



Preparing for the Incarceration of a Loved One

Hotline: (212) 343-1122 • www.LIFTonline.org

INTRODUCTION

When a loved one is sentenced to jail or prison, it can be a very difficult time for all members of the family. This guide will cover:

- The options a relative has for caring for the child of an incarcerated loved one (pages 1–7), including:
 - A. Custody and guardianship (page 2–5)
 - B. Letters of parental designation (page 5–6)
 - C. Kinship foster parents (page 6–7)
- The options a pregnant woman has when she is incarcerated (pages 8)
- How families can keep in touch while a loved one is incarcerated (pages 8–11), including:
 - A. Mail and packages (page 10)
 - B. Visits (page 10)
 - C. Phone calls (page 11)
- Getting married and divorced while incarcerated (pages 11–12)
- How an incarcerated person can work on their legal issues (page 12)

There is also a list of resources on page 13.

CAREGIVER OPTIONS

My child has been incarcerated, and I want my grandchildren (nieces, nephews, or other related children) to come live with me. What are my options?

- You can petition for custody or guardianship of the child in Family Court (page 2).
- You can informally care for the child (page 2).
- You can ask the parent to sign a letter of parental designation (page 4).
- You can become a kinship foster parent of the child (page 5).



What things should I think about when deciding what is the best option?

Every family is different and needs to think about different things. Some things to think about are:

- What does the child want?
- What does the incarcerated person want to have happen?
- How long do you think the parent will be incarcerated?
- What kind of financial support do you need?

Can the parent's sentence be postponed to arrange for child care or other personal matters?

Maybe. The parent's lawyer can make a **Motion to Defer** the sentence. That means that the lawyer can ask the judge for more time between the sentencing and the start of the incarceration.

Are there counseling and support services available to help my family deal with the incarceration of our loved one?

Yes, there are several programs that offer these services. The "Handbook for Families and Friends of New York State DOCS Inmates," Appendix E (pages 46–51) at <http://www.prisonfamiliesofnewyork.org/PDF/docs-handbook.pdf> has a list of statewide and national support programs. You can also call the LIFT Family Law Information Hotline at (212) 343-1122.

A. Custody and Guardianship

What is custody?

To have custody means to be in charge of someone. There are two kinds of custody: physical and legal. The same person often has physical and legal custody – but not always.

Physical custody is when an adult is responsible for a child and takes care of the child most of the time. Usually the child lives with this adult.

Legal custody is when an adult is responsible for making important decisions – such as medical or religious decisions – about the life of a child.

Sometimes people do not go to court, and do not receive a court order to care for the child. This is called **informal custody**. If someone does not have a court order, they are not able to make all of the important decisions about a child.

How can I get custody of a child?

To get custody, you must go to Family Court and file a **petition** for custody. A petition is when you ask the court to make a decision about something. You will have to **serve** the parents of the child with court papers letting them know that you are asking for custody. Serving the parents means giving the parents the official papers about the case. The incarcerated parent can be brought to court when the case is before the judge and can tell the judge what he or she wants to have happen.



For more information on custody cases, please see the LIFT guide, “Custody and Visitation.”
For more information on notifying the parents, please see the LIFT guide, “Serving Court Papers.”

How will a judge decide custody of the child?

When a judge is deciding a custody case between a parent and someone who is not a parent, different things will be considered. First, the judge will decide whether there are **extraordinary circumstances**. Examples of some extraordinary circumstances are: when a court has determined that there has been abuse or neglect; when the child has been harmed by domestic violence; or when there is drug abuse in the home. It might also mean that the parent is incarcerated and unable to care for the child. It is automatically considered to be an extraordinary circumstance if a grandparent has been caring for a child for two years.



If there are extraordinary circumstances, the judge will decide what is in the **best interests** of the child. The judge will look at many things when figuring this out. The case will not be decided based on who loves the child more or who has more money. The judge does not favor a mother over a father, even if the case involves a young child. The judge will look at who has been the main person taking care of the child up until now.

To get this information, the judge may ask for a **Court Ordered Investigation (COI)**. This is a report written about the people involved in the custody case. A caseworker from **New York City Children’s Services** (which used to be called Administration for Children’s Services or ACS) will visit the homes of both parents and write a report to the judge about what the homes were like and with whom the caseworker spoke.

Please note that before the court will issue any order of custody, the court will check the domestic violence registry, the sex offender registry, and child abuse and neglect proceedings in court. In some courts these checks are done at the time someone files a petition.

What is guardianship?

There are two kinds of guardianship: **guardianship of a person** and **guardianship of property**. This guide deals with guardianship of a person, which is when an adult takes care of someone who is unable to take care of him or herself. The person is usually a child. A guardian is responsible for the child, cares for the child, and makes decisions about the everyday life of the child. Guardians have **legal custody** over a child. Guardians usually also have **physical custody** of the child.

How can I get guardianship of a child?

To ask for guardianship, you can go to Family Court or Surrogate's Court and petition for guardianship. You will be given a form to fill out on which you will have to list everywhere you have lived since 1973. The court will investigate if you have a criminal history and if there are any reports about you in the State Central Registry for Child Abuse and Neglect.

You will have to serve the parents of the child with court papers letting them know that you are asking for custody. The incarcerated parent can be brought to court when the case is before the judge and can tell the judge what he or she wants to have happen.

What is the difference between custody and guardianship?

In New York State, there are very few differences. However, in other states, there are big differences between the two. If you are planning to move, you should find out about the laws in the state where you are going. This will help you decide whether you should petition for custody or guardianship of the child.

Some health insurance policies require you to have guardianship in order to provide coverage to the child. Others require custody. If you want the child to be covered by your insurance, you should call your insurance company to see which status the policy covers.

Sometimes courts prefer to give guardianship of a child rather than custody to people who are not parents, such as grandparents.

Will I be responsible for bringing the child to visit his or her parent in jail or prison?

Yes. If you have custody or guardianship of the child you will be responsible for making sure that the visits happen.

If you do not bring the child to visit, the incarcerated parent can file a petition for visitation in the borough where the child lives by writing to the court to file the petition. A judge can order you to bring the child to visits if the judge thinks that would be in the child's best interests. For more information on visiting, see pages 8–9.

Can the incarcerated parent get the child back after he or she is released if I have custody or guardianship?

In order to regain custody or guardianship, the parent will have to file a petition in court to modify, or change, the order that you received. The parent will have to show that there has been a change in circumstances. This means that something has changed since the court made the order. The judge will decide based on what is in the best interests of the child.

What kind of financial support can I get if I am a child's custodian or guardian?

You can file a petition for child support against the parents. The court can order parents to pay a minimum of \$25 a month in child support, even if they are incarcerated. The order can also be for much more, depending on the parents' financial situation.

You can also apply for public assistance for the child. If you are already receiving public assistance, you can add the child to your public assistance budget. If you are not on public assistance, you can still get public assistance for the child. Relatives, or other people caring for a child that is not their own, can apply to receive a **child only grant**. The child only grant is money that is meant to help support the child. It does not matter how much money you earn; you can still receive the child only grant. If you do receive public assistance for the child, the Support Collection Unit (SCU) of the Human Resources Administration (HRA) will file a petition for child support against the parents.

For more information about child support, please read the LIFT guide, "Child Support: A Guide for Parents Who Pay."

B. Letters of Parental Designation

What is a designation of parental relationship?

It is when a parent chooses someone over the age of 18 to temporarily make some medical and school related decisions for their child or children. It does not authorize the person to do anything else.

The person chosen is then thought of as being in "parental relation" with the child and that person is called the "designee." This designation can be granted for up to one month or up to six months. The designation is not the same as having legal custody. It is much more limited, meaning the person cannot make all of the same decisions. It also lasts for only a short period of time.

How can I be designated to be in parental relation?

The designation is made in a letter. No one has to go to court. Depending on how long the designation will last, there are different requirements in the letter that must be met.

One Month: The letter must include:

- Name of the parent
- Your name
- Name of the children
- Whether you can make health or education decisions or both.

It must be signed and dated by the parent.



More on how to be designated to be in parental relation

Six Months: The letter must include:

- Name, address and phone number of parent
- Your name, address and phone number
- Date of birth of each child
- When the designation starts
- Whether you can make health or education decisions or both
- A statement that there is no court order that would prohibit the designation

It must be signed and dated by the parent. The parent's signature must be **notarized**. When something is notarized it is signed in front of a notary public. A **notary public**, or **notary**, is someone who watches people sign their names on official papers and verifies that the people signing are who they say they are. The notary also signs the paper. You must also sign a statement accepting the responsibility. Your signature must also be notarized.

Samples of these letters can be found on the New York State Kinship Navigator website at www.nysnavigator.org.

What kind of financial support can I get if I am designated to be in parental relation?

You can get the same support as if you had custody or guardianship. You do not have to have a court order of custody or guardianship to receive child support or public assistance for the child. Please see the remedies listed above.

C. Kinship Foster Care

What is a kinship foster parent?

A kinship foster parent is a relative who becomes a foster parent to a child who is placed in foster care. The relative is then called a kinship foster parent. A foster parent has physical custody of the child. New York City Children's Services (which used to be called the Administration for Children's Services or ACS) has legal custody.

How can I become the kinship foster parent to a child?

You can only become a kinship foster parent to a child if the child is in the foster care system. To become the foster parent, you can speak to the caseworker for the family. The caseworker will have to determine if you qualify to become a foster parent. They will look at your home, everyone who lives in your home, and whether or not your home has enough space for a foster child. They will also look at whether there has ever been a finding of child abuse or neglect against you. They will also do a criminal background check on everyone who lives in the home.

How does a child enter the foster care system?

The child can enter in two ways: The parent can voluntarily place the child in foster care, or New York City Children's Services can file a petition in Family Court against the parent asking that the child be put into the foster care system. The petition would include charges of abuse or neglect against the parent.

For a parent to voluntarily place a child in foster care, he or she has to go to a New York City Children's Services field office:

Bronx Field Office
2501 Grand Concourse, 4th Floor
Bronx, NY 10468
718-933-1212

Brooklyn Field Office
1274 Bedford Avenue
New York, NY 11217
718-623-4500

Manhattan Field Office
150 William Street, 2nd Floor
New York, NY 10038
212-676-7055

Queens Field Office
165-15 Archer Avenue, 4th Floor
Jamaica, NY 11433
718-481-5700

Staten Island Field Office
350 St. Marks Place, 5th Floor
Staten Island, NY 10301
718-720-2765

What kind of financial support can I get if I am the kinship foster parent?

New York City Children's Services will give the kinship foster parent money (called a **subsidy**) every month for the care of the child.



Will I be responsible for bringing the child to visit his or her parent in jail or prison if I am the kinship foster parent?

No. The caseworker will be responsible for making sure that the child visits the parent at the jail or prison. Usually, parents have a right to a minimum of one visit each month with their child.

The Children of Incarcerated Parents Program (CHIPP), run by New York City Children's Services, can be helpful in facilitating visits between children in foster care and their incarcerated parents. The child would be escorted to the incarceration facility by a caseworker or foster parent. CHIPP can be contacted at 212-487-8577.

PREGNANCY

Where do pregnant women serve time?

All women serve time at Bedford, Taconic, or Rikers, including pregnant women.



Do pregnant women who are incarcerated have special rights?

Incarcerated pregnant women have the following rights:

- There must be limited use of restraints in the 3rd trimester. This depends on the person's particular medical situation and surroundings.
- Restraints cannot be used during labor.
- A female correctional officer must be present during labor.
- Pregnant women must receive basic OB/GYN care.
- Pregnant women must be transferred quickly to a hospital while in labor if it is necessary.

Can my loved one get an abortion?

Yes. Your loved one has a right to terminate her pregnancy while she is incarcerated. The following rules apply:

- She cannot be prevented from getting an abortion.
- She does not need a court order to have an abortion.
- The state must pay for the abortion if she is already incarcerated.
- The state must pay for transportation to and from the abortion or medical facility.

For more information, you can talk to your loved one's doctor or contact the local Planned Parenthood Federation (800-230-PLAN).

Can my loved one be forced to have an abortion?

No. She cannot be forced to have an abortion by prison officials or anyone else.

KEEPING IN TOUCH

A. Mail and Packages

Can I exchange letters with my loved one?

Yes. Your loved one can send and receive letters. There cannot be any obscene, threatening, or fraudulent material in the letters. Please note that all regular (non-legal) letters that are received at the facility are opened and inspected before being given to your loved one.



Are there any rules about letters that I send to my loved one?

Yes. The following rules must be followed:

- Envelopes must include your loved one's full name and **Department Identification Number (DIN)**. (Every incarcerated individual is given a DIN when they enter a correctional facility and they must use that number for identification purposes until they are released.)
- Envelopes cannot include letters from more than one person, except children.
- Letters can include photographs, but no nude photographs.
- Letters cannot contain stamps.
- Envelopes cannot include more than five printed or photocopied pages in addition to the actual letter. There is no limit as to how long the written letters can be.

Are there any restrictions on letters my loved one sends?

Yes. They cannot send letters to people on their Negative Correspondence and Telephone List. The Negative Correspondence and Telephone List is a list of people who send letters to the facility saying that they do not wish to be contacted by the incarcerated person. Your loved one also cannot send letters to anyone who has an Order of Protection against him or her.

How would my loved one get stamps?

They can buy stamps in the **commissary**. The commissary is a store in the facility that sells things to the incarcerated population.



Can I send my loved one money?

Yes. You can send a letter or package with cash, checks, money orders, etc. All letters and packages are inspected. If they contain money, the money will be put in your loved one's account. Your loved one can use the money in the account to purchase items from the commissary.

Can I send packages?

Yes. Your loved one can receive packages either by mail or by personal delivery from a family member or friend when they visit.

Please note that the facility does provide your loved one with basic personal items such as toothbrush, toothpaste and soap.



Are there any restrictions on receiving packages?

Yes. Each facility has specific rules about what can be included in packages. They also have rules about how often you can receive packages.

Detailed information about this can be obtained from the facility or on the website of the New York State Department of Corrections at: <http://www.docs.state.ny.us/FamilyGuide/FamilyHandbook.html#pack>.

Can my loved one send me a package?

Yes. Packages are sent by certified mail with a return receipt. This means that once the package is delivered, your loved one will receive a receipt in the mail. Your loved one will be responsible for the shipping costs.

B. Visits

Can I visit my loved one?

Yes. All correctional facilities permit visits. Your loved one has to put you on an “approved visitors list.” Children must have an adult with them at visits.

Are there specific visiting hours or days?

Yes. Each facility is different. You should check the facility’s schedule before visiting.



Are there rules about what I can bring to the visit?

Visitors are not allowed to bring a cell phone, pager, camera, laptop, or cigarettes into the visit area. Only food and drinks purchased in the vending machines in the visiting area are allowed. Please note that not all visiting areas have vending machines. Visitors with small children will be allowed to bring a limited number of diapers, milk, and plastic baby bottles.

Are there rules about what I can wear during the visit?

Visitors are not allowed to wear revealing clothing.

Women wearing a bra with underwire sometimes must remove the bra when going through the metal detector.

Hairpins, jewelry, zippers, metal studs, etc., can also set off a metal detector and must sometimes be removed when going through the metal detector.

Are there any restrictions during the visit?

Yes. All visitors must show picture identification and must sign a statement that they understand and agree to follow the visiting rules.

More details about visiting restrictions can be obtained from the facility or on the website of the New York State Department of Corrections at: <http://www.docs.state.ny.us/FamilyGuide/FamilyHandbook.html#pack>.

How can I get to the jail or prison?

The Department of Corrections provides **free bus transportation** to many, but not all, state prisons. Family members of incarcerated individuals can be approved to use it through the Family Visiting Program. Your loved one must apply to have you approved for the program. This is also called the Free Bus Program.



There are also privately operated bus lines that provide transportation to many, but not all, correctional facilities. The transportation is not free and seats must be bought ahead of time. There is no relationship between these transportation companies and the correctional facilities.

C. Phone Calls

Can my loved one call me?

Yes, but all calls must be collect calls. That means you will have to pay for the call.



Are there restrictions on the calls?

Generally, your loved one can call every day, including holidays, from 7:00 am to 11:00 pm, for 30 minutes.

If others are in line to use the phone, the call can only be for 10 minutes.

International calls can only be made twice each month. Those calls can only be for 10 minutes. Your loved will be responsible for paying for the long distance call.

Some facilities might have different rules.

Can I call my loved one?

No. Incarcerated individuals cannot receive phone calls. If there is an emergency, you can call the Correctional Counselor, the facility Chaplain, or, during non-business hours, you can call the facility Watch Commander.

Are there any restrictions on who my loved one can call?

Yes. Everyone has an approved Call Home Telephone List. Your loved one can only have 15 people on the list.

Your loved one cannot call:

- Anyone on their Negative Correspondence and Telephone List.
- Anyone who has an Order of Protection against them.
- The homes of the victims of their crimes.
- People for the purpose of harassing or intimidating them.
- 1-800 numbers.

MARRIAGE AND DIVORCE

Can I marry my loved one while he or she is incarcerated?

Yes. You can get married as long as there are no legal barriers to the marriage. You and your intended spouse must meet with your facility counselor, as well as the facility chaplain of your faith. You must also apply for a marriage license with the County Clerk, must marry within 60 days of the license, and must pay the expenses of the license and the marriage ceremony.



Can I divorce my former loved one while he or she is incarcerated?

Yes. Both you and your former loved one can file for a divorce while he or she is incarcerated. To get a divorce in New York State, you need a reason, called a **ground**. One ground for divorce is the incarceration of a spouse for three or more years in a row after you were married. If you are using this ground, then the person must be incarcerated for three years in a row before you file for the divorce. There are also other grounds that you can use for divorce. You can speak to a lawyer to find out all of your options.

OTHER LEGAL ISSUES

Can my loved one appear in court on cases, including Family Court cases?

Yes. Your loved one has the **right to be produced** for all court hearings. The right to be produced means having the right to go to all the court hearings that involve you while you are serving time. This includes Family Court, Civil Court, and Criminal Court.

In Family Court cases, the judge will sign an **Order to Produce**. If your loved one has a lawyer for a Family Court case, you can remind the lawyer to ask the judge to sign the order.

In Criminal Court cases, your loved one's facility should know when they are supposed to appear. The District Attorney's office will sign the Order to Produce your loved one in court.

Can my loved one work with a lawyer on non-criminal matters?

Yes. Your loved one can have access to a lawyer to help on both civil and criminal cases. The facility will not pay for the legal services. Your loved one will be allowed to make as many telephone calls as needed to find and hire a lawyer. The facility will pay for the phone calls to find and hire a lawyer.

How can my loved one meet with his or her lawyer?

All facilities have places for incarcerated individuals to meet with their lawyers. Your loved one can have a legal visit with a lawyer if the visit is necessary to resolve a legal issue. Legal visits have to be arranged 24 hours ahead of time by the lawyer. The lawyer will have to call the General Office at the facility. Legal visits are allowed Monday through Friday during the normal visiting hours, except on holidays. Visits are scheduled in one hour blocks and cannot be longer than two hours.

Can my loved one exchange letters with a lawyer?

Yes. The letters your loved one receives from the lawyer has to be on business envelopes with official printed letterhead.

Your loved one will receive a weekly free postage allowance to send up to five legal letters.

HELPFUL RESOURCES

- **ACS Office of Advocacy Parents' and Children's' Rights Helpline (collect):** (212) 619-1309 (M–Th. 9 am–5 pm). Have name, case name (birth mother's name), NYSID/case booking #, facility that you're calling from, and children's name(s) and dates of birth.
- **ACS Children of Incarcerated Parents' Program (CHIPP):** (212) 487-8577
- **Court Appointed Special Advocates (CASA):** (212) 334-4010
- **Department of Correctional Services for New York State:** (518) 457-8126 or <http://www.docs.state.ny.us/>
- **Family and Corrections Network:** <http://www.fcnetwork.org/>
- **The Fortune Society:** (212) 691-7554
- **Hour Children:** (718) 433-4724
- **New York State Division of Parole:** <http://parole.state.ny.us/Handbook.pdf>
- **New York State Office of Child Support Enforcement:** (888) 208-4485
- **The Osborne Association:** (718) 637-6560, Family Resource Center Hotline (800) 344-3311
- **Prison Families of New York:** (518) 453-6659 or <http://www.prisonfamiliesofnewyork.org/>
- **Women's Prison Association:** (212) 674-1163
- **LIFT's Family Law Information Hotline: (212) 343-1122.**



Please note that the LIFT Hotline accepts collect calls from correctional facilities.

This document should not take the place of a consultation with a lawyer. LIFT encourages all individuals involved with the Family Court or Criminal Court to consult with a lawyer.

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