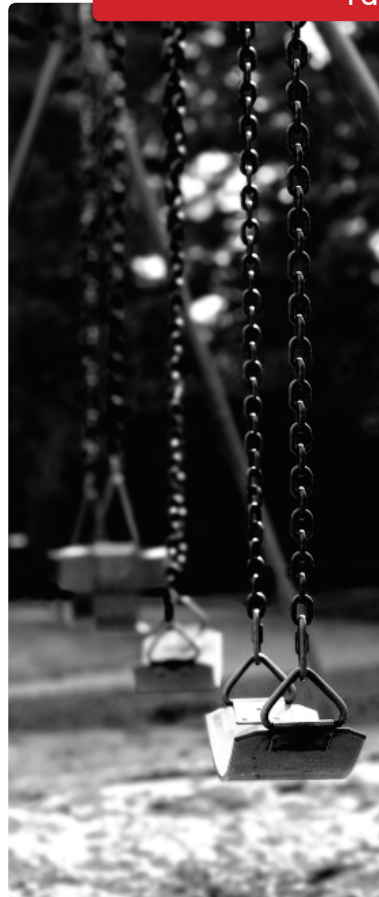


QUICK GUIDE
Got a Record? **Know Your Rights**

Children, Child Support, and Parental Rights



QUICK GUIDE
Got a Record? **Know Your Rights**

Children, Child Support, and Parental Rights

Q How does having a criminal record affect my rights as a parent?

Many parents have criminal records. This brochure will help you understand your rights as a parent if you are facing criminal charges, if you have a criminal record, or if you are currently incarcerated in jail or in prison. Whether your record affects your rights as a parent depends on what you are convicted of and whether you are incarcerated.

Q I'm going to jail or prison. What should I do about my children?

Ask someone you trust to take care of your children, and make sure you fill out all the legal paperwork to give that person the legal authority over your children. Otherwise, you could lose your rights to your children. If you can't afford to pay support while you are incarcerated, get your support reduced or stopped. Read on for more details about child support and about the legal paperwork you need so your children are taken care of while you are incarcerated.

Q How can I reduce the risk that I'll lose my rights to my children while I'm incarcerated?

Make sure someone you trust is taking care of your children. And make sure to do all the paperwork so that arrangement is legal. It is not enough just to ask someone to take care of your children. You have to make it legal. If you don't make it legal, you risk losing your parental rights. Who should take care of your children and what paperwork you need depends on your circumstances. If you aren't sure what to do, talk to a family law lawyer. See the last page for information on how to find a lawyer.

You should also stay in touch with your children while you are incarcerated. Keep a list of every time you write or call, so that you can prove you are involved.

You can also reduce the risk of losing your children by paying child support, even if you are not ordered to. It is better to make smaller payments every month than larger payments less often. If you have a support case, make your payments through the Friend of the Court, so there is a record of what you paid. If you don't have a support case and are sending money to the other parent or child's guardian, make sure to keep receipts for all your payments. If you have a child support order and you can't pay, read on to find out what you can do.

Q What paperwork do I need to do if my children will be with friends or a family member?

If you are going to be in jail for a short time (a year or less), you should fill out a Parental Power of Attorney, so that the person taking care of your children can enroll them in school and take them to the doctor. A Parental Power of Attorney is good for up to six months at a time, and no court order is required. You can end or extend a Parental Power of Attorney any time. If you want to end it before six months, be sure to tell the person caring for your children. If you want to extend it for longer than six months, you need to fill the same form out again. You can get the forms by going to www.michiganlegalaid.org and searching for "kinship care kit" (if your children will be with a relative) or "parental power of attorney kit" (if your children will be with a non-relative). Or ask your local legal aid office for the forms. See the last page for information on how to find a lawyer.

If you are going to be incarcerated for a long time (more than a year) you may need to give a friend or family member a guardianship over your children. This is more formal and stable than a Power of Attorney, and can help your children avoid foster care. But a guardianship may make it harder to get your children back once you are released. Generally, it is better to use a limited guardianship, rather than a full guardianship. You or the guardian can get the forms from the probate court in the county where your children live.

There is no set rule about when to use a Parental Power of Attorney and when to use a guardianship, although if you are going to prison for more than a year, you will probably need to use a guardianship. For shorter periods, it is often better to use a Parental Power of Attorney, because then it is easier to get your children back later. However, you may need to do a guardianship if Child Protective Services is involved in your case or if there is a danger that your children will end up in foster care.

You should also be sure to choose a friend or relative who would be approved by the court. The court is not likely to approve someone who has a serious criminal history or has any cases with Child Protective Services. The person should also have an adequate home and room for your children.

Q What paperwork do I need to do if my children will be with the other parent?

You may not need to do any paperwork if (1) you are married, (2) you are unmarried but are raising your children together and there is no court order about your children, or (3) if the other parent has custody. You may want to write up an agreement with the other parent about when and how you'll see or contact your children while you're incarcerated. If you have a custody case, you can file your agreement with the court to make it a court order. If you do not have a court case, you cannot file your agreement with the court. But you should keep it in a safe place as proof of what the other parent agreed to do.

If you have custody and the children are now going to the other parent, what you should do depends on how long you will be incarcerated, what your relationship is like with the other parent, and whether you want custody back when you get out. You may want to write up an agreement that the other parent gets "extended parenting time" until you get released. If you are going to be incarcerated for a long time (a year or more) and the other parent insists, you may need to agree to change custody, even though that could make it very hard for you to get custody back when you get out.

Make sure any "extended parenting time" agreement or custody order you write up talks about whether either of you have to pay child support,

and about when and how you'll see or contact your children while you're incarcerated. Also make sure you take your agreement to the court and file it so that the judge can approve your agreement. That way, your agreement will become an official court order.

Q What if I don't want my children to be with the other parent?

If the other parent doesn't want the children, or if you are worried that the children would not be safe with him or her, you can ask another family member or friend to take care of them. However, in most cases, if you are in prison and the other parent wants the children, the other parent will get the children. For the children to go somewhere else, you must prove that it would be unsafe or harmful for the children to live with the other parent. Remember too, that if your children end up in foster care, you are more likely to have your parental rights terminated.

Q My children are in foster care and I'm going to jail/prison. What should I do?

Try to work with the foster care agency to see if you can get your children placed in a guardianship with family members or friends. The agency has to make "reasonable efforts" to work with you unless you have been convicted of certain crimes. Be sure to get in contact with the Department of Human Services (DHS) worker assigned to your child's case and ask what the worker wants you to do. Get involved in any services offered by the jail or prison, like parenting classes, counseling, and substance abuse treatment. If you participate in any of these services, make sure that you send information from your counselors to your child's case worker. You should also send letters and cards to your children; if you don't know where they are, send your mail to the assigned DHS worker. Also be sure to get in touch with your lawyer. If you don't have a lawyer and can't afford one, write to the court and ask for one. You also have a right to participate by phone in each court hearing. If your children remain in foster care for 15 months out of the most recent 22 months, your parental rights can be terminated.

Q Can I get a court order that the guardian or other parent has to bring the children for visits or let me talk to the children on the phone while I'm incarcerated?

Maybe, but you must be sure to take care of this when the court names a guardian or changes your custody or parenting time order. If you and the other parent or the guardian agree that the children will visit you or take your phone calls, then be sure to include it in your agreement and in the order the judge signs. If the guardian or other parent does not agree, then you must ask the judge to order it. A judge could order it when the guardian is named or when you and the other parent change custody or parenting time, but only if the judge thinks it is good for the children. If your children are in a court-ordered foster care placement, ask for visits or phone contact to be included in your service plan. Some judges are unwilling to order that children go to jail or prison for visits. You have a better chance of convincing a judge to order visits if you can show that you have a close relationship with your children. It also helps to show that you have a family member or friend who is willing to bring the children to see you.

Q What do I do if I have cases in criminal court and family court at the same time?

Anything you say in the family law case can be used against you in the criminal case. Your criminal charges, and whether you will serve time, will usually affect your family law case. If possible, you should get a lawyer in both cases and have your lawyers talk to each other about the best strategy for you. If you only have a lawyer in the criminal case, tell that lawyer about the family law case. A court appointed lawyer will not represent you in the family law case. But you can still ask that lawyer questions about how your criminal case affects your family law case.

Q Will my parental rights be terminated if I am convicted?

In most cases, just being convicted of a crime is not enough to terminate your parental rights. However, your rights can be terminated if you are convicted of a crime against your child. You 6

can also lose your children if you are convicted of certain very serious crimes, and the court decides it would be harmful to your children if you continue to be their parent. If your parental rights are being terminated or if your children are in foster care, the court will appoint a lawyer for you if you cannot afford one.

Q Will my parental rights be terminated if I go to prison?

Your parental rights cannot be terminated just because you are incarcerated. However, you can lose your children if:

- You are incarcerated for two years or more and don't arrange for care for your children.
- You are not able to care for your children for a reasonable time, and you don't arrange for their care. The law is not very specific about how much time counts as "reasonable," and that may depend on the age of your children. Depending on the circumstances, you could lose your children even if you are in jail or prison for less than two years.
- Your children spend 15 months out of the most recent 22 months in foster care. If your children are in foster care, you are much more likely to lose them.
- You were convicted of certain serious crimes, including murder, criminal sexual conduct or violent crime resulting in sentencing as a multiple felony offender.
- Your children have a guardian and you don't follow the court-ordered plan or you haven't supported or communicated with your children for two years.

Q What happens to my rights if the other parent of my kid gets married while I'm incarcerated?

If the other parent has legal custody and gets married, the new spouse may ask the court for permission to adopt your child. If that happens, you can agree to terminate your parental rights, which ends your relationship with your child as well as your obligation to pay child support. If you do not agree, the court may terminate your rights and allow the adoption if you haven't provided regular 7

financial support for your child and haven't stayed in contact with your child for two years.

Q If my parental rights are terminated, can I still see my children?

No. You have lost all rights to your children. You can only see them if their legal guardians or new parents allow it.

Q If my parental rights are terminated, do I still have to pay child support?

If your parental rights are terminated, you may still have to pay support. The highest court in Michigan will be deciding whether this practice is legal in the upcoming year. If your rights are terminated and someone else adopts the child, you do not have to pay support.

Q I'm incarcerated. How can I participate in court hearings about my children?

If you are in an MDOC prison, in most cases you will not be able to go in person to court hearings about your children. However, you have the right to participate by phone in court hearings. The person who asked for the court hearing is supposed to tell the court you are in prison, and then the court will order the MDOC to let you call in for the court hearing. If you think the court might not know you are in prison, you can write to the judge and ask to be included by phone. If the court orders you to participate by phone, the MDOC must let you. Contact the administrative assistant to the warden to set up the call.

This rule for phone participation does not apply if you are in a county jail. However, you are still supposed to get notice of a court hearing and you can write to the court and ask to participate by phone. If the state is terminating your parental rights or your child is in foster care, you will get an appointed lawyer unless you can afford to hire one.

Q I'm ordered to pay child support. Do I still need to pay if I'm incarcerated?

Yes. Unless you get a court order to change your support, you will have to pay the same amount as before. If you do not pay, when you get out you will owe all the money for each month that you were 8

incarcerated. If you can afford it, you should pay your support. But, if you cannot afford to pay child support while you are incarcerated, it is very important to stop or reduce your payments while you are in prison or jail, so that you don't end up owing all that money when you get out.

Q How can I stop or reduce my child support while I'm incarcerated?

You have two options. First, you can write to the Friend of the Court to tell them that you are incarcerated and need your child support to be reviewed. Some Friend of the Court offices will stop your support, starting on the date that they get your letter. Other Friend of the Court offices will start a support review process that could take months. Be sure to put the date on your letter, and keep a copy of it.

Second, you can file a motion to change your support. If you have more than one case, you must file a motion in each case. A support review request is usually easier, especially if you have lots of children with different parents. But a motion is often faster and will be a formal part of the court record. Whichever you use, make sure to keep a copy of all your papers. And make sure to act right away. If possible, contact the Friend of the Court or file a motion before you are incarcerated. The longer you wait, the more support you will owe. To get more information and forms, go to: reentry.mplp.org, under "family issues/child support." Many prison law libraries also have the forms, or you can get them from your local Friend of the Court office.

Q Now that I'm out of prison, the Friend of the Court is taking so much of my paycheck that I can't pay my bills. Why do I have to pay so much?

The amount you pay is based on the income of both parents, the number of children, and other factors. Raising children is expensive, so you may have to pay a lot. You may have to pay even more if you owe back support or have a lot of children. If you owe both current and back support, the Friend of the Court will collect for both. The Friend of the Court can take up to 50 percent of your paycheck.

Q I can't pay my current support. What can I do?

If you think your current support amount is too high, you can ask to reduce the amount you pay each month. Your support could be too high if it is based on a good job you no longer have, or if you have lots of children and the court didn't consider that when it set the amount you owe in each case. However, even if you don't have a job, you will still have to pay support.

To try and lower your support amount, you can either ask for a support review with the Friend of the Court, or you can file a motion to reduce support with the court. You can get the forms from the Friend of the Court office. In the forms, explain why you are asking that your support be reduced, such as that you now have a lower-paying job.

Q I can't pay back support that I owe. What can I do?

First, find out to whom the back child support is owed. If the other parent was getting welfare payments, the support is probably owed to the State. If not, the support is probably owed to the other parent. Generally, once you owe child support, you have to pay it unless the other party agrees to cancel the support, whether it's the State or the other parent.

Q Can I reduce the amount of back child support that I owe to the State?

Maybe. If the support is owed to the State, you may be able to ask the court for a payment plan. You must prove to the court that you do not have the ability to pay all the support. Under the plan, you pay a reduced amount of support for a period of time. If you make your payments on time, the rest of the support you owe to the State will be erased.

Some Friend of the Court offices also have "incarceration credit" programs, where they will forgive support that added up while you were in prison. Ask your Friend of the Court if it has a program like that, and how you can apply.

Q How do I set up a payment plan?

You must file a motion for a payment plan. Ask your local Friend of the Court for the forms. Before setting up a plan, make sure you have regular income, so you can make all the payments on time.

Q Can I reduce the amount of back child support that I owe the other parent?

Maybe. The other parent can agree to forgive all or part of the back support you owe to that parent. You can also offer to pay a lump sum if the other parent agrees to forgive the rest of the support you owe. If the other parent agrees to forgive your back support, you need to write up your agreement, get it notarized, and take it to the Friend of the Court.

You can also do a court-ordered payment plan, where you make regular payments for a period of time, and the other parent then forgives the rest of the money you owe. The other parent has to agree, or the court will not order a payment plan for money you owe the other parent.

Q I'm not able to reduce the amount of back support I owe. Is there still a way to reduce the amount I pay each month?

Maybe. You can file a motion with the court to reduce the amount being taken out of your paycheck for back support. Make a budget showing all your expenses and income, and show the court how much you can afford. If the court agrees with you, this can reduce the amount you pay each month. But it will not reduce the total amount of child support owed.

Q Can the Friend of the Court take child support out of my Social Security payments?

That depends. SSI, which stands for Supplemental Security Income, is paid to low income elderly people or people with disabilities who do not qualify for Social Security disability. The Friend of the Court cannot take your SSI. However, the Friend of the Court can take other types of Social Security payments, such as Social Security disability or retirement income. If you are on a fixed income and you cannot live off what's left after the Friend of the Court takes out support, contact your local legal aid office for help.

Q I'm fighting for custody of my children. Will the court consider my criminal record?

Probably. It depends on what you were convicted of, how old your conviction is, and whether it affects your ability to parent. By law, courts must look at a lot of different factors to decide custody based on the "best interests of the child." The court may look at your record to decide if you are morally fit, if you have a drug or alcohol problem, or if you can provide a stable home.

Q The other parent has custody of our child. Can I ask that custody be changed, even though I have a criminal record?

Yes. Custody can always be modified by the court based on the best interests of the child. However, you have to show that circumstances for your child have changed a lot since the last custody order. Otherwise, the court won't take your children out of the home environment they are used to.

Q The other parent won't let me see my children. What can I do?

If you have an existing family law court case (a divorce, custody, paternity or support case), file a motion for parenting time with the court. You can get the forms at your local Friend of the Court office. You can get parenting time even if you are behind on your child support, and even if you were away in prison for a long time. However, if you have not recently been involved in your children's lives or if you were convicted of a serious crime, the court may order that you have only very limited contact with your children. The court can also order that your parenting time be supervised. If things go well as you get to know your children again, you can ask for more time or for unsupervised visits.

If there is already a court order for specific parenting time, you may want to file a written parenting time complaint with the Friend of the Court to enforce the existing order, rather than a motion for parenting time. The Friend of the Court may decide not to enforce the existing schedule based on how things have changed since you were incarcerated. However, then the complaint will start the process of getting a new parenting time schedule.

If you do not have an existing family law court case, you cannot file a parenting time motion. You either need to work something out with the other parent or file a new court case to get a court order. You also cannot file a parenting time motion if your parental rights have been terminated, as you have no right to see your children.

Q I have parole or probation conditions that prevent me from seeing my children. What can I do?

If you committed a crime against your children, you may have parole or probation conditions that specifically say you cannot have contact with your own children. Such conditions are hard to change because they are specifically designed to protect your children. Before trying to get your conditions changed, you may want to talk to Child Protective Services about whether they would support your having contact with your children.

Some parolees and probationers who did not commit crimes against their children have conditions that say they cannot be around children in general. In those cases, you may be able to get an exception so that you can see your own children.

If you are on parole, you can ask your parole officer to request that the parole board change your conditions so that you can see your own children. You should show that you have a relationship with your children and that the child's other parent or guardian wants you to see your children. If you need help, talk to a lawyer.

If you are sentenced to probation and your probation order includes a condition that you cannot be around children, ask your defense attorney to request at sentencing that the condition be changed so that there is an exception for your own children. If you have already been sentenced, you can file a motion with the court to ask that you be allowed to see your own children.

Q I'm not incarcerated anymore, but my children's guardian won't give my children back. What can I do?

To get your children back, you will need to file a motion and go back to court to ask the judge to end the guardianship. If the judge ends the guard-

ianship, you may need to do a "reintegration plan." Under the plan you have to prove that you are able to take care of your children again. You may have to prove you can keep a job, get an apartment, and stay off drugs. Or, the judge may continue the guardianship for up to a year and you will have to follow a court plan to get your children back. It will help if you can show the judge that you stayed in touch with your children while you were incarcerated. You should let the judge know if the children visited you, if you talked to them on the phone, or if you wrote to them.

If you have a "limited" guardianship, the judge must end the guardianship if you have followed the guardianship placement plan that you agreed to when the guardianship was ordered. If you need help, get a lawyer.

Q What paperwork do I have to file with the court and do I have to pay?

What paperwork you need to file depends on your exact case. A Parental Power of Attorney does not need to be filed with the court, but be sure you give a copy to the person taking care of your children. A motion for custody, for parenting time, or to change child support must be filed with the court. A request for a guardian for your child or a request to end a guardianship also must be filed with the court. If you and the other parent write up an agreement about your children and you have a court case, you may need to file it with the court and get the judge to sign it so that it becomes a court order. If you aren't sure what to do, talk to a family law lawyer, call your Friend of the Court, or see if your court has a legal resource center that could help you.

The court charges a fee to file any motion, including a motion to change custody, parenting time or child support, or to end a guardianship. However, if you are low income and cannot afford to pay, you can ask the court to waive the motion fee by filing a request for a fee waiver. This form is available online at <http://www.michiganlegalaid.org>, at your local Friend of the Court, or at the court clerk's office. Ask for form MC 20.

Q How can I get more information?

For more information, go to <http://reentry.mplp.org> or <http://www.michiganlegalaid.org>. Or contact your local Friend of the Court. To find the address and phone number for your Friend of the Court office, call (866) 540-0008, or go to http://www.michigan.gov/documents/dhs/MiCase_FOC_County_Address_272345_7.pdf. Your local court may also have a legal assistance center or website where you can get information and forms.

Q How can I get legal help?

To find an attorney, contact the State Bar of Michigan Lawyer Referral Service at (800) 968-0738. If you cannot afford an attorney, ask to be referred to your local legal aid office. To find a legal aid office, go to http://www.michbar.org/public_resources/legalaid.cfm.

Disclaimer: A reasonable effort was made to ensure the information in this brochure is timely, accurate and complete. However, because each legal issue depends on its individual facts and because the law is constantly changing, readers are advised to consult with an attorney before relying on any of the information. The information is provided "AS IS", without warranty of any kind, express or implied, and should not be construed as formal legal advice or as forming an attorney/client relationship.

The State Bar of Michigan Justice Initiatives Program, Michigan State Bar Foundation, and Legal Aid of Western Michigan provided support for the development of this brochure. However, the statements in this brochure are entirely those of the author(s), many of whom volunteered their time and advice.

SBM

STATE BAR OF MICHIGAN

MICHAEL FRANCK BUILDING
306 TOWNSEND STREET
LANSING, MI 48933-2012

www.michbar.org

Other materials are available as part of the *Got a Record? Know Your Rights* series. If you have questions or would like additional copies, please contact materials@mail.michbar.org

112010