

Research Brief

Children, Families, and the Criminal Justice System

Center for Social Policy and Research
Jane Addams College of Social Work
University of Illinois at Chicago

1040 W. Harrison St., Chicago, IL 60607
312-413-2302

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What we Know Now that we Didn't Know Then about the Criminal Justice System's Involvement in Families with whom Child Welfare Agencies have Contact

Findings from a Landmark National Study

Susan D. Phillips, Ph. D., James P. Gleeson, Ph.D.

In the 1980s, the United States entered an era of criminal justice reform that was intended to "get tough on crime". As a consequence of these reforms, an unprecedented number of people were arrested and criminal justice populations reached historically unknown proportions.^[1]

As the criminal justice system grew, attention began to focus on the fact that many of the people being placed under criminal justice supervision were parents.^[2-4] Throughout the 1990s, researchers, child and prisoner advocates, practitioners, and policy makers scrambled to learn what happens to children when their parents are arrested and incarcerated. It was during this period that the Child Welfare League of America (CWLA) held the *National Institute on Children of Incarcerated Parents*. One outcome of the Institute was a special issue of *Child Welfare* dedicated to the topic of children with parents in prison.^[10] The introduction to the issue describes a number of gaps in the knowledge that existed at that time about these children.^[11] Among the questions that could not be fully answered were:

1. What proportion of children who are reported victims of maltreatment live in families in which the criminal justice system has intervened?
2. What are the specific needs and problems confronting children of arrested/incarcerated parents and are they any different than those of other children child welfare agencies encounter?
3. What happens to children as their parents progress through different phases of the criminal justice process (e.g., arrest, sentencing, incarceration, release)?

Ten years later, new data are available that address some of these prior shortfalls in knowledge. These data are from the National Survey of Child and Adolescent Well-being (NSCAW), a study funded by the Administration for Children and Families (ACF).^[12] NSCAW is a landmark study of children who were subjects of reports of maltreatment. Information was collected on more than 5,000 children from 92 different communities in 36 states. More importantly, the participating communities and children were selected in such a way that the resulting data depict the entire population of reported child maltreatment victims in the United States.

To be clear, NSCAW is *not* a study specifically of children of incarcerated parents in the child welfare system; its focus is much broader. Consequently, it does not fully answer all questions about these children. It is, however, the most detailed and reliable national data currently available on the safety, permanency, and well-being of children that child welfare agencies come into contact with and it contains seminal data about the criminal justice system's involvement in these families.

So, What Do we Now Know About . . . ?

1. The extent to which the criminal justice system intervenes in the families of children who are reported victims of maltreatment.

When the CWLA published its special issue on children of prisoners, very little data were available to tell us what proportion of the children child welfare agencies come in contact with have parents that have been arrested or are in prison. The best estimates at the time were from a national survey of prison inmates^[2] and a Health and Human Services survey of child welfare agencies.^[13] Findings from these studies suggested that about 8 to 10 percent of mothers in prison on any given day and 1 to 2 percent of fathers had children in foster care and that the presenting problem in about 4 percent of cases of children receiving child welfare services was the incarceration of a parent. Data from NSCAW suggest that the criminal justice system's involvement with the families child welfare agencies encounter is much more extensive.

Recent arrest of a parent. NSCAW data indicate that nationally as many as 1 in every 8 children who are reported victims of maltreatment have parents who were recently arrested (i.e., within 6 months of agencies receiving a report of maltreatment). In the vast majority of cases (90 percent) it is children's mothers who were arrested.^[14]

Consistent with the disproportionate representation of African Americans in the criminal justice system, African American children are more likely to have recently arrested parents than are other children.^[2] About 1 in every 5 African American children who come to the attention of child welfare agencies have a recently arrested parent compared to only 1 in 10 White children and only 1 in 20 Hispanic children.^[14]

Any arrest during a parent's adulthood. If arrests at any time during a parent's adult life are considered (rather than only recent arrests), the criminal justice system has intervened in at least 1 in 3 families with which child welfare agencies have contact.^[15] We say "at least" because this estimate is based only on children who were in in-home settings and only on their primary caregivers. NSCAW does not have detailed information about the arrest histories of parents of children in out-of-home placements where parental arrest may be even more common.^[14] Nor does it include detailed arrest information on caregivers other than the *primary* caregiver of children in in-home settings. Consequently, if a child's primary caregiver was his

or her mother, but the child's father also had an arrest record, that information was not captured.

Ongoing arrests. Parents' experiences with the criminal justice system do not necessarily end when the child welfare system steps into the picture. This is particularly evident among parents who had sentences to probation. About 1 in 10 children in in-home settings lives with a primary caregiver who was arrested and sentenced to probation in the year prior to coming into contact with child protective service agencies.^[16] In the first 18-months after agencies investigated reports of maltreatment, about 1 in 12 of these children had a parent/caregiver that was arrested at least once and about 1 in 8 experienced a change in caregiver because their parent/caregiver was incarcerated.

2. The prevalence of various needs and problems confronting children of arrested/incarcerated parents and how they compare to those of other children.

In the 1998 *Child Welfare* special issue on children of prisoners, Seymour suggested that children whose parents were involved with the criminal justice system "are similar to the rest of the child welfare population. ... [T]heir families struggle with an array of complex problems, including poverty, domestic violence, inadequate housing, lack of education, and difficulties with interpersonal relationships; ...and parental substance abuse plays a large role in many of their lives." ^([11], p 473)

At that time, what we knew about children of arrested or incarcerated parents came primarily from studies of small samples of children or their parents and other caregivers. Many of these studies used measures of unknown validity and reliability.^[17, 18] Because of these methodological limitations, there was no way to know exactly how widespread the problems were that these studies identified^[19] and, more specifically, whether they applied to children in the child welfare system. In comparison, NSCAW is based on a large, randomly selected sample of children that is representative of all children who were subjects of reports of maltreatment. This makes it possible to arrive at sound estimates of the prevalence of various problems and issues facing families that are known to criminal authorities and to compare households in which the criminal justice system has and has not intervened.

Three categories of problems and needs are described in this section. The first is indicators of child safety such as the type of maltreatment

children allegedly experienced and the prevalence of risk factors for maltreatment (i.e., parental substance abuse, mental illness, domestic violence, inadequate education, and extreme poverty). The second category is permanency in which children's living arrangements are described (i.e., whether they are with their parents or in out-of-home care). The final category is indicators of child well-being focusing specifically, in this case, on serious child emotional and behavioral problems and children's involvement with criminal authorities.

Child safety. Children whose parents were recently arrested differ from other children with respect to the types of alleged maltreatment that brought them into contact with the child welfare system. Children with recently arrested caregivers were significantly *more* likely than other children to be subjects of reports of abandonment and neglect (i.e., failure to supervise, failure to provide) and *less* likely to be victims of reports of physical abuse.

They also differed with respect to the prevalence of various parent and family problems that are associated with the risk for maltreatment. Specifically, the proportion of children whose parents/caregivers had a substance abuse problem was 8 times greater among children with recently arrested parents than among other children. Also, the proportion whose basic needs were unmet, who were living in households where there was domestic violence, and who had a caregiver with a serious mental illness is 2 times greater.^[14]

The prevalence of these various problems differ by race.^[14] Among children with recently arrested parents, parental substance abuse was identified as a problem by caseworkers in 45 percent of cases involving White children, but only 31 percent involving Hispanic children, and only 27 percent involving African American children. Domestic violence was an identified problem in 29 percent of cases involving White children, 21 percent of cases involving African American children, and only 15 percent of cases involving Hispanic children.

As was the case with recently arrested parents, these same problems were also more common in households in which the primary caregivers had ever been arrested as an adult (not just recently).^[15] The prevalence of these problems, however, differed depending on the most serious consequence of arrest caregivers had experienced (i.e., incarceration, probation, or something else). Children whose parents had been on probation had the highest reported levels of exposure to parental substance abuse (45 percent), domestic violence (39 percent), inadequate education (34 percent), and extreme poverty (32 percent).

Exposure to these problems also varied over time.^[16] Among children in in-home settings whose parents had been on probation, exposure to parental substance abuse decreased by about 50% three years after contact with child welfare agencies and exposure to domestic violence decreased by about 80 percent. However, another dramatic change also took place in these households during the same period: the proportion of probationer-mothers that were present in these households decreased by about 50 percent.

One final characteristic distinguishes families in which the criminal justice system has and has not intervened: children who have parents that were or had been involved with the criminal justice system were exposed to a *greater total number of problems* (i.e., parental substance abuse, mental illness, domestic violence, extreme poverty) than the other children^[14]. The importance of this cannot be overstated because as the number of risk factors children experience increases the odds of children developing serious problems grows exponentially^[20, 21]. Just as importantly, in terms of practice, this means that in general ***children who have parents that have been involved with the criminal justice system are the most complex cases the child welfare system encounters.***

Permanency. Approximately 6 months after child protective service agencies received allegations of maltreatment, most (75 percent) children with recently arrested parents were in in-home settings where they were typically being cared for by their mothers.^[14] Only a relatively small proportion was in the care of relatives (1 in 7) or in the care of foster parents (1 in 10 children). Placement with relatives or caregivers, however, was more common among children with recently arrested parents than among other children.

When other factors were taken into account, out-of-home placement (i.e., placement with a relative or foster parent) was more likely in instances where children had clinically significant emotional and behavioral problems and parents/families had multiple problems. The recent arrest of a parent contributed marginally to children being in any out-of-home placement; however, it was not related to whether children were in foster care rather than living with relatives. Instead, children's emotional and behavioral problems and the number of problems in their families were the key determinants of foster care versus relative placement.

Well-being. Parental arrest and incarceration are purported to be responsible for a wide variety of emotional and behavioral problems children experience. Problems listed in the CWLA's special issue on children of prisoners included fear, anxiety,

anger, sadness, loneliness, guilt, low self-esteem, depression, emotional withdrawal from friends and family, inappropriate acting out, disruptive behavior, and other antisocial behaviors.^[11]

Data from NSCAW indicate that emotional and behavioral problems are no more common among children with recently arrested parents than they are among other children.^[14] That having been said, 1 in 5 children with recently arrested parents had clinically significant internalizing problems (e.g., anxiousness, depression, withdrawal) and 1 in 3 had clinically significant externalizing problems (e.g., attention problems, aggression, disruptive behaviors). This compares to only about 1 in 10 children in the general population who have these types of problems.^[22] Thus, whether children of arrested parents have more or less problems than other children that child welfare agencies encounter is irrelevant. There is a substantial need for mental health intervention in both groups.

Among children in in-home settings, the prevalence of emotional and behavioral problems differs based on (1) children's age and (2) the most serious outcome of arrest their caregivers had ever experienced^[15]. Generally, emotional and behavioral problems were more common among young children (i.e., age groups 2 to 5 and 6 to 10) whose primary caregivers had previously been to prison than among children of the same age with never-arrested caregivers. For instance, 34 percent of children ages 2 to 5 with previously incarcerated caregivers had emotional and behavioral problems compared to only 22 percent of children with never-arrested caregivers. On the other hand, among older children (ages 11 and up), 43 percent of children with never-arrested caregivers had emotional and behavioral problems compared to 35 percent of children with previously incarcerated caregivers. Again, we point out that both groups experience these problems at a higher rate than is typical for children in general.

In addition to concerns about the emotional and behavioral well-being of children, there has been a particular concern that children of incarcerated parents are at risk for becoming "the next generation of inmates." Among children in in-home care, arrest was no more common among children of arrested parents than among children of never-arrested parents^[15]. In fact, among children ages 11 and up, about 9.8 percent of children living with primary caregivers that had previously been to prison reported being arrested themselves compared to 9.2 percent of children with never-arrested caregivers. The proportion of children who had been arrested was even lower among children whose primary caregivers had been on probation (5 percent) or had some other less serious outcome of a prior arrest (7 percent).

3. What happens to children as their parents progress through different phases of the criminal justice process (e.g., arrest, sentencing, incarceration, release).

Lastly, the introduction to the 1998 special issue of *Child Welfare* alludes to the fact that parental involvement with criminal authorities is a dynamic phenomenon. For example, there is mention of the need for research that "follows children through different phases of parental incarceration and release" (p. 471). NSCAW data suggest yet another aspect of the dynamic nature of parents' criminal justice system involvement that has not been adequately addressed. Namely, parents not only progress through phases within the criminal justice system, they also sometimes *loop* through them. By this we mean that parents may go through the cycle of arrest, sentencing, punishment (e.g., probation, jail, prison), and release from criminal justice supervision multiple times.

Using the data NSCAW provides on parents' arrest histories over time, it was possible to identify subgroups of mothers who shared similar arrest histories.^[23] Three distinct groups were identified. A small group of mothers of children in in-home settings (about 1 in 25) had *dated arrest histories*. These mothers had not been arrested in at least 5 years. Another small group (also about 1 in 25 mothers) had *protracted arrest histories*. All of these mothers had been arrested more than once and their criminal careers spanned anywhere from 5 to 26 years in duration. Most had last been arrested within the year or two prior to coming in contact with the child welfare system. The final and *largest group* consisted of about 1 in 5 mothers of children in in-home settings. These mothers were typically 25 years old or older the first time they were arrested. Although about 50 percent had been arrested multiple times, their arrest histories were confined primarily to a single year.

The prevalence of risk factors for maltreatment varied among these groups, as did child well-being. Households where mothers had dated arrest histories were distinguishable from households with never-arrested mothers by higher levels of substance abuse (38 versus 10 percent), and also by *lower* levels of extreme poverty (20 versus 25 percent).

In households where mothers had protracted arrest records, substance abuse was by far the most common problem (62 percent). The second most prevalent problem was domestic violence (46 percent). More than any one individual problem, these households were noteworthy for having multiple problems.

In households in which mothers were 25 or older when they were first arrested, the single most prominent problem was extreme poverty (45 percent). Substance abuse was about 3 times more prevalent in these households than in households with never-arrested mothers, but it was the least prevalent problem in this group (29 percent).

The prevalence of child emotional and behavioral problems differed among these groups and also by children's ages. Among children ages 2 to 10, emotional and behavioral problems were most common among children whose mothers had dated arrests (54 percent), followed by children whose mothers were first arrested at age 25 or older (41 percent). Among children ages 11 and up, two-thirds (68 percent) of children whose parents had protracted arrest histories and 59 percent of children whose parents had dated arrest histories had emotional and behavioral problems.

Moreover, approximately 1 in 4 children age 11 and up whose parents had dated arrests had been arrested in the year prior to contact with child welfare authorities. This compares to only about 3 percent of children whose parents had either protracted arrest histories or were first arrested at age 25 or older.

IMPLICATIONS FOR POLICY AND PRACTICE

NSCAW leaves many questions unanswered about the children child welfare agencies come in contact with who have parents that are or have been involved with the criminal justice system. Nonetheless, it provides a sufficient amount of new information to raise important questions about policy and practice.

Why Wait for Parents to go to Prison?

NSCAW highlights the variation that exists in (1) the criminal careers of the parents the child welfare system encounters, and (2) the differences in criminal sanctions that the criminal justice system imposes upon them. Focusing narrowly on parental incarceration ignores this variation and the dynamic nature of parents' involvement with criminal authorities. It also ignores the fact that children of incarcerated parents are only a subgroup of a larger at-risk group of children on whose behalf the criminal justice and child welfare systems both have opportunities to intervene.

As was the case in NSCAW, multiple other studies have also repeatedly found that children whose parents have a history of *arrest* – not just

incarceration -- are exposed to a greater total number of risk factors.^[24-29] This is important for two reasons. First, the likelihood of adverse outcomes grows exponentially as the number of different risks children are exposed to increases.^[20,21] Second, it means that the children protective service agencies come in contact with who have parents that have been arrested are the most complex cases the child welfare system encounters.

A further implication of these findings is that the children of probationers with whom child welfare agencies come in contact are a vastly overlooked group. At any given time, approximately 6 times more adults are on probation than in jail and there are about 3 times more probationers than prison inmates.^[30] Probation is also often a precursor to incarceration; about 30 percent of probationers are incarcerated before they complete probation for failing to comply with the conditions of their probation or because they are arrested for a new crime.

In the child welfare system, approximately 1 in 10 children in in-home settings is living with someone who was on probation. Yet, despite their parent's involvement with probation authorities, these children still became subjects of reports of maltreatment.

Probation departments are in a position to intervene with parents to address risk factors for maltreatment such as substance abuse, domestic violence, mental illness, and poverty. Preventing child maltreatment, however, is not typically a measure of the success of probation departments. For that matter, preventing criminal recidivism is typically not a measure of the success of child protective service agencies; yet substance abuse – a problem that child protective agencies routinely encounter – is a major predictor of criminal recidivism. Accordingly, the success or failure each of these systems experience in addressing parents' problems has direct implications for the other.

It is important that policy makers recognize the interplay between these systems and the mutual, underlying social problems that both systems are ensnarled in addressing. Moreover, there is currently a surge of interest in what happens to children and their families when parents are released from prison.^[31, 32] The findings from NSCAW challenge us not only to focus on the "deep end" of the criminal justice system (i.e., prison, parole), but to also look for ways to benefit children on the "front end".

The Devil in the Details

A decade ago, Johnston (1995) pointed out that "even among groups of prisoners' children selected

for study because of their emotional, behavioral, or disciplinary problems, few of the children had problems in every area and all of the children were performing adequately in one or more areas".^(13); p. 63) Yet, we talk about children of incarcerated parents or criminally-involved parents as if they are a homogenous group.

What statistics on children of arrested and incarcerated parents describe are not universal characteristics, but common or prevalent characteristics. These are useful for understanding ways in which these children as a *group* differ from other children, but when it comes to developing services and planning interventions, the differences *within* the group become immensely important.

For example, while it is true that as a *group* substance abuse, domestic violence, parental mental illness, and poverty are more prevalent in households where parents have been arrested, different subgroups of children and families have very different service needs. The predominant service need in one subgroup is treatment for parental substance abuse, in another it is interventions that address extreme poverty, and yet other families need coordinated and integrated services that simultaneously address multiple problems.

Focusing on ways in which children with arrested/incarcerated parents differ from other children has helped establish these children as an at-risk group. But, because of the tendency to treat children of arrested or incarcerated parents as if what is true for the statistically average case is true for all children, intervention and service development has tended to take a one-size-fits all approach. The challenge that lies ahead is to become more aware of the particular risks confronting different segments of this population, and to develop services that match those needs.

What are We Thinking Anyway?

In the wake of unparalleled growth in the criminal justice system and out of growing recognition that many of the people we arrest and incarcerate are parents, a variety of programs have been developed in both correctional settings and in communities to address the needs of children of incarcerated parents. These include parent education programs for parents in prison, programs to make visiting parents in prison more child-friendly, and programs that facilitate children remaining in contact with their incarcerated parents. In the child welfare field, there have been efforts to provide support to relatives who care for children while parents are serving time and efforts to increase awareness of how children may be affected by parental incarceration.

While all of these could have benefits for children, one has to wonder if at the end of the day they amount to any more than palliative care for much more complex social problems like poverty, substance abuse, mental illness, domestic violence, and child maltreatment. Our impotence in making any substantial headway in addressing these problems is reflected in the families we find that, despite the criminal justice *and* child welfare systems intervening in their lives continue to have ongoing encounters with these and other systems.

Rather than concentrating on what fundamental changes may need to be made in these systems and society at large to bring about widespread, long-lasting improvements in the lives of children and families, we instead tinker with changing the policies and practices of individual systems. For example, sentencing guidelines and truth-in-sentencing legislation were passed to reform the criminal justice system; the Adoption and Safe Family Act to reform child welfare; Temporary Assistance to Needy Families to reform welfare; No Child Left Behind to improve schools; and HOPE-IV to reform public housing.

Each of these reforms is linked to the relatively narrow mandates that drive a particular system. Likewise, we judge the success or failure of these reforms based upon narrowly defined criteria that are also based on the specific mandates of individual systems: we focus on changes in reported crimes, or the number of children who are reunited with their parents, or relapse rates, and so forth. In other words, we concentrate primarily on the experiences systems have with individuals and families entering, exiting, and possibly reentering over time, but we seldom stop to ask whether, in the end, children and families are fundamentally any better off.

What if we instead looked at what these systems do and judged their accomplishments from the perspective of the individuals and families they purportedly serve? From this perspective, it is not a matter of individuals or families entering and exiting systems, but rather it is a matter of systems entering and exiting (and possibly reentering) the lives of individuals and families as they have problems and experience needs across time. Sometimes multiple systems enter into their lives simultaneously, sometimes sequentially, and sometimes seemingly at random. But, are we making any significant dent in the prevalence of the problems that draw these systems into people's lives? If we were, we should see these systems "going out of business," but that's far from the case.

How might we judge the success of these systems differently if we asked families to tell us in what

ways, if any, their lives and circumstances fundamentally improved as a result of these systems entering and exiting their lives?

NSCAW helps to focus attention on a group of families that, more so than other families that become known to the child welfare system, are struggling with multiple problems including poverty, drug addiction, and mental illness. It also highlights the fact that, in many cases, multiple different systems enter into the lives of these families and jointly and collectively fail to alleviate their problems. The growth in the criminal justice system is in part a symptom of this failure. It is unlikely that we will see profound, far-reaching improvements by simply doing more of what we already know is not working or by making superficial changes in the policies and practices of isolated systems.

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CONTACT INFORMATION

Direct questions or comments to Susan D. Phillips at suephi@uic.edu.

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