

Intentions and Results

A Look Back at the Adoption and Safe Families Act

Sometimes Good Intentions Yield Bad Results

ASFA's Effect on Incarcerated Parents and Their Children

Martha L. Raimon

Senior Associate, Center for the Study of Social Policy

Arlene F. Lee

Senior Associate, Center for the Study of Social Policy

Philip Genty

Clinical Professor, Columbia Law School

*W*e made the most of each visit that we had. My mom was very special about trying to give time to each little child...I couldn't even begin to express to you in words how fulfilling that was to my soul to give my mother a hug...If I hadn't been able to do that, I would have felt very empty then, as a child, and maybe as well now. Because I didn't have that permanent separation...I understand the strength of a family. When it's hard times, you stick together. And that was just a hard time."—**Malcolm, 17**

"When I was five, my mother's parental rights were terminated. I wasn't even allowed to be by her in the courtroom. But I just knew from her expression, her tears, begging the judge, what had happened... They picked me up and just took me away. Me screaming and yelling, 'Mommy, I'm sorry, I won't be bad again.' All the system saw was a drug addicted mother... They wanted to protect little Ahmad... There are mothers out there that are abusive to their kids, so the system has to step in and do something about that. That's understood. But when there's a mother struggling with an addiction, struggling with herself, but is not abusive towards her kids, then the system has to help better that situation. Help the mother as well as the child... What would have helped me most is compassion for my mom."—**Ahmad, 21**

Children of incarcerated parents have become the focus of ever-increasing attention, from community-based programs to three State of the Union addresses by then-President George W. Bush.² The reasons for this growing attention are myriad, being political, economic, environmental, and logistical in nature. In essence, the number of children whose lives suffer the impact of parental incarceration has reached the point that all public systems are affected. "The imprisonment of [over] three-quarters of a million parents disrupts parent-child relationships, alters the networks of familial support, and places new burdens on governmental services such as schools, foster care, adoption agencies, and youth-serving organizations."³ As a result of this explosion in the number of

children with parents behind bars, new policies and practices are emerging at all levels. Yet they are developing without clear guidance from the federal agencies responsible for providing services to the most vulnerable children and families. Unfortunately, states vary widely in their response to conflicting federal mandates, creating child protective systems whose policies appear arbitrary and often fail to promote the goals of well-being, permanence, and safety. This paper will examine the effects of conflicting mandates contained in the Adoption and Safe Families Act and provide federal policymakers with recommendations to guide state and local child welfare agencies in meeting the needs of families affected by incarceration.

The Data

The United States leads the world in rates of incarceration.⁴ More than 1.5 million people were confined in federal and state prisons in 2007, and the number of parent inmates totaled 809,800 adults with 1,706,600 children under 18,⁵ making the United States the world's leader in the rate of incarceration.⁶ The number of children with an incarcerated parent has increased by almost 80 percent since 1991, and the number of children with a mother in prison has more than doubled during that time.⁷ It is noteworthy that the annual survey of prisoners is a national one-day count, which does not take into account the number of prisoners released the day prior to or the number of prisoners confined the day following the count. As a result, the number of children upon whom parental incarceration has had an impact is estimated to be significantly higher. Nevertheless, on that single day, the United States had 2.3 percent of all children in this country with a parent in prison.

The best available estimate is that the number of children in foster care with an incarcerated parent is between 29,000 and 51,000.⁸ Neither criminal justice nor foster care agencies typically keep these statistics. According to the 2008 Bureau of Justice Report, 3 percent of children with an incarcerated parent (the estimated total of 51,000) are believed to be in foster care, with another 9 percent in the care of friends or relatives who are not a parent or a grandparent.⁹ These data likely underestimate the real percentage because they do not distinguish between formal or informal foster care placements. The Adoption and Foster Care Analysis and Reporting System (AFCARS), administered by the U.S. Department of Health and Human Services for fiscal year 2003, cites the 29,000 figure, suggesting that more than 6 percent of children in foster care have been removed because of parental incarceration.¹⁰ Again, this is almost certainly a conservative estimate since AFCARS records only removals of children into foster care as a direct result of incarceration, missing other children who may have entered foster care for other reasons and who have a parent in prison.¹¹ Thirty-eight percent of children of incarcerated parents will reach 18 before their parents are released.¹²

We have more extensive information about parents in prison. According to 2008 Bureau of Justice data, the majority of prisoners reported having minor children, 22 percent of whom were 4 years old or younger.¹³ While 56 percent of incarcerated mothers

and 39 percent of incarcerated fathers maintain at least weekly contact with their children through letters or phone-calls,¹⁴ far fewer have visits. Among state prisoners, approximately 58 percent of mothers and 59 percent of fathers report never having face-to-face visits.¹⁵

Of course, the contributing factors behind prison sentences are also important. Poverty, substance abuse, and a history of having been a victim of physical or sexual abuse are common to the experience of incarcerated parents. Nearly 36 percent of women in state prisons were receiving public assistance before arrest, compared to 10 percent of men. About 30 percent of these women had incomes of less than \$600 per month prior to arrest, compared to 16 percent of men; 52 percent of these women and 54 percent of the men were employed prior to arrest.¹⁶ Female prisoners are more likely than male prisoners to report histories of physical or sexual abuse.¹⁷

Because these families lack material resources and are frequently without relatives who will assume care of their children, the arrest of a parent often leads to foster care placement. Available data support this connection between foster care placement and the criminal justice involvement of parents. One recent study determined that children whose parents become involved in the criminal justice system have an above-average likelihood of entering foster care.¹⁸ Looking at data from the past two decades, another study found that higher rates of female incarceration correlate with increased numbers of foster care cases.¹⁹

Just as this tidal wave of confining parents to prison was occurring, the Adoption and Safe Families Act²⁰ (ASFA) limited the timeframes for reunification and accelerating the termination of parental rights. This resulting "perfect storm" has had a devastating impact on far too many children in this country. Greater emphasis on termination of parental rights has increased the number of children who are legal orphans with no permanent family. Although the purpose of ASFA was to reduce the number of children in foster care awaiting permanent homes, statistics since 1997, the year in which ASFA was enacted, suggest that it has had the opposite effect. The percentage of children in foster care whose parents' rights have been terminated and who are awaiting adoption has risen from 10.7 percent in fiscal year 1998 (60,000 of a total 559,000 children in care) to 17 percent in fiscal year 2007 (84,000 of 496,000).²¹ Due to the tension between the timeframes driving the termination of parental rights and the average length of prison sentences, children of incarcerated parents are more

likely to become legal orphans than other children in foster care.

Clearly, children and families of color suffer the ongoing effects of this “storm” to a disproportionate degree. More than four in ten fathers and more than half of all mothers in state or federal prison are black. Children of color comprise the majority of all children between ages 5 and 14 with an incarcerated parent. Black children are 7.5 times more likely to have a parent in prison than white children.²² While 2.3 percent of all children in the U.S. have a parent in state or federal prison, the corresponding figure for black children is almost 7 percent; fewer than 1 percent of white children have a parent in prison.²³ This means that at any given time, one out of every fourteen black children has at least one parent in prison. The corresponding figure for white children is fewer than one out of one-hundred.²⁴

Federal Child Welfare Legislation

The federal government has created legal mandates with inherent, unresolved conflicts, resulting in confusions among state child welfare agencies that profoundly affect families involved in the criminal justice system. The most significant conflict surrounds the requirement to use undefined reasonable efforts to reunify families and the seemingly unyielding timeline for legally severing the parent/child relationship.

In 1980, Congress passed the Adoption Assistance and Child Welfare Act²⁵ to refocus state child welfare agencies on keeping or moving children out of foster care and reuniting them with their families. Ensuing regulations urged that all reasonable efforts should be made to assist parents to overcome barriers to reunification, but failed to provide guidance as to the precise nature or desired scope of these efforts. States were left to define reasonable efforts for themselves.

The lack of clarity around the federally mandated “reasonable efforts” requirement often created inconsistency and confusion in the field and in family court. In practice, judges would “rubber stamp assertions by social service agencies” that reasonable efforts had been made.²⁶ Because of the vague federal requirement, a child or parent’s attorney’s call for agencies to provide “reasonable efforts” would often be met with derision and even dissent. As the number of children in foster care continued to grow, a federal response was inevitable.

ASFA provided a response to the burgeoning number of children in foster care in the form of a new

timeframe by which reasonable efforts should cease. Rather than clarifying the scope and extent of reasonable efforts ASFA imposed strict timelines for the provision of reunification efforts. With the goal of reducing children in foster care and average length of stay, ASFA sought to accelerate the process of moving children toward permanency, with a particular emphasis on adoption. Two critical components of ASFA are that (1) states must finalize a permanency plan for each child within twelve months after entry into care, and (2) states must seek termination of parental rights (TPR) once a child has been in foster care for 15 of the most recent 22 months (“15/22 mandate”).²⁷ These very rigid timeframes have a particularly devastating effect on families with an incarcerated parent, as will be discussed in detail below.

It should be stressed that families subject to the 15/22 mandate are typically not those in which a parent has been incarcerated for a crime of violence against a child. Those situations are covered by another provision of ASFA, which mandates the filing of a termination petition against a parent who has committed, attempted, or been involved in commission of murder or voluntary manslaughter of another child of the parent, or who has “committed a felony assault that has resulted in serious bodily injury” to a child of the parent.²⁸ Thus, the 15/22 mandate will typically be applied against parents who do not fall into the category of having committed serious acts of physical abuse against their children. This is the majority of children, as a relatively low percentage of children involved in the child welfare system are victims of physical abuse. For example, one recent national survey found that only 16 percent of the children found to have been maltreated by parents were victims of physical abuse; the majority (64 percent) were victims of neglect.²⁹ Thus, an analysis of the 15/22 mandate primarily involves parents who have not committed acts of serious physical abuse against their children.

Overall, the 15/22 mandate has seriously limited the discretion available to child welfare professionals in deciding which parents and children qualify for reunification efforts. Intended as a default provision, the presumption is that reasonable efforts will be time-limited, and children will move expeditiously toward termination of parental rights and adoption. There are only three exceptions to this 15/22 mandate. Families could be exempted from the mandated timeframe—and states not required to file for TPR—when (1) the child is living with a relative caregiver, (2) there are “compelling reasons” why filing for termination of

parental rights is not in the child's best interest, or (3) the state concedes its failure to make necessary efforts to reunify the family. If a child welfare professional feels that one of these exceptions to the 15/22 mandate should be invoked, he or she must provide justifying documentation. Because federal audits of state child welfare agencies focus on how quickly children are moved out of foster care, there is an incentive for child welfare workers to err on the side of termination. Therefore, ASFA's implementation in the field and federal audits create a disincentive for workers to do meaningful, individualized case-planning.

Another potential disincentive for child welfare workers to invoke the ASFA exceptions to the 15/22 mandate is the cumbersome process mandated to justify their decisions. Child welfare workers must make a detailed record of why they invoke the exceptions, and therefore the burden for determining why the exceptions may be appropriate lies with the already overworked caseworker. Perhaps most significant, practitioners tell of agency workers who are not trained on the ASFA exceptions, let alone how they are to be implemented. The exceptions are not widely understood as a helpful tool for workers to use when appropriate.³⁰ Yet anecdotal evidence suggests training on this issue has not made much difference in the field. A decade after ASFA's enactment, workers and practitioners still confuse the 15/22 mandate and its exceptions with the substantive grounds for termination of parental rights. For example, many child welfare workers (and even some lawyers) believe that the mere fact that a child has been in foster care for 15 months is itself a ground for terminating parental rights, rather than a basis for requiring the *filing* of a petition to determine *whether* parental rights should be terminated. If ASFA exceptions are ever to be employed as they should be, the statute must be rewritten to give workers clear directions—without losing ground in federal audits or otherwise penalizing their decisions—for invoking the ASFA exceptions in appropriate circumstances.

In 1999 DHHS published advisory guidelines to states on how to implement reasonable efforts.³¹ The guidelines provided that “[s]tate agency policies or regulations should clearly define the agency’s obligations to make reasonable efforts to reunify the family.”³² Since the guidelines were only advisory, there may be a wide variation among states as to specifics of definition and implementation of reasonable efforts and timelines.

In view of ASFA's strict time limits and the role

reasonable efforts plays in a decision to forever terminate parental rights, it is imperative to more clearly define the child welfare agency's obligations to provide such efforts to families. Nowhere is this more important than with regard to the unique service needs of families with children in foster care who have an incarcerated parent. It is critical that child welfare professionals be trained to recognize and respond to these unique needs and be given discretion, in appropriate cases, to continue serving these families beyond the short ASFA timeframe. Agencies must develop fitting, effective services for these families.

The Impact of Parental Incarceration on Families, Including Families with Children in Foster Care

Reunification services are necessary to address serious detrimental effects of parental incarceration upon children and families. Researchers examining the developmental impacts of parental incarceration rely on child development research on bonding and attachment, separation anxiety and post-traumatic stress.³³ Child development is an ongoing process in which biological factors interact with experience to create the both neurological and behavioral underpinnings. Some stress is compatible with normal child development, but toxic stress “can damage developing brain architecture and create a short fuse for the body’s stress response systems that leads to lifelong problems in learning, behavior, and both physical and mental health.”³⁴

While research has yet to show a direct causal connection, parental incarceration is considered an “adverse childhood experience” (ACE) of the type that significantly increases the likelihood of long-term negative outcomes for children, such as drug addiction, obesity, or their own experiences with incarceration.³⁵ What distinguishes parental incarceration from other ACEs is the combination of trauma and shame or stigma.³⁶ A recent study found that parental incarceration is correlated with children’s involvement in anti-social behavior, mental health issues, drug use, school problems, and unemployment.³⁷ Other studies found strong evidence that affected children are prone to depression, difficulty in sleeping or concentrating,³⁸ academic or disciplinary problems at school,^{39, 40} aggression or withdrawal, delinquency, increased risk of abuse or neglect, distrust of authority, and disruption of development.⁴¹ Another research study found that one in five foster children whose parents had been recently arrested exhibited aggression, attention

problems, and disruptive behaviors—a ratio twice that of the general population.⁴²

Strong parent/child attachments are the most crucial building blocks toward reducing delinquency among children of incarcerated parents⁴³ and mediating the effects of parental incarceration.⁴⁴ Thus many programs work to strengthen this bond⁴⁵ improving children's capacity for trusting, affectionate relationships and their long-term outcomes.⁴⁶ Conversely, when that building block is removed, children suffer short- and long-term consequences as described above.⁴⁷ Therefore the single most important factor to ameliorate the harmful impacts of parental incarceration is the parent/child relationship itself.

Yet many barriers to reunification stem from state laws and policies that attempt to interpret ASFA requirements. As noted, the 15/22 mandate puts children of incarcerated parents at especially high risk of permanently losing their parents. In addition, states have enacted statutes that make termination of the rights of incarcerated parents more likely. A recent study found that a majority of states include parental incarceration as a factor to be considered in terminating parental rights, and many of these statutes were enacted as a result of ASFA.⁴⁸ In addition some states include parental incarceration as a basis for suspending reasonable reunification efforts. Perhaps not surprisingly, the study found that between ASFA's passage in 1997 and 2002, termination proceedings of incarcerated parents more than doubled.⁴⁹

Several factors create a sense of urgency for incarcerated parents of children in foster care. First, with average sentences running fifteen months or more, time is not on the side of parent and child. The scarce data available⁵⁰ suggest that many children go into foster care prior to the period of incarceration. Thus under ASFA time limits, even parents with shorter-than-average sentences have little time in which to fulfill mandates necessary to reunify.

The ASFA timeframe poses related challenges. Typically, prisons are built in remote areas, far from where agencies are located or children reside. Distance becomes a major obstacle; the logistics for caseworkers to make mandated visits are daunting, often involving overnight stays and time away from court and other responsibilities. Without a relationship with the parent, a caseworker lacks a real ability to replace a name with a face and a life story. This circumstance hampers caseworkers in trying to build relationships with parents and to provide a foundation for determining the best interests of the child; it also makes TPR more likely.

Prison visiting policies present another challenge. Limited visiting hours, restrictive telephone policies, lengthy security procedures, and sometimes disrespectful corrections staff are all barriers to successful visiting.⁵¹ Some agency staff are not aware of mandates to provide children visits to incarcerated parents, and other caseworkers refuse to arrange them. In many states, visiting areas are not geared to accommodate children, and can discourage or even forbid parental contact.

Moreover, incarcerated parents often have insufficient access to parenting, substance abuse, or educational programs acceptable to child welfare agencies. Being transferred to a facility with such programs may cause a parent to lose privileges, such as placement in desirable housing units or access to programs, which are allocated by seniority. Finally, incarcerated parents encounter procedural difficulties: judge's orders to be produced for court might be sent to the wrong facility if a parent has been moved; corrections staff sometimes fail to make arrangements for a parent to be in court; or parents with both criminal and family cases may have conflicting court appearance dates.⁵²

For children in foster care with an incarcerated parent, the 15/22 exceptions are critical to avoiding permanent and sometimes injudicious dissolution of the family. If a child is not in the care of a relative, the family's only recourse is the "compelling reason" exception, but to marshal such an exception to filing a termination of parental rights petition, a caseworker has to document each compelling reason to convince a judge or a supervisor why the filing is not in a child's best interest. A child and her or his incarcerated parent who do not have regular, meaningful contact with the caseworker are unlikely to be considered for such an exception. These children are often unnecessarily separated forever from their parents in spite of ASFA's intent to encourage timely reunifications in the best interests of the child. Legal and policy contradictions have resulted in a growing number of victims caught in the eye of this storm.

Conclusion and Recommendations

We offer the following recommendations to begin to address the problems identified in this paper:

- 1 **Amend ASFA to create an exception to the 15/22 mandate for incarcerated parents and their children.** While attempting to achieve permanency for children in foster care is generally a laudable goal, the rigid ASFA timeframes are ill-suited to the unique needs of families of incarcerated parents. The timeframes are unrealistically short, and inflexibility does not encourage child welfare professionals to use discretion in providing extended services to such families as appropriate. The exception would apply in cases where the incarcerated parent continues to occupy a place of importance in the child's life, and it would be in the child's best interests to continue reasonable reunification efforts beyond the 15/22 month threshold. Several states (Colorado, Nebraska, New Mexico, and New York) have enacted or proposed such exceptions in their implementation of ASFA, which could be used as models for a federal amendment.⁵³
- 2 **Amend ASFA to mandate that child welfare agencies provide specialized services for incarcerated parents and their families.** These might include special transportation services to facilitate visitation, therapeutic services for children to address unique needs, and enhanced funding to enable foster parents to pay for collect phone-calls from parents in prison. Congress might also offer funding to states for demonstration projects toward services designed for the special needs of families of incarcerated parents.
- 3 **Promulgate regulations requiring collaboration between child welfare and criminal justice agencies.** DHHS should encourage state child welfare and criminal justice agencies to collaborate on policies and protocols that assist incarcerated parents to maintain contact with their children. The goals should be to:
 - ▷ Address barriers to visitation and parent/child relationships: telephone costs, mail access, visitation eligibility, friendly visitation space, easing of rules prohibiting contact, improved treatment of visiting children.
 - ▷ Identify cross-agency training needs: better understanding of the impact of incarceration on children, families, and communities, age-appropriate

interactions, coordination of community resources.

- ▷ Develop program/activities that support familial relationships: use of telephone conferencing to permit incarcerated parents to participate in parent/teacher conferences; use of videoconferencing to allow "virtual" visitation when parents are more than 100 miles from their families; development of "books on tape" programs; establishment of "family days" to provide longer visitation hours or family activities; creation of children's areas in visitation rooms.
 - ▷ Remove interagency barriers to collaborating in the joint provision of services to incarcerated parents and their children in foster care, kinship care or the community (e.g., cross-training; common manuals of resources and services).
- 4 **Promulgate regulations regarding permanency options.** DHHS should direct states to offer more funding and make wider use of permanency options appropriate for children of incarcerated parents. These include subsidized guardianship, kinship care, and court-enforceable open adoptions. Building on the Fostering Connections to Success and Increasing Adoptions Act (H.R. 6893), DHHS should require states to prioritize children of incarcerated parents in foster care who are living with grandparents or other relative guardians and to expedite subsidized guardianship and corresponding payments to these families.
 - 5 **Require family-focused re-entry services.** Federal agencies, either individually or through interagency approaches, should require reunification and/or case planning as part of any federal grant involving re-entry services where children will reside with the parent after the term of incarceration.
 - 6 **Fund family visiting centers in prisons.** Congress and DHHS should provide funding to states to develop family visiting centers in prisons and programs that facilitate visitation.
 - 7 **Require the collection of data.** Congress and DHHS should require collection and tracking of comprehensive data about incarcerated parents and their children.

8 Require federal agencies to establish an interagency task force. Congress should convene a task force comprised of federal and state departments of corrections, child welfare agencies, and the courts to recommend, in a report to Congress, improvements to interagency coordination of services for children of incarcerated parents or, more generally, re-entry issues affecting families, children, and communities. The goals should be to:

- ▷ Identify methods to improve collaboration and coordination of programs and activities.
- ▷ Identify areas of responsibility so that improved cooperation would increase program effectiveness or efficiency.
- ▷ Develop innovative interagency or intergovernmental programs, activities or procedures to improve outcomes for children of incarcerated parents and their families.
- ▷ Develop better communication methods to enhance interagency program effectiveness.
- ▷ Identify areas of needed research to be coordinated across agencies.
- ▷ Identify cross-agency funding priorities and protocols (e.g., Serious and Violent Offender Re-entry Initiative, Work Opportunity Tax Credits, Prison Inmate Placement Program, etc.⁵⁴).

9 Fund parental substance abuse treatment. Congress should increase funding for comprehensive family and community-based substance abuse treatment programs to divert parents from prison.

10 Fund alternatives to incarceration. Congress should increase funding for alternative-to-incarceration programs to keep parents in the community and close to their children. Congress should also support the Family Unity Demonstration Project Act⁵⁵ and similar state efforts.

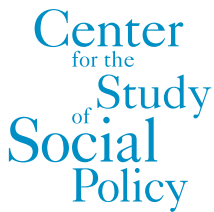
11 Promulgate regulations regarding identification of and notice to relatives. On the strength of the Fostering Connections to Success and Increasing Adoptions Act, DHHS should require state agencies to identify and provide notice to all grandparents and other adult relatives of a child of an incarcerated parent immediately after the child is removed from his or her home.

Footnotes

- 1 San Francisco Partnership for Incarcerated Parents. (2003). Children of Incarcerated Parents: A Bill Of Rights. Retrieved from www.fcnetwork.org/billofrights.pdf.
- 2 “We need mentors to love children, especially children whose parents are in prison.” President George W. Bush, January 2002, State of the Union Address. “Tonight I ask Congress and the American people to focus the spirit of service and the resources of government on the needs of some of our most vulnerable citizens—boys and girls trying to grow up without guidance and attention, and children who have to go through a prison gate to be hugged by their mom or dad.” President George W. Bush, January 2003, State of the Union Address. “In the past, we’ve worked together to bring mentors to children of prisoners...” President George W. Bush, January 2004, State of the Union Address.
- 3 Travis, J., Solomon, A., and Waul, M. (2001). From Prison to Home: The Dimensions and Consequences of Prisoner Reentry,” *The Urban Institute*.
- 4 Sentencing Project. (2006). New Incarceration Figures: Thirty-Three Consecutive Years of Growth. Retrieved from www.sentencingproject.org/Admin/Documents/publications/inc_newfigures.pdf.
- 5 Glaze, L.E. & Maruschak, L.M. (2008). Parents in Prison and their Minor Children Retrieved from Bureau of Justice Statistics Special Report, Website:www.usdoj.gov/bjs/pub/pdf/pptmc.pdf (hereinafter, *Parents in Prison*), at 2, tbl.1.
- 6 Sentencing Project. (2006). New Incarceration Figures: Thirty-Three Consecutive Years of Growth. [Retrieved from www.sentencingproject.org/Admin/Documents/publications/inc_newfigures.pdf].
- 7 *Parents in Prison*, at 1-2, and 13, app. tbl.1.
- 8 *Parents in Prison*, combining data from p. 2, tbl. 2 and p. 5, tbl. 8 (51,000); Patricia E. Allard and Lynn D. Lu, *Rebuilding Families, Reclaiming Lives: State Obligations to Children in Foster Care and Their Incarcerated Parents*, Brennan Center for Justice, (2006) at 4 and 41, n.9 (citing National Data Archive on Child Abuse and Neglect, Cornell University, *Adoption and Foster Care Analysis and Reporting System (AFCARS) 2003 (2005)*, [NDACAN Dataset #118—FC2003v1] (29,000).
- 9 *Parents in Prison*, combining data from p. 2, tbl. 2 and p. 5, tbl. 8 (51,000).
- 10 National Data Archive on Child Abuse and Neglect, Cornell University, *Adoption and Foster Care Analysis and Reporting System (AFCARS) 2003 (2005)*, [NDACAN Dataset #118—FC2003v1], cited in Patricia E. Allard and Lynn D. Lu, *Rebuilding Families, Reclaiming Lives: State Obligations to Children in Foster Care and Their Incarcerated Parents*, Brennan Center for Justice (2006) at 41, n. 9.
- 11 For a full discussion of why AFCARS data are incomplete, see Patricia E. Allard and Lynn D. Lu, *Rebuilding Families, Reclaiming Lives: State Obligations to Children in Foster Care and Their Incarcerated Parents*, Brennan Center for Justice (2006) at 41, n. 10.

- 12 Parents in Prison, at 3.
- 13 *Id.* at 3, tbls.3 and 5. This survey found that 62 percent of women in state prison were parents of minor children, compared to 51 percent of men. *Id.* at 3, tbl. 5.
- 14 *Id.* at 6, tbl. 10 (state prisoners only).
- 15 *Id.* at 18, app. tbl.10. The corresponding statistic in federal prison is 45 percent for both men and women. *Id.*
- 16 *Id.* at 17, app. tbl. 9.
- 17 *Id.* at 19, app. tbl. 12; Women In Prison Project, Correctional Association of New York, Women in Prison Fact Sheet (March 2008).
- 18 Phillips, S. D., Burns, B. J., Wagner, H. R., & Barth, R. P. (2004). Parental arrest and children in child welfare services agencies. *American Journal of Orthopsychiatry*, 2, pp 174-186.
- 19 Swann, C. A., and Sylvester, M. S. (2006). The Foster Care Crisis: What Caused Caseloads to Grow? *Demography*, 43, 309-335.
- 20 The Adoption and Safe Families Act of 1997, Pub. L. No.105-89, 111 Stat. 2115 (1997).
- 21 U.S. Department of Health & Human Services, Administration for Children and Families, "Trends in Foster Care and Adoption—FY 2002-FY 2007 (Based on data submitted by states as of January 16, 2008)"; and U.S. Department of Health and Human Services, Administration for Children & Families, "The AFCARS Report, Final Estimates for FY 1998 through FY 2002 (12)."
- 22 Parents in Prison, at 2.
- 23 Parents in Prison, at 2, tbl. 2.
- 24 *Id.*
- 25 Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980).
- 26 National Coalition for Child Protection Reform, "The Unreasonable Assault on Reasonable Efforts" [quoting National Council of Juvenile and Family Court Judges et. al., *Making Reasonable Efforts: Steps for Keeping Families Together 8* (1987)].
- 27 42 U.S.C. Section 675(5)(E).
- 28 42 U.S.C. Section 675(5)(E).
- 29 U.S. Department of Health and Human Services, Administration for Children & Families, Administration on Children, Youth, and Families, *Child Maltreatment 2006*, at 42, tbl. 3-6. The survey also found that an additional 8.8 percent were victims of sexual abuse. *Id.*
- 30 Women In Prison Project, Corr. Ass'n of NY (2006). *When "Free" Means Losing Your Mother: The Collision of Child Welfare and the Incarceration of Women in New York State*, 17.
- 31 Duquette, D.N., et al., (1999). Children's Bureau, Admin. on Children, Youth and Families Department of Health and Human Services., *Guidelines for Public Policy and State Legislation Governing Permanence for Children I-1*, June (1999).
- 32 Duquette, *Guidelines* III-3.
- 33 Hairston, C. F. (2007). Focus on Children with Incarcerated Parents: An Overview of the Research Literature, www.aecf.org/childrenofincarcerated.aspx
- 34 Shonkoff, J., (2007). A Science-Based Framework for Early Childhood Policy Annual Meeting of the National Conference of State Legislatures, Boston, MA.
- 35 Fetelli, V. J., Anda, R. F., Nordenberg, D., Williamson, D., Spitz, A. M., Edwards, V., Koss, M. P., & Marks, J. S. (1998). Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study. *American Journal of Preventive Medicine*, 14(4), pp 245-258.
- 36 Bates, R. E., Lawrence-Wills, S., & Hairston, C. F. (2003). *Children and families of incarcerated parents: A view from the ground*. Chicago, IL: University of Illinois at Chicago, Jane Addams College of Social Work, Jane Addams Center for Social Policy and Research, Chicago, Illinois.
- 37 Murray, J., and Farrington, D. (2007). Effects of Parental Imprisonment on Children. *Crime and Justice: A Review of Research*, (37).
- 38 Kampfner, C. (1995). Post traumatic stress reactions in children of imprisoned mothers. In *Children of Incarcerated Parents*, ed. Katherine Gabel and Denise Johnston. New York, NY Lexington Books.
- 39 Phillips, S., and Bloom, B. (1998). In whose best interest? The impact of changing public policy on relatives caring for children with incarcerated parents. *Child Welfare* 77 (5) 469-93.
- 40 Virginia Commission on Youth (2002). *Children of Incarcerated Parents: Final Report to the Governor and the General Assembly of Virginia*, Richmond, VA.
- 41 Travis, J., Solomon, A., and Waul, M. (2001). *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry*. *The Urban Institute*, Washington, DC.
- 42 Phillips, S. D., and Gleeson, J.P. (2007). *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*. Chicago: University of Illinois at Chicago, Chicago, Illinois.
- 43 Tolan, P. H., Guerra, N.G., & Kendall, P. C. (August 1995). A developmental-ecological perspective on antisocial behavior in children and adolescents: Toward a unified risk and intervention framework. *Journal of Consulting and Clinical Psychology*, 63(4), 579-584.
- 44 Larzelere, R. E., & Patterson, G. R. (1990). Parental management: Mediator of the effect of socioeconomic status on early delinquency. *Criminology*, 28, 301-324.
- 45 Supporting Families with Incarcerated Parents: Strengthening Families, Family Strengthening Policy Center, National Human Services Assembly. [Retrieved on January 30, 2009 from http://www.nassembly.org/fspc/practice/documents/brief8_2_.pdf].
- 46 Berlin, L., Zeanah C. H., and Lieberman, A. F. (2008). Prevention and Intervention Programs for Supporting Early Attachment Security. In Cassidy, J., and Shaver, P. R. *Handbook of Attachment: Theory, Research and Clinical Applications* (2nd ed.). New York: London: Guilford Press.
- 47 Bowlby, J. (1969). *Attachment. Attachment and Loss*. Vol. I. London: Hogarth.

- 48 Lee, A., Genty, P. & Laver, M. (2005). *The Impact of the Adoption and Safe Families Act on Children of Incarcerated Parents*. Child Welfare League of America 2005.
- 49 Lee, A., Genty, P. & Laver, M. (2005). *The Impact of the Adoption and Safe Families Act on Children of Incarcerated Parents*. Child Welfare League of America 2005.
- 50 Vera Inst. of Justice, *Hard Times: An Empirical Analysis of Maternal Incarceration, Foster Care, and Visitation*. Executive Summary (2004).
- 51 Women In Prison Project, Corr. Ass'n of NY, *When "Free" Means Losing Your Mother: The Collision of Child Welfare and the Incarceration of Women in New York State* 19 (2006).
- 52 Raimon, M. L. (2001). *Barriers to Achieving Justice for Incarcerated Parents*, 70 *Fordham L. Rev.* 422 See e.g. *When "Free" Means Losing Your Mother: The Collision of Child Welfare and the Incarceration of Women in New York State*, A report of the Women in Prison Project of the Correctional Association of New York (2006), at 12-13.
- 53 Some argue that this exception should be geared to the age of the child. There is no basis for this argument in the child development research or the research on children of incarcerated parents; it appears to spring directly from biases regarding infants versus adolescents. The parent/child relationship should only be severed under the most extreme circumstances (see *Santosky v. Kramer*, 455 U.S. 745 [1982]), which should not include yet another subjective timeframe based on age of the child, length of sentence, or other potentially biased factors.
- 54 Serious and Violent Re-entry Initiative, www.reentry.gov/; Work Opportunity Tax Credit Program, www.doleta.gov/business/Incentives/opptax/; Prison Inmate Placement Program, www.ncjrs.gov/App/publications/abstract.aspx?ID=198467.
- 55 <http://fdsys.gpo.gov/fdsys/pkg/BILLS-103s1158is/pdf/BILLS-103s1158is.pdf>.



CENTER FOR THE STUDY OF SOCIAL POLICY

1575 Eye Street, NW
Suite 500
Washington, DC 20005
202.371.1565 phone

www.cssp.org

55 Exchange Place
Suite 404
New York, NY 10005
212.979.2369 phone



URBAN INSTITUTE

2100 M Street, NW
Fifth Floor
Washington, DC 20037
202.833.7200 phone

www.urban.org