status conference, schedules the termination hearing (where it will make the final decision), and the court instructs you that your failure to attend any of these hearings may result in terminating your parental rights.

What happens if I do not attend the initial hearing or if I miss a hearing?

If you do not attend the initial hearing, or if you miss a hearing, and the court determines that you have been given proper notice, the court may find that you have waived your legal rights as a parent and that you have admitted the allegations of the petition filed against you. The court may then legally terminate your parental rights.

Once you receive notice of any scheduled hearings, act quickly to make the proper arrangements for your attendance. Contact the court immediately and let the judge know you are incarcerated and that you would like an order requesting your transport and that you want an attorney to be appointed to you. You may also, speak to prison officials about scheduling your transport, but they may tell you that you need a court order to do so. If prison officials deny your request, contact the court and follow up on the order or request that the court provide you with an alternative such as attending the hearing telephonically.

If you take actions, like those mentioned above, to show that you are actively trying to attend all hearings, you may have legal grounds to file a motion to set aside a judgment of the court, in the event that the court terminate your parental rights because you failed to appear.⁴⁵

How do I get transported to the hearing?

Try to get a transport order by doing the following:

1. Call or write your lawyer and/or the judge and tell them that you want to be present at the hearings.
2. Ask the court to issue an order that you be transported to the hearing.
3. Ask for a filed, stamped copy of the judge's order to be sent to the warden or sheriff where you are incarcerated and to the county sheriff where the juvenile dependency court is located.

Jail mail may move very slowly. You should not depend on receiving hearing notices in time to get to court. If you know your child is in DCS custody, contact the Department and ask them to provide you with the hearing dates. Keep track of your child's hearing dates. Ask your lawyer and social worker to let you know of any changes in court dates.

What happens if I contest the petition for terminating my parental rights?

If you contest the petition the court must hold what is called a termination adjudication hearing to rule on whether your parent-child relationship should be terminated.⁴⁶ If you do not object the petition, then you are essentially consenting and waiving your parental rights.

What is the standard of proof that must be met to terminate my parent-child relationship?

A Court must find that the statutory grounds is proven by *clear and convincing* evidence, and that terminating your parental rights is in the best interest of your child by a *preponderance of the evidence*.⁴⁷

⁴⁵ *Kendra M. v. Ariz. Dep't of Econ. Sec.*, 2009 Ariz. App. Unpub. LEXIS 124 (2009); *see also John C. v. Sargeant*, 208 Ariz. 44 (Ariz. Ct. App. 2004).

⁴⁶ A.R.S. § 8-537.

⁴⁷ A.R.S. § 8-537; *Kent K. v. Bobby M*, 210 Ariz. 279 (2005).

What must be proven first, that there are statutory grounds or that terminating my parental rights are in the best interest of my child?

First the court determines if statutory grounds exist, and once this has been proven the focus shifts to your child’s best interest. However, once the court finds statutory grounds, it may presume that the interest of your child is different from your interest’s.⁴⁸

What if the court does not find statutory grounds but determines that terminating my parental rights is in the best interest of my child?

This alone is not sufficient to grant termination. However, finding that terminating your parental rights is not in your child’s best interest, alone, is enough to deny termination.⁴⁹

Specific example-

- After father and mother split up, father did not contact child for a year. He gave neither support, gifts, cards, letters, or made any phone calls. A year later mother petitioned to terminate father’s parental rights so that she may list her parents as guardians in her will and so that her parents may be able to adopt the child in the future. The father opposed the petition. The court found that statutory grounds for abandonment was proven, but the court did not point out how the termination would serve the child’s best interests. Therefore, termination was not granted at that point.⁵⁰

Can the state or the person petitioning to have my parental rights terminated argue that there is evidence of more than one statutory ground?

Yes. The petition may allege as many statutory grounds as a party believes they can prove. However, just proving one of the grounds alleged is enough to move on to the best interest analysis.

Is the state required to provide me with reunification services while I am incarcerated?

It depends, while there is a general constitutional obligation to provide you with reunification services, in Arizona there is no constitutional obligation to give you reunification services that are ineffective.⁵¹ As such, DCS *is not required* to provide services, *prior* to seeking termination of your parental rights, when the reasons for termination are based on the length of your sentence. Look at section IV for more information.

What is considered diligent effort by DCS to provide me with appropriate reunification services?

DCS makes diligent effort to provide appropriate reunification services when it provides you with time and opportunity to participate in programs designed to help you to become an effective parent.

⁴⁸ *Kent K. v. Bobby M*, 210 Ariz. 279 (2005).

⁴⁹ *In re Appeal in Maricopa County Juvenile Action No. JS_500274*, 167 Ariz. 1 (1990).

⁵⁰ *In re Appeal in Maricopa County Juvenile Action No. JS_500274*, 167 Ariz. 1 (1990).

⁵¹ *Brandon G. v. Dep’t of Child Safety*, 2019 Ariz. App. Unpub. LEXIS 636 (this case is pending review by the Supreme Court of Arizona)

Does every type of felony conviction prove that I am an unfit parent?

No. To support termination of parental rights your specific felony conviction must directly demonstrate your serious unfitness to parent, as opposed to the general character defects reflected by the commission of *felonies in general*.⁵² Some felonies that demonstrate substantial unfitness are murder and child abuse.

Specific example-

- Father was accused of murdering mother in front of his children. DCS sought to terminate the father's parental rights. The Court noted that because the children were placed at risk of harm, the father had mentally abused his children by allowing them to witness the murder of their mother. This specific crime proved him unfit to care for and control his children.⁵³

What is considered a lengthy sentence?

Arizona law has no bright line definition of when a sentence is sufficiently long to deprive a child of a normal home for a period of years. Courts must consider each case on its particular facts.⁵⁴

When considering this question, the court needs to determine the following:

- The length and strength of the parent-child relationship existing when incarceration begins;
- The degree to which the parent-child relationship can be continued and nurtured during the incarceration;
- The age of the child and relationship between the child's age and the likelihood that incarceration will deprive the child of a normal home;
- The length of the sentence;
- The availability of another parent to provide a normal home life; and
- The effect that no parental presence will have on the child.

Keep in mind that if your sentence is longer than 15-months there is a good chance that the state/petitioning party may argue this length is enough to find statutory grounds.

Specific example-

- Father was sentenced to prison for 6.5 years for burglary. Because the father was a Mexican national, he also faced deportation to Mexico upon being released from prison. Even though the father only had between sixteen and twenty-six months left in prison, the Court found he would likely be deported. Thus, the Court found that terminating his parental rights would not result in any damage to his daughters. Additionally, the Court held that terminating the father's parental rights was in the best interest of the daughters because the daughters were in an excellent foster home where the parents wanted to adopt them.⁵⁵

⁵² *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246 (2000).

⁵³ *Pima County Juvenile Action No. S-2462*, 162 Ariz. 536 (Ariz. Ct. App. 1989).

⁵⁴ *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246 (2000).

⁵⁵ *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278 (2002).

- Father was sentenced to 5.5. years in prison. The sentence begun when the child was six months old. The father had three years remaining. The court found that there was no actual length or strength in the father-child relationship before the father was incarcerated. The Court held the sentence was of enough length under the circumstances of the case.⁵⁶
- Father was sentenced to 2.5 years imprisonment. Mother, who was not incarcerated, failed to comply with the plan created by DCS, so the children were removed, and the juvenile court changed the case plan to adoption. The father was projected to be released in approximately nine months from this time. The State moved to terminate the father’s parental rights on abandonment and lengthy incarceration. The Court found that statutory grounds were met and that because the children were adoptable by the maternal grandmother termination was in the children’s best interests.⁵⁷

Is a lengthy sentenced measured by my total sentence or what is left of my sentence?

A lengthy sentence is measured by the total sentence. The Court may not ignore the time you have already been absent, what matters to a dependent child is the total length of time you have been absent from the family.⁵⁸

What is considered abandonment?

A court finds that a parent has abandoned their child when the parent fails to give reasonable support and fails to maintain regular contact with their child. The parent’s intent is not considered when making this determination. What constitutes reasonable support, regular contact, and a normal supervision is different from case to case.⁵⁹ A person’s incarceration affects the court’s consideration of whether a parent abandoned their child, however incarceration alone does not justify a failure to make more than minimal efforts to communicate with the child. Not contacting or attempting to be involved and attempting to learn about a child while incarcerated may mean abandonment. Especially if a parent fails to do so for a period of six months or longer.⁶⁰ *Remember* it does not matter if you did or did not *intend* to abandon your child.

Specific example-

- Father was notified of a dependency petition while he was incarcerated. He did not respond nor attend his child’s hearings. His child was declared dependent at which point the father contacted DCS requesting to visit his son. The Department responded by telling the father what he had to do to protect his legal rights. The father made no effort and his parental rights were terminated. Father argued that he did not intend to abandon his son. The Court found that Arizona law does not take intent into consideration.⁶¹

⁵⁶ *James S. v. Arizona Dep’t of Econ. Sec.*, 193 Ariz. 351 (Ariz. Ct. App. 1998).

⁵⁷ *Brandon G. v. Dep’t of Child Safety*, 2019 Ariz. App. Unpub. LEXIS 636 (this case is pending review by the Supreme Court of Arizona)

⁵⁸ *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278 (2002).

⁵⁹ *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246 (2000).

⁶⁰ This constitutes *prima facie* evidence of abandonment.

⁶¹ *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246 (2000).

Does the fifteen month out-of-home placement apply to my child even if I am incarcerated?

Yes. This statutory ground requires all of the following to be proved:⁶²

- The child has been in an out-of-home placement for fifteen months or longer;
- DCS has made strong efforts to provide *appropriate* reunification services;
- The parent is unable to fix the circumstances; and
- There is a substantial likelihood that the parent will not be capable of giving proper and effective parental care and control in the near future.

The failure to prove one of the bullet points above makes the claim insufficient. However, keep in mind that appropriate reunification services *do not mean* that DCS is required to provide ineffective services. Like when dealing with allegations regarding the length of a sentence, DCS does not have services to correct the physical separation created by incarceration.

Specific Example-

- Mother was incarcerated and DCS moved to terminate her parental rights based on neglect and out-of-home care. While incarcerated DCS provided mother with pictures of her daughter and facilitated communication by giving the placement the letters that the mother wrote. At the termination hearing the Court terminated the mother's rights. The mother appealed and argued that DCS was required to offer her appropriate reunification services. DCS argued that because the mother was incarcerated any attempts at reunification would be ineffective, therefore the Department was not required to offer any services. The Court agreed.⁶³

What evidence may be sufficient to prove that terminating the relationship I have with my child is in my child's best interest?

To determine that terminating your rights is in your child's best interest evidence must either prove that your child will benefit if your rights are terminated *or* that your child will be harmed if your relationship continues.⁶⁴ The court believes a parent, even an inadequate one, is better than no parent at all *unless* your child can somehow benefit from losing you.

In previous cases the court has ruled that adoption provides sufficient benefits to support a best-interests finding in both private and state action cases. Adoption obligates the adopting parent legally and financially to your child, it strengthens the adopting parent's right to exercise custody and control of your child in the future, and if your child is adopted, he/she will be able to inherit from the legal adopting parent. Usually when statutory grounds are found, and adoption is highly possible, the court will find that the adoption supports a best interest finding.⁶⁵

⁶² *Roberto F. v. Ariz. Dep't of Econ. Sec.*, 232 Ariz. 45 (2013).

⁶³ *Kathryn S. v. Dep't of Child Safety*, 2019 Ariz. App. Unpub. LEXIS 499 (2019) (this case is pending review before the Arizona Supreme Court).

⁶⁴ *In re Appeal in Maricopa County Juvenile Action No. JS_500274*, 167 Ariz. 1 (1990).

⁶⁵ *Demetrius L v. Joshlynn F.*, 239 Ariz. 1 (2016).

Providing evidence that a child lives in a stable household with a custodial parent, and that the child has expressed fear of you and your family, may also support a finding that terminating your parental rights would be in your child's best interests. Evidence of your child bonding with foster siblings and with the foster family also supports a finding of best interests. Additionally, a lack of relationship with you is also in support of termination being in the best interest of the child.⁶⁶

Specific example-

- Father had been incarcerated since the child was six months old and was due to remain incarcerated until the child was six years old. The court found that the six months prior to being incarcerated was not really enough time for the father and child to bond. The court emphasized that the child was now with a family who was willing to adopt her, and the child had bonded with this family. The court also noted that failure to grant termination would be detrimental to the child because the child did not really know the father.⁶⁷
- Stepfather wanted to adopt the child. Stepfather was married to the mother and had financially provided for the child for about half of the child's life. The Court found that terminating the natural father's rights would increase the child's stability and legally strengthen the Stepfather's relationship with the child. Thus, termination was in the best interest of the child.

Does an adoption plan need to exist in order to sever a parental relationship on the ground of abandonment?

No. Having a present plan of adoption is not required. The purpose of the Arizona statute is to free children for adoption who have no hope of being returned to their natural parents. This does not mean that a plan has to be set in stone.⁶⁸

What happens if the court finds grounds for the terminating my parent-child relationship?

If the court finds grounds for terminating your parent-child relationship, the court must either appoint an individual as your child's guardian and give them absolute legal custody or appoint an individual as the child's guardian and give absolute legal custody to another individual or an authorized agency.⁶⁹

An order terminating your parent-child relationship will take away all rights, privileges, duties and obligations with respect to your child. The only right that is not removed is your child's right to inherit and receive support from you. However, if your child is adopted, your child's right to inherit and receive support from you may be terminated.⁷⁰

⁶⁶ *James S. v. Arizona Dep't of Econ. Sec.*, 193 Ariz. 351 (Ariz. Ct. App. 1998).

⁶⁷ *James S. v. Arizona Dep't of Econ. Sec.*, 193 Ariz. 351 (Ariz. Ct. App. 1998).

⁶⁸ *In re Appeal in Pima County Juvenile Action*, 162 Ariz. 156 (1989).

⁶⁹ A.R.S. § 8-538.

⁷⁰ A.R.S. § 8-539.

What happens if the court does not terminate my parental rights?

If the court does not terminate your parental rights, the court will dismiss the petition. The court may also order substitution or supplementation of your child's current parental care or supervision and will usually ask the Department to provide you with reunification services.⁷¹

VI. Making a Record: What can I do while I am incarcerated?

While you are incarcerated there are things that you can do to help your efforts to reunify with your child after you are released, and to possibly avoid having your parental rights terminated while you are incarcerated. You should try to stay in contact with your child as much as you can by sending letters, making phone calls, even if your child is just a toddler. *Note that if you are in jail for an ongoing criminal case, it may be in violation of the conditions of your criminal case to have contact with your children if they are involved in the criminal investigation.* Make sure to let your criminal attorney know that you plan to keep contact with your child to ensure you won't be in violation of any conditions in your ongoing criminal matter. You should also try to participate in any rehabilitation and any parenting programs that are available to you. If DCS is involved in your case, complete any and all reunification programs that the Department assigns to you.

After you are released, you will have to prove to the judge that you are fit to be a safe parent and one way to do this is by proving that you care about what happens to your child. It is important that you keep records of all of your efforts by writing down the time, date, and a small description of what you have done for your child. This means maintaining a record in a notebook, or special pad of paper, of every phone call and visit with your child, your child's caregiver, the social worker, or your lawyer.

Actions you should take

1. You should try to write letters to your child as much as possible and *save* copies of those letters and write down the date sent.
2. If your child is too young to understand letters, draw pictures to him/her, and save copies of the pictures, and write down the date sent.
3. Ask to see your child's report cards.
4. Go to any available classes, meetings or programs that your detention facility offers and write down the dates and time that you went.
5. Keep copies of certificates, or other proof, showing that you attended classes, groups or meetings (whether they are court ordered or not).
6. Ask the teachers and counselors of any programs you complete to write a letter about how you did.

⁷¹ A.R.S. § 8-538.

Note: Don't forget to keep a record of all actions that you take and to take this record with you to court as evidence, for when you are released and are attempting to reunify with your child.

VII. Family Reunification: I am no longer incarcerated. How do I get my child back after I am released?

After you have been released from custody, the process that you must take to get your child back will depend on who is currently caring for your child and whether your parental rights were terminated while you were incarcerated.

How do I revoke a parental power of attorney?

You may revoke a parental power of attorney at any time, even if the 6-month period has not expired. If the period has expired, you do not have to take any additional steps. However, if the period has not expired, you must complete a what is called a revocation document that must be signed by you and notarized. You must give notice of revocation to the person you gave the power to (the agent), and all other parties who had the original form.

Once you revoke their powers, the agent no longer has legal authority to use the original document on your behalf. Look at Appendix 4 for a sample form you can use to revoke a Power of Attorney.

How do I revoke a legal guardianship that I originally consented to?

You have the right to file a petition to revoke a permanent guardianship once you are released.⁷² Once you file the petition the court will appoint a *guardian at litem* for your child.

The court will revoke the order granting permanent guardianship of your child if *all* of the following are true:

- You petition the court for revocation.
- You prove by *clear and convincing* evidence that you have fixed the grounds alleged in the guardianship motion.
- The court finds by *clear and convincing* evidence that the return of your child would not create a substantial risk of harm to your child's physical, mental, and emotional health or safety. The court will consider your child's position if your child is 12 years or older, the duration of the guardianship and the level of contact you have had with your child during the time away, and any other relevant factor.

Each court may have specific forms that need to be submitted to initiate this petition. Look for the form online at your assigned court's website. Keep in mind that the court is not required to appoint counsel to help you fill out this paperwork. Nonetheless, speaking to a lawyer before filing the petition with the court may help prevent unexpected results. If you

⁷² A.R.S. § 8-873.

are unable to afford an attorney, you should consider contacting a local legal aid office that may be willing to provide you with legal advice with little to no cost at all. Look at pages 39-41 for the contact information of some of the legal aid offices in Arizona.

How do I get my child back when DCS was involved?

(1) The permanency goal is still family reunification

If your parental rights were not terminated by the court while you were incarcerated and instead your child remains in DCS custody, when you are released you should contact DCS as soon as possible to let them know of your release and your intent and willingness to participate in family reunification services.

DCS will seek to reunify your family when one of the following is met:⁷³

- (1) You have met the conditions for returns; *and* the department has completed their required investigation and the results indicate that your child can be maintained in your home with a safety plan; *or*
- (2) The Department determines that your child is not faced with danger in your home.

Once DCS has concluded that reunification is proper, the Department will complete a Motion for Change of Physical Custody with the court. Lastly, DCS will also petition to dismiss the dependency order.

(2) The court appointed a permanent guardian

If while you were incarcerated your child was appointed a permanent guardian by the court, instead of terminating your parental rights, then you have the right to request to participate in reunification services.⁷⁴ The court will set a hearing to determine if there has been a significant change of circumstances that show that you are able to care for your child and if reunification services are in your child's best interests.

You bear the burden of proving by *clear and convincing evidence* that there has been a significant change of circumstances that shows that you are able to care for your child and that reunification is in your child's best interest. If you are able to prove this then the court will order the department to provide reunification services to you.

Things to keep in mind:

- It is likely that a court will not appoint an attorney to represent you during this stage, but it would be wise to consult with a local attorney during the process. You can search for your local legal aid organization as they may be able to provide you with free legal advice. Look at pages 39-41 for the contact information of some of the legal aid offices in Arizona.

⁷³ Policy and Procedure Manual, *Chapter 5: Section 1 Family Reunification*, ARIZONA DEPARTMENT OF CHILD SAFETY.

⁷⁴ A.R.S. § 8-873.01(B).

What if my parental rights were terminated while I was incarcerated, will I be able to get my child back?

If your parental rights were terminated while you were incarcerated, although extremely difficult, you may still be able to get your rights reinstated. Below are ways that this may happen:

Your child has not been adopted- If your child has been in the state's care and is still not placed with a family you may petition to reclaim your parental rights. By reclaiming your rights, you will be required to prove that your child will now be living in safe conditions.

You appeal the order- You have the right to appeal any order granted by the juvenile court. However, appealing is a time sensitive issue. If you wish to appeal a court order you must submit a notice of appeal no later than 15 days after the final order terminating your parental rights was filed with the clerk. Speak to your lawyer about a possible appeal.

*You petition the court to revoke the relinquishment of your parental rights*⁷⁵- You may file a motion asking the court to relieve you from the order terminating your rights. Under this motion you must show three things: (1) promptness in seeking relief, (2) a meritorious claim or defense, and (3) extraordinary circumstances of hardship or injustice.⁷⁶ The court may consider granting relief for the following meritorious reasons:

- If you believe there was a mistake, inadvertence, surprise, or excusable neglect in the original proceedings;
- There is newly discovered evidence that could not have been discovered on time which would allow you to move for a new trial;
- You experienced fraud, misrepresentation, or other misconduct from the opposing party (in most cases the state);
- The judgement is void;
- The judgement is based on an earlier judgment that has been reversed or vacated;
- Any other reason justifying relief.

This type of motion must be filed *no more than 6 months* after the order terminating your rights was granted. If your parental rights were terminated because you failed to attend any hearings related to the matter, you were not allowed to testify telephonically, and you attempted to get transported to the hearing, but prison authorities refused, it is possible that this may qualify as an "extraordinary circumstance of hardship or injustice"⁷⁷

You should speak to a lawyer if you wish to take this course of action. If you cannot afford one, contact your local aid organization for possible free legal representation. Look at pages 39-41 for the contact information of some of the legal aid offices in Arizona.

⁷⁵ Ariz. R. Civ. P. 60.

⁷⁶ *Jepson v. New*, 164 Ariz. 265 (1990).

⁷⁷ *John C. v. Sargeant*, 208 Ariz. 44 (Ariz. Ct. App. 2004).

What if my parental rights were terminated while I was incarcerated, and none of the above pertain to me?

If you have lost your parental rights while you were incarcerated and none of the above pertain to you, it is likely that you will be unable to get your child back. Nonetheless, it is important to consult with an attorney to discuss the particular facts of your case. If you cannot afford an attorney look for a local legal aid office that may be able to provide legal services at no cost. Look at pages 39-41 for the contact information of some of the legal aid offices in Arizona.

Southern Arizona Legal Aid Region

Note: You can apply over the phone for any of the following regions at (520)623-9461 or +1(800) 248-6789

PIMA/SANTA CRUZ COUNTIES

Address: 2343 E. Broadway Blvd, Ste 200, Tucson, AZ 85719

Phone: (520)6239461 or 1+(800)640-9465

Fax: (520)620-0443

Sells/Tohono O'dham Legal Services: (520)623-9465

PINAL COUNTY

Address: 1729 N. Trezell Rd, Ste 101, Casa Grande, AZ 85122

Phone: (520)316-8076

Fax: (520) 316-8063 or +1(877)718-8086

FOUR RIVERS INDIAN LEGAL SERVICES

Address: 403 Seed Farm Rd/PO Box 68, Sacaton, AZ 85147

Phone: 1(520)562-3369

Fax: (520)562-3900

COCHISE/GRAHAM/GREENLEE COUNTIES

Address: 400 Arizona St., Bisbee, AZ 85603

Phone: (520)432-1639 or +1(800)231-7106

Fax: (520)432-1641

NAVAJO/APACHE/GILA COUNTIES

White Mountain Legal Aid

Address: 5658 Highway 260, Ste 15, Lakeside, AZ 85929

Phone: +1(928)537-8383 or +1(800)658-7958

Fax: (928)537-1838

White Mountain Apache Legal Services

Address: 202 E. Walnut St/PO Box 1030, Whiteriver, AZ 85941

Phone: +1(928)338-4845 or +1(866)312-2291

Fax: (928)338-1436

Community Legal Services Locations

Description: Non-Profit Organization that provides legal services to underrepresented individuals. Similar to Legal Aid, but only offers services in certain locations.

CENTRAL PHOENIX OFFICE

Location: 305 S. 2nd Avenue, Phoenix, AZ

Mailing Address: P.O. Box 21538, Phoenix, AZ 85036-1538

Phone: (602)258-3434 or 1+(800)852-9075

TTY: (602)254-9852

Fax: (602)245-1536

Email: info@clsaz.org

Hours: Mon-Fri 8:00 a.m. to 5:00 p.m.

MOHAVE AND LA PAZ COUNTIES OFFICE

Location: 2701 E. Andy Devine, Suite 400, Kingman, AZ 8641

Phone: (928)681-1177 or 1+(800)255-9031

TTY: Arizona Relay: 711

Fax: (928)681-5998

Email: infomoco@clsaz.org

Hours: Mon-Thu 8:00 a.m. to 5:00 p.m.

YAVAPAI COUNTY OFFICE

Address: 141 South McCormick Street, Suite 200, Prescott, AZ 86303

Phone: (928)445-9240 or 1+(800) 233-5114

TTY: Arizona Relay: 711

Fax: (928)445-6312

Email: infoyaco@clsaz.org

Hours: Mon-Thu 9:00 a.m. to 12:00 p.m. and 1:30 p.m. to 4:00 p.m.

YUMA COUNTY OFFICE

Address: 204 S. 1st Ave., Yuma, AZ 85364

Phone: (928)782-7511 or 1+(800)424-7962

TTY: Arizona Relay: 711

Fax: (928)782-0037

Email: infoyuco@clsaz.org

Hours: Mon-Thu 9:00 a.m. to 12:00 p.m. and 1:30 p.m. to 4:00 p.m.

SAN LUIS OFFICE

Address: 845 E. B Street, Suit 1, San Luis, AZ 85349

Phone: (928)627-8023 or 1+(800)356-7115

TTY: Arizona Relay: 711

Email: infoslo@clsaz.org

Hours: Mon-Fri 8:00 a.m. to 5:00 p.m.

DNA Legal Services

Description: This organization provides free civil legal services to low-income people who cannot otherwise afford to hire an attorney in Coconino County, the Navajo and Hopi Nations.

NAVAJO NATION DNA OFFICES

Chinle DNA

Address: P.O. Box 767, Chinle, AZ 86503

Phone: (928)674-5242

Fax: (928)674-2410

Fort Defiance DNA

Address: P.O. Box 306, Window Rock, AZ 86515

Phone: (928)871-4151

Fax: (928)871-5036

Tuba City DNA

Address: P.O. Box 765, Tuba City, AZ 86045

Phone: (928)283-5265

Fax: (928)283-5460

HOPI OFFICES**Hopi DNA**

Address: P.O. Box 558, Keams Canyon, AZ 86034

Phone: (928)738-2251/5345

Fax: (928)738-5343

Hopi Public Defender

Address: P.O. Box 558, Keams Canyon, AZ 86034

Phone: (928)738-5231/5234

Fax: (928)738-5343

OFF-RESERVATION DNA OFFICES**Flagstaff DNA**

Address: 2323 E. Greenlaw Lane, Suite 1, Flagstaff, AZ 86004

Phone: (928)774-0653

Fax: (928)774-9452

Other Resources

MODEST MEANS PROJECT

Description: This is a non-profit organization that provides low-cost legal assistance to individuals who do not qualify for free legal services but cannot afford an attorney at a standard rate. The project assists individuals with a one-hours meeting for a fee of \$75. To apply to you must call the number below and apply over the phone.

Phone: 866-637-5341

QUILT

Description: This is a low-cost legal assistance program for Pima residents who do not qualify for free legal aid and cannot afford an attorney at a standard rate. You must submit the application found in Appendix 6 to the fax below. The program costs \$35 for administrative cost and provides one free initial legal consultation. For more information look at Appendix 6.

Fax: (520)623-9772

Appendix

Appendix 1: Sample Letter to Your Attorney

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

(Date)

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

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

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

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

I am requesting that you file a motion with the court to have me transported from **(name of facility)** to the hearing. I look forward to speaking with you about my case so that I will know how I can work to reunite with my child**(ren)** and to prevent the court from terminating my parental rights.

Thank you for your attention to this matter.

Sincerely,
(Your signature)
(Print your name)

Appendix 2: Sample Letter to the Judge

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

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

(Date)

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

Dear Judge **(Name)**:

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

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

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

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

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

Thank you for your attention to this matter.

Sincerely,
(Your signature)
(Your printed name)

Appendix 3: Power of Attorney Sample Form

(Most courts have an official form that you must complete available online under the Self-Service tab. If the court you are assigned to does not have an official form you may use the following form as a guide).

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

1. That I am the natural mother/father of _____ who was born on _____, _____.
2. That I am presently incarcerated at _____ located in _____.
3. That, during this time, my child, _____, is being cared for by _____.
4. That I wish to give full Power of Attorney to _____ with respect to the care and custody of my child _____.
5. That, specifically, I give _____ full Power of Attorney with respect to the care and custody of _____ in matters affecting his/her medical needs, schooling, public assistance, AHCCS, legal matters, and all other matters pertaining to the well-being of my child.
6. I understand that this Power of Attorney is not a legal custody order and that I am not giving up my parental rights by signing this agreement.
7. This agreement will remain in effect until _____ (no more than six months) or until revoked in writing.

PRINCIPAL

I, _____, the principal, sign my name to this power of attorney this _____ day of _____ and, being first duly sworn, do declare to the undersigned authority that I sign and execute this instrument as my power of attorney and that I sign it willingly, or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes expressed in the power of attorney, and that as required by A.R.S. § 14-5501, I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

WITNESS

I, _____, the witness, sign my name to the foregoing power of attorney first duly sworn, and do declare to the undersigned authority the principal signs and executes this instrument as the principal's power of attorney and that the principal signs it willingly, or willingly directs another to sign for the principal, and that I, in the presence and hearing of the principal sign this power of attorney as witness to the principal's signing, and to the best of my knowledge the principal is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

NOTARIZATION

State of _____
County of _____

Subscribed, sworn to or affirmed, and acknowledged before me by _____, the principal,
and subscribed and sworn to or affirmed before me by _____, witness, this ____ day
of _____.

(notary seal)

Notary Public

Appendix 4: Sample Form for Revoking a Power of Attorney

(Most courts have an official form that you must complete available online under the Self-Service tab. If the court you are assigned to does not have an official form you may use the following form as a guide).

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

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

2. That I am no longer incarcerated at and am able to provide my child with parental supervision and care.

3. That, during the time I was incarcerated, my child, _____, was being cared for by _____.

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

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

State of Arizona

County of _____

On this _____ day of _____, in the year _____.

I declare that all power and authority granted under said Power of Attorney is hereby revoked and withdrawn, and the Attorney in Fact no longer has the authority to act on my behalf in any matter.

_____, 20_____
Signature Date

Signature of Witness:

(Printed Name of Witness)

(Signature of Witness)

(Address of Witness)

(City, state & zip code of Witness)

Appendix 5: Fee Waiver Sample Form

(COURT'S JURISDICTIONAL NAME AND ADDRESS HERE)

Name of Person Filing Document: _____
Your Address: _____
Your City, State, and Zip Code: _____
Your Telephone Number: _____
Attorney Bar Number (if applicable): _____
Attorney E-mail Address: _____
Representing Self (Without an Attorney) OR
 Attorney for Petitioner Respondent

STATE OF ARIZONA)
COUNTY OF _____) **ss.**

Name of Petitioner/Plaintiff

Case Number: _____

APPLICATION FOR DEFERRAL OR WAIVER OF COURT FEES OR COSTS AND CONSENT TO ENTRY OF JUDGMENT

Name of Respondent/Defendant

Notice. A Fee Deferral is only a temporary postponement of the payment of the fees due. You may be required to make payments depending on your income. A Fee Waiver is usually permanent unless your financial circumstances change during the pendency of this court action.

I am requesting a deferral or waiver of all fees including: filing a case, issuance of a summons or subpoena, the cost of attendance at an educational program required by A.R.S. § 25-352, one certified copy of a temporary order in a family law case, one certified copy of the court's final order, preparation of the record on appeal, court reporter's fees of reporters or transcribers, service of process costs, and/or service by publication costs. (I have completed the separate Supplemental Information form if I am asking for service of process costs, or service by publication costs.) I understand that if I request deferral or waiver because I am a participant in a government assistance program, I am required to provide proof at the time of filing. The document(s) submitted must show my name as the recipient of the benefit and the name of the agency awarding the benefit. **Note. All other applicants must complete the financial questionnaire beginning at section 3. If you are a participant in one of the programs in section 1 or 2 (below), you do not need to complete the financial questionnaire, and can proceed to the signature page.**

1. **DEFERRAL:** I receive government assistance from the state or federal program marked below or am represented by a not for profit legal aid program:
 - Temporary Assistance to Needy Families (TANF)
 - Food Stamps
 - Legal Aid Services
2. **WAIVER:**
 - I receive government assistance from the federal Supplemental Security Income (SSI) program.

3. FINANCIAL QUESTIONNAIRE

SUPPORT RESPONSIBILITIES. List all persons you support (including those you pay child support and/or spousal maintenance/support for):

NAME	RELATIONSHIP
_____	_____
_____	_____
_____	_____

STATEMENT OF INCOME AND EXPENSES

Employer name: _____
 Employer phone number: _____
 I am unemployed (explain): _____

My prior year's gross income: \$ _____

MONTHLY INCOME

My total monthly gross income: \$ _____
 My spouse's monthly gross income (if available to me): \$ _____
 Other current monthly income, including spousal maintenance/support,
 retirement, rental, interest, pensions, and lottery winnings: \$ _____

TOTAL MONTHLY INCOME \$ _____

MONTHLY EXPENSES AND DEBTS: My monthly expenses and debts are:

	PAYMENT AMOUNT	LOAN BALANCE
Rent/Mortgage payment	\$ _____	\$ _____
Car payment	\$ _____	\$ _____
Credit card payments	\$ _____	\$ _____
Explain: Other payments & debts	\$ _____	\$ _____
Household	\$ _____	
Utilities/Telephone/Cable	\$ _____	
Medical/Dental/Drugs	\$ _____	
Health insurance	\$ _____	
Nursing care	\$ _____	
Tuition	\$ _____	
Child support	\$ _____	
Child care	\$ _____	
Spousal maintenance	\$ _____	
Car insurance	\$ _____	
Transportation	\$ _____	
Other expenses (explain)	\$ _____	

TOTAL MONTHLY EXPENSES \$ _____

STATEMENT OF ASSETS: List only those assets available to you and accessible without financial penalty.

	ESTIMATED VALUE
Cash and bank accounts	\$ _____
Credit union accounts	\$ _____
Other liquid assets	\$ _____

TOTAL ASSETS

\$ _____

The basis for the request is:

4. [] DEFERRAL:

A. [] My income is insufficient or is barely sufficient to meet the daily essentials of life, and includes no allotment that could be budgeted for the fees and costs that are required to gain access to the court. My gross income as computed on a monthly basis is 150% or less of the current federal poverty level. (Note: Gross monthly income includes your share of community property income if available to you.)

OR

B. [] I do not have the money to pay court filing fees and/or costs now. I can pay the filing fees and/or costs at a later date. **Explain.**

OR

C. [] My income is greater than 150% of the poverty level, but have proof of extraordinary expenses (including medical expenses and costs of care for elderly or disabled family members) or other expenses that reduce my gross monthly income to 150% or below the poverty level.

DESCRIPTION OF EXPENSES

AMOUNT

_____ \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

TOTAL EXTRAORDINARY EXPENSES \$ _____

5. [] WAIVER:

I am permanently unable to pay. My income and liquid assets are insufficient or barely sufficient to meet the daily essentials of life and are unlikely to change in the foreseeable future.

IMPORTANT

This "Application for Deferral or Waiver of Court Fees or Costs" includes a "Consent to Entry of Judgment." By signing this Consent, you agree a judgment may be entered against you for all fees and costs that are deferred but remain unpaid thirty (30) calendar days after entry of final judgment. At the conclusion of the case you will receive a *Notice of Court Fees and Costs Due* indicating how much is owed and what steps you must take to avoid a judgment against you if you are still participating in a qualifying program. You may be ordered to repay any amounts that were waived if the court finds you were not eligible for the fee deferral or waiver. If your case is dismissed for any reason, the fees and costs are still due.

CONSENT TO ENTRY OF JUDGMENT. By signing this Application, I agree that a judgment may be entered against me for all fees or costs that are deferred but remain unpaid thirty (30) calendar days after entry of final judgment.

OATH OR AFFIRMATION

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

Date

Signature

Applicant's Printed Name

Date

Judicial Officer, Deputy Clerk or Notary Public

My Commission Expires/Seal:

Appendix 6: Quilt Application for Civil Case

Qualified-Income Legal Team (QUILT) Program for Civil Cases

A Public Service of the Pima County Bar Association

The Pima County Bar Association's Qualified-Income Legal Team (QUILT) Program may be able to assist you with legal representation at a reduced fee. The QUILT program is comprised of local attorneys who have agreed to provide legal services to financially-eligible clients at a reduced rate.

THIS IS NOT A FREE LEGAL SERVICE.

There is a \$30 application/referral fee at the time you apply, **AND** you are responsible for paying the reduced attorney fees presented below.

TYPE OF CASE	FEES (* Plus Any Incidental Costs)
Divorce (Simple – No Children) <i>Uncontested</i>	\$650 Flat fee
<i>Contested</i>	\$650 Retainer / \$100 Per Hour
Divorce (With Children) <i>Uncontested</i>	\$650 Flat fee
<i>Contested</i>	\$1000 Retainer / \$100 Per Hour
Foreclosure	\$500 Retainer / \$100 Per Hour
General Civil Litigation	Negotiable Retainer (\$500 / Not to Exceed \$1000) / \$100 Per Hour
Guardianship +	\$500 Retainer / \$100 Per Hour
Landlord / Tenant	\$250 Retainer / \$100 Per Hour

* Incidental Costs may include process fees, locator costs, & all filing fees.
+ If unsuccessful with petition, client may be responsible for additional fees.
Talk with attorney for more details.

Client Financial Eligibility Guidelines

Size of Household	Monthly Income
1	0—\$2,833
2	0— \$3,841
3	0— \$4,909
4	0— \$5,879
5	0— \$6,847
6	0— \$7,817
7	0— \$8,789
8+	0— \$9,667

* Qualification eligibility income requirements change every July.
Current listings in effect until July 2018

Here's How the Program Works:

- 1. Call our Lawyer Referral Service at 623-4625 or send an email to lrs@pimacountybar.org.** State that you would like information about our QuILT Program. The operator will provide you with further details.

Please note this is a phone service. Due to limited staff, we cannot accept walk-ins. Also, the operator DOES NOT provide legal advice.

- 2. Complete & submit a Client Eligibility Form WITH the \$30 non-refundable Application/Referral fee.** The form can be sent to you by email, fax, or mail. It is also available online at our website: www.pimacountybar.org.

The \$30 Application/Referral fee must be included with the submitted form. We accept checks and money orders (made payable to PCBA), or you can pay using VISA or MASTERCARD (by including credit card information on the form). There are two ways to return the completed form and payment:

BY FAX: (520) 623-9772 (credit card payments only)

BY MAIL: Send to PCBA-QUILT Program, P.O. Box 2189, Tucson, AZ 85702-2189

- 3. Upon receipt of your application and payment, we will contact you by phone within two (2) business days.** If approved, we will provide you with the name and contact information of an attorney who will provide a free initial consultation.
- 4. You will need to contact the attorney to schedule the initial consultation.** It is your responsibility to make these arrangements. The attorney fees and payment will be discussed during the consultation. If you have any concerns, please contact us at 623-4625.

Call (520) 623-4625

Monday thru Friday, 9:00AM—4:30PM

Qualified-Income Legal Team (QUILT) Program Client Eligibility Application

PERSONAL

Name: _____

Driver's License Number: _____ State: _____

Marital Status: Single Married Divorced Separated Widowed

Address: _____

City: _____ State: _____ Zip: _____

Telephone: Home: _____ Work: _____

(Please list only number's where you may be reached; include ext. or dept. w/work number)

Dependents:

Other than yourself, how many dependents are you legally obligated to support in your household? _____

Total number of children: _____ Total number of adults: _____

List persons you support in your household:	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EMPLOYMENT

Status: Full-time Part-time Unemployed Student Other

Name of Current Employer: _____

Work Address: _____

City: _____ State: _____ Zip: _____

If Applicable:

Spouse's Name: _____

Spouse's Employer: _____

Work Address: _____

City: _____ State: _____ Zip: _____

INCOME	
What is your Monthly GROSS Income?	\$ _____
What is your Spouse's Monthly GROSS Income (if applicable)?	\$ _____
Other Monthly Income: Please list and provide the amount (e.g., child support, spousal maintenance, a business, self-employment, rent payments, etc.)	
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL MONTHLY INCOME	\$ <input type="text"/>

ASSETS	
Amount of Cash Available on Hand	\$ _____
Checking Account (Average Balance)	\$ _____
Bank: _____ Account #: _____	
Savings Account (Average Balance)	\$ _____
Bank: _____ Account #: _____	
Life Insurance (Cash Value)	\$ _____
Net Real Estate (Value Less Amount Owed)	\$ _____
Automobiles, Recreational Vehicles or Other Forms of Transportation	\$ _____
Stocks, Bonds, CD's, Other Redeemable Paper	\$ _____
IRA's, 401(K)'s, Deferred Comp. Plan	\$ _____
Other	\$ _____
TOTAL AMOUNT OF ASSETS	\$ <input type="text"/>

EXPENSES	
How much do you pay each month for:	
• Medical Insurance	\$ _____
• Child Support	\$ _____
• Major Medical Bills	\$ _____
• Other Major Monthly Expenses (e.g., garnishments, fixed debts, transportation, regular support of a family member, child care) — <i>excluding food, credit cards, car payments, rent, or mortgage</i>	\$ _____
TOTAL MONTHLY EXPENSES	\$ <input type="text"/>

REQUIRED ATTACHED ITEMS

** With this completed application, you need to include:

1. A COPY OF CURRENT WAGE STUBS (for you and your spouse, if applicable)
2. A COPY OF LAST YEAR'S TAX RETURN DOCUMENTS

PLEASE READ FOLLOWING CAREFULLY BEFORE YOU SIGN

My signature below indicates that all the financial and identifying information I have supplied on this Application document is complete and true, to the best of my knowledge. **I understand that if I have provided a misrepresentation concerning my financial status, then I shall be responsible for payment for services rendered according to the lawyer's standard fee schedule, or the lawyer may be released from further representation if the court allows.** I understand that the Pima County Bar Association is not responsible for any acts or omissions made by the attorney and is not responsible for any lawyer's competency in any particular area of law.

Signature: _____ Date: _____

AFTER COMPLETION

MAIL THIS APPLICATION FORM TO THE ADDRESS BELOW WITH THE FOLLOWING:

- (a) A \$30 CHECK OR MONEY ORDER PAYABLE TO PCBA
- (b) THE REQUESTED COPY OF CURRENT WAGE STUBS (for you and your spouse)
- (c) THE REQUESTED COPY OF LAST YEAR'S TAX RETURN DOCUMENTS

You will be notified when an appointment has been made for you with an attorney who practices in the appropriate area of law for your needs. If you have any questions about the QUILT Program or Application, please contact the **Lawyer Referral Service at (520) 623-4625.**

PCBA / QUILT Program · P.O. Box 2189 · Tucson, AZ 85702