

CHECKLIST: CHILD CUSTODY

This checklist is part of a larger Manual titled “Protecting Assets and Child Custody in the Face of Deportation,” released by Appleseed in 2017. For more info and to read the full Manual, please visit www.AppleseedNetwork.org/DeportationManual.

This checklist is not legal advice. You can search for a lawyer at <http://www.ailalawyer.org/>.

“Child Custody” is a collection of various legal rights to care for a child and make important decisions about that child’s life. Usually, parents both have custody rights (known as “joint custody”) of their kids, especially if they are married; that means either parent can make legal decisions for the kids or care for the kids. If parents are divorced or were never married, then custody may be different. Talk to a lawyer or check out Chapter 1 of Appleseed’s Manual for more info and so that you can best prepare.

In general, if both parents have custody and live with or near their kids, then no further work is needed in case one parent is detained. But if only one parent has custody, or if it is possible that both parents could be detained, here are a few steps you can take to prepare:

Identify a person who can take care of your kids

Find a person you trust who can take care of your kids if you aren’t around. If possible, the person should have valid immigration status or be a U.S. citizen, but that is not always required in certain states. Remember that the person may need to take care of your kids for a long time, so think about any special medical or other needs your kids might have.

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Prepare the right paperwork

It is important to make formal arrangements with the person who will take care of your kids when you are gone – just talking about it is not enough to give them the legal right to take care of your kids.

Each state has different ways to create “temporary guardianship” for kids – this is the term that describes when someone is taking care of your kids for a short amount of time. Usually, the process includes the guardian (the person taking care of your child) filing paperwork in a court. Then, the court has a hearing and figures out whether it is in the best interests of your child to have this person become a guardian.

It can often take a long time for a court to decide whether the guardian should be allowed to take care of the child, so it is important to start the process as soon as possible. **However, one very important thing to remember is that once the new guardian has been approved by the court, parents may no longer have custody of their kids — even if they are still in the country and have not been detained.**

In some places, parents can give someone “standby guardianship.” These agreements allow another person to care for kids and make medical or school decisions only when a specific event takes place in the future (like detention or deportation). It is important to talk to a lawyer about your options depending on where you live.

Remember: The plan is to have a plan. You are taking the right steps to protect your family. Don't be afraid to ask for help so you get answers you can trust: try your lawyer or caseworker, or ask your child's school or doctor's office.