

PLANNING FOR THE CARE OF YOUR CHILDREN IF YOU ARE DETAINED OR DEPORTED

Many undocumented immigrants with children worry about who will care for their children if one or both parents is suddenly arrested or deported. This packet will guide parents in creating a plan for the care of children after a parent is detained. The packet contains general information but cannot address every family's situation. If you believe that your situation is not addressed by this guide, or if you have any questions, please consult an attorney for advice.

Tips:

- Start working on your plan right away so it will be ready in case of an emergency.
- As you plan, be sure to talk with the people who will help you carry out your plan so they understand and agree.
- Try to memorize important phone numbers that you may need in an emergency.
- In addition to planning for the care of your children, you may also need to make plans for your finances and property. You may consider giving someone your “Power of Attorney” to deal with these issues. More information about a power of attorney can be found at saveimmigrantfamiliesusa.com. You can also check Santa Maria or Su Casa for more resources.
- For information about your rights when dealing with immigration officials and police, see page 12.
- **The information about the law contained in this packet is specific to Ohio.**
- **Beware that “Notarios” cannot practice law. If you need legal advice, consult an attorney.**

The materials available in this packet are provided for general information purposes only and do not constitute legal advice. This packet is not intended to create an attorney-client relationship between you and the Legal Aid Society of Greater Cincinnati.

If I Am Deported I Plan To...

TAKE MY CHILDREN WITH ME

1. Collect **important documents** listed on page 3 and fill out **important information** sheet on page 4.
2. Obtain or update the children's **passports** (page 5).

HAVE SOMEONE BRING MY CHILDREN TO ME

1. Collect **important documents** listed on page 3 and fill out **important information** sheet on page 4.
2. Obtain or update the children's **passport** (page 5).
3. Decide how the children will travel and set aside the money for their tickets.
4. Find out what documents the airline or bus company will need if someone who is not the parent will be transporting them.
5. Find out what documents the border authority in your country will need if a non-parent tries to bring the children to join you.
6. Obtain two sets of certified copies of the children's U.S. birth certificates, custody and child support orders, and medical and school records (if applicable). Take one set with you and give one set to the person who will be caring for your child while you are separated.

LEAVE MY CHILDREN HERE WITH SOMEONE ELSE

1. Collect **important documents** listed on page 3 and fill out **important information** sheet on page 4.
2. If the children will be left with their other parent, it may or may not be necessary to obtain court orders (page 6).
3. If the children will be left with their grandparent, you could sign a **Grandparent Power of Attorney** or the grandparent can sign a **Caretaker Authorization Affidavit** (page 9).
4. If someone else other than a grandparent will be providing care, he or she will need to obtain **custody or guardianship** to have full powers to care for the child (page 6).

You may also want to sign a Child Care Power of Attorney (see page 11). This document is not a substitute for someone having custody or guardianship of the children. However, it may help the person who is bringing your children to you, or the new caregiver who is waiting for a custody order from the court.



Important Documents

Keep these documents in a safe place. Tell your children, family members and emergency caregiver where to find them in an emergency. You may want to make an extra copy for a trusted person to hold.

You may also want to check with your consulate about what you may need to do in order for certain documents to be accepted in your home country.

Generally Important Documents:

- Passports (you, your spouse and each of your children)
- Birth Certificates (you, your spouse and each of your children)
- Marriage License or Divorce Decree (if applicable)
- Any Protection or Restraining Orders you may have against anyone (if applicable)
- Any ongoing Court Orders regarding child custody or parental rights (if applicable)
- Any ongoing Court Orders regarding immigration status (of you or your spouse) (if applicable)
- A-Number and any immigration documents (work permit, green card, visa, etc.) (if applicable)
- Driver's License and/or other Identification Cards
- Social Security Card or ITIN number (for you, your spouse and each of your children) (if applicable)
- Registry of Birth (for U.S. born children registered in parent's home country) (if applicable)
- Important Children's Information (see page 3 of this packet)
- Emergency Numbers and Important Contact Information (see page 4 of this packet)
- Any other documents you would want to be able to find quickly



Important Information

CHILD'S IMPORTANT INFORMATION

Keep this information for you or any caregiver you designate to provide for your child(ren)

General Information about Child(ren):

Child's Full Legal Name: _____

Child's Social Security #: _____

Passport # (if applicable): _____

Child's Date of Birth: _____

Child's Place of Birth: _____

Child's Cell Phone Number (if applicable): _____

Child(ren)'s School & Activities:

School Name and Address: _____

School Phone Number: _____

Teacher and/or Principal's Name: _____

Afterschool Program Name (if applicable): _____

Afterschool Program Phone Number: _____

Schedule _____

Other Camp/Sports/Program: _____

Other Camp/Sports/Program Phone Number: _____

Medical Information:

Allergies: _____

Medical Conditions: _____

Medications: _____

Doctor's Name and Phone Number: _____

Doctor's Address: _____

Pharmacy's Name and Phone Number: _____

Pharmacy's Address: _____

Dentist's Name and Phone Number: _____

Preferred Hospital: _____

EMERGENCY NUMBERS AND IMPORTANT CONTACT INFORMATION

Keep this information in one place so that you and your family can access it easily

Family Contacts

Mother/Parent/Guardian:

Name: _____

Social Security #: _____

Passport #: _____

Home Address: _____

Home Phone Number: _____

Cell Phone Number: _____

Work Address: _____

Work Phone Number: _____

Father/Parent/Guardian:

Name: _____

Social Security #: _____

Passport #: _____

Home Address: _____

Home Phone Number: _____

Cell Phone Number: _____

Work Address: _____

Work Phone Number: _____

Family/Important Contact in Home Country:

Name: _____

Home Address: _____

Home Phone Number: _____

Cell Phone Number: _____

Work Phone Number: _____

Relationship: _____

Child's Health Insurance Information

Company: _____

Phone: _____

Policy #: _____

Legal Information

Attorney

Name: _____

Phone: _____

Case Numbers and Court Names for any Cases:

Child Custody/Guardianship/Divorce: _____

Civil Protection Orders/Restraining Orders: _____

Immigration Proceedings: _____

Passports for U.S. Citizen Children

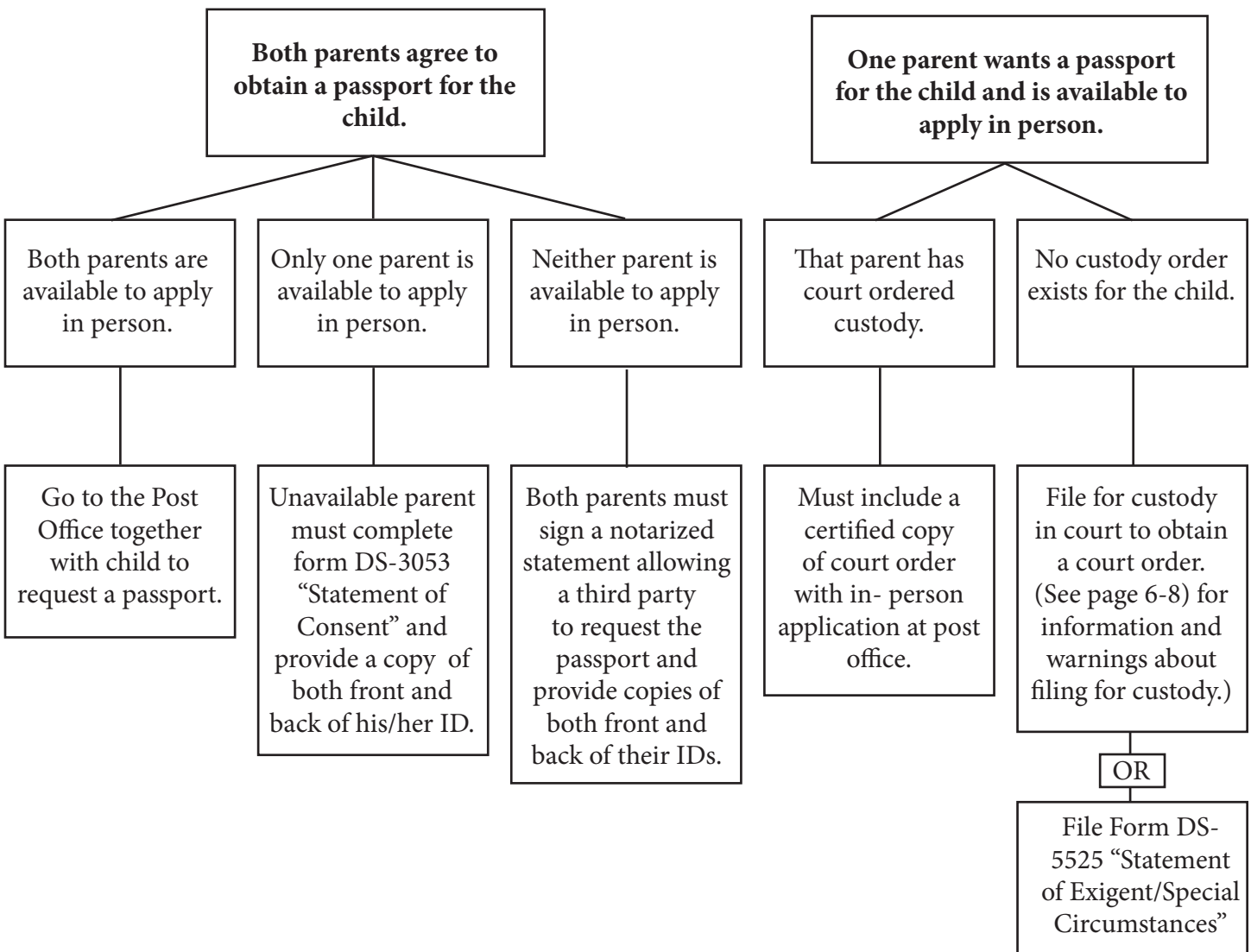
Some parents plan to take their U.S. citizen child back to their home country if they are deported. If that is your plan, find out if your child will need a U.S. passport or passport from your home country to enter your home country.

If your child later wants to re-enter the U.S., he or she will need a U.S. passport. This page provides information about how to apply for a U.S. passport in the U.S. You may also be able to obtain a U.S. passport for your child at the U.S. Embassy or Consulate in your home country.

The application is available at: <https://travel.state.gov/content/passports/en/passports/under-16.html>. The passport will usually arrive approximately 6-8 weeks after you apply. You can pay more for “expedited service” if you want the passport to arrive in approximately 2-3 weeks.

The process for obtaining a U.S. passport is different depending on your family’s situation. Check with Su Casa or Santa Maria to see if free help is available to apply for a passport.

To obtain a U.S. passport for your child in the U.S. who is under 16 years old, the child must appear in person at the post office. Find your situation below to determine what else is necessary.



One Parent Remains in the U.S. to Care for Children

If one parent is detained or deported, and the other parent will be remaining in the U.S. to care for the children, consult the chart below to determine whether the remaining parent needs to get a court order for custody.

If you are...	Married to the other parent	Not married to the other parent
Mother	Under Ohio law, when the parents are married to each other, both parents have custody, so there is no need to go to court.	Under Ohio law, if the mother is not married when she has the baby, she has legal custody of the child. She does not need to go to court for custody.
Father	Under Ohio law, married parents both have custody, so there is no need to go to court.	Under Ohio law, a father who is not married to the mother DOES NOT have custody. Father must go to court to ask for custody. See the next section for more information.

Custody and Guardianship of Children

Why is custody or guardianship better than a Child Care Power of Attorney?

- You can give a non-parent caregiver your Power of Attorney, but some schools, doctors, hospitals, and other agencies will not honor it. Only a court order for custody or guardianship will give the non-parent caregiver full authority to make decisions and obtain services for your child.
- Also, if someone reports to “Children’s Services” or “241-KIDS” that your child is not receiving proper care in your absence, Children’s Services may be especially concerned if no one has custody or guardianship of the child.

How are custody and guardianship different?

1. Where the case is filed:

- A request for custody is filed in Juvenile Court (see Appendix A for Juvenile Court information).
- A request for guardianship is filed in Probate Court (see Appendix A for Probate Court information).

- Note: if any court has issued a custody or guardianship order in the past, usually the new request must be filed in that same court. For example, if the child’s parents are divorced, the request for custody usually has to be filed in the court where the divorce was granted.
- Unmarried fathers should file for custody in Juvenile Court. Probate Courts generally do not handle guardianship cases involving two parents.

2. What is required when the parent wants to get custody back or terminate the guardianship?

CUSTODY: After the court gives custody to the non-parent caregiver (or to the child’s father, if the parents are unmarried), it may be very hard for the parent to get custody back in the future. If the other person does not agree that the parent should have custody again, it will not be enough for the parent just to say that they want custody back. *The parent will have to prove to the court that the non-parent caregiver is no longer taking good care of the child.*

GUARDIANSHIP: Under the law, it may be a little easier to terminate the guardianship than it would be to reverse a custody order from the Juvenile Court. Even if the Guardian/caregiver does not agree with giving the child back to the parent, *the parent should only have to prove that the parent is now fully able to care for the child.*

3. Required forms:

Every court has its own forms to file for custody or guardianship. The forms are available on each court's website. You should review the forms for custody and guardianship to decide if you understand one court's forms better than the other.

4. Court fees:

Each court has its own fees to file for custody or guardianship. Information about court fees is available on the courts' websites.

The court must send a notice about the court case to the parents. If the location of one or both of the parents is unknown, then notice about the court case may be published in a newspaper, which can be very expensive. In Juvenile Court custody cases, there is a special rule to avoid the fee for caregivers with very low income. However, the same rule may not apply in Probate Court.

When should the custody or guardianship papers be prepared?

Some parents may want to help the caregiver fill out the forms for custody or guardianship now, before they are detained or deported. This would ensure that the caregiver has all of the information that he or she needs when it comes time to file the papers in court.

If the papers are prepared in advance, the caregiver should not sign the forms until they are ready to file them in court. Most of the forms have to be witnessed by a notary public and dated. If the signature date is too old by the time the papers are filed in court, the court may reject them.

Is there any way to avoid paying the court fee?

If the caregiver cannot afford the fee to file for custody, he or she can ask the clerk for a special form to request waiver of the fee (it may be called a *poverty affidavit*, or *affidavit of indigency*, or *motion for waiver of filing fee*). However, the court may not grant the request to waive the fee. Some courts feel that if a caregiver cannot afford the fee, then they cannot afford to care for the child. Therefore, it is best if the caregiver pays the fee to avoid any delay in the case.

How to deal with the requirement that both parents receive notice about the court case

When a custody or guardianship case is filed in court, you have to provide the court with an address where the parents of the children can receive notice (called "*service of process*") about the case.

- If it will be difficult for the parents to receive certified mail from the court, it may be helpful for the parents to sign a form called "*waiver of service of process*." This tells the court that the parent gives up the right to receive notice about the case by mail.
- The parents can also sign a "*consent for custody*" or "*consent for guardianship*." The consent form tells the court that the parent is in agreement with the caregiver's request for custody or guardianship. The court does not have to honor this, but may take it into consideration.
- The *waiver* and *consent* forms are usually not provided by the court.

How long will the court case take?

The first court appearance is usually about eight weeks after the papers are filed. At the first hearing, the court will check to make sure that both parents have received notice about the case. The court may also review the information from the background check on the caregiver. Typically, the court does not make an order for custody or guardianship at the first hearing. Instead, it will usually schedule at least one or two more hearings to get additional information before it makes a final order. Caregivers should expect the process to take up to six months.

Some cautions about bringing a custody or guardianship case to court

- If any court made orders for care of the children in the past, you should seek the advice of a lawyer before filing a new case. There are special laws that have to be followed when someone is seeking to change a past court order.
- As discussed above, parents should be careful about asking someone else to obtain custody or guardianship of their children, since it may not be easy to get the children back if there is a disagreement with the caregiver in the future.
- When the caregiver files for custody or guardianship, the court has to give notice to both parents. Both parents will have the chance to come to court and say if they agree with the caregiver's request.
 - This may be a problem in some families where one parent does not want the other parent to know where the child is living.
 - It also creates an opportunity for a parent who has not been in contact with the child to come to court and ask for custody or visitation.
 - Under Ohio law, a court is supposed to give preference to a parent over a non-parent if they are both asking for custody. For example, even if the mother wants her sister to have custody of the child, the child's father would probably win if he also asks for custody.
- The Juvenile and Probate courts are usually not concerned with the immigration status of someone who is filing for custody or guardianship. However, laws and policies can change at any time. A caregiver who does not have legal status in the U.S. may not be the best choice. If the caregiver is detained or deported, you may not have control over what will happen to your child.
- Courts usually require that anyone who files for custody or guardianship of a child must have a background check. The background check will include any record of criminal charges and any history with Children's Services. The court may appoint someone to visit and inspect the caregiver's home. If there are other adults living in the home, the court may require that they also have background checks.

Options for Grandparents Caring for their Grandchildren

Grandparents caring for their grandchildren can file the “Grandparent Power of Attorney” or the “Caretaker Authorization Affidavit” depending on their circumstances. The forms are created under Ohio law. Schools and medical providers must accept these forms.

GRANDPARENT POWER OF ATTORNEY

When to use this option:

Grandparent has or will have physical custody of a child, the **parent or parents agree with this, and parent or parents are available** to sign the Power of Attorney (POA for short).

What it allows the grandparent to do:

- Arrange for the medical, dental and psychological treatment
- Enroll the child in school
- Access the child’s school records
- Provide consent for educational activities
- Make all decision for the daily care of the child as a parent would

Ends when:

- The parent or custodian files a form in court stating that the POA is revoked
- The Grandparent files a paper in court to terminate the POA
- Court orders termination of the POA
- Either the child or Grandparent dies

CARETAKER AUTHORIZATION AFFIDAVIT

When to use this option:

Grandparent has physical custody of a child whose **parents cannot be located**. The grandparent must attempt to locate the parents before signing this paper.

What it allows the grandparent to do:

- Arrange for the medical, dental and psychological treatment
- Enroll the child in school
- Access the child’s school records
- Provide consent for educational activities
- Make all decision for the daily care of the child as a parent would

Ends when:

- Child moves from Grandparent’s household
- Parent or guardian changes one of the decisions made by the grandparent
- Court orders termination of the Caretaker Authorization Affidavit
- Either the child or Grandparent dies

How to use these options:

1. Obtain the appropriate forms from the Juvenile Court in the County where the child will be living with the grandparent. However, if there is a prior custody order from another County, the forms will have to be filed in that County.

Note: Caretaker Authorization Affidavits in Butler County can only be obtained in person at the Clerk’s office. All other forms are available on the websites of the Butler and Hamilton County Juvenile courts, or you can go to the court to pick them up.

2. Sign all forms in front of a notary public.
3. You must file the forms with the Juvenile Court within 5 days after they are signed.
4. If both parents have not signed the Grandparent POA, you must provide an address where the court can notify the other parent that a Grandparent POA has been signed. The court may make an exception if you show that you have tried and cannot locate the other parent’s address.

Fees: There is no fee to file these forms with the court.

CHILD CARE POWER OF ATTORNEY

A parent can give their Power of Attorney to a caregiver to act on the parent's behalf to care for their child if they are unavailable to do so. (Note: if you are a grandparent, see page 10 for the forms that apply just to grandparents.). However, a Child Care Power Of Attorney does not cover every situation that a family may face. Read below for more information.

What it allows you to do:

This document gives a caregiver limited power to make decisions for a child's **IMMEDIATE NEEDS. IT IS NOT A SUBSTITUTE FOR CUSTODY OR GUARDIANSHIP OF THE CHILD.** In fact, there is nothing in Ohio law that would require a doctor, school or anyone else to accept this type of Power of Attorney.

As you are making your plan, you should contact your children's school and medical providers to ask if they would accept a caregiver Child Care Power of Attorney form so that the caregiver can:

- Pick-up a child from school
- Enroll a child in school
- Obtain a child's school records
- Make educational decisions for a child.
- Consent to a child's travel
- Make medical decisions for a child

When to use this option:

In order to have full authority to care for your children and make decisions for them, a non-parent caregiver needs to go to court to obtain custody or guardianship. However, a custody or guardianship case in court can take many months until there is a final order. While the caregiver is waiting for a final order, a Child Care Power Of Attorney may give them the authority they need for the child's immediate needs.

How to do it:

1. Complete a Power of Attorney form (see attachment on page 14).
2. The document must be signed and witnessed by a Notary Public, but does not need to be filed in Juvenile Court.

Ends when:

The parent can revoke (terminate) the power of attorney at any time. The parent does not need to file anything in court.



Know Your Rights

Everyone – both documented and undocumented persons – has rights in this country. Talk to everyone in your family and household to make sure they know what to do if approached by immigration officials (ICE) or if ICE comes to your house.

- **Remain calm and do not try to run away.** If you do, ICE or the police may use that against you.
- **Do not open the door for ICE or any police officer without a signed warrant.** You do not need to open the door unless an ICE agent can show you a warrant *signed by a judge with your correct name and address on it*. If ICE knocks on your door, ask them to slide the search warrant under the door or show it through a window. If ICE or the police do not have this, then you do not have to open the door. Once you open the door, you lose certain rights.
- **You have the right to remain silent and can refuse to answer ICE's questions.** Say that you want to remain silent until you speak with a lawyer. Do not answer any questions, especially about your birth place, immigration status or how you entered the U.S. What you say can be used against you later. *No matter what, do not lie or show false documents. If you have valid immigration documents, show them.*
- **You have the right to refuse to sign anything before you talk to a lawyer.** Do not sign anything you do not understand or agree with. That could eliminate your right to speak with a lawyer or have a hearing in front of an immigration judge. This may result in you being deported immediately without a hearing.
- **If you are detained, you have the right to make a phone call.** Make sure to memorize the number of your lawyer or someone who can put your plans into place and access all of your important documents. You should also have the contact information for your country's nearest consulate, which may be able to provide assistance.



APPENDIX A

Hamilton County Juvenile Court

800 Broadway
Cincinnati, OH 45202
(513) 946-9200
<http://www.juvenile-court.org/>

Butler County Juvenile Court

280 N. Fair Avenue
Hamilton, OH 45011
(513) 887-3317
[http://www.butlercountyohio.org/
juvenilejusticecenter/](http://www.butlercountyohio.org/juvenilejusticecenter/)

Hamilton County Probate Court

230 E. 9th Street, 10th Floor
Cincinnati, OH 45202
(513) 946-3600
<https://www.probatect.org/>

Butler County Probate Court

101 High Street
Hamilton, OH 45011
(513) 887-3294
<http://www.butlercountyprobatecourt.org/>

POWER OF ATTORNEY FOR CHILD CARE PURPOSES

I, the undersigned parent of _____, child's date of birth ____/____/____
Child's Name
residing at _____, in the county of _____,
Parent's Address
State of Ohio, hereby appoint _____ residing at _____
Petitioner's Name *Petitioner's Address*

_____, in the county of _____, State of Ohio, to be my attorney in fact to exercise any and all of my rights and responsibilities regarding the care, physical custody, and control of my above named child, except my authority to consent to marriage or adoption of the child, and to perform all acts necessary in the execution of the rights and responsibilities hereby granted, as fully as I might do if personally present. **I appoint this person to be in loco parentis of my child.**

The rights I am transferring under this power of attorney include the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, to consent to the child's travel, and to consent to medical, psychological, or dental treatment for the child as well as determining the child's residence.

This transfer does not affect my rights in any future proceedings concerning the custody of the child or the allocation of the parental rights and responsibilities for the care of the child and does not give the attorney in fact legal custody of the child. This transfer does not terminate my right to have regular contact with the child. I hereby certify that I am transferring the rights and responsibilities designated in this power of attorney because of the following circumstances: I am in detention, about to be detained, incarcerated, or about to be incarcerated, and therefore am temporarily unable to provide financial support or parental guidance to the child. I have a well-founded belief that the power

of attorney is in the child's best interest. In the event that a court of competent jurisdiction does review my child's custody and I unable to attend those hearings, I ask the court to consider this my approval of the designated attorney in fact as the proper, future legal custodian of my child. Both I and my attorney in fact understand that this document cannot be used for the purposes of transferring schools.

I have made reasonable efforts to locate and provide notice of the creation of this power of attorney to the other parent and have been unable to locate that parent.

This POWER OF ATTORNEY is valid until the (1) I revoke this POWER OF ATTORNEY in writing and give notice of the revocation to the person designated as attorney in fact or (2) the child ceases to reside with the person designated as attorney in fact or (3) this POWER OF ATTORNEY is terminated by court order or (4) the death of the child who is subject of the power of attorney or (5) the death of the person designated as the attorney in fact.

Signature of Parent _____ Printed Name of Parent _____

Address of Parent _____ Phone Number of Parent _____

County of _____)
State of Ohio) ss:

Before me, a notary in and for the State of Ohio and County of _____, personally appeared _____ whose identity was proven to me by competent, credible, identification, who deposed, knowingly executed this document to authorize this attorney in fact change her child's custody, and stated that the same was her free act and deed this day, ____/____/ 20__.

Notary Public