

Improving Outcomes for Incarcerated Parents and their Children

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Goal:

- ▶ To promote a more in-depth understanding of issues impacting incarcerated parents and their children, in an effort to improve outcomes through careful consideration of the underlying factors, trends and best practices that lead to successful reintegration into society for parents and healthier outcomes for families.

Impact on Child Welfare

- ▶ The United States has the highest incarceration rate and the most people incarcerated in the world (International Centre for Prison Studies, 2012).
- ▶ Over half of the 2.3 million individuals in U.S. jails and prisons are parents, and in 2006 an estimated 7,476,500 children had a parent who was incarcerated or under correctional supervision (Glaze, 2010; Glaze & Maruschak, 2008).

Important to Remember . . .

- ▶ An arrest of a parent in itself is not grounds for an allegation of child abuse or neglect.
- ▶ Incarcerated parents/legal guardians have the right to child welfare services and reunification as ordered by the court.
- ▶ And, parents who are incarcerated are entitled to receive notice of all court hearings affecting their children as required by law.

Modifications necessary in visiting environments

- ▶ Drastic increase in prison population necessitates modifications for developmentally appropriate visiting environments. (SERVICES FOR CHILDREN OF INCARCERATED PARENTS, Denise Johnston, 50 Fam. Ct. Rev. 91, (January 2012).
- ▶ US addressing mass incarceration but still, two-thirds of women in state prisons are there for nonviolent offenses.
- ▶ America now incarcerates eight times as many women as in 1980, and only Thailand seems to imprison women at a higher rate.

NICHOLAS KRISTOF, Mothers in Prison, New York Times, NOV. 25, 2016.

How many children are impacted?

- ▶ 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 77% from 1991 to 2007.
- ▶ During that time, the number of children with a mother in prison increased by 131 percent.

Steve Christian, Children of Incarcerated Parents, National Conference of State Legislatures, March 2009.

Risk factors for children

- ▶ 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.

Steve Christensen, Children of Incarcerated Parents, National Conference of State Legislatures, March 2009.

The parents

- ▶ Women in state prison (62%) were more likely than men (51%) to report being a parent. (U.S. DOJ OJP, Bureau of Justice Statistics, Special Report, Parents in Prison and Their Minor Children, Lauren E. Glaze and Laura M. Maruschak, 2010).
- ▶ The majority of men were employed prior to incarceration.
- ▶ Family structures were complicated, and most men had children in multiple households.
- ▶ Reports of physical and emotional abuse within the relationships were very common.
- ▶ Education levels were low, particularly for men, and many sample members reported learning difficulties.

https://aspe.hhs.gov/sites/default/files/pdf/137556/MFS-IPIC20BaselineReport.pdf?utm_source=Youth.gov&utm_medium=Announcements&utm_campaign=Reports-IPIC20Sources

Pre-incarceration considerations (continued)

- ▶ Pre-incarceration substance use was fairly high;
- ▶ Substance abuse and criminal justice involvement were prevalent in social networks.

The Experiences of Families during a Father's Incarceration: Descriptive Findings from Baseline Data Collection for the Multi-site Family Study on Incarceration, Parenting and Partnering. November 2015. Prepared for U.S. Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation Administration for Children and Families Office of Family Assistance

Differences between men and women?

- ▶ Today, mothers are the fastest growing segment of the U.S. prison population.
- ▶ The majority of women inmates are incarcerated for non-violent crimes such as prostitution, fraud or drug offenses.
- ▶ Many were caught up in criminal behavior as a result of being in an abusive relationship.
 - "Indeed, female convicts across the board report alarming rates of abuse: in 1999, **the federal government found that close to sixty percent of all women in state prisons nationwide suffered abusive histories.**"

Incarcerated Mothers and Their Children, The Harris School, Public Policy, University of Chicago, available at http://harrisschool.uchicago.edu/research/faculty/projects/incarcerated_mothers/index.asp. Most of this increase can be traced to "tough on crime" measures, including mandatory sentences rather than an increase in female criminality. See Bernstein, Nell, *infra* note 20.

Special Issues for Incarcerated Women

- Studies show that about one quarter of children remain with their fathers when the mother goes to prison, but nearly 9 out of 10 children remain with their mothers when the father is incarcerated. Bureau of Justice Statistics, Special Report: Women in Prisons, U.S. Department of Justice, March 1990.
- Many times, female inmates have lost custody and have had their children placed with a relative or with a foster care provider as a result of a dependency and neglect action in the juvenile court.
- Consider the collateral damage.

Challenges and Complexity

- ▶ Roughly 1 in 10 mothers and 1 in 50 fathers in state prison has a child in the child welfare system during their incarceration.
 - *Guide for Incarcerated Parents Who Have Children in the Child Welfare System*, http://www.apis.wva.gov/default.htm?COF_ParentGuide_308.pdf.
- ▶ Children with Disabilities
- ▶ American Indian Families
- ▶ Child Support
- ▶ Across States
- ▶ Immigrants

Other Relevant Legal Issues

- ▶ Child support
- ▶ Custody and visitation,
- ▶ Guardianships;
- ▶ Foster Care;
- ▶ Grandparent and caregiver visitation;
- ▶ And the mechanisms by which noncustodial parents can pursue visits with their children and enhance their options for access.

Financial Support for Children

- ▶ About half of parents in state prison provided the primary financial support for their minor children prior to imprisonment.
- ▶ Most fathers did make meaningful parenting contributions before the incarceration for most of their children, though often not for all of their children.
- ▶ Parental incarceration is associated with greater risk that a child will experience material hardship and family instability.

Child Support

- ▶ Many noncustodial parents (and custodial parents whose children are placed in foster care) are still expected by law to pay child support while they are in prison.
- ▶ A written request for a modification is required. No guarantee that it will be granted.
- ▶ NO AUTOMATIC SUSPENSION OR REDUCTION OF CHILD SUPPORT EXISTS
- ▶ Can trigger enforcement and income withholding in facility

Time is of the essence

- Child support orders must be modified to avoid the accumulation of arrearages -- accrual of child support debt continues during incarceration if support order isn't modified.
- Arrears don't go away.
- **Federal law prohibits retroactive modification of arrears.**
- Child support policies are also believed to affect inmate reintegration patterns, especially if they lead to large debts and wage attachments that drive paroled and released prisoners away from their families and legitimate employment.

Change in circumstances required to modify child support

- ▶ According to federal and law, NCPs with child support orders who have experienced a substantial change in circumstances can request a modification of their order (42 U.S.C. § 666[a] [10] [B]).
- ▶ Incarceration, with limited employment opportunities and minimal wages, is seen as one such circumstance by some courts.

Different views on child support obligations of incarcerated parents

- Court and/or child support agency may choose to treat parental incarceration as a form of voluntary underemployment; and
- Inmate's failure to request a modification (and/or its failure to be awarded) may result in the accumulation of significant child support arrears during incarceration and the inmate's exposure to a host of punitive enforcement actions upon his/her release.

State Laws Vary

- Many agencies and courts find that incarceration does not warrant modification of an order or establishment of a minimum order because imprisonment is considered to be a voluntary act;
- Other agencies and courts have laws that specifically state incarceration is one factor to be considered in assessing a motion for modification of child support (i.e. Colorado).
- Wyoming's statute has no specific mention of incarceration as a qualifying substantial and material change in circumstance warranting a modification.

Income

- ▶ If the incarcerated parent has assets or income while in prison, that income can properly be applied against the outstanding support obligation.
- ▶ General rule: in no case shall the support obligation be less than fifty dollars (\$50.00) per month for each family unit

Consequences

- ▶ Parents who owe child support may have up to 65 percent of their take-home pay garnished.
- ▶ They may also have their driver's license and/or their state-issued professional license suspended and
- ▶ Be reported as delinquent on their credit reports.
- ▶ Inability to pay huge arrears after release can lead to additional criminal charges and even incarceration!

Parenting by incarcerated parents

- ▶ Incarceration affects parents and children in many profound ways
- ▶ Children may have to be placed on an emergency basis
- ▶ Custody and visitation rights change
- ▶ Guardianship may be required
- ▶ Child may be in foster care
- ▶ May lead to termination of parental rights . . .

Impact on Children

- ▶ Obviously, 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. Julie Poehlmann, "Representations of Attachment Relationships in Children of Incarcerated Mothers," *Child Development* 76, no. 3 (May/June 2005): 679-696.
- ▶ Foster care can mean several placements and loss of connection to school, community, friends, siblings and extended family.

- Since incarcerated mothers tend to be their family's sole caregiver, many of their children do end up in foster care, bouncing chaotically from one home to another.
 - In fact, 10% of mothers in state prisons reported that their children were in the foster care system as compared with only 2% of fathers in prison.
- Some children are transported out of state, where they have little or no opportunity to visit their mothers in prison.
- Ripped away from all that is familiar, they experience separation anxiety, low self-esteem and a range of other negative consequences, according to the Child Welfare League.

Foster Care

- ▶ Criminal justice and child welfare systems are intertwined;
- ▶ At any given moment, 10% of the children of women prisoners and 2% of the children of incarcerated men, are in foster care;
- ▶ Wyoming has a large need for qualified foster families.
- ▶ The federal Adoption and Safe Families Act (ASFA) has hit incarcerated people hard.

Grandparents

- ▶ In a trend fueled by both addiction and incarceration, 4.4 million children now live with grandparent-headed households.
- ▶ 1/2 of all children with incarcerated mothers, and 1/6 of the children of incarcerated fathers, are cared for by grandparents.
- ▶ Children lose not only their mothers, but their “grandmothers” as well. Grandparents have to take on the role of parent instead of grandparent.

Grandparents

- ▶ Often, less financial resources available to grandparents than foster parents;
- ▶ Nearly 2/3 of children being raised by single grandmothers live in poverty;
- ▶ Additional expenses associated with maintaining contact with the incarcerated parent (phone, travel, money for commissary, etc.) are a strain.

Visitation Issues

- Parental incarceration also leads to a dramatic reduction in parental contact.
- One-half of incarcerated parents do not receive any visits from their children and most of those whom do receive visits are not visited regularly or frequently (Hairston, 1998).
- Incarcerated mothers see their children even less frequently than incarcerated fathers, even though they often have closer relationships with their children prior to incarceration, with more than half (54%) of the children never visiting their mothers in prison (Beatty, 1997).

Importance of visitation

- ▶ Studies show that family ties, along with stable employment, help to reduce recidivism and improve the success of prisoners who move into parole.
- ▶ Family relationships and understanding of the reintegration process are key to the success of inmates upon their release.
- ▶ Some research indicates that visiting is important in maintaining parent-child relationships and increases the likelihood of successful reunification after release.

Barriers to Visitation

- ▶ Practitioners found that a lack of affordable transportation to the prison was a major barrier to parent-child correctional visitation;
- ▶ Corrections policy-Theory vs. Reality. Important to find out visitation policies at various institutions.
- ▶ Some facilities are not child friendly.
- ▶ The caregiver of the child and his/her attitude.
- ▶ Foster care placement can pose unique barriers to visitation with incarcerated parent.

Best practice requires that barriers to parent-child visits be addressed. These include:

- ▶ Inadequate information about visiting procedures.
- ▶ Difficulty scheduling visits.
- ▶ Geographic location of prison facilities.
- ▶ Family's inability to afford transportation.
- ▶ Visiting procedures that are uncomfortable or humiliating.
- ▶ Visiting rooms that are inhospitable to children.
- ▶ Foster parents or caregivers who are unwilling to facilitate visits.

ASFA

- ▶ Has caused a steep increase in the number of incarcerated parents who have their parental rights terminated.
- ▶ Many prisoners do stints even for minor infractions that exceed ASFA's time limits.
- ▶ Staying in contact with one's child is crucial to preventing tpr!
- ▶ Parents in prison have several barriers, including geographical and financial.

- ▶ ASFA 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.
- ▶ Exceptions: 1) when child is being cared for by a relative, 2) compelling reason for determining that termination of parental rights would not be in the child's best interest, or 3) state has not provided the child's family with necessary services.

State Grounds for Terminating Parental Rights

- Child has been left in the care of another person without provision for the child's support and without communication from the absent parent for a period of at least one (1) year.
- The parent is incarcerated due to the conviction of a felony *and* a showing that the parent is unfit to have the custody and control of the child.
- ▶ But, incarceration *per se* is not grounds for termination of parental rights in any state.

Federal and State Regulations

- The child has been in foster care under the responsibility of the state of Wyoming for fifteen (15) of the most recent twenty-two (22) months, *and* a showing that the parent is unfit to have custody and control of the child.
 - *Exceptions allow caseworkers to examine individual cases for compelling reasons not to file.*
 - However, "Many caseworkers have used the time limit as a bright line: Fifteen months and you're out."
- Justifies fear on behalf of parent of losing their children.

Challenges to avoiding TPR

- ▶ Court less likely to terminate if parent receiving frequent, consistent contact--Very important when children are in foster care but those are the children least likely to have visitation;
- ▶ Parents reliant on caseworkers in order to fully participate in dependency proceedings, including case planning, hearing and court orders.

Considerations for Parents' Counsel

- Attorneys for parents should address the legal responsibilities that incarcerated parents face and the barriers and opportunities they will encounter in their efforts to gain access to their children and adjust their child support obligations to reflect their financial circumstances while they are in prison.

Counsel for Parents

- Be informed and able to competently represent parents on issues relevant to child support, child custody and visitation, welfare reform, domestic violence, child welfare, and state-wide resources for all of these issues.
- Consider ways to cross train and collaborate with representatives of the state CSE, family law attorneys, administrators with the TANF and child protection agencies, and the coordinators of domestic violence programs that offer services and/or treatment for batterers and victims.

Helping parents help themselves

- ▶ The inmates should be provided with the necessary documents to request a modification of child support. (See Wyoming's Pro Se Packets)
<http://courts.state.wy.us/DandCS.aspx>
- ▶ Need to know what resources exist and how to access them, including legal resources.

Service Delivery Issues

- Like all legal services programs, outreach programs for incarcerated parents face the usual challenges of working with low literacy and disenfranchised populations.
- Incarcerated parents, are often poor, uneducated, and typically do not understand the importance of communicating with caseworkers, judges, and other professionals who handle cases that affect them and their children.

Service Delivery Issues

- They are unaccustomed to corresponding, filing forms, and creating a paper trail.
- These conditions are only complicated by their inaccessibility and moves to different facilities.
- If they neglect to notify the court each time they move locations, they may not receive notices of hearings and/or actions, including termination of parent rights.

Disseminating Information

- Distributing informational literature is a challenge;
- Often legal materials focus on processing criminal appeals, sentencing, and re-sentencing issues.
- It may be just as, if not more important, to have family law related publications and forms dealing with child support and visitation , including pro se forms and packets.

For inmates facing release

- Trainings can focus on working with county CSE agencies to develop payment plans for the gradual payment of child support arrearages,
- Methods of obtaining a court order for visitation,
- Compliance with court orders to avoid re-incarceration, and
- How to initiate safe and appropriate contact with children, including the use of supervised visitation facilities, when available.

Other solutions

- ▶ Improve the data collection on incarcerated parents with children;
- ▶ Gather additional information on each child, particularly foster children;
- ▶ Increase attention on keeping parents connected with their children;
- ▶ Learn about available resources for children in child welfare with incarcerated parents;
- ▶ Promote collaboration and development of protocols between correctional facilities and Child Welfare offices.

Child Welfare Best Practices Bulletin: What's My Role?

- ▶ Judges
- ▶ Caseworkers
- ▶ Correctional staff
- ▶ Child's Attorney and/or Guardian ad litem
- ▶ Parent's Attorney
- ▶ Law Enforcement
- ▶ CASA Volunteers
- ▶ Foster Parents and
- ▶ The Children

▶ [http://childlaw.unm.edu/docs/BEST-PRACTICES/Connecting%20Children%20with%20Incarcerated%20Parents%20\(2011\).pdf](http://childlaw.unm.edu/docs/BEST-PRACTICES/Connecting%20Children%20with%20Incarcerated%20Parents%20(2011).pdf)

Major data gaps– Recommendations

- ▶ Policymakers need to better engage 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.

Recommendations

Policies, Protocols and Laws can:

- 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.

Recommendations

- ▶ Ensure that incarcerated parents understand and have the opportunity to participate meaningfully in dependency proceedings that involve their children in foster care.
- ▶ Improve parent-child bonding and inmate parenting skills.
 - Wyo. Stat. §35-27-102.

Conclusion

- ▶ Issues are complex and involve various stakeholders across jurisdictional and agency boundaries;
- ▶ Lack reliable data collection and analysis;
- ▶ Change will require ongoing education and training.

