

## Does A Jailed Parent Have Custody Rights? By Alexander Poulos

**Question:** My husband was jailed for a crime. Does he still have legal rights to our child?

**Answer:** There is no Arizona statute prohibiting parental rights or access solely because a parent is jailed for a crime. However, A.R.S. 25-403.05 provides that the domestic relations arm of the Superior Court *shall not* grant a person sole or joint custody of a child OR *unsupervised* parenting time if the person is a registered sex offender or is convicted of first degree murder of the other parent, unless the Court finds that there is no significant risk to the child.

Under A.R.S. 25-403, the Domestic Relations Court determines custody based on the best interest of the minor child. The Court must consider "all relevant factors," including all factors specifically listed under that statute. The Court may restrict a parent's rights for any jailable circumstance if the child's best interests call for it. However, it must be remembered that the Domestic Relations Court is NOT empowered to *terminate* parental rights, i.e. custody and visitation. Only the Juvenile Court arm of the Superior Court may do so.

A.R.S. 8-533 provides numerous circumstances under which the Juvenile Court may terminate parental rights. These include (a) willful abuse or neglect of the child; (b) chronic alcohol or drug abuse; (c) a lengthy jail sentence that will deprive the child of a normal home for a period of years; or (d) the crime the parent committed is of such a nature as to prove the unfitness of that parent to have future custody and control of the child, i.e. murder or manslaughter of, or conspiracy to murder, the child's other parent.

The Juvenile Court must find by *clear and convincing* evidence that statutory grounds exist for termination of parental rights and by a *preponderance of the evidence* that termination is in the child's best interests. Termination of a parent's rights, without that parent's consent, is no easy task, as that parent has constitutional rights that may not be ignored. Often the risk and expense of seeking termination of parental rights is prohibitive.

On the other hand, the Domestic Relations Court is imbued with extensive power to protect a child's best interests. Those seeking restrictive orders in the case of a parent who is jailed (whether that parent is currently incarcerated or has been in the past) may ask the court to condition that person's access to the child on a myriad of circumstance that may apply to a particular case. These conditions may include participation in extensive psychiatric counseling and therapy, taking required medications, undergoing random drug testing, and having supervised access to the minor child – all at the jailed parent's expense.

Legal counsel should be consulted prior to initiating any court proceedings to address how the law relates to a particular circumstance.

