

INCARCERATED PARENTS MANUAL: Chapter 2

PROBATE COURT GUARDIANSHIPS: Child Custody and Visiting Rights Manual for Incarcerated Parents

This manual (written in 2023) is for incarcerated parents in California prisons and jails whose minor children are the subject of a guardianship created in the probate court. Its focus is to help you get or expand visits with your child during your incarceration and after your release. It also addresses other issues about guardianships and alternatives to a guardianship. Other similar LSPC manuals cover dependency court and family court procedures.

We hope that this manual will give you the information and tools you need to start having visits with your children. Most of the time, family visits benefit prisoners, their children, the community, and even the jails and prisons themselves. We would like to see all of these institutions and people work together to make more visits happen and for these visits to be as good as they can be.



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Note to attorneys: Legal services providers and other attorneys may distribute this manual to incarcerated people, formerly incarcerated people, and/or their loved ones who contact them for legal assistance.

Disclaimer for non-attorneys: This manual is not intended to answer all of your legal questions or take the place of an attorney. Legal Services for Prisoners with Children (LSPC) does not provide direct legal representation. We have provided current information to the best of our ability. However, laws and procedures change frequently. It is your responsibility to check relevant legal cases, codes, court rules and forms when using this manual.

Section 1: INTRODUCTION TO THE BASICS

Courts that hear child custody cases

Three different kinds of courts handle cases that concern the custody of children of incarcerated parents. This manual provides information about **probate court guardianships**. The **probate court** hears guardianship petitions filed by *private parties*, such as relatives or friends, who want to be appointed guardian of your child.

The other two courts are the **juvenile dependency court** and the **family court**. If your child's case is in either of these two courts, please see LSPC's manuals for those courts.

The **juvenile dependency court** hears cases brought by a *governmental agency* that believes a child is being abused or neglected. The name of the agency may differ, depending on the county, but is often called Child Protective Services (CPS) or the Department of Children and Family Services (DCFS). One source of confusion is that a guardianship can be established in the dependency court.¹ It is like a probate court guardianship, but it is created in a different court using different procedures.

The **family court** hears disputes between parents. This includes divorces (dissolutions of marriage) and dissolutions of domestic partnerships. It also hears custody cases between unmarried couples, called Petitions to Establish Parental Relationship or Petitions for Custody and Support of Minor Children.

Probate court guardianships

A guardianship of a minor child is created by a probate court after a private party has filed a Petition for Guardianship. Usually, the person who files the petition is the proposed guardian. That person may already be caring for the child in the absence of a court order. After an investigation is conducted, a court will grant the petition if the proposed guardian and their home are found acceptable and there is a need: that no parent is able to care for the child and no other legal arrangement has been made. If the petition is granted, the court will issue court orders that set forth the duties and powers of the appointed guardian.

The probate court can order the guardian to allow visiting or contact between the child and a parent. Before guardians are appointed, they must sign a "Duties of Guardian" document (a **GC-248** form) that states that they may be required to allow visits:

The court may require that you allow visitation or contact between the child and his or her parents. The child's needs often require that the parent-child relationship be maintained, within reason. However, the court may place restrictions on the visits, such as the requirement of supervision. The court may also impose other conditions in the child's best interest.

¹ If a guardianship involves Child Protective Services and the parents are given court-appointed attorneys, then that would be a juvenile dependency court case, not a probate court case.

Guardians receive a “Guardianship Pamphlet” (called a **GC-205** form) which advises:

Under most circumstances, it is best for you to have a working relationship with the parents if possible. However, in every case, you must follow all orders of the court, including those that may restrict contacts and visitation.

A working relationship between guardian and parent is best for all concerned.

Benefits (and downsides) of a guardianship

Benefits of a guardianship include the prospect of stability for the child with a caregiver who has been vetted by the court and found suitable. The caregiver may need a guardianship to get health insurance for your child under their own policy. There is also a special immigration benefit for a minor who is a non-US citizen and is the subject of a probate court guardianship.²

It is important to know that guardianships, once created, are considered to be “permanent,” meaning that they will last until the child turns 18 or the guardianship is terminated early.³ Once created, there is little if any court supervision over the guardian; court hearings are not routinely scheduled. Also, be aware that a petitioner can file for guardianship “with the intent to adopt.” Item 5 on the Petition can reveal this intention. For these reasons, it is important to be involved early in the case to seek visiting orders if you want them and to register any hopes you may have for reunification upon your release.

It is possible to seek a visiting order after the guardianship is established. Also, the court *can* terminate a guardianship before the child turns 18 if it is in the child’s best interests. These procedures are discussed in sections 5-7 and 10.

If your child is being cared for by a non-parent and you would like to see that person be appointed as your child’s guardian, *you* could file a Petition for Guardianship. However, it is more practical for the guardian themselves to file the petition. Since that person is not incarcerated, they have better access to legal resources and to the court than you do. If you want to learn how to file a guardianship petition in probate court, see Section 10.

Non-court alternatives to a guardianship

Arrangements can be made for the care of your child by a non-parent in family court or without court involvement at all. This may make sense if the situation is temporary or for some other reason.

Power of Attorney for Minor Child: In general, a power of attorney is created by one person (called the “principal”) to grant to another person (called the “agent” or “attorney-in-fact”) the authority to make important decisions on their behalf concerning “property, personal care, or any other matter.”

² The Special Immigrant Juvenile Status (SIJS) law is a way for a minor to apply to become a permanent resident of the United States (get a “green card”) and apply for US citizenship in five years. The probate court must make written findings that reunification with parents is not viable and return to the prior country is not in the child’s best interest. (**GC-224.**) These findings are then submitted to immigration authorities; this must be done before the child turns 18. You can use this on-line directory to find legal assistance in your child’s county. www.immigrationadvocates.org/legaldirectory/

³ Sometimes a temporary guardianship is ordered, pending a full hearing on a petition for a permanent guardianship.

[Cal. Prob. Code § 4123(a).]⁴ A power of attorney can be granted by a parent to another person to make important decisions about the parent's children. It can be used as a supplement to a Caregiver's Authorization Affidavit (see below).

The document, signed by a parent or parents, authorizes that person to make specified decisions about the child's education, medical care, where they live, etc. The term can be time limited. Also, the parent(s) who signed the power of attorney can revoke (cancel) it at any time. It is not a court order; a court can order a different custody arrangement which will be enforceable over a power of attorney. Ordinarily, a power of attorney is notarized. A sample is attached to this manual.

► ***Power of Attorney for Minor Child – with notary – Attachment #1***

If you have no access to a notary, the law allows two witnesses to sign a statement that they witnessed you signing it. A sample is attached as Attachment 2:

► ***Power of Attorney for Minor Child – with witnesses – Attachment #2***

Caregiver's Authorization Affidavit: This is a two-page form signed by a qualified (close) relative that states that the relative is the caregiver and currently has custody of the child. It allows the caregiver to enroll a child in school and to consent to school-related medical care on behalf of a child. It is good for one year and can be renewed. A copy of this form is attached to this manual.

► ***Caregiver's Authorization Affidavit – Attachment #3***

Family court alternative to probate guardianship

Another alternative to a guardianship where a child is already being cared for by a non-parent is a family court order for custody and visiting. If there is already a custody case in family court not involving the caregiver (such as a divorce), you (or the other parent) can bring a motion in that case to have the caregiver awarded custody, with visiting to you. If there is no custody case involving your child, you (or the other parent) could open a case in the family court to resolve custody and visiting issues. The caregiver would be joined as a party. An advantage of this approach is that the family court is more accustomed to fluid child custody situations than the probate court is. For more information on this option, see LSPC's manual, "Family Court: Child Custody and Visiting Rights Manual for Incarcerated Parents."

Section 2: GETTING STARTED

This manual assumes that your child is the subject of a guardianship petition filed in the probate court. If you are not sure about the legal status of your child, then you'll have to do some investigation to find out. The first steps are to:

- Locate your child and your child's caregiver
- Find out if there is already a court order that gives someone authority over your child
- Get copies of relevant court orders and documents.

⁴ The website for the California court system explicitly states that a power of attorney may be used by a parent to give another adult the right to make important decisions about their child. See: selfhelp.courts.ca.gov/guardianship/other-options

Locating your child: Not all parents know where their child is, or who is caring for them. Without this information, there is nothing you can do. You will need this information to reach out to the caregiver to make your request for visits. You will also need this information so you can serve legal papers on the caregiver.

Unfortunately, there are no official services that we know of that will help you to locate your child, unless there is an agency that is already involved (such as Child Protective Services or a Child Support agency). If this is the case, you can contact that agency for help, by writing or calling that office. If not, you need a private investigator, or a family member or friend, to locate your child and the caregiver. Give your helpers all of the information you have about the people who might know where your child is: names, dates of birth, relatives' names, addresses and phone numbers, etc. The internet is a helpful tool. Another idea is to search courthouse records.

Current court orders: If you are not sure about the legal status of your child, you can start by asking the caregiver. You can have someone research court records in the county where your child lives, or you can write to the court clerk or the court's Self-Help Center or Family Law Facilitator. A list of addresses for these offices is attached. A case involving the custody of a child is usually filed in the county where the child lives; a divorce case can be filed in the county where a parent lives.

► ***California Family Law Facilitator addresses -- Attachment #4***

It is important to get copies of any court order that may have been issued about your child. This manual assumes that someone has petitioned the probate court to become the guardian of your child.⁵ If a guardianship petition was filed involving your child, you should have been notified and given an opportunity to respond. However, sometimes a parent is not notified. If you know about, or even suspect, that such a court case has been filed, try to get copies of the documents filed in that case. Unlike dependency court, most records in the probate court are available to the public. If you do not already have these documents, you can get copies by writing to the court.

A note about court forms: California state courts use standard statewide forms. These forms each have a name and number. Most forms in a probate guardianship case will start with **GC**. Blank copies of the standard statewide forms are available on the internet at the website for the California Judicial Council. That address is: www.courts.ca.gov/forms.htm There is more information about these forms in the sections which follow.

In a guardianship case, you will want a copy of:

- **GC-210** Petition for Guardianship or **GC-110** Petition for Temporary Guardianship
- **FL-105/GC-120** Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA) Declaration
- **GC-211** Nomination and/or Consent forms
- **GC-020** Notices of Hearings
- **GC-020/GC-020P** Proofs of Service
- **GC-240** Order Appointing Guardian or **GC-140** Order Appointing Temporary Guardian
- **GC-250** Letters of Guardianship or **GC-150** Letters of Temporary Guardianship
- Any other court orders.

You may have to pay a fee for copying costs.

⁵ If you learn that your child's custody is the subject of a case in either the family court or the juvenile dependency court, please consult LSPC's manuals on those courts to learn more about your rights and legal options.

If you learn that a guardianship has been established already (shown by the issuance of Letters of Guardianship), you can still seek a court order for visiting or contact. You can skip the next section and go to Section 4 for information about this.

Section 3: GETTING VISITING RIGHTS AT THE INITIAL HEARING

If you are served with legal papers which petition a probate court to appoint a guardian to care for your child, you will have the opportunity to oppose or consent to it and, in either case, to seek visits. A guardianship is created in situations where neither parent is able to care for the child. If you believe that your child's other parent *is* able to care for your child, and especially if the other parent is also contesting the guardianship, you can add your voice to that effort. The court will deny a petition for guardianship if it finds that the proposed guardianship is not necessary.

If you (or the other parent) are unable to care for the child and you agree that there is a need for a guardianship, but you object to the specific person who is being proposed to be the guardian, then you can oppose it for that reason as well.⁶ However, a new petition will have to be filed to nominate a different guardian.

Consenting to the guardianship: If you agree that the proposed guardian should be appointed for your child, you may be asked to sign a written consent to the appointment on a **GC 211** form. This is a multi-purpose form that can be used (1) for the proposed guardian to consent to being appointed; (2) for someone to nominate a guardian; and (3) for someone to consent to the appointment of a guardian. **WARNING:** This "consent" portion also includes a *waiver of notice to you* of future court hearings. If you consent to the appointment of a guardian but want to be informed of future hearings in general, or because you are seeking a visiting order, you can either *not sign* the form at all, or *cross out* the waiver language before signing it.

Seeking visits: Whether you consent to or oppose the guardianship, you have the right to ask the court to order the guardian to bring your child to you for visits. However, if you are incarcerated, the court will probably not order visits unless you ask it to. We recommend that you ask for court-ordered visits *even if you think* the guardian will bring your child to you *voluntarily*. Sometimes potential caregivers make promises that they don't intend to keep. Even where a caregiver sincerely intends to provide visits, circumstances can change. There can be a change of heart or the caregiver can become overwhelmed or otherwise unable to live up to their promises. It is harder to get court-ordered visiting *after* the creation of guardianship.

We recommend that you let the proposed guardian know that you will be seeking court ordered visits or phone calls, that you hope they agree with it, and (if true) that you support their becoming guardian and appreciate their willingness to take on the responsibility of caring for your child.

Here is a list of the basic steps in a probate guardianship case:

- Petition for Appointment of Guardianship and other documents are filed
- First court hearing is scheduled
- Petition, Notice of Hearing and other documents are served on parents and other relatives

⁶ The "Seeking visits" subsection below describes how you can communicate your concerns to the court.

- First court hearing is held (at least 15 days after serving parents); investigator is appointed, possibly a temporary guardianship is ordered
- Investigator conducts investigation, interviews relevant parties, writes report
- Second court hearing is held, the court may order guardianship at this time, or continue for further hearings.

There are three ways that you can ask the court to order visits⁷: (1) in writing; (2) by speaking to the probate court investigator assigned to the case; and (3) by appearing in court and telling the judge directly. We suggest that you use all three methods.

Written request: As soon as you are served with the petition, or learn about it, you can write a letter to the court stating that you want the guardian to be ordered to bring your child to visit you regularly. The letter should be typed if possible, or written in clear handwriting. It should include the case number and the name of the case. Your letter need not be lengthy, but it should describe the nature and depth of your relationship with your child and why it is in your child's best interest to maintain a relationship with you. You might consider sending a similar letter to the prospective guardian, letting them know of your desire for visits.

You can ask the court to order the court investigator to speak with you (by phone if not in person). You can ask the court to order you to be transported to court (or to be present by phone or video-conferencing) at the hearing.

You can even file a formal motion for visits and/or for transportation to court. Information on how to do this is in section 5 below.

Court investigator: The investigator's primary responsibility is to determine if the proposed guardian is a proper choice to care for your child. The investigator will write a report for the court that covers all aspects of your child's situation. We believe that a probate court investigator should *always* interview an incarcerated parent whose child is the subject of a guardianship petition. After all, the incarcerated parent may have valuable insight into the child's needs and the proposed guardian's appropriateness. However, this is not standard practice.

If you want the guardian to be ordered to bring your child to visit you, or be ordered to facilitate other contacts (such as phone calls or letters), you should ask the investigator to recommend this to the court. You can write to the court investigator, or you can speak with them over the phone. Either way, the court investigator needs to hear about your relationship with your child and why it is important to your child that your relationship continues. If you will be released while your child is still a minor, you may be able to be granted custody in the future (see section 10 about reunification after release). Tell the investigator about visiting conditions at your facility (days and hours, vending machines, child's play area, outside options, etc.). If someone else would be willing to take your child to these visits, provide that information. A favorable recommendation from the investigator for visits or calls will be very helpful.

Court hearing: If the court has ordered you to be transported to court or appear by video or phone, you will probably have a short opportunity to be heard. You should plan what you will say. Turn to sections 6 and 7 of this manual for more information about this. You can skip over the next two sections.

⁷ You can use these methods to oppose a guardianship as well. You can also file an objection to the proposed guardianship on form **GC-215**.

Section 4: AFTER A GUARDIANSHIP HAS BEEN CREATED: GETTING VISITS INFORMALLY

If a guardianship was created but no visits were ordered, you can try to work out an informal visiting arrangement with the guardian (unless the court ordered the guardian not to allow visits). The guardian of your child may be more receptive to your friendly letter than to being served with legal papers. Keep in mind that a court is going to place great weight on the guardian's opinion about you and your relationship with your child; you will likely be better off approaching the guardian in a reasonable manner than by being angry or confrontational. Filing legal papers takes a lot of work; if you can get visits without it, you ought to try. If this effort is not successful, you will have learned something about the guardian's position. You will also be able to inform the court that your informal efforts have failed.

We suggest that you write to your child's guardian and ask that your child be brought to you for a visit. Explain why this is important to you and how you would use that visiting time. Give the caregiver all the information you can find about visiting procedures at the facility where you are housed: days and hours, what the visiting room is like, the process to get into the prison (metal detectors, searches), the need to submit paperwork to get advance approval for visits, etc.

If a visit involves a lot of travel, you can consider helping pay for travel expenses. Another idea is for you to find someone other than the guardian who might be willing to transport your child to you. Keep in mind that caring for a child is a lot of work; bringing a child to a prison visit can be an added burden. In fact, this is a good time to express your appreciation to the guardian for their efforts in caring for your child while you are not available to do so yourself. If the guardian is reluctant to expose your child to the jail or prison setting, you might suggest that the guardian visit you first without the child, so that they may become familiar with the process and environment. Be sure to let the guardian know of the various services available to them, such as **TransMETRO**, **Get on the Bus**, Friends Outside, etc.

In addition to visits, you can make other requests, such as agreeing to accept regular phone calls from you and allowing you and your child to write to each other. You can also ask the guardian to send you photos of your child, as well as report cards, school and artwork, etc., and to keep you informed about school progress, medical issues and other major concerns.

Once you have a successful visit, you can negotiate with the guardian for a reasonable schedule for visits. This could be as frequent as weekly if you are in the same community, to once a year, if there is great distance and cost involved, to anything in between. Be sure to put your agreement in writing – it can be a simple letter from you stating what you have agreed. Keep a copy.

Generally, keep written records of how your arrangement is working: in a separate notebook or pad, write down the date and time of each call and visit, and keep copies of letters you write to your child and/or the caregiver. Make a note of the highpoints and any problems. This record will be useful if you need it later for court. However, we hope that you will be able to successfully arrange visits informally and will not have to seek assistance from the court.

Section 5: AFTER A GUARDIANSHIP HAS BEEN CREATED: GETTING A COURT ORDER FOR VISITS

If a probate court has already created a guardianship and appointed a guardian (or guardians) for your child, visiting was neither ordered nor forbidden, and you have been unable to arrange visits informally, then you will have to file a request in that case for the court to order visiting.⁸ Be sure to have copies of the documents already on file in the guardianship case. They are listed in Section 2 above.

Forms you will need

Unfortunately, there are no standard, statewide forms specifically designed to ask for visiting rights after a probate court guardianship has been established. Some probate courts allow family court forms to be used. Other counties, such as San Diego County, may have developed their own petition form. Some courts may even treat a simple letter seeking visits as a request for a court hearing.

To find out what paperwork your county probate court requires, you can write a letter to your county's Family Law Facilitator or Self-Help Center. The Family Law Facilitator is an office within the county court system that has been created to help people who don't have lawyers get practical information on filling out court forms. Tell them that your child is the subject of a guardianship in that county, that you are incarcerated, that you want court-ordered visits with your child, and that you need to know which forms to use. Ask them to send you blank copies of them. A list of addresses of all these offices is attached to this manual.

► **California Family Law Facilitator addresses -- Attachment #4**

Other important questions are:

- Whether there is a fee to file your visiting request, and if so, how much.
- Whether you can serve (give) the guardian with your request by *mail*, or whether the guardian must be served *in person*.
- Who else needs to be served.
- What the deadline for service is.
- Who will be responsible for preparing the court order after the hearing.

If you have a friend or relative on the outside, that person may be able to help you. That person could call or visit your local Family Law Facilitator or download forms from the internet and mail them to you. That address is: www.courts.ca.gov/forms.htm Another source of assistance is the Law Library at your institution. The library clerks may be able to give you the forms you need and help you learn how to fill them out.

If your court uses family court forms for this purpose, the likely family court forms are:

- **FL-300** Request for Order; Notice of Hearing; Court Order
- **FL-300 Information Sheet** explains how to fill out **FL-300**
- **FL-311** Child Custody and Visitation (Parenting Time) Application Attachment (optional)

⁸ If the court has denied your request for visits, and the guardian is unwilling to facilitate visits, then it would be pointless to refile for visits right away. However, the court may be willing to reconsider the issue if a significant change occurs (such as a move, a serious health issue or other change of circumstances). You can raise the issue in court again when your child is older.

- **FL-105/GC-120** Declaration under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA); lists current and previous addresses and caregivers of your child
- **MC-025** Blank attachment sheet (Optional)
- **FL 330 or FL 335** Proof of Personal Service/Proof of Service by mail.

This manual provides some information about these forms. The court may also want you to use a **GC-20** (Notice of Hearing) form. The Proof of Service is on page 2 of that form.

If you are unable to determine what forms your county uses, you could use the San Diego Petition for Order Re Guardianship Visitation (filling in your court’s address). A copy is attached (with the San Diego information removed). Along with it, you would use a standard probate court form (**GC-20** Notice of Hearing) to ask for a hearing date on your petition.

► ***Petition for Order Re Guardianship Visitation (San Diego model) – Attachment 5***

If you need a fee waiver, see below.

Filling out the forms in general

Many forms are “check the box” or “fill in the blank.” Read each part of the forms carefully. Do your best to answer each question. If a question does not apply to you, you can write “not applicable” or “NA.” You can add extra words if it will help explain your answer. Ideally, you would have one set of forms to practice on and a second, “clean” set to fill out after you are sure how best to fill them out. You could use a pencil at first if you only have one set.

No matter what forms you use to request visits, you’ll need to get across the same basic information: your relationship with your child, visiting conditions at your institution, what you are asking the guardian to do, and what you need from the court to be able to present your case.

Some places on the forms give you space to write your own statement or declaration. Definitely write out these section(s) on a blank piece of paper at first, because you may want to put it through a few drafts. If you can’t fit your answer into the space provided on the form, you can continue onto a blank piece of paper that you staple to the form, or use a **MC-025** Attachment sheet.

What to ask for

Fee waiver: If you have limited resources, you can ask the court to waive (not charge) whatever fee the court might charge you for filing a visiting request and asking for a hearing. Here are the two forms you need:

- **FW-001** Request to Waive Court Fees
- **FW-003** Order on Court Fee Waiver

You can attach a recent copy of your prison Trust Account statement. If you must serve the guardian in person and you will need to use the Sheriff’s Department to do so, you can include “service of process fee by sheriff” as a fee you are seeking waived in your Fee Waiver forms.

Visiting request: State what you want, in terms of days, length and frequency of visits. If you are using Family Court forms, page 2, item 2 on form **FL-300** asks you to state the visiting order you want in terms of days, length and frequency of visits. You can either fill out form **FL-311** or write your request on either a separate piece of paper or on form **MC-025** (label it “Attachment 2b”). Be sure to ask for

“contact visits.” (Otherwise, the prison may restrict you to non-contact visits behind glass.) Ask for visits to occur consistent with your institution’s family visiting hours. Ask for a reasonable visit length. Depending on your child’s age, distance from your current housing, and the strength of your current relationship, you could ask for visits every week or two, monthly, every 3 or 6 months, etc. You can suggest that someone other than your child’s caregiver bring your child to visit you. This will take a burden off the caregiver and may remove an objection that the caregiver has.

If you haven’t seen your child in some time, you could ask for one or two visits to see how it goes, and then return to court to evaluate the experience with the hope of making a more permanent schedule. You could also suggest that the caregiver visit you first, without the child, so that the caregiver becomes familiar with the prison environment. Your child will be more comfortable if the caregiver is comfortable.

Other requests of the guardian: On form **FL-300**, question 8 asks you to state what “other relief” you are seeking. Here is the place to ask for everything else that you would like to help you maintain a relationship with your child. You can also ask for regular (collect) phone calls; emails, if available; that your letters to your child be read or given to him/her; that photographs be mailed to you regularly; that you be kept informed about school activities, grades, health issues, etc. If you want the guardian to be ordered to attend the hearing, you can add that request here.

Any additional orders should be indicated as an “other order” on the first page of **FL-300**, in the box called Request for Order, or on page two of the San Diego Petition, item 6(2).

Transportation to court from prison or jail: It is generally a good idea to attend court in person when you are seeking a visiting order with your child. The judge will have a better idea of who you are, and you will be able to respond to any concerns or questions the judge may have.

Unfortunately, you do not have the *absolute right* to in-person attendance at a court hearing which is scheduled to hear your motion for a visiting order in a probate court guardianship case. Only where court proceedings are trying to make your child a dependent of the juvenile court, or are trying to terminate your parental rights, do you have an absolute right to be transported to the court hearing. [Cal. Penal Code §§ 2625(b), (c) and (d).]

However, you have the *right to ask* for a court order that you be transported to the court and the judge *may grant your request* and issue the order. This is true for any court hearing at which your parental rights are being ruled on, such as your right to visit. [Cal. Penal Code § 2625(e).] You can also ask to be transported to court for any mediation session that the court may order. Put these requests under item 8 on **FL-300** (or under item 6(2) on the San Diego Petition). If you need more room, you can write on a separate piece of paper or on **MC-025**, labeling this part “Attachment 8” or “Attachment 6,” depending on which form you are using.

Telephone or video-conference court appearance from prison or jail: An alternative to your being physically present in court is your appearance by telephone or video-conference. This option is preferable to the court. You can also ask that you be allowed to participate in any required mediation session by phone or teleconferencing. Put this request under item 8 on **FL-300**. You will have to figure out what the specific procedure for phoned-in court appearances is for your court and your prison or jail. Since procedures vary from county to county, and institution to institution, this manual cannot provide specific guidance. You can ask your counselor, other prisoners, or the litigation office for information about your institution, and the Family Law Facilitator or court clerk for information about your court.

Other requests: If there is any other court order that you want, it should be requested in the documents you are filing with the court. For example, you could ask for mediation between you and the guardian about your visiting request. You could ask that the guardian not disparage you in front of your child or refrain from anything else that you worry might be harmful to your child.

Your supporting statements or declaration

Probably the most important parts of any form are the places where you are asked to provide facts which support your requests. This is where you tell your story about who you are, what your relationship with your child is like, and why visiting with you is in your child's best interest. Plan to spend some time writing and rewriting it. The statement could be 1-3 pages in length. It can be a separate document, or an attachment to one of the forms you have filled out. In a lengthy declaration, each sentence or paragraph is numbered.

A logical order is to start with positive things about yourself – such as your education or employment before you were incarcerated. Then describe your relationship with your child before you were incarcerated. You'll have to tell the court about your conviction and sentence. Try and find the best way to describe the context of your criminal case. For example, if it came about because of a drug problem, or an abusive relationship, or if you were a minor participant, or it was your first conviction, you could provide that information. Then you could describe the positive things that you are doing while incarcerated.

Describe who is caring for your child now and what you are doing to maintain your relationship with your child. If your child wants to visit with you, let the judge know that. Describe why visiting with you will be good for your child. If you will be released while your child is still a minor, you can point out that you want to reunify with your child upon your release (this does not necessarily mean that you will seek custody) and that keeping an on-going relationship will make the future go better for all involved. But even if you have a long sentence, it is generally good for a child's emotional wellbeing to know, and have a positive relationship with, their parents.

Finally, give the judge some idea of what the visiting environment is like – will you have contact visits and be able to touch and hold your child? Is there a play area for children in the prison's visiting room? How long can a visit last? What will you do during those visits? It is also a good idea to address the issue of transportation. If your child's home is fairly near the prison, this is a point in your favor. If your child's home is far away, there will be significant time and cost involved in bringing your child to see you. Can you help lessen this burden for your child's guardian? Perhaps there is another relative who would be willing to bring your child, or maybe you or someone else can contribute towards expenses. If a program like **Get on the Bus** or **TransMETRO** is available to the guardian, give that information to the court.

Exhibits

You can attach to your motion and declaration any exhibit that you think is helpful to your case. This could include certificates you have earned while incarcerated; letters to or from your child; support letters from family members or others; or any other document that supports your case. Mark each exhibit with a number or letter (Exhibit A, B, C, or 1, 2, 3, etc.), and describe each exhibit in your declaration so that the court knows what it is. Do not overwhelm the court with documents. Only attach those few exhibits, if any, that directly support your request.

Reviewing your documents

Once you have filled out the forms to your best ability, ask someone at your institution to review them. It could be someone in the Law Library, a jailhouse lawyer, or someone who has filled out these forms themselves before.

After you have done the best you can with the resources available to you, prepare a complete set of the forms, in ink, in your best handwriting (printing). The easier your documents are to read, the easier it will be for the clerk and the judge to understand what you want and why.

Mailing the forms to the court

Before you mail the forms to the court, be sure to make two copies of everything. Keep one set for yourself. Mail the original and one set to the court and enclose a self-addressed, stamped envelope. If you feel confident about how you have filled out the forms, you can mail the forms directly to the court clerk.

If you want someone to look over your forms before you file them, you can send them to the Family Law Facilitator. Write that office and ask them to review your forms and to let you know if they are filled out properly. The Family Law Facilitator will not give you legal advice, but can point out things that you may have missed or misunderstood. You can ask the Facilitator to forward your forms to the court clerk for filing if they are complete, or to return them to you if you need to make any changes.

Receiving the forms back from the court

If the court accepts your forms, it will file the originals, rule on your fee waiver request, schedule a court hearing time and place, and stamp the copies “file-endorsed.” The court may order the guardian to attend the hearing, and order you both to participate in mediation services before the hearing. The court may issue other orders pending the hearing. The court clerk will mail one set of these papers back to you. It is very important that you make copies of this set, because you and the guardian(s) will each need a set. (**Exception:** You do not have to serve your fee waiver forms on the guardian(s).)

Serving the forms on the guardian

Most likely, you will be able to serve the guardian (or their lawyer if they have one) by mail and will not be required to serve any other party (such as another parent or relative). You must also serve your child if they are 12 years or older. If your county court instructs you differently, you must follow those instructions.

You *personally* are not allowed to serve (mail) the documents because you are considered a party to the court proceedings. You will have to find someone else to be your process server – to mail the documents and sign a form (called a Proof of Service) that they mailed them. The person can be anyone at least age 18 who is not a party to the action. It could be a fellow prisoner or staff person, or someone helping you on the outside.

After you receive file-endorsed copies of your documents back from the court, you should provide your process server with a set of file-endorsed documents for them to mail with a stamped envelope addressed to each guardian (or their lawyer). If you used the **FL-300** (Request for Order) form, you may be required to send the guardian a blank **FL-320** (Responsive Declaration) form. The packet should be mailed to the guardian as soon as possible, because they must be served at least 15 days before the hearing.

If you are unable to serve the guardian, you will not be able to get a court order to visit with your child, so this step is crucial. If you need more time to do so, you can ask the court for a later court date. The Litigation Coordinator may be able to assist you with this. You may have to submit new documents.

Filling out and filing the Proof of Service form

If you have the **FL-300** form, you can use the **FL-335** (Proof of Service by Mail) form. If you used the **GC-020** (Notice of Hearing–Guardianship) form, the Proof of Service is on the second page. You can fill out parts of these forms for your process server. After your process server mails the documents, they must fill out the rest of the form, including date and signature.

The original Proof of Service must be filed with the court. If the process server gives it to you to file, be sure to make a copy of it for your records *before* mailing the original (and one copy) to the court with a stamped self-addressed envelope. If the process server files it with the court directly, they should make a copy before filing it, and make sure you are mailed a file-endorsed copy.

Section 6: PREPARING FOR THE COURT HEARING

Prepare for and attend the mediation session

The probate court judge may refer your request to a court mediator. This could happen over the telephone on a date before, or maybe the same day as, the hearing. The mediator works for the court. A mediator is a trained counselor who will listen to both the guardian and you, and try to help you come to an agreement. The mediator’s primary concern, like the court’s, will be the best interest of your child. Depending on the mediator and/or the county where the case is being heard, the mediator may be quite supportive of a child’s visiting an incarcerated parent, or hostile to the idea, or neutral. If no agreement is possible, then the mediator will give a report to the court and probably make a recommendation. Courts tend to follow the recommendations of their mediators.

This is an important session. You must present yourself and your case as strongly as possible. One effective way to prepare for this meeting is by role-playing with your friends. Ask someone to pretend to be your child’s guardian and someone else to play the role of mediator. You be yourself. Have the “mediator” ask you to describe your request and then ask the “guardian” for a response. Then, you give your response and have the mediator try to negotiate an agreement. After the exercise, have a discussion with your friends about what you did well and what you could have done better. You can learn a lot from this kind of exercise.

Marshal your witnesses and evidence

Most probate court guardianship hearings are not lengthy. However, you may have an uphill battle so it is good to present as strong a case as you can. If you have family or friends who support your motion, they can help you tremendously by attending the court hearing. Their physical presence in the courtroom can give you strength and will let the judge know that you have support. Also, you may want them on hand as possible witnesses. If someone has firsthand knowledge that you are a good and loving parent, or that the guardian has been unreasonable in some ways, they might make a good witness for you. Tell your witnesses what testimony you think they can offer and make sure they are comfortable with it.

Consider carefully which witnesses you want. Ask yourself whether your witness could somehow be used against you – for example, if they know negative things about you that might come out in court if they were cross-examined.

Consider also whether you have any additional exhibits to present that you have not already submitted to the court. If so, bring them to court with you, have your support person bring them to court that day, or mail them in before the hearing. Always have an extra copy to give to the guardian and one for yourself.

Write down your main points

It is easy to get flustered and forget things during a court hearing. It will be helpful if you make a list of your main points – the strongest facts you have to support your requests. Also, try to anticipate what the guardian will say to try and prevent visits and write down in advance what your best response is to those arguments. You may have an opportunity to ask the guardian questions. Think about this beforehand and write down a few questions to ask the guardian that will either bring out favorable information about you or will reveal negative information about their position. Finally, make a checklist of all the things that you have asked for in your papers (frequency and length of visits and phone calls, copies of report cards, photographs, etc.).

Do a roleplay of a court hearing

Again, an effective way to prepare for this court hearing is by role-playing with your friends. Ask someone to pretend to be your child's guardian and someone else to play the role of judge. You be yourself. Have the "judge" ask you to describe your request and then ask the "guardian" for a response. The "judge" can ask you both questions and allow each of you to ask the other questions. Then, the judge can make a ruling. After the exercise, have a discussion with your friends about what you did well and what you could have done better.

Get transported to court from prison or jail

If you received a court order to be transported to court for your hearing, you may have to be proactive at your institution to make sure you are transported in time. Be polite but persistent! The judge has ordered that you be brought to court, but *you* will have to make it happen.

Appear in court by telephone or video conference from prison or jail

If you receive an order to appear in court by telephone or video-conferencing, be sure that you understand what you need to do on your end to make this happen. It may take several steps, over several days, to arrange this, including getting a permission slip or ducat. On the day of the hearing, allow yourself plenty of time to get yourself and your paperwork to the office where the phone or video equipment is located.

Section 7: THE COURT HEARING ITSELF

Phone or video appearance: special considerations

When you are connected to the courtroom, let them know right away if you are having difficulty hearing or seeing the judge and other people in the courtroom, and ask if they can hear and see you. Listen carefully to the proceedings. The judge should tell you when it is your turn to speak. If you are not getting a chance to speak, you can say, politely, “Your Honor, may I say something?”

Your witnesses and supporters

Ask your witnesses and supporters to arrive a bit early to the courtroom. Before court goes into session, they can introduce themselves to the court clerk or bailiff as being in court for your case. This could be helpful for the judge, especially if there is any difficulty in getting you transported to court or connected over the phone. You can ask your witnesses or supporters to deliver new exhibits to the court. The original goes to the court and copies go to the guardian and to you.

Being sworn as a witness

Unless you have an attorney, you will have two roles to play during the court hearing. You are your own attorney, and you are the party (or person) who is seeking a court order. You, and any other witnesses or parties, will be sworn to tell the truth.

Your presentation

Since you are the party whose motion is being heard, the judge may call on you first. Be prepared to state your case simply and briefly. Speak slowly and clearly. State what you want and why it is reasonable and in your child’s best interest. Hopefully, the judge has read everything you have sent to the court. It is fine to repeat your main points, but you do not need to repeat every detail. Be conscious of the time. You may have less than five minutes to speak to the judge. Tell the judge if you have any witnesses to present.

If you have new exhibits to present, do so now. Explain what they are. If you are in court, give the original to the court and a copy to the guardian, keeping a copy for yourself. If you are appearing remotely, you’ll need someone in the courtroom to deliver any new exhibits.

The judge, the opposing attorney, or the guardian (if without an attorney) may ask you questions. It is best to admit the truth, but provide a helpful context. For example, if the judge asks how often you have seen your child in the last five years, and the answer is “not at all,” you can answer (if true), “The guardian has refused to let me see my child when I tried, so I have been unable to see her at all. I have written to my daughter every month.”

If you are presenting a witness, you would do so at this point. The general rule is that you have to ask open-ended questions of your witnesses. This means you have to ask a question like, “Please tell the judge what you know about me as a parent,” and *not* a leading (yes/no) question like, “You think that I am a great parent, don’t you?” Even if your witness does not testify, you can tell the judge that you have a witness present in court who could corroborate you on particular facts.

The guardian's presentation

When it is the guardian's turn to present their case, do not interrupt. If you disagree with what is being said, write yourself a note. The court should give you a chance to ask questions of the guardian at some point. You may have some questions already prepared, and you may think of some during the presentation. The questions can bring out facts favorable to you, or unfavorable to the other side. You *can* ask leading questions of an opposing party or witness. For example, you can ask, "Didn't I bring my son to the doctor regularly when he was in my care?" Or, "Isn't it true that you have not let me speak to my daughter on the phone?" and "Isn't it true that she wants to talk to me?"

Your rebuttal

When the other side finishes its presentation, you can ask the court if you can reply. Don't just repeat your original presentation. Instead, use this time to refute what the guardian has said. You can tell the judge if certain unfavorable facts are untrue. Even if an unfavorable fact is true, you can put it in an understandable context.

The court's ruling

Listen carefully to the judge's decision. Take notes. If you don't understand some part of it, ask that the judge explain it. If the judge has forgotten to rule on something that you asked for, remind them. For example, the judge may have made a ruling about visits, but forgotten your request about phone calls. (This is why it is helpful to have a written list of your requests.)

Next court date

If you think it will be helpful to your case, you can ask for a next court date. For example, if the judge orders a visit once every three months, but you are worried that the visit won't happen, you can ask for a "progress report" or "status hearing" in four or five months. This will put pressure on the guardian to make the visit happen in the timeframe the judge ordered. You can even agree at the current hearing that you will "continue" or "postpone" the next hearing for another few months if the visits are happening on schedule.

The advantage of having an automatic next court date is that you (or the guardian) will not have to refile and re-serve court papers to get back on the court's calendar to address any problems that may occur. Remember to ask for an order that you be transported to court, or that you are given a telephone or video-conference appearance, as appropriate, for that hearing.

Court order

The last step is to ask who will be responsible for preparing, filing, and serving the written court order. There is no standard statewide form for a probate court visiting order. In some courts, the order may be prepared by the clerk the same day as the hearing. Other times, one of the parties (particularly where there is an attorney) will be responsible. You can ask to review and approve an order drafted by the guardian's attorney. If you do so, read the proposed order carefully and make sure it accurately reflects what the judge said. You can make corrections. The court order is then submitted to the judge for signature. The court clerk will "conform" or stamp copies of the court order. Then, the copies will be handed or mailed to the parties.

Forms for court orders

Here are standard forms that can be used or modified for court orders for child visiting:

Family Law:

- **FL-340:** Findings and Order After Hearing
- **FL-341:** Child Custody and Visitation Order Attachment (optional)

Probate guardianship:

- **GC-240:** Order Appointing Guardian of Minor/s
- **GC-250:** Letters of Guardianship

The court or the Family Law Facilitator should be able to provide guidance in this area.

Section 8: ENFORCING YOUR ORDER COOPERATIVELY

If you have obtained a court order for visits, phone calls or anything else that will help you maintain a relationship with your child, *CONGRATULATIONS!* Hopefully, your child's guardian will comply with the order. Here are some things you can do to help make this happen.

This is a good time to again express your appreciation to your child's guardian for the important work they are doing to care for your child. Express your intention to do everything you can to make the visits or other contact as positive for your child as possible.

If you haven't already, set up a communication system with the guardian – through phone, letters or through a third party. Make your requests clear. For example, suggest a reasonable date for the first visit to occur. Provide the guardian with the information they need to get pre-screened, if necessary. Find out what other paperwork may be needed, such as your child's birth certificate, a copy of the guardianship orders, etc.

Keep copies of any letters you send the caregiver and/or keep a diary of your contact with the caregiver about these arrangements. Be reasonable and flexible. This means that you will accept modifications of the schedule if requested by the guardian, so long as you still receive the basic amount of contact that the judge ordered. If necessary, let the caregiver know that you will take the case back to court if the judge's order is not followed.

Also keep a record of your visits and other contact with your child. If difficulties develop, look for assistance from third parties. For example, Friends Outside, your counselor, a prison chaplain, or other family members may be helpful intermediaries.

Section 9: GOING BACK TO COURT

If the guardian does not substantially comply with the order, you may be forced to go back to court for relief. If a next court date was already scheduled in the case, then you may be able to raise the issues at that hearing. Before the hearing, you can file a written declaration telling the court what has happened since the last hearing. You can use form **MC-030** (Declaration) for this purpose. If you file a declaration, you will have to serve it on the opposing party. It can be mailed, but not by you. Have the sender sign Form **FL-335** to prove that it was served by mail, then file the Proof of Service with the court.

If there is no new court date scheduled, you can write to the Family Law Facilitator office or the court itself and ask how to proceed. Perhaps a mediator or other service is available to address the problem. If not, you may have to file a new Request for Order or a new Petition and Request for Hearing (like you did already). Another option is to file an Order to Show Cause for Contempt.

Either filing will get the attention of the court and show the guardian that you are serious. In family court, a new motion for a visiting order hearing usually requires a change of circumstances from the last court hearing. The probate court may be more flexible. If nothing external has particularly changed, you could seek a change in the prior order to require a more willing person to transport your child to you.

A contempt of court proceeding does not seek to change the court order, but to punish the party who *intentionally* disobeyed the previous court order when they had the ability to comply. Since it is in the best interest of your child that you and your child's guardian work cooperatively together, a contempt proceeding should only be used as a *last resort*. In other words, only file for contempt in extreme situations – when the guardian has *intentionally* thwarted the court's orders, you've received little or none of the contact with your child that was ordered, and there's no hope for compliance without court intervention. For those parents who have no other choice, the following are the forms you will need to file a contempt motion:

- **FL-410**: Order to Show Cause and Affidavit for Contempt
- **FL-412**: Affidavit of Facts Constituting Contempt
- **MC-025**: Attachment (optional)
- **FL-330**: Proof of Personal Service.

Being accused of contempt of court sometimes motivates people to comply with court orders.

Aside from seeking compliance with the current court order, you may have other reasons to return to court. For example, if you have been moved to a new facility (either farther from or closer to your child's home), and if you and the guardian cannot agree on a revised schedule, you may need the court to modify its previous order. If your visits have been going well, and you want to increase their frequency or make some other modification, you can go back to court and make that request. Generally, though, it is best to work these issues out with the guardian.

Section 10: REUNIFICATION AFTER RELEASE

It is not uncommon for a returning parent to want immediate custody of their child, while a caregiver has a different opinion. In the case of a probate court guardianship, the general assumption is that the guardianship will continue until the child turns 18. However, the probate court *can* terminate a guardianship before the child turns 18 and return custody to a parent under certain circumstances. Even if a guardianship continues, an incarcerated parent who has returned to the community can seek or expand visiting rights and other forms of contact with their child.

Obtaining or expanding visitation rights

Incarcerated parents who have been able to maintain contact with their children, through visits, phone calls and/or letters, will have a smoother time reuniting with their children after release. If you have been able to maintain or establish a positive relationship with your child's guardian, this too will serve you well. But even if your contact has been limited, or dissatisfactory, you will have a new opportunity to reconnect once you return home.

General approach: It is important to remember that everyone's greatest concern should be the "best interests of the child." We believe that, in most cases, a child's best interest includes being able to maintain a lifelong relationship with his or her parents, incarcerated or not. However, this does not mean that it is in a child's best interest to be moved from one home to another immediately upon a parent's release from prison or jail. Children may have school or daycare routines that ought not be disrupted. At the same time, a formerly incarcerated person may have a lot of work to do to reestablish him or herself, with a home, a job, etc.

Informal arrangement: If you are comfortable with the current guardianship arrangement, but want to gain or expand your visits now that you are in the community, we recommend that you first try to work out a new schedule with the guardian. Limited visiting that starts immediately can be expanded over time, as everyone gets comfortable with the new routine. A child should not be the subject of a legal tug-of-war. Instead, loving adults can cooperate with each other to make sure that the child's needs are met. Raising children is a lot of work. Ideally, you and the guardian can find a way to work together and develop a sensible arrangement of custody and visitation that supports your child's needs.

Court involvement: If you are unable to work things out with your child's caregiver upon your release, you can file a motion for visiting rights in the probate court. The forms and procedures you would use are the same as outlined in sections 5 - 7 above. Your release from prison or jail may be a change of circumstance that would justify a court taking a fresh look at the present court order. You will fare better in court if you can show that you have transitioned well back into the community and that your efforts to visit with your child have been reasonable. A judge may be reluctant to expand your visiting and custody rights at first. Instead, a judge might order an initial period of "supervised" visits. However, the courts should not require every parent returning to the community to have visits supervised. You can give the judge reasons why supervised visits are not necessary in your case.

Visiting order: If you obtain a new visiting order, it will be important for you to take advantage of every opportunity you are given to visit with your child. Keep records of your visits, phone calls and letters, so you can show the effort you are making. Over time, your consistent efforts will be noted. The order can be modified as circumstances change. After a reasonable period of regular visits, the reestablishment of your relationship with your child, and other markers of your successful reentry (employment, stable housing, a drug/alcohol-free lifestyle), you can petition the court again to expand your visiting rights.

It is important to follow court orders. If you take your child without the permission of the legal guardian or the court, or fail to return your child as ordered, you could be prosecuted for a criminal offense and your probation, parole or supervised release could be revoked.

Resources: Your local county law library is a good resource. The librarians can help you obtain forms and legal research materials, as well as refer you to other legal resources in your community.

Regaining custody (termination of guardianship)

To regain legal custody, you would petition the court to terminate the guardianship. (A child over age 12 can petition to terminate their guardianship.) The “grounds” or “reason” is that it is in the best interest of your child that they be moved into your home, now that you are able to resume caring for them.

Be aware, though, that California law values “stable, continuous and successful” living arrangements for children. [*In re Guardianship of L.V.* (2006) 136 Cal.App.4th 481, 491.] To terminate the guardianship, the court must find that the guardianship is not in your child’s best interest anymore and that it would not be detrimental for your child to separate from the guardian in order to live with you. [Cal. Family Code section 3041.] If the guardianship is terminated, the court can order visiting rights for the former guardian to allow them to maintain their relationship and thus minimize any emotional distress your child might experience due to the transition.

To petition to terminate the guardianship and for custody of your child, you will (or may) need these forms:

- **FW-001** Request to Waive Court Fees (if needed)
- **FW-003** Order on Court Fee Waiver (only if you request a waiver)
- **GC-255** Petition for Termination of Guardianship
- **MC-025** Attachment form (optional)
- **GC-020** Notice of Hearing
- **GC-020(MA)** Attachment to Notice of Hearing: Proof of Service by Mail (may not be necessary)
- **GC-020(P)** Proof of Personal Service of Notice of Hearing (optional).

Use the current guardianship case number on these documents.

Filling out the forms

The **Petition** is the key document. You say what you want and why. You also have to list your child’s close relatives (section 9). If any of them agree with the termination of the guardianship, they can sign the Consent to Termination and Waiver of Service and Notice of Hearing at the bottom of the second page of the **original copy** of your petition (section 11). If your child is over age 12, they can sign the consent form as well. If you know you will be unable to send any of them copies of your Petition, you can ask the judge to dispense with notice to them (item 7).

You can use the **MC-025** Attachment form if you need more room for any of your answers. You can copy it if you need extra pages. Attach any other helpful documents to your petition, such as documents about your re-entry achievements, evidence of positive visits, character reference letters, etc.

The last three forms listed above (**Notice of Hearing, Attachment** and **Proof of Personal Service**) provide people with notice of the court hearing and tell the court how you served them with this notice. You can fill out the basics on the first page of the Notice of Hearing form, but will have to leave the Date/Time/Dept./Room information blank. The court clerk will fill in that information.

Also, you can leave the second page of the **GC-020** Notice of Hearing and the **GC-020(MA)** form blank at this point. (This second form is an attachment to the first form, to give you room to list any additional people you mail the papers to.) You will only use the third form if you happen to serve someone in person—one form for each person who is served in person.

You might also consider filing (in the current guardianship) a current request for visits with your child, if you don't already have them, and as a backup in case the judge denies your petition to terminate the guardianship. For more information about filling out forms, writing your declaration and attaching exhibits, see section 5 above. Your county's Family Law Facilitator may be able to provide you with additional assistance. You can also write to LSPC to send you our "Termination of Probate Court Guardianship Information Packet."

Filing and serving the forms

Filing: After you fill out the basic mandatory paperwork, make at least 3 copies. Bring them to the court for filing, with a self-addressed stamped envelope. The clerk will file your documents, give you a time and date for a hearing, and hand you back a set of file-stamped copies. Hopefully, the court will grant your fee waiver request; the clerk will mail you a copy of the order.

You can also file these documents by mail. Be sure to include multiple copies and a self-addressed stamped envelope.

In either case, be sure to keep one copy of each document you have prepared – don't leave or mail every copy of a document with the clerk.

Serving: After you receive the filed documents back from the court, finish filling out the Notice of Hearing and **GC-020(MA)** forms, by listing the parties' names and addresses of those you are going to serve. You will serve the guardian(s), all of the relatives who had to be served when the petition for guardianship was filed (parent, grandparents, brothers and sisters), anyone who has a right to visit, and any other relatives who may have appeared in court when the guardianship was established. However, you do not have to serve anyone who signed the Consent and Waiver portion of your petition.

Next, address an envelope for each person entitled to notice. People living in the same home must be given separate notice (in separate envelopes). Double-check that you have an envelope for all of the people listed on the Proof of Service documents.

Then make several sets of your forms—one set for each envelope and at least one set for yourself. Put one set in each envelope and put the correct amount of postage on each envelope.

As the petitioner, you are not allowed to serve (mail) these documents yourself. You will have to find someone else (at least age 18) who is willing to place these envelopes in the mail for you. That person must then fill out the Proof of Service by Mail on page 2 of a copy of the Notice of Hearing or on the **GC-020(MA)** form. Although not necessary, it may be more convenient to have some people served in person. If so, someone *other than you* would have to hand the documents to those persons and then fill out the Proof of Personal Service form (**GC 020(P)**). You must give notice at least 15 days before the hearing.

Make two copies of the signed Proof of Service documents. Keep one copy for yourself. Send the original and one copy to the court, with a self-addressed stamped envelope so the court can mail you back a file-stamped copy.

Next steps

After a petition to terminate guardianship is filed, a court investigator will investigate the situation and write a report for the judge. The court may appoint an attorney for the child(ren). The investigator and the child's attorney are resources who can probably help answer other questions about procedures.

It is of course important for you to attend the hearing. See sections 6 and 7 for information about how to prepare for the hearing, and what happens at and after the hearing. The court will use form **GC-260** (Order Terminating Guardianship) if your petition to terminate the guardianship is granted.

How to change guardians

If you want to *change* guardians to a different adult, the first step is to identify an appropriate person who is willing to take on this responsibility. You would then file the same forms (listed above) to terminate the present guardianship. In addition, you and/or your proposed guardian would file a petition to create a new guardianship:

- **FW-001** Request to Waive Court Fees (if needed)
- **FW-003** Order on Court Fee Waiver (only if you request a waiver)
- **GC-210(P)** Petition for Appointment of Guardian (naming the new guardian)
- **GC-210(CA)** Child Information Attachment
- **GC-212** Confidential Guardian Screening form (filed out by proposed guardian)
- **FL-105/GC-120** Declaration Under UCCJEA
- **GC-211** Consent of Proposed Guardian (may not be required if new guardian is the petitioner).

Write in "Successor" to show the judge that it is a Petition for Appointment of Successor Guardian. When this Petition is filed, the court clerk will give it a new case number.

GC-505 is a 2-page Judicial Council guide on filling out these forms and the next steps in creating a guardianship. **GC-510** is a 4-page guide on how to serve these legal papers and who must be served. The Judicial Council website has a useful section on "Becoming a Guardian" at www.courts.ca.gov/1212.htm

You and your proposed guardian can also seek assistance from your county's Family Law Facilitator office, or write to LSPC for a copy of our "Termination of Probate Court Guardianship Information Packet."

CONCLUSION

We hope that this information is helpful to you. The court system can be overwhelming. We believe that the courts should make it easier, and not harder, for incarcerated parents, and parents returning to the community from prisons and jails, to develop and maintain relationships with their children. Being incarcerated does not make someone a bad parent. Nor should parents who are released from prison or jail be stigmatized for that reason. In most cases, children want to know their parents and want their parents to be a part of their lives. Even if you do not regain primary custody, your continued positive presence in your child's life is priceless to both of you.

As more and more incarcerated and released parents petition the courts for visiting rights, we believe the courts will become more understanding of your perspective. In this way, you are helping pave the way for a better tomorrow, not only for your family but also for others. We wish you success in your efforts to remain in your children's lives.

ATTACHMENTS

Attachment 1: Power of Attorney for Minor Child – with notary

Attachment 2: Power of Attorney for Minor Child – with witnesses

Attachment 3: Caregiver’s Authorization Affidavit

Attachment 4: California Family Law Facilitator addresses

Attachment 5: Petition for Order re Guardianship Visitation (San Diego model)

POWER OF ATTORNEY FOR MINOR CHILD

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

- 1. I am the natural mother/father of _____ who was born on _____.
- 2. I am presently incarcerated at _____ located in _____.
- 3. During this time, my child _____ is being cared for by _____.
- 4. I wish to give full Power of Attorney to _____ with respect to the care of my child _____.
- 5. Specifically, I give _____ full Power of Attorney with respect to the care of _____ in matters affecting medical needs, schooling, residence, legal matters, public assistance, Medi-Cal, CalWORKS, and all other matters pertaining to well-being.
- 6. I understand that this Power of Attorney is not a legal custody order and that I am not giving up my parental and custody rights by signing this document.
- 7. This Power of Attorney will remain in effect until _____ or until revoked in writing.

Signed this _____ day of _____ (month), _____ (year).

Signature of parent

State of California

County of _____

On this _____ day of _____, in the year _____, before me, _____ [name and title of officer], personally appeared _____ [name of signer], who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Notary Public Signature]

POWER OF ATTORNEY FOR MINOR CHILD [witnesses]

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

1. I am the natural mother/father of _____ who was born on _____.
2. I am presently incarcerated at _____ located in _____.
3. During this time, my child _____ is being cared for by _____.
4. I wish to give full Power of Attorney to _____ with respect to the care of my child _____.
5. Specifically, I give _____ full Power of Attorney with respect to the care of _____ in matters affecting medical needs, schooling, residence, legal matters, public assistance, Medi-Cal, CalWORKS, and all other matters pertaining to well-being.
6. I understand that this Power of Attorney is not a legal custody order and that I am not giving up my parental and custody rights by signing this document.
7. This Power of Attorney will remain in effect until _____ or until revoked in writing.

Signed this _____ day of _____ (month), _____ (year).

Signature of parent

STATEMENT OF WITNESSES

On the date written above, I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of convincing evidence) to be the principal, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears of sound mind and under no duress, fraud, or undue influence, that I am over the age of eighteen, and that I am not the person appointed as attorney in fact (agent) by this document.

[Signature of Witness #1]

[Printed or typed name of Witness #1]

[Address of Witness #1, Line 1]

[Address of Witness #1, Line 2]

[Signature of Witness #2]

[Printed or typed name of Witness #2]

[Address of Witness #2, Line 1]

[Address of Witness #2, Line 2]

[Cal. Probate Code sections 4121 and 4122.]

Caregiver's Authorization Affidavit

Use of this affidavit is authorized by Part 1.5 (commencing with Section 6550) of Division 11 of the California Family Code.

Instructions: Completion of items 1 - 4 and the signing of the affidavit is sufficient to authorize enrollment of a minor in school and authorize school related medical care. Completion of items 5-8 is additionally required to authorize any other medical care. **Print clearly.**

The minor named below lives in my home and I am 18 years of age or older.

1. Name of minor: _____.

2. Minor's birth date: _____.

3. My name (adult giving authorization): _____.

4. My home address (street, apartment number, city, state, zip code):

5. F I am a grandparent, aunt, uncle, or other qualified relative of the minor (see page 2 of this form for a definition of "qualified relative").

6. Check one or both (for example, if one parent was advised and the other cannot be located):

F I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.

F I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.

7. My date of birth: _____.

8. My California's driver's license or identification card number: _____.

Warning: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both.

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

Dated: _____ Signed: _____

Notices:

1. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody, and control of the minor, and does not mean that the caregiver has legal custody of the minor.
2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.
3. This affidavit is not valid for more than one year after the date on which it is executed.

Additional Information:**TO CAREGIVERS:**

1. "Qualified relative," for purposes of item 5, means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great," or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.
2. The law may require you, if you are not a relative or a currently licensed foster parent, to obtain a foster home license in order to care for a minor. If you have any questions, please contact your local department of social services.
3. If the minor stops living with you, you are required to notify any school, health care provider, or health care service plan to which you have given this affidavit.
4. If you do not have the information requested in item 8 (California driver's license or I.D.), provide another form of identification such as your social security number or Medi-Cal number.

TO SCHOOL OFFICIALS:

1. Section 48204 of the Education Code provides that this affidavit constitutes a sufficient basis for a determination of residency of the minor, without the requirement of a guardianship or other custody order, unless the school district determines from actual facts that the minor is not living with the caregiver.
2. The school district may require additional reasonable evidence that the caregiver lives at the address provided in item 4.

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

1. No person who acts in good faith reliance upon a caregiver's authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action, for such reliance if the applicable portions of the form are completed.
2. This affidavit does not confer dependency for health care coverage purposes.

California Family Law Facilitator Addresses (Updated June 2023)

Alameda

24405 Amador St.
Hayward, CA 94544
510-690-2700

Alpine

495 Main St.
Placerville, CA 95667
530-621-5098

Amador

500 Argonaut Ln.
Jackson, CA 95642
209-257-2627

Butte

1) One Court St.
Oroville, CA 95965
530-532-7002

2) 1775 Concord St.
Chico, CA 95928
530-532-7002

Calaveras

400 Government Center Dr.
San Andreas, CA 95249
209-754-1443

Colusa

Mailing

532 Oak St.
Colusa, CA 95932
530-458-0598

Office

547 Market St.
Courthouse Annex
Colusa, CA 95932
530-458-0598

Contra Costa

751 Pine St.
Martinez, CA 94553
925-608-1000

Del Norte

450 H St., Rm. 209
Crescent City, CA 95531
707-465-8634

El Dorado

1) 2850 Fairlane Ct., Ste. 120
Placerville, CA 95667
530-621-6426

2) 1354 Johnson Blvd.

South Lake Tahoe, CA 96150
530-573-3044

Fresno

1130 O St.
Fresno, CA 93721-2220
559-457-2143

Glenn

119 N. Butte St.
Willows, CA 95988
530-934-7304

Humboldt

825 5th St., Rm. 310
Eureka, CA 95501
707-445-7256

Imperial

939 W. Main St.
El Centro, CA 92243
760-482-2233

Inyo

301 W. Line St.
Bishop, CA 93514
760-872-6240

Kern

1) 1122 Jefferson St.
Delano, CA 93215
661-720-5800

2) 325 Central Valley Hwy.
Shafter, CA 93263
661-746-7500

Kings

1640 Kings County Dr.
Hanford, CA 93230
559-582-1010

Lake

7000-A S. Center Dr.
Clearlake, CA 95422
707-994-4612

Lassen

2610 Riverside Dr.
Susanville, CA 96130
530-251-3935

California Family Law Facilitator Addresses (Updated June 2023)

Los Angeles

1) 111 N. Hill St.
Fl. 4, Rm. 426F
Los Angeles, CA 90012

2) 9425 Penfield Ave.
Fl. 3, Rm. 3700
Chatsworth, CA 91311

3) 200 W. Compton Blvd.
Fl. 2 Rm. 200F
Compton, CA 90220

4) One Regent St.
Fl. 1, Rm. 107
Inglewood, CA 90301

5) 42011 4th St. W.
Fl. 3, Rm. 3700
Lancaster, CA 93534

6) 275 Magnolia Ave.
Fl. 3, Rm. 3101
Long Beach, CA 90802

7) 300 E. Walnut St.
Fl. 3, Rm. 300
Pasadena, CA 91101

8) 400 Civic Center Plz.
Fl. 7, Rm. 730
Pomona, CA 91766

9) 1725 Main St.
Fl. 2, Rm. 210
Santa Monica, CA 90401

10) 825 Maple Ave.
Fl. 1, Rm. 160
Torrance, CA 90503

11) 6230 Sylmar Ave.
Fl. 3, Rm. 350
Van Nuys, CA 91401

12) 7339 S. Painter Ave.
Fl. 3, Rm. 300
Whittier, CA 90603

Madera

200 S. G St.
Madera, CA 93637
559-416-5520

Marin

3501 Civic Center Dr., Rm. C-44
San Rafael, CA 94903
415-444-7130

Mariposa

5088 Bullion St.
Mariposa, CA 95338
209-742-5322

Mendocino

1) 100 N. State St., Rm. 304
Ukiah, CA 95482
707-468-2020

2) 700 S. Franklin St.
Fort Bragg, CA 95437
707-468-2020

Merced

2260 N St., Rm. 1400
Merced, CA 95340
209-725-4168

Modoc

205 S. East St.
Alturas, CA 96101
530-233-6516

Mono

100 Thompsons Wy.
Mammoth Lakes, CA 93546
760-923-2314

Monterey

1) 1200 Aguajito Rd., Fl. 1
Monterey, CA 93940
831-647-5800, ext. 3005

2) 118 W. Gabilan St.
Salinas, CA 93901
831-647-5800, ext. 3005

3) 250 Franciscan Wy.
King City, CA 93930
831-647-5800, ext. 3005

Napa

825 Brown St., Fl. 2
Napa, CA 94559
707-299-1137

Nevada

201 Church St., Fl. 1, Ste. 9
Nevada City, CA 95959
530-362-5328

Orange

341 The City Dr. S. Thompsons
Fl. 1, Rm. 101
Orange, CA 92868
657-622-5077

Placer

10820 Justice Center Dr.
Roseville, CA 95678
916-408-6446

Plumas

89 Court St.
Quincy, CA 95971
530-283-4792

California Family Law Facilitator Addresses (Updated June 2023)

Riverside

1) 265 N. Broadway
Blythe, CA 92225
760-775-8500

2) 880 N. State St.
Hemet, CA 92543
951-766-2525

3) 46200 Oasis St.
Indio, CA 92201
760-393-2617

4) 3535 10th St., Fl. 2
Riverside, CA 92501
951-274-4499

Sacramento

3341 Power Inn Dr.
Sacramento, CA 95826
916-875-3400

San Benito

450 4th St.
Hollister, CA 95023
831-636-4057

San Bernardino

351 N. Arrowhead Ave.
San Bernardino, CA 92415
909-269-8789

San Diego

1) 1100 Union St.
San Diego, CA 92101
619-844-2200

2) 325 S. Melrose Dr.
Vista, CA 92081
760-201-8200

3) 250 E. Main St.
El Cajon, CA 92020
619-844-2200

4) 500 3rd Ave.
Chula Vista, CA 91910
619-844-2200

San Francisco

400 McAllister St.
San Francisco, CA 94102
415-551-0605

San Joaquin

180 E. Weber Ave., Ste. 105
Stockton, CA 95202
209-992-5283

San Luis Obispo

1050 Monterey St.
San Luis Obispo, CA 93408
805-706-3617

San Mateo

400 County Center, Fl. 6
Redwood City, CA 94063
650-261-5100

Santa Barbara

1) 1100 Anacapa St.
Santa Barbara, CA 93101
805-882-4660

2) 312 E. Cook St.
Santa Maria, CA 93454
805-614-6442

Santa Clara

201 N. First St.
San Jose, CA 95113
408-882-2826

Santa Cruz

1 2nd St., Rm. 301
Watsonville, CA 95076
831-786-7200

Shasta

1655 Court St., Rm. 115
Redding, CA 96001
530-245-6900

Sierra

100 Courthouse Square
Downieville, CA 95936
530-289-3698

Siskiyou

311 4th St.
Yreka, CA 96097
530-842-8182

Solano

600 Union St.
Fairfield, CA 94533
707-207-7300

Sonoma

3055 Cleveland Ave.
Santa Rosa, CA 95403
707-521-6500

California Family Law Facilitator Addresses (Updated June 2023)

Stanislaus

800 11th St.
Modesto, CA 95354
209-530-3100

Sutter

1175 Civic Center Blvd.
Yuba City, CA 95993
530-822-3300

Tehama

1740 Walnut St.
Red Bluff, CA 96080
530-527-3563

Trinity

11 Court St.
Weaverville, CA 96093
530-623-5641

Tulare

1) 221 S. Mooney Blvd., Rm. 203
Visalia, CA 93291
559-737-5500

2) 300 E. Olive Ave.
Porterville, CA 93257

Tuolumne

12855 Justice Center Dr.
Sonora, CA 95370
209-533-6565

Ventura

1) 4353 E. Vineyard
Fl. 3, Rm. 30
Oxnard, CA 93036
805-289-8864

2) 800 S. Victoria Ave., Rm. 206
Ventura, CA 93009
805-289-8732

Yolo

1000 Main St., Fl. 2
Woodland, CA 95695
530-406-6794

Yuba

215 5th St.
Marysville, CA 95901
530-740-1850

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO.(Optional): _____ EMAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____	
GUARDIANSHIP OF: _____	
PETITION FOR ORDER RE GUARDIANSHIP VISITATION	CASE NUMBER _____

Petitioner(s) _____ requests the court to issue an order to:

- Modify order appointing guardian to include or modify visitation.
- Enforce existing visitation order.
- Attend Family Court Services Child Custody Recommending Counseling.

1. Petitioner is:

- Guardian
- Parent
- Minor (12 or older)
- Stepparent
- Grandparent
- Other: _____

2. Names and addresses of interested persons:

Guardian(s): _____
 Father: _____
 Mother: _____
 Other: _____

3. Minor's date of birth: _____

4. Minor's address: _____

Minor currently resides with: _____

Information requested in items 3 and 4 for additional minors is continued on attachment 3/4.

- 5. Petitioner requests the court to modify the Order Appointing Guardian to order visitation or modify a previous visitation order. **(Must also complete item 6 on page 2)**
- Petitioner requests the court to enforce its previous order for visitation.
- Petitioner alleges the matter of visitation is contested and requests the court to order Family Court Services Child Custody Recommending Counseling.

GUARDIANSHIP OF:

CASE NUMBER

Explain need or change in circumstances that support the request: _____

continued on attachment 5.

6. Petitioner specifically requests the court to order or modify visitation as follows:

Person to have visitation with minor: _____
(Name and Relationship)

(1) Supervised Unsupervised visitation with the minor(s) from _____ at _____ a.m. p.m. to _____ at _____ a.m. p.m.

(2) Other Visitation/Orders (specify): _____

continued on attachment 6.

Date: _____

Signature of Attorney

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

Date: _____

Signature of Petitioner

