



# CHILDREN OF INCARCERATED PARENTS

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March 2009

The nation's growing prison and jail population has raised serious questions about the collateral effects of incarceration on children, families and communities. Whatever one's views about the appropriate role of incarceration in the criminal justice system, it is clear that imprisonment disrupts positive, nurturing relationships between many parents—particularly mothers—and their children. In addition, many families with children suffer economic strain and instability when a parent is imprisoned. Research suggests that intervening in the lives of incarcerated parents and their children to preserve and strengthen positive family connections can yield positive societal benefits in the form of reduced recidivism, less intergenerational criminal justice system involvement, and promotion of healthy child development. In the words of one prominent researcher, “[s]tudies . . . indicate that families are important to prisoners and to the achievement of major social goals, including the prevention of recidivism and delinquency.”<sup>1</sup>

Because this area is fraught with major data gaps, it is recommended that policymakers begin their exploration of the subject by posing a series of questions to their staffs and the heads of agencies with jurisdiction over law enforcement, corrections, child welfare, education and welfare, as well as child advocates, the university community and others who have an interest in ensuring the well-being of children whose parents are in custody.

This report proposes a list of such questions, each followed by a discussion that is intended, not so much as a definitive answer, but as general background information. The information identifies only general trends, since specific answers to the questions posed will differ by state, depending on factors such as the existing policy context and service array, demographic trends and available data.

## WHAT IS THE NATURE AND SCOPE OF THE PROBLEM?

### *How many children have a parent in prison and how many incarcerated parents have children?*

Much of what we know about this issue comes from a series of reports by the Bureau of Justice Statistics (BJS) on incarcerated parents and their children, that in turn, are based upon periodic national surveys of inmates in state and federal prisons. The latest such report was released in August 2008.<sup>2</sup> It found that, in 2007, slightly more than 1.7 million children under age 18 had a parent in state or federal prison, representing 2.3 percent of the total U.S. child population. The number of children with a father in prison increased from 881,500 in 1991 to more than 1.5 million in 2007, a 77 percent increase. During that time, the number of children with a mother in prison increased by 131 percent, from 63,900 to 147,400.

In 2007, 744,200 male prison inmates had minor children, compared to 65,500 women inmates. Most prisoners had at least one child under age 18 (52 percent of state inmates and 63 percent of federal inmates). Sixty-two percent of women in state prison and 56 percent of female inmates in federal prison were parents of minor children, compared to 51 percent of male state prisoners and 63 percent of male federal inmates.

### ***What do we know about these children's race and age?***

In 2007, the population of minor children of incarcerated parents consisted of approximately 484,100 white, non-Hispanic children (one in 110 white children), 767,400 black, non-Hispanic children (one in 15 black children), and 362,800 Hispanic children (one in 41 Hispanic children). Black (54 percent) and Hispanic (57 percent) men in state prison were more likely than white men (45 percent) to be parents. The likelihood that women in state prison were parents did not vary by race.

About half of these children were age 9 or younger. Thirty-two percent were between the ages of 10 and 14, and 16 percent were between the ages of 15 and 17.

### ***How does parental incarceration affect children?***

Parental incarceration can affect many aspects of a child's life, including emotional and behavioral well-being, family stability and financial circumstances. Unfortunately, much of the research on the effect of parental incarceration on children's well-being is of poor quality.<sup>3</sup> One major challenge confronting researchers is disentangling the effects of parental incarceration from the effects of other factors that could have existed long before incarceration, such as child maltreatment, parental use of alcohol or drugs, parental mental illness and domestic violence. Because many studies fail to account for these background risk factors and include other methodological flaws, some claims about how parental incarceration affects children that appear in the research, advocacy and policy literature might not be supported by empirical evidence. One such claim is that children of incarcerated parents are six times more likely than other children to be incarcerated as adults. No empirical data currently support this claim.<sup>4</sup>

Some studies suggest that parental incarceration has an independent effect on a child's behavior, academic performance and mental health.<sup>5</sup> A causal relationship between a parent's incarceration and children's problems has not been established.<sup>6</sup>

There is, however, consensus in the field that these children are exposed to many risk factors and that the effects of parental incarceration on children are subject to a host of variables, including pre-incarceration living arrangements; the quality of the parent-child relationship; the degree to which inmate parents participated in daily care and financial support of their children prior to confinement; children's current living arrangements; the amount of contact children have with their incarcerated parents; and children's age, temperament, gender and coping skills, among other factors.<sup>7</sup> Some of these factors are discussed below.

#### *Pre-Incarceration Living Arrangements, Daily Care and Financial Support*

The 2008 the Bureau of Justice Statistics report found the following.

- Approximately one-half of state prisoners (64 percent of mothers and 47 percent of fathers) lived with at least one of their children either in the month before or just prior to imprisonment.
- Forty-two percent of mothers in state prison reported living in a single-parent household in the month before arrest, compared to 14 percent who reported living in a two-parent household.
- Seventeen percent of fathers lived in a single-parent household and 18 percent lived in a two-parent household.

- Seventy-seven percent of mothers in state prison who lived with their children just prior to incarceration provided most of the children's daily care, compared to 26 percent of fathers.
- More than half of parents in state prison (54 percent of fathers and 52 percent of mothers) provided primary financial support to their minor children before imprisonment. Of these mothers, more than one-third received government payments such as welfare or Social Security benefits.

In short, a substantial number of incarcerated parents were deeply involved in their children's lives before imprisonment—living with them, providing daily care and supporting them financially. The data also indicate that mothers are far more likely than fathers to care for their children in single-parent households, increasing the risk that their children will experience disruption in their living arrangements following maternal incarceration. At the same time, because many more men than women are imprisoned, the number of single-parent male households is almost five times higher than that of single parent female households.

Parental incarceration is associated with greater risk that a child will experience material hardship and family instability.

- A recent study by Susan Phillips and her colleagues found that parental incarceration is strongly related to economic strain in children's households, defined as low-income with an unemployed caregiver and a lower standard of living or inability to meet the child's needs.<sup>8</sup> Related to economic strain is the possibility that parental incarceration will increase the risk that children's households will become unstable, including multiple, frequent moves; the introduction of unrelated parental figures into the household; divorce; and non-routine school changes. Any of these can pose risks to children's healthy development. The Phillips study found that any kind of parental involvement in the criminal justice system—including, but not limited to, incarceration—is related to family instability.<sup>9</sup> On the other hand, the study found that such involvement was not significantly associated with a child's living in a family with structural risks, i.e., with a single caregiver, a large family, or placement in foster care.
- An analysis of data from the Fragile Families Study—a national, longitudinal study of approximately 5,000 children born between 1998 and 2000—also found that children who had been exposed at some point in their lives to parental incarceration were at significantly greater risk of experiencing material hardship and family instability than were children in fragile families with no history of parental incarceration. Children whose fathers were incarcerated, for example, were 40 percent more likely to have an unemployed father, 34 percent less likely to live with married parents, 25 percent more likely to experience material hardship, and four times more likely to face contact with the child welfare system.<sup>10</sup>

### *The Child's Current Caregiver*

Children who live in stable households with nurturing caregivers during their parents' incarceration are likely to fare better than children who experience family instability as a result of a parent's confinement.<sup>11</sup> Foster care, in particular, carries with it the risk of multiple placement changes and loss of connection to school, community, friends, siblings and extended family.

The vast majority (84 percent) of parents incarcerated in state prisons reported to the Bureau of Justice Statistics that at least one of their children was in the care of the other parent. Fifteen percent identified as caregivers the grandparents, 6 percent other relatives and 3 percent reported that at least one child was in a foster home, agency or institution.<sup>12</sup> Responses of mothers and fathers in state prison differed on this survey question. Eighty-eight percent of fathers identified the child's other parent as the current caregiver, compared to 37 percent of mothers. Sixty-eight percent of mothers, on the other hand, identified a grandparent or other relative as a child's current caregiver, compared to 17.5 percent of fathers. Finally, mothers were five times more likely than fathers to report that a child was in foster care (11 percent vs. 2 percent, respectively).

Notwithstanding the Bureau of Justice Statistics survey, accurate estimates are not available of the number of children in foster care who have an incarcerated parent. Although the report tells us how many inmates identified a given type of caregiver, it does not tell us how many children are in each type of caregiving arrangement. Thus, we do not know how many children are represented by the 3 percent of inmates who reported that a child was in foster care. Further, the survey makes no attempt to distinguish between relative caregivers who are foster parents and those who provide care outside the formal child welfare system. Other data sources are equally problematic, producing widely varying estimates of this population of children in care.

### *Children's Contact with Incarcerated Parents*

Maintaining family contact during incarceration can be beneficial to both children and their parents. It is generally thought that maintaining parent-child contact through personal visits during incarceration is important for the well-being of many children, although little empirical evidence exists on that point. Some research indicates that visiting is important in maintaining parent-child relationships and increases the likelihood of successful reunification after release.<sup>13</sup> With regard to prisoners themselves, several studies found that maintenance of family ties during incarceration is linked to post-release success, defined as lower rates of recidivism and fewer parole violations.<sup>14</sup>

The Bureau of Justice Statistics study examined the types and frequency of contacts between prison inmates of minor children and the children of these inmates, including their adult children. The study found that almost 79 percent of state inmate parents had some kind of contact with at least one of their children since admission. Thirty-nine percent of fathers and 56 percent of mothers in state prison reported at least weekly contact with a child, in the form of letters, telephone calls or visits. Relatively few inmates reported regular personal visits from at least one of their children, however. In state prison, only 12.3 percent of fathers and 14.6 percent of mothers reported personal visits from a child at least once a month. Fifty-nine percent of fathers and 58 percent of mothers had no personal visits from any of their children.

Barriers to more frequent contact, particularly personal visits, include the following.

- **Corrections policy** In theory, corrections officials encourage visiting and maintenance of family ties. In practice, however, prison rules to ensure safety and security often impede such visits. As Creasey Finney Hairston notes, “[c]orrectional institutions commonly require children’s custodial parents to escort them on visits, require child visitors to produce birth certificates listing the prisoner as the biological parent, and house prisoners in locations hundreds or thousands of miles from their homes—all policies that create obstacles for healthy parent-child relationships.”<sup>15</sup> Prisons also commonly charge excessive fees for telephone calls to subsidize their operations, so incarcerated parents cannot afford to maintain regular contact with their children.
- **Child-unfriendly facilities** The prison environment can be frightening and traumatic for children, both in the attitudes and behavior of prison staff and the physical setting. Visits can include long waits; body

frisks; rude treatment; and hot, dirty and crowded visiting rooms with no activities for children.<sup>16</sup> These conditions do not encourage frequent visits between incarcerated parents and their children.

- **Parent-caregiver relationships** One of the most important factors that affect whether and how often a child has contact with an incarcerated parent is the relationship between the parent and the children's current caregiver. For various reasons, a caregiver—be it the other parent or a relative—may have a strained relationship with the incarcerated parent or may have severed all ties with him or her. The caregiver may feel that further contact with the imprisoned parent could harm the child and therefore might prevent or discourage such contact.
- **Child welfare policy and practice** For reasons that will be discussed more fully in the next section, placement of a child in foster care poses unique barriers to visitation with incarcerated parents. In the context of federal and state policies that discourage reunification when a child has been in foster care for an extended period, caseworkers have little incentive to arrange visits and work to preserve parent-child relationships.

### *How are children in foster care affected by the incarceration of a parent?*

In addition to the adverse emotional and behavioral consequences of parental incarceration and parent-child separation, children in foster care and their parents face additional challenges created by child welfare law, policy and practice. The most serious of these challenges is the risk that the legal parent-child relationship will be permanently severed through legal action by a child welfare agency. The 1997 federal Adoption and Safe Families Act, requires states to file a petition to terminate parental rights on behalf of any child who has been abandoned or who has been in foster care for 15 of the most recent 22 months. The law provides exceptions to this requirement in the following cases: 1) at the option of the state, the child is being cared for by a relative, 2) the state has documented a compelling reason for determining that termination of parental rights would not be in the child's best interest, or 3) the state has not provided the child's family with services that the state deems necessary for the safe return of the child to his or her home.

Although the Adoption and Safe Families Act does not explicitly require a termination of parental rights filing against incarcerated parents, the 15 of 22 months provision technically would apply in cases where reunification is delayed beyond 15 months due to a parent's incarceration, even if the parent is receiving services to facilitate reunification. Because the typical sentence for an incarcerated parent is from 80 to 100 months, most imprisoned parents of children in foster care are at some risk of losing their parental rights.

We lack the data, however, to know how ASFA actually affects the permanency outcomes for children in foster care whose parent is incarcerated. Some evidence suggests that the number of termination of parental rights cases that involved incarcerated parents increased following enactment of ASFA.<sup>17</sup> Such cases were on the rise before ASFA enactment as well. A recent analysis of data from the Adoption and Foster Care Analysis and Reporting System examined the subset of children for whom parental incarceration was indicated as a reason for removal from home. The study found no significant difference in rates of reunification between these children and children in foster care whose parents were not incarcerated.<sup>18</sup> Another study of children in the Minnesota child welfare system found that the vast majority of children who were placed in foster care from 2000 to mid-2007 due to incarceration of a parent ultimately were reunified with their parents.<sup>19</sup> On the other hand, a study of mothers incarcerated in Illinois state prisons and the Cook County, Illinois, jail from 1990 to 2000 found that these mothers were one-half as likely to reunify with their children in foster care than were non-incarcerated mothers whose children were in foster care.<sup>20</sup>

Although ASFA requires a termination of parental rights filing in certain cases, it is state—not federal—law that defines legal grounds for such termination. Many state termination of parental rights laws include parental incar-

ceration as a factor to be considered by courts in determining whether to grant a termination decree. Incarceration *per se* is not grounds for termination of parental rights in any state. In fact, six states expressly include this caveat in statute.<sup>21</sup> Rather, states have defined a variety of conditions related to incarceration that, together with imprisonment, constitute grounds for termination. These conditions include length of confinement relative to the child's age; failure to make provision for the child's care; the quality of the parent-child relationship and the effect of incarceration thereon; pre-incarceration contact with and support of the child; repeated incarceration; failure to cooperate with the child welfare agency's efforts to help with case planning and visitation; and the nature of the crime for which the parent is incarcerated. Another important distinction among state termination of parental rights statutes is that, although most states give judges some discretion in making termination decisions, others require judges to grant a decree upon proof of one or more statutory grounds.

At least two states—California and Utah—set strict time limits on provision of reunification services. Unlike ASFA, these statutory provisions allow no exceptions, although California recently authorized courts, in limited circumstances, to extend the time limits for parents who are incarcerated, institutionalized or in residential substance abuse treatment.<sup>22</sup>

To prevent the termination of their parental rights, incarcerated parents face three challenges.

- First, regular contact, preferably visitation, with a child in foster care is critical. Unless termination of parental rights is clearly in the child's best interest, a court will be less likely to terminate the rights of a parent who can demonstrate ongoing positive contact with a child and involvement in his or her life. In California, for example, the statutory list of circumstances that constitute exceptions to termination includes that, "the parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."<sup>23</sup>

Ironically, though contact and visitation are most important for incarcerated parents whose children are in foster care, some evidence suggests that such children are the least likely to visit their parents in prison. That is because visits must be authorized and arranged by child welfare caseworkers who carry high caseloads and who may be inclined to "abandon" the prospect of reunification with an imprisoned parent.

- Second, incarcerated parents who want to avoid termination of parental rights should participate to the fullest extent possible in their children's dependency proceedings, including case planning, hearings and court orders. Parents, however, are often dependent upon caseworkers for information and guidance to navigate the dependency process. Unfortunately, some studies have found that caseworkers rarely communicate with parents in prison, inform them of hearings or involve them in case planning.<sup>24</sup>
- Third, incarcerated parents need access to reunification services, such as substance abuse treatment, mental health services and parenting classes. In the BJS study, more than half of parents in state prison (55 percent of fathers and 74 percent of mothers) reported a mental health problem and more than two-thirds (67 percent of fathers and 70 percent of mothers) reported substance dependence or abuse. Only four in 10 of these parents, however, reported receiving treatment for substance abuse since admission, and only one-third received treatment for mental health problems.

In short, unique policy and practice issues can adversely affect children in foster care and their incarcerated parents. State policymakers, however, have options to mitigate the potentially harmful consequences of these policies and practices. The options are discussed later in this paper.

### ***What are the challenges to children and parents associated with discharge from prison?***

The effects of parental incarceration on children do not end with a parent's discharge from prison. Approximately 650,000 people are released from state and federal prisons annually, and a much larger number are released from local jails.<sup>25</sup> Many parents who are discharged from prisons intend to reunite with their minor children, but may not anticipate the difficulties associated with doing so. Former inmates face immense challenges, both internal and external, to build productive lives for themselves, including finding jobs, housing and health care and avoiding further involvement with the criminal justice system. Many grapple with paying off debts that have accumulated during imprisonment, including child support arrearages, criminal fines, court and legal fees, and restitution.<sup>26</sup> These challenges have been extensively documented and discussed elsewhere.<sup>27</sup>

Re-entry can be even more daunting for women with children than for men. Compared to male former inmates, women are more likely to be dealing with the psychological effects of past trauma and abuse and are more likely to have abused drugs, alcohol or both at the time of imprisonment.<sup>28</sup> At the same time, reunification with children is likely to be a more important part of re-entry for women than it is for men.

Prisoner re-entry also can be challenging and stressful for children. Children grow, change and often form relationships with new parental figures during a parent's incarceration. These parental figures—and perhaps other family members—often are reluctant to allow a child to re-establish a relationship with a parent upon release. Such family conflicts can destabilize already fragile families and leave children confused and torn. More important, the return of a violent offender can increase the risk that a child will be subjected or exposed to domestic violence.<sup>29</sup>

### **WHAT POLICY OPTIONS ARE AVAILABLE TO STATE LEGISLATORS TO IMPROVE THE LIVES OF CHILDREN OF INCARCERATED PARENTS?**

Parental incarceration is not an isolated event, it is a process that unfolds over time. To protect children from the harmful effects of parental incarceration, the interests of children should be considered at each stage of the process, including arrest, sentencing, intake, incarceration and re-entry. Because the process involves many agencies and individuals who do not routinely coordinate their efforts or communicate with one another, a key policy goal is to ensure that such agencies and individuals work together to promote the best interests of children when their parents go to jail or prison. Possible policy interventions at each stage of the incarceration process follows.

#### ***Arrest Phase***

The arrest of a parent can be highly traumatic to a child, yet most police departments have no protocols to protect children, explain to them what is happening and ensure that they are properly cared for after a parent is arrested. To ensure that the needs of children are taken into account during an arrest, some jurisdictions have replicated a program called Child Development-Community Policing (CD-CP), a collaboration between the New Haven Department of Police Service and the Yale Child Study Center. The program trains police in child development, provides clinicians to work with children at the scene of an arrest, provides treatment and counseling for such children, and provides ongoing consultation for police and child welfare workers.<sup>30</sup>

At least two states enacted legislation to address the needs of children at the time a parent is arrested. California law encourages law enforcement personnel and child welfare agencies to develop protocols and apply for federal training funds to learn to better cooperate in the arrest of a parent to ensure a child's safety and well-being.<sup>31</sup> California also allows arrestees, during the booking process, to make two additional telephone calls to arrange for care for their children.<sup>32</sup> New Mexico law requires that law enforcement training include how to ensure child

safety during the arrest of a parent.<sup>33</sup> It also includes a requirement that a law enforcement officer who makes an arrest inquire whether the arrestee is a parent or guardian of a child who may be at risk because of the arrest and to make reasonable efforts to ensure the safety of the child in accordance with guidelines established by the Department of Public Safety.<sup>34</sup>

States also can consider ways to divert children from foster care at the point of arrest. It is not uncommon for drug offenders to cycle in and out of local jails during the course of a year. In fact, most people who go to jail have been there before and do not go on to prison.<sup>35</sup> Given this pattern of repeated arrests and jail stays, it can be anticipated that the children of such offenders will need substitute care for relatively short periods of time, but at more frequent intervals. Family group conferencing, arranged by the public child welfare agency, can be used to develop safety plans for such children, during which a relative agrees to provide short-term care for a child when the child's parent is arrested and jailed. This arrangement—although perhaps preferable to extended stays in non-relative foster care—still is disruptive and potentially harmful to the child. Therefore, alternative care for the child should be accompanied by appropriate services and interventions for the parent to break the cycle of arrest and incarceration.

### ***Sentencing Phase***

Much discussion of how sentencing affects children has centered on the effect of mandatory minimum sentencing laws enacted as part of the “war on drugs” in the 1980s. Observers point out that these laws have disproportionately affected women. From 1986 to 1996, the number of women incarcerated in state facilities for drug offenses increased by 888 percent, compared to a rise of 129 percent for non-drug offenses.<sup>36</sup> Whether or not states amend their mandatory minimum sentencing laws, they still can ensure that children's interests are considered during sentencing.

- State law could be amended to explicitly require judges, at sentencing, to consider the effects of a parent's incarceration on children. At least one state—Oklahoma—requires judges to inquire whether a convicted individual is a single custodial parent and, if so, to inquire about arrangements for care of the child.<sup>37</sup>
- States could require, in appropriate cases, that pre-sentence investigation reports include a family impact statement, including recommendations for the “least detrimental alternative” sentence and for services to and supports for children during a parent's imprisonment.<sup>38</sup> These statements are being used to a limited extent in Arkansas and Tennessee. Family advocates in other states, including Texas, are developing templates and working with the judiciary system to integrate them into sentencing in select cases.<sup>39</sup> One Tennessee judge routinely requests that a video of the parent interacting with the child accompany family impact statements.<sup>40</sup>

### ***Placement/Intake Phase***

Corrections officials usually do not inquire whether a newly committed inmate is a parent and how incarceration is likely to affect the parent-child relationship, if at all. State legislators may want to consider requiring that prison officials make such inquiries. There are several reasons for doing so. First, a major barrier to regular visitation between children and their incarcerated parents is placement of inmates in facilities located far from where the children live. State law could require corrections officials to consider the effects of inmate placement on maintaining family relationships.

- Hawaii, for example, enacted legislation in 2007 that, among other things, requires the director of public safety to establish policies that parent inmates be placed in facilities, consistent with public safety and inmate security, based on the best interest of the family rather than on economic or administrative factors. The



legislation also requires consideration when making prison placements of an offender's capacity to maintain parent-child contact.<sup>41</sup>

- California law requires the director of corrections to examine newly committed inmates to determine the existence of any strong community and family ties, the maintenance of which could aid in the inmate's rehabilitation, and, when reasonable, to assign a prisoner to the appropriate facility nearest his or her home.<sup>42</sup>

A second reason for requiring prison officials to routinely collect information about new inmates' parental status is to ensure that their children receive the services and supports to which they are entitled and to fill some of the gaps in data that hinder research and policymaking.

- Colorado law, for example, requires corrections officials to determine whether an inmate is a parent and, if so, whether the child is in school. The department of corrections also must collect and compile information related to programs that help students whose parents are incarcerated.<sup>43</sup>
- A 2007 Hawaii provision appropriates funding to support, among other things, the collection of data on children of incarcerated parents, including the number of children each inmate has, the children's ages, schools, caregiving arrangements and needed services.<sup>44</sup>

### ***Incarceration Phase***

Entry of a parent into jail or prison presents an opportunity for a coordinated response by multiple systems to ensure that children's best interests are protected and to accomplish the following goals.

- **Manage the disruptive effects of a parent's incarceration.** Options include minimizing disruptions in a child's residence, school attendance, friendships and caregiving arrangements, and minimizing economic hardship following a parent's imprisonment. One type of caregiving arrangement that deserves special consideration is care by non-parent relatives. Although kinship care has many advantages over other forms of caregiving arrangements, such as non-relative foster care, it also poses some risks to children's healthy development. Research on kinship care in general has shown that many grandparent caregivers are poor, physically frail and in poor mental health.<sup>45</sup>

Kin caregivers of children of incarcerated parents face additional challenges. These include coping with the social stigma associated with incarceration of a family member, the added expense of long-distance telephone calls from prison and travel to prisons for visits, and anger about the parent's poor choices and behaviors that resulted in imprisonment.

Although many policies exist for kinship care, in general, no state or federal legislation addresses the unique circumstances and needs of relatives who care for children of incarcerated parents. Policymakers might want to examine whether existing state kinship care policies and programs meet the needs of this subset of relative caregivers.

- **Maintain regular, meaningful contact between children and their incarcerated parents.** Policies and programs can address some, but not all, the barriers children face in contact with their incarcerated parents. Some children either never had a relationship with their incarcerated parents or lost contact with them long before arrest, sentencing and imprisonment. In other cases, children might have a relationship with their incarcerated parents but are denied access to them by their custodial parents or relative caregivers.

Accordingly, policies should target those children who have a relationship with their incarcerated parent, who would benefit from maintaining that relationship, and who face the barriers that state policies can address. Such policies include assigning inmates to facilities close to home (see discussion in Placement/Intake Phase, above), requiring child-friendly visiting areas within prisons and jails, requiring training for corrections staff on treatment of visiting children, and reviewing and revising prison visiting policies to identify and remove unnecessary barriers to regular visitation. Michigan, for example, included in its 2007 corrections appropriations bill a requirement that the state allocate sufficient funds from the appropriation to develop a pilot children's visitation program, which is to include parenting skills instruction.<sup>46</sup>

Another approach is to reduce the cost of maintaining contact, particularly exorbitant long-distance telephone charges. New York recently enacted legislation to require the Department of Corrections, when determining the best value of telephone services in accordance with the state procurement law, to emphasize the lowest possible cost to the telephone user. The law further prohibits the department from receiving revenue in excess of its reasonable operating cost for establishing and administering telephone system services.<sup>47</sup>

With regard to contact between incarcerated parents and their children in foster care, state legislators may want to consider revising statutes that affect child welfare practice and court procedure. State law could be amended, for example, to:

- Require child welfare agencies to consider relevant exceptions to termination of parental rights in permanency planning for children of incarcerated parents.
- Clarify that parental incarceration, by itself, does not negate the requirement for reasonable efforts to reunify a child with his or her parent upon the release of such parent from prison.
- Clarify that parental incarceration does not negate the requirement for reasonable parent-child visitation while the child is in foster care. A few states have taken this approach.

**New York law**, for example, requires child welfare agencies to diligently encourage a meaningful relationship between a child and a parent who is at risk of losing parental rights on the grounds of permanent neglect. With respect to an incarcerated parent, "diligent efforts" means:

"making suitable arrangements with a correctional facility and other appropriate persons for an incarcerated parent to visit the child within the correctional facility, if such visiting is in the best interests of the child . . . . Such arrangements shall include, but shall not be limited to, the transportation of the child to the correctional facility, and providing or suggesting social or rehabilitative services to resolve or correct the problems other than incarceration itself which impair the incarcerated parent's ability to maintain contact with the child."<sup>48</sup>

**California law** requires a court to order reasonable reunification services for an incarcerated parent and his or her child unless it determines by clear and convincing evidence that such services would be detrimental to the child. The statute lists factors the court must consider in determining detriment. It also provides that services can include maintaining contact through telephone calls, transportation services, and services to extended family members or foster parents. Finally, the law provides that, as part of the service plan, the incarcerated parent can be required to attend counseling, parenting classes or vocational rehabilitation.<sup>49</sup>

**Colorado law** provides an exception to the 15/22 month TPR filing requirement when the duration of a child's stay in foster care is due to circumstances beyond the control of the parent, such as incarceration.<sup>50</sup>

As stated earlier, statutes in at least six states provide that a parent's incarceration, by itself, is not sufficient grounds for TPR.<sup>51</sup> For such provisions to have the desired effect, they should be coupled with other reforms to make arranging and conducting visits easier and to minimize the trauma of visits for children.

**Ensure that incarcerated parents understand and have the opportunity to participate meaningfully in dependency proceedings that involve their children in foster care.** Although inmate parents are vulnerable to losing parental rights, they often are unaware of this vulnerability or know very little about what they can do to prevent loss of rights.<sup>52</sup> Even if they understand what is at stake, administrative and logistical factors can prevent them from attending critical court hearings. Key to addressing these issues is ensuring that inmate parents are consistently represented by attorneys who are familiar not only with dependency litigation, but also with the criminal justice system and applicable corrections policies that affect incarcerated parents. Addressing this problem also will require improved coordination among law enforcement, the judiciary, corrections and child welfare. California law, for example, authorizes the presiding judge of the juvenile court in each county to convene representatives of these systems to develop protocols to ensure notification, transportation and presence of an incarcerated parent at all court proceedings that affect his or her child.<sup>53</sup>

**Improve parent-child bonding and inmate parenting skills.** Since most prisoners eventually return to their families and communities, some programs and policies aim not merely to maintain parent-child contact during incarceration, but to strengthen the parenting skills of inmates and to provide an opportunity for bonding between incarcerated mothers and their newborn children. Only a few states have legislation in this area, and most provisions address the parenting skills of mothers of very young children, including those who give birth while in prison or jail. Some laws provide prison-based nursery programs, allow temporary release of inmate mothers to community-based alternatives to incarceration, or both.

- California law created a community treatment program for women inmates with children under age 6. The law provides for the release of an eligible incarcerated mother and her child to a community-based facility that provides pediatric care, services to stabilize the parent-child relationship, and other services for both the mother and child.<sup>54</sup>
- Maryland legislation passed in 2007 authorizes special leave for inmates to participate in programs for pregnant women or to establish bonding between mothers and their newborn children. The law also authorizes parole for residential treatment in the best interest of an inmate's expected or newborn child. Finally, the law authorizes corrections officials to allow an inmate to retain custody of a newborn.<sup>55</sup>
- New York law enacted in 1930 authorizes a newborn to reside with his or her mother in a correctional institution for up to one year.<sup>56</sup> New York was the first state to experiment with prison nursery programs, beginning as early as 1901.<sup>57</sup>
- Ohio law authorizes the corrections department to establish a prison nursery program for women who are pregnant at the time of incarceration.<sup>58</sup>
- Wyoming includes new mothers who are incarcerated or who are on probation or parole on the list of women who are eligible for services under the public health nursing infant home visitation program.<sup>59</sup>

Some states that have no legislation regarding prisoners' custody of their young children—including North Carolina and Pennsylvania—have addressed the issue through regulation.<sup>60</sup>

### *Re-Entry Phase*

Re-establishing relationships between ex-offenders and their children and families is a critical part of re-entry, but it is rarely addressed in the literature. Policymakers in some states are incorporating help with parenting and family life into comprehensive re-entry programs. Hawaii law, for example, requires the Department of Public Safety to “institute policies that support family cohesion and family participation in offenders’ transition to the community.”<sup>61</sup> In 2007, Oklahoma enacted a law requiring creation of a Reentry Policy Council and a Transformational Justice Interagency Task Force to, among other things, develop and establish a parenting skills program for inmates who are within one year of release.<sup>62</sup> For many mothers who are making the transition from prison, help with parenting is important, but so are gender-specific drug treatment and mental health services and programs for survivors of family violence. Perhaps more important, these mothers need supportive relationships with treatment providers, friends and other women.

### **WHAT CAN THE LEGISLATURE DO TO IMPROVE COLLABORATION AMONG THE STAKEHOLDERS THAT MUST BE INVOLVED IN EFFORTS TO IMPROVE THE LIVES OF CHILDREN OF INCARCERATED PARENTS?**

Many—if not most—of the policy actions described above require the active involvement of multiple systems working together to achieve positive results for the children of imprisoned parents. As in other areas of human services, however, such collaboration may first require action on the part of policymakers, including state legislators. Some experts on children of incarcerated parents have noted that legislation is needed at both the state and federal levels to fully address the complex range of issues facing incarcerated parents and their children.<sup>63</sup>

To lay the groundwork for such collaboration, an initial approach legislators might consider is a broad statement of legislative intent that the relationship between an incarcerated parent and his or her child should be recognized, preserved and strengthened when in the best interest of the child. Such statement of intent could be coupled with two requirements:

- That all systems that touch the lives of such children and parents—including law enforcement, corrections, child welfare, education and the judiciary—jointly assess the effects of their policies, programs and practices on children of incarcerated parents; and
- That these various state agencies undertake to collect, share, analyze and regularly report on data regarding children of incarcerated parents to better understand their service needs and the needs of their caregivers.

In the past decade, legislatures in several states have required broad-based policy reviews, multidisciplinary planning, and data collection to address the issues facing children of incarcerated parents.

- In 1998, the Missouri legislature required the state Children’s Services Commission to evaluate state laws and policies that affect incarcerated parents and their children and to recommend legislative proposals and state and local programs to respond to the needs of such children.<sup>64</sup>
- In 2001, Oregon established by legislation a planning and advisory committee to make recommendations on how to increase family bonding for children of incarcerated parents.<sup>65</sup> The legislation required representation by the corrections department, the state youth authority, the state court administrator, the state Commission on Children and Families, the Department of Education, the Department of Human Services, and several local boards and councils. The committee issued a report to the legislature in 2002,<sup>66</sup> and in 2005, the legislature extended the committee through the 2005–2007 biennium.<sup>67</sup>

As one of the first states to address this issue at a high level, Oregon is now considered a national model for interagency collaboration and innovation. Oregon's effort began in 2000 with a Children's Project workgroup consisting of over 20 organizations. The workgroup focused on changes in the prison system to include parent education classes, a therapeutic child-centered facility to serve children of female inmates, and improved policies regarding contact and visitation.<sup>68</sup>

- Hawaii adopted a resolution in 2005 requesting the departments of public safety and human services to form a task force to identify and develop appropriate programs and services for children of incarcerated parents and to provide support for incarcerated parents, where appropriate.<sup>69</sup> The task force issued a report to the Legislature,<sup>71</sup> and was extended through 2012.<sup>72</sup>

Hawaii also enacted legislation in 2008 to articulate guiding principles for use by state agencies when dealing with children of incarcerated parents.<sup>73</sup> The principles were adapted from the Incarcerated Parents Bill of Rights created by the San Francisco Children of Incarcerated Parents Partnership.<sup>74</sup> The principles include "children should be kept safe and informed at the time of the parent's arrest;" "the children's wishes should be taken into consideration regarding any decisions made concerning their welfare;" "if the children so choose, communication avenues should be made available such that children should have opportunities to see, speak to, or visit parents, where appropriate," and "children should receive support for the desire to retain a relationship with an incarcerated parent, where appropriate."

- In 2005, Washington required the Department of Corrections and the Department of Social and Health Services to establish an oversight committee to develop an interagency plan for services and supports to children with incarcerated parents.<sup>75</sup> Washington followed up on its 2005 legislation with a 2007 law that requires a broad array of agencies—including corrections, social services, education, early learning and economic development—to adopt policies to encourage familial contact between inmates and their children, facilitate normal child development, and reduce recidivism and intergenerational incarceration.<sup>76</sup> These agencies also must gather and evaluate data on children of incarcerated parents. Finally, the law requires creation of an advisory committee to gather the data collected by the departments, monitor implementation of existing recommendations, identify needs, and provide advice regarding funding of community programs. The state budget for the 2007-2009 biennium contains \$1.086 million, divided among various departments, to fund this legislation.<sup>77</sup>

Pursuant to the legislation, the Washington Department of Social and Health Services embarked on a comprehensive analysis of administrative data to determine the extent services are received by children and families of incarcerated parents and to identify the social service systems that are involved with such families.<sup>78</sup> Department staff also prepared an excellent policy paper on the issue.<sup>79</sup>

- In 2007, the Virginia General Assembly required that an integrated system be established to coordinate planning and service provision so children and their incarcerated parents could maintain their relationships.<sup>80</sup>
- The Vermont legislature required in 2008 that the Corrections Oversight Committee investigate issues regarding children of incarcerated parents and make recommendations on how to increase appropriate contact between minor children and their parents. The committee also was to determine data that should be collected to enable the legislature to better understand the effects of parental incarceration on minor children, among other things.<sup>81</sup>
- Also in 2008, the Tennessee legislature passed a joint resolution urging the state Department of Corrections to examine the Children of Incarcerated Parents Bill of Rights and to incorporate appropriate principles to help the state achieve its goal to eliminate intergenerational crime.<sup>82</sup>

State legislators also can initiate a dialogue about changing the cultures of disparate systems to ensure that the needs of children of incarcerated parents do not get lost between agencies. Even without legislation, the attention and influence of state legislators could help change attitudes that have hindered better results. The culture and mission of the correctional system, for example, could be expanded to include reducing recidivism and improving public safety by facilitating maintenance of parent-child relationships during a parent's imprisonment. The culture and mission of child welfare could be changed so that parental incarceration no longer is viewed as an automatic bar to providing reunification services and regular visitation. Juvenile and family court judges could be encouraged to hold child welfare agencies accountable for maintaining connections between a child in foster care and an incarcerated parent and delivering appropriate reunification services to the parent when it is in the child's best interest.

## CONCLUSION

The many issues that face children of incarcerated parents and their families are complex and cross the jurisdictional boundaries of multiple agencies and service systems. In addition, thoughtful policymaking in this area is hindered by lack of reliable data on the characteristics of these children and a paucity of sound research on both the effects of parental incarceration and the effectiveness of interventions. Nevertheless, a growing number of state policymakers are taking an active interest in helping children of incarcerated parents. This paper provides a preliminary framework for those who must deal with this critical policy issue.

## NOTES

This paper was prepared with support from Casey Family Programs. The author also thanks Ben DeHaan and Dr. Creasia Finney Hairston for reviewing a draft of the paper and providing many helpful suggestions.

1. Creasie Finney Hairston, "Prisoners and Their Families: Parenting Issues During Incarceration," in *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families and Communities*, edited by Jeremy Travis and Michelle Waul (Washington, D.C.: The Urban Institute Press, 2003), 260-282.
2. Lauren Glaze and Laura Maruschak, *Parents in Prison and Their Minor Children* (Washington, D.C.: Bureau of Justice Statistics, 2008).
3. Nancy LaVigne, Elizabeth Davies, and Diana Brazzell, *Broken Bonds: Understanding and Addressing the Needs of Children with Incarcerated Parents* (Washington, D.C.: Urban Institute, 2008).
4. Creasie Finney Hairston, *Focus on Children with Incarcerated Parents: An Overview of the Research Literature* (Baltimore: Annie E. Casey Foundation, 2007).
5. Joseph Murray and David Farrington, "Effects of Parental Imprisonment on Children," *Crime and Justice: A Review of Research*, vol. 37 (Chicago: University of Chicago Press, 2008).
6. Creasie Finney Hairston *Focus on Children with Incarcerated Parents: An Overview of the Research Literature*.
7. Ross Parke, and K. Allison Clarke-Stewart, "The Effects of Parental Incarceration on Children: Perspectives, Promises and Policies," in *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities.*, edited by Jeremy Travis and Michelle Waul (Washington, D.C.: The Urban Institute Press, 2003), 189-232.
8. Susan Phillips et al., "Disentangling the Risks: Parent Criminal Justice Involvement and Children's Exposure to Family Risks," *Criminology and Public Policy* 5, no. 4 (Nov. 2006): 677-702.
9. Ibid.
10. Center for Research on Child Well-Being, *Fragile Families Research Brief, Parental Incarceration and Child Wellbeing in Fragile Families* (Princeton, N.J.: Princeton University, 2008).
11. Julie Poehlmann, "Representations of Attachment Relationships in Children of Incarcerated Mothers," *Child Development* 76, no. 3 (May/June 2005): 679-696.
12. These percentages add up to more than 100 because some inmates had multiple children living with different caregivers.
13. Creasie Finney Hairston, *Focus on Children with Incarcerated Parents: An Overview of the Research Literature*.
14. Creasie Finney Hairston, "Prisoners and Their Families: Parenting Issues During Incarceration," in *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families and Communities*, edited by Jeremy Travis and Michelle Waul (Washington, D.C.: The Urban Institute Press, 2003), 260-282.
15. Ibid.
16. Ibid.
17. Arlene Lee, Philip M. Genty, and Mimi Laver, *The Impact of the Adoption and Safe Families Act on Children of Incarcerated Parents* (Washington, D.C.: Child Welfare League of America, 2005).
18. R. Anna Hayward and Diane DePanfilis, "Foster Children with an Incarcerated Parent: Predictors of Reunification," *Children and Youth Services Review* 29 (2007): 1320-1334.
19. Anita Larson and Mira Swanson, "Identifying Children with Incarcerated Parents: The Child Welfare Data Environment," *CW 360: A Comprehensive Look at a Prevalent Child Welfare Issue, Children of Incarcerated Parents* (St. Paul, Minn.: University of Minnesota Center for Advanced Studies in Child Welfare, 2008).
20. Marilyn C. Moses, "Correlating Incarcerated Mothers, Foster Care and Mother-Child Reunification," *Corrections Today* (October 2006).
21. Mass. Gen. Laws Ann. ch. 210, §3; Mo. Rev. Stat. § 211.447; Neb. Rev. Stat. §43-292.02; N.H. Rev. Stat. Ann. §170-C:5; N.M. Stat. Ann. §32A-4-28; Okla. Stat. Tit. 10, §7006-1.1.
22. 2008 Cal. Stats., Chap. 482.
23. Cal. Welfare and Institutions Code §366.26.
24. Creasie Finney Hairston, *Kinship Care When Parents are Incarcerated: What Research Tells Us* (Baltimore: Annie E. Casey Foundation, forthcoming).

25. Office of Justice Programs, <http://www.reentry.gov/welcome.html>.
26. Marcia Festen, *From Prison to Home: The Effect of Incarceration on Children, Families and Communities, Conference Report* (Washington, D.C.: U.S. Department of Health and Human Services, 2002).
27. See, e.g., National Governors Association Prisoner Reentry Policy Academy, <http://www.nga.org/portal/site/nga/menuitem.1f41d49be2d3d33eacdcbbeeb501010a0/?vgnnextoid=6c239286d9de1010VgnVCM1000001a01010aRCRD>; Urban Institute Justice Policy Program, <http://www.urban.org/justice/index.cfm>; U.S. Office of Justice Programs, <http://www.reentry.gov/>; and the John Jay College of Criminal Justice Reentry Institute, <http://www.jjay.cuny.edu/centersinstitutes/pri/pri.asp>.
28. Stephanie Covington, "A Woman's Journey Home: Challenges for Female Offenders," in *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families and Communities*, edited by Jeremy Travis and Michelle Waul (Washington, D.C.: The Urban Institute Press, 2003) a 67-103.
29. Jeremy Travis and Michelle Waul, "Prisoners Once Removed: The Children and Families of Prisoners," in *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families and Communities*, edited by Jeremy Travis and Michelle Waul (Washington, D.C.: The Urban Institute Press, 2003), 1-29.
30. Nell Bernstein, Nell, *All Alone in the World: Children of the Incarcerated* (New York: The New Press, 2005).
31. Cal. Penal Code §833.2.
32. Cal. Penal Code §851.5.
33. N.M. Stat. Ann. §29-7-7.3.
34. N.M. Stat. Ann. §31-1-8.
35. Ben DeHann, private consultant, personal communication with author, Jan. 15, 2008.
36. The Sentencing Project, *Women in the Criminal Justice System* (Washington, D.C.: The Sentencing Project, 2007).
37. Okla. Stat. tit. 22, §22-20.
38. San Francisco Children of Incarcerated Parents Partnership, *Children of Incarcerated Parents: A Bill of Rights* (San Francisco: SFCIPP, 2005).
39. Dee Ann Newell, co-founder, Arkansas Voices for Children Left Behind, personal communication with author, Dec. 8, 2008.
40. Ibid.
41. 2007 Hawaii Sess. Laws, Special Session, Act 8.
42. Cal. Penal Code §5068.
43. Colo. Rev. Stat. §17-1-119.5.
44. 2007 Hawaii Sess. Laws, Act 250.
45. Richard Barth et al., "Kinship Care and Nonkinship Foster Care: Informing the New Debate," in *Child Protection: Using Research to Improve Policy and Practice*, edited by Ron Haskins, Fred Wulczyn and Mary Bruce Webb (Washington, D.C.: Brookings Institution Press, 2007), 187-206.
46. 2007 Mich. Pub. Acts, Act 124.
47. 2007 N.Y. Laws, Chap. 240.
48. N.Y. Social Services Law, Art. 6, Tit. 1 § 384-b.
49. Cal. Welfare and Institutions Code §361.5.
50. Colo. Rev. Stat. §19-3-604.
51. See note 21, *supra*.
52. Women's Advocacy Project, *Improving Legal Representation of Parents in Family Court* (New York: Women's Prison Association, 2004).
53. Cal. Welfare and Institutions Code §361.5.
54. Cal. Penal Code §§3410-3424.
55. 2007 Md. Laws, Chap. 91.
56. N.Y. Corrections Law §611.



57. Katherine Gabel and Kathryn Girard, “Long-Term Care Nurseries in Prisons: A Descriptive Study,” in *Children of Incarcerated Parents*, edited by Katherine Gabel and Denise Johnston (New York: Lexington Books, 1995), 237-254.
58. Ohio Rev. Code Ann. §5120.65.
59. Wyo. Stat. §35-27-102.
60. Barbara Bloom, “Public Policy and the Children of Incarcerated Parents,” in *Children of Incarcerated Parents*, edited by Katherine Gabel and Denise Johnston (New York: Lexington Books, 1995), 271-284.
61. Hawaii Rev. Stat. §353H-4.
62. 2007 Okla. Sess. Laws, Chap. 274.
63. See, e.g., Barbara Bloom, “Public Policy and the Children of Incarcerated Parents;” and Creasie Finney Hairston, “Prisoners and Their Families: Parenting Issues During Incarceration.”
64. 1998 Mo. Laws, SB 720. The report of the task force formed in response to the legislation is on the web at <http://www.csc.mo.gov/reports.htm>.
65. 2001 Ore. Laws, Chap. 635, §16.
66. Children of Incarcerated Parents Project, *Report to the Oregon Legislature on Senate Bill 133* (Salem, Ore.: CIPP, 2002), [http://egov.oregon.gov/DOC/PUBAFF/docs/pdf/legreport\\_bill133.pdf](http://egov.oregon.gov/DOC/PUBAFF/docs/pdf/legreport_bill133.pdf).
67. 2005 Ore. Laws, Chap. 497.
68. Oregon Department of Corrections, “Children of Incarcerated Parents Project,” [http://egov.oregon.gov/DOC/TRANS/PROGMS/oam\\_children.shtml](http://egov.oregon.gov/DOC/TRANS/PROGMS/oam_children.shtml).
69. 2005 Hawaii Sess. Laws, SCR 128.
71. SCR 128 Task Force, *Report to the Legislature: Children of Incarcerated Parents*. Honolulu: 2006. <http://www.hawaii.gov/dhs/main/reports/LegislativeReports/2006Leg/2005%20SCR%20128%20Children%20of%20Incarcerated%20Parents.pdf>.
72. 2008 Hawaii Sess. Laws, Act 240.
73. 2008 Hawaii Sess. Laws, Act 7, Special Session 2008.
74. San Francisco Children of Incarcerated Parents Partnership, *Children of Incarcerated Parents: A Bill of Rights* (San Francisco: SFCIPP, 2005).
75. 2005 Wash. Laws, Chap. 403.
76. 2007 Wash. Laws, Chap. 384.
77. Legislative Evaluation and Accountability Program Committee, *Legislative Budget Note: 2007-2009 Biennium* (Olympia, Wash.: LEAP, 2007); <http://leap.leg.wa.gov/leap/budget/lbns/2007toc.asp>.
78. See, e.g., Washington Department of Social and Health Services, *Children of DOC Incarcerated Parents Receive DSHS Services at Very High Rates*, presentation to the Children of Incarcerated Parents Advisory Committee, <http://publications.rda.dshs.wa.gov/1350/>.
79. Miriam Bearse, “Children and Families of Incarcerated Parents: Understanding the Challenges and Addressing the Needs” (Olympia, Wash.: DSHS, 2008), <http://www.dshs.wa.gov/pdf/incarcerated/CFIPfinal.pdf>.
80. 2007 Va. Acts, Chap. 366.
81. 2008 Vt. Acts, Act 179, §19.
82. 2008 Tenn. Pub. Acts, HJR 116.



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ISBN 978-1-58024-544-9