



Practice Tips to Assist Formerly Incarcerated Parents Reunite With Their Children

1. **Intake interview:** Identify that your client is post-incarceration during an interview or from an intake questionnaire. Be aware that your client may not want to offer this information; you may need to pull it out from them. Ask if they have been arrested, convicted, incarcerated, etc. These facts immediately make it a harder case, but it is best to identify all issues upfront. The worst case scenario for the family law case is to find out later.
2. **Obtaining court records:** Ask for copies of your client's court records. Clients may omit something because they are forgetful, embarrassed or not thinking clearly. Clients can obtain records from the county court but there may be a fee; they may need a fee waiver. Clients may have resistance, viewing the matter to be in the past, or not wanting anyone to pass judgment. But you need to understand what the record is. You may have to get the information yourself at the courthouse or from Lexis-Nexis. It is harder to get the other side's records.
3. **Be realistic:** Assess stability, income, rehabilitation. Are they in a program? Look for something that rehabilitates them in the court's eyes. Be realistic. Be prepared to say, "You are not ready," if your assessment is that it will be very difficult to obtain any relief right now. Advise your client what steps to take to get ready. They need to be drug-free and have some basic stability.
4. **Gather supporting documentation:** If proceeding now with court action, put together a positive presentation of your client's life. These cases are fact-intensive and need to be built. These cases are harder and need more work.
5. **Tailor the relief requested:** Work with your client on what is realistic to expect when fashioning relief. The family court is guided by the principle of "frequent and continuing contact" between parent and child, but this is tempered by the facts. If the parent is in a shelter, then daytime visits are reasonable (particularly where there is good weather like LA), but not overnights. If the parent is couch-surfing, then visits may have to occur in the home of the caregiver or other person.
6. **Supervised visits:** Court-ordered supervised visitation can be a big problem if, as in LA, there is no free professional supervision available. The denial of visitation for lack of funds to pay for supervision is akin to an equal protection violation.
7. **Exit orders:** You may have to deal with a dependency court "exit order". These orders are issued in dependency court where one parent is awarded custody and the case is considered closed. It is usually the last order issued in dependency court. In LA, these "exit orders" are filed automatically in the Family Court. In LA, such an order will normally be given a BD label if the parents were married and a BF label if they were not married. In such a case, a motion to modify would be made in Family

1540 Market St., Suite 490,
San Francisco, CA 94102.

Phone: (415) 255-7036
Fax: (415) 552-3150

www.prisonerswithchildren.org

Court. “Exit orders” can be vague as to the other parent’s custodial rights. To modify or make such an order more specific, you may have to show a change of circumstance. If you are only tinkering with a visitation order, you may not have to show a change of circumstance, but it is advisable to meet this higher standard. There may not be an “exit order” from dependency court. If so, just get the last order filed. Be aware that it can be hard to get copies of records from closed dependency court cases that concerned your client. Clerks may resist providing such records and/or may charge a high fee. You can seek a fee waiver, which should be granted where the client is eligible.

8. **Restraining orders:** One obstacle to a visitation order is a “criminal protective order” – a court order from a criminal case that might prevent visitation rights being granted in the family court. Your client will have to go back to the criminal court and get it modified. A domestic violence order can also contain restrictions on visiting a child and must also be modified by the court. Read any restraining orders very closely. Be aware that a “temporary” order may not have the same terms as a “final order.” On the criminal protective order, Boxes 13 and 14 are worded funny. They refer to the “protected party.” That party may be an adult only, and not apply to the child. Also, since these forms are issued on carbon paper, your client’s copy may be hard to read. You may have to get another copy from the court.
9. **Take the long view:** Be realistic and encouraging. You may need to “teach patience”. Tell your client not to get depressed or discouraged, but advise that it may take a long time. Relapses happen. Relapses are like starting over, but they can make it.
10. **Child support orders:** County government has a system of collecting child support from non-custodial parents, including formerly incarcerated parents. In LA, these are called “IVD” cases and are heard in a separate court branch. Sometimes incarcerated people (and others) will not have actual notice of a child support proceeding, because they can be served through “substituted service.” And a child support order can be issued based on “imputed income” – an assumption that the parent can earn minimum wage if the parent is not present to contest that finding. A court may make this assumption unless there is proof of disability, such as proof of receipt of disability benefits. Generally, a child support order cannot be modified retroactively, so a party should take action to challenge an unfair support order as soon as possible.
11. **Child support orders for formerly incarcerated parents:** A new law now allows for the suspension of child support orders (and the reduction of arrearages) for orders that were in effect while a parent was incarcerated for at least 90 days. California Family Code section 4007.5. This requires going to court and producing records to prove incarceration. Kristine Reiser, KReiser@LASuperiorCourt.org, is a family law facilitator in LA who is a good resource in LA on this issue.
12. **LA Resources:** “Self-help” centers at the courts are a primary resource for parents representing themselves in family law cases. Service providers for low income parents in LA include the Harriet Buhai Center for Family Law, Legal Aid Foundation of Los Angeles and Neighborhood Legal Services. A New Way of Life provides housing and support services to formerly incarcerated women in South Central Los Angeles transitioning back into the community.

By: LSPC Staff Attorney Carol Strickman, based in part on conversations with Betty Norwind, Executive Director of the Harriet Buhai Center for Family Law, Los Angeles. June 2014.