

When a Parent Is Incarcerated

A Primer for Social Workers



The Annie E. Casey Foundation

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This guide should not be regarded as legal or child welfare advice and should not be used as a substitute for professional counsel that takes into account either the specific circumstances of each agency's or client's situation or any notices which may be issued from federal, state, and local officials. Child welfare policy and practice vary greatly in different jurisdictions, so it is always important to consult with competent legal and child welfare experts. Also, the inclusion of an organization or agency in this guide does not guarantee access to its services nor does it constitute a specific endorsement of the organization. The views presented in this guide represent those of the author alone and do not necessarily reflect the opinions of the Annie E. Casey Foundation.

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“Children and families with incarcerated parents have been a relatively invisible population to the public, to policymakers, and to funders. Programs and policies, which have traditionally focused on the offender, his or her victims, and the public safety of the community, ignore the vast and growing number of other victims—children.”

—from *Children and Families with Incarcerated Parents—Exploring Development in the Field and Opportunities for Growth*¹

The goal of this primer is to provide relevant and practical information for public child welfare agencies and social workers when working with incarcerated parents. There are many compelling reasons why child welfare agencies should develop programs and policies specifically to address the needs of this subset of children in the child welfare system:

- *Increased Parental Incarceration Rates in the U.S.*

The United States leads the world in rates of incarceration with more than one in every 100 adults in America in jail and prison.² The growth in the prison population has largely been driven by a wave of policy trends in the 1990s aimed at sending more lawbreakers to prison through popular “three-strikes” measures and other sentencing enhancements to keep inmates in prison longer.³ 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.⁴ The increase in maternal incarceration has important implications for child welfare agencies because most female inmates are mothers

of minor children, and many are single parents.⁵ Research has shown that when women with children are incarcerated, their arrests and imprisonment substantially increases the chances that their children will be placed in foster care.⁶ National data from parents in state and federal adult prisons found that mothers were five times more likely than fathers to report that their child was in foster care (11 percent vs. 2 percent respectively).⁷ The disproportionality of minority children in the child welfare system parallels the disproportionality in the criminal justice system. In 2007, one in 110 white children, 1 in 41 Hispanic children and one in 15 African-American children had one or both parents incarcerated.⁸

- *Legal Obligations of the Child Welfare Agency to Arrested/Incarcerated Parents*

An arrest of a parent in itself is not grounds for an allegation of child abuse or neglect. Incarceration of a parent may be considered as an additional risk factor and, in all cases, decisions regarding an incarcerated parent should follow laws and child welfare regulations. Incarcerated parents/legal guardians have the right to child welfare services and reunification

as ordered by the court. Federal law requires child welfare agencies to make “reasonable efforts” to preserve and reunify families in most cases, but leaves it to local jurisdictions to define what these are, on a case-by-case basis. And, parents who are incarcerated are entitled to receive notice of all court hearings affecting their children as required by law.⁹

- *Improvement in Permanency Outcomes for the Child*

By engaging the incarcerated parents early and regularly throughout a child welfare case, from arrest to re-entry, the child welfare agency can improve permanency outcomes for children of incarcerated parents. Current federal legislation requires child welfare agencies to provide diligent searches for potential family placement so the importance of early engagement with the parent cannot be over emphasized. This early engagement will hopefully result in the reduction in the number of children entering shelter placement at the time of arrest by identifying other safe, alternative options; engaging in early family-finding efforts which can decrease non-relative or institutional placements; and improving the relationships between the children, parents and caregivers through improved communications.¹⁰

- *Incarceration’s Severe Impact on the Welfare of Children*

The national foster care data system offers limited information and identifies 14,000 children who entered foster care at least partly because of parental incarceration in 2009 alone (about 8 percent of all children entering foster care in 2009); however, researchers believe this number is a substantial undercount. For example, this number does not reflect parents who are incarcerated sometime before or after the child enters foster care, or when a non-custodial father was not the child’s caretaker at the time of removal.¹¹ Although it has traditionally been considered a topic for agencies working with criminal justice/adult services, incarceration is increasingly recognized as an area of concern for social service

organizations and child welfare agencies. One in eight children who are reported victims of parental maltreatment had a parent who was arrested within six months of the child abuse report.¹² At least one in three children in contact with the child welfare system has experienced the arrest of a primary caregiver at some point in their lives.¹³ According to the San Francisco Department of Human Services’ child welfare database in 2009, about 15 percent of its overall cases involve one or both parents incarcerated in jail or prison.¹⁴ A survey of 153 New York City case records for children in foster care showed that 10 percent had an incarcerated parent at some point during the one-year review period.¹⁵ And, if the data were available on arrested/incarcerated non-custodial parents or non-parental primary caregivers—e.g. non-residential fathers, step-parents, siblings, grandparents—the number of children in child welfare impacted by family incarceration would be significantly higher.¹⁶

- *Termination of Parental Rights*

The Adoption and Safe Families Act of 1997 requires that child welfare agencies hold permanency hearings within 12 months of the child’s entering foster care to determine permanent placement and requires agencies to file a termination of parental rights (TPR) when a child has been in foster care for 15 of the most recent 22 months. However, state child welfare agencies are not required to file a TPR if a child is in the care of relatives, if the state has not provided necessary services to the family consistent with the case plan, or if the state agency documents a compelling reason why filing for TPR is not in the best interest of the child. Approximately 44 percent of inmates released from state prisons in 2008 served sentences longer than a year, so the timeline and possible TPR exceptions are particularly relevant for incarcerated parents.¹⁷ Some child welfare jurisdictions, such as Nebraska, California, New York, and Colorado, have enacted explicit statutory provisions that could prevent or delay filing for TPR for incarcerated parents in certain circumstances.¹⁸

- *Improved Outcomes for Both Corrections and Child Welfare*

Increasingly, research and policy demonstrate the shared interests of corrections and child welfare in joining forces to maximize opportunities for assisting children and families involved in both systems.¹⁹ Strong family relationships motivate inmates to participate in effective programs and maintain good behavior, improve inmates' states of mind, contribute to easier prison management, and greatly reduce recidivism.²⁰ Despite poverty and numerous personal and social problems, most prisoners have significant family roles and commitments prior to incarceration.²¹ The majority of parents in state prison—54 percent of fathers and 73 percent of mothers—are convicted of non-violent offenses, including drug and property offenses.²² Most parents are not “career” criminals and continue to act as parents while incarcerated. Finally, most incarcerated parents will be reunited with their families and children upon release from prison.²³

Child Welfare Considerations Regarding Incarcerated Parents

“I’ve been a social worker for a long time and it’s heartbreaking when I see our kids grow up in foster care and go from group home, to juvenile hall, to jail and then to prison. And then, I see their children come into the foster care system, and the generational cycle starts again. The corrections and child welfare system are two complicated bureaucracies, often serving the same families, but each operating on different timelines, different rules, different funding. If corrections and child welfare could put our collective resources together, perhaps we can stop this cruel, vicious cycle.”

—Susan Arding, founding member of the San Francisco Children of Incarcerated Parents Initiative and supervising social worker for the San Francisco Human Services Agency

Each child welfare case is unique, involving complex issues and a host of laws, rules, and procedures designed to balance preserving parental rights while ensuring the child’s safety and well-being. The child welfare system is difficult to navigate and understand, even for non-incarcerated parents. The added complication of families involved in both criminal and child welfare law makes this confusion even greater.

Unless the family court has issued a ruling that releases the child welfare agency from making “reasonable efforts” to reunite the child with his/her birth parent, child welfare workers are obligated to approach all cases involving incarcerated parents with the same urgency and respect as any other family reunification case. And, unless the court has determined that visiting and contact with the incarcerated parent puts the child in danger, the incarcerated parent and the child have the

right to regular contact and communication. Whether reunification and visitation are part of the case plan or expressly excluded, barring termination of parental rights, every case manager has the same responsibilities to both incarcerated and non-incarcerated parents. This chapter will focus on both policy recommendations and practical tips for child welfare agencies that fulfill those responsibilities in cases involving an incarcerated parent.

There are also two helpful handouts from Arkansas Voices for the Children Left Behind included at the back of this report that can help social workers in this work.

Time of Arrest Policies and Protocols

Child welfare agencies can potentially prevent placements and eliminate harm to children by assisting law enforcement officials at the time of arrests. Most

local law enforcement agencies do not have policies or protocols in place to guide officers' response to children present at the time of arrest or living in the household of the parent being arrested, unless the arrest was specifically for child abuse, domestic violence, or a drug-endangered child.²⁴ Nor do most law enforcement agencies currently have agreements with child welfare agencies to coordinate responses and locate appropriate caregivers, except in cases of a child abuse-specific arrest.²⁵ The potential for harm can be tragic, especially in cases where a parent's arrest can result in children being left unattended or staying on their own, even caring for younger siblings until noticed by neighbors or teachers.²⁶ A parent's arrest can also lead to a child's unnecessary entry into foster care when they could be safely cared for by a relative or friend, or result in an unsafe placement with an inappropriate or even dangerous caregiver.²⁷

The direct trauma caused by witnessing a parent's arrest is also a serious concern. A study by the University of Illinois found that children in the child welfare system who witness an arrest of a household member may be psychologically traumatized by the arrest which may result in elevated symptoms associated with post-traumatic stress disorder (PTSD).²⁸ In many cases, PTSD symptoms can lead to more serious problems, like the inability of children to get along with others and succeed in school.²⁹

To mitigate the effects of parental arrests, a handful of jurisdictions in the country have adopted formal protocols between police and child welfare agencies that guide how to handle situations involving minor children when their parents are arrested.³⁰ For example, New Haven, Connecticut has developed a program between the New Haven Police Department and the Yale Child Study Center. The program provides cross training between police, mental health and other child development professionals, and 24-hour acute response services available to the police so that clinical staff can work with children at the arrest scene. The program also requires weekly interdisciplinary case reviews and offers an ongoing resource for consultation between police and child welfare workers.³¹

To avoid a situation in which children are unnecessarily traumatized by being overlooked at the time of parental arrest, or left unsupervised, or forced to care for their siblings after an arrest, some states like California, New Mexico, and Washington State, have passed legislation that encourages law enforcement and child welfare agencies to develop protocols and a coordinated response which often includes the following components:

- *Joint Training with Police/Child Welfare Workers to Minimize Trauma to Children at the Time of Arrest*

In 2007, the New Mexico legislature passed HB271, an act requiring law enforcement to identify minor or dependent children upon arrest, provide protocols and guidelines, and offer a training program to help ensure child safety upon the arrest of a parent or guardian. Under the law, the training must include a law enforcement option to not arrest the parent in the presence of a child and to transport children in non-police vehicles (such as a social worker's car), whenever possible.³²

- *Joint Response Protocols Between Police and Child Welfare*

Through thoughtful planning by police, child welfare agencies, and other partners, many jurisdictions have developed successful joint response protocols to address the needs of children when their parents are arrested. In San Jose, California, their time of arrest protocol includes a requirement that police officers check a box to indicate whether children are present at the arrest scene. If a child is present, it also requires the officer on the scene to consult with the child welfare office for assistance and dispatch child welfare workers to the arrest scene within 30 minutes of receiving a call from law enforcement. The protocol also requires law enforcement officers to consult with child welfare staff before transporting any children to the county children's shelter.³³ In 2006, California passed AB1942, legislation encouraging the development of joint protocols between law enforcement and

child welfare agencies and requiring the Commission on Peace Officer Standards and Training to develop guidelines and trainings for law enforcement officers across the state. Model child-sensitive arrest protocols include: guidance for looking for signs of children who may not be present but reside with the arrested parent, not hand-cuffing parents in front of their children whenever possible, allowing parents to reassure their children, waiting for a designated caregiver, not using the siren when leaving, and allowing the parent additional phone call(s) to arrange childcare.³⁴ California also passed AB760, a law that permits an arrested person determined to be a custodial parent of a minor child a minimum of two (2) phone calls at no expense to arrange for the care of their minor children.³⁵ And, if a child must be picked up by child welfare and placed in emergency shelter, some

Clara, California, have seen dramatic reductions in the number of children entering emergency shelter care. Instead, the children are placed with relatives and other appropriate caregivers.³⁹ Besides reducing trauma to children, these successful diversions represent a major cost savings to the county and result in improved communication and trust between law enforcement and child welfare.⁴⁰

Data Collection

Insufficient data are collected by both child welfare and corrections organizations about incarcerated parents and their children. When the Child Welfare League of America surveyed child welfare systems nationwide in the 1990s, very few agencies were able to estimate how many children in their care had an incarcerated

“I guess some caseworkers assume your mom is a bad person when they hear she’s incarcerated. But they should keep an open mind and remember that every child has only one mother, one father. The ones we’re given are special to us, even if we can’t live with them, even if they’re not perfect.”

—Youth speaker with Foster Change for Children, New York³⁶

jurisdictions have developed policies so that a parent is allowed to quickly notify a relative or trusted friend so that an emergency assessment of the caregiver can be conducted within 48 hours to prevent the child welfare agency from having to file a dependency petition with the court.³⁷ The New York Law Enforcement Handbook issued by the New York State Association of Chiefs of Police includes a model and detailed protocol for arrests when a child is present or when the person arrested is the caretaker of a child.³⁸

As a result of these joint protocols between police and child welfare agency, some counties, such as Santa

parent.⁴¹ The same study found that only 21 percent of the 38 responding states indicated that their data-gathering systems capture information about parental incarceration at the intake and assessment phases. Of these, several states gathered that information only under specific circumstances, such as when the parent’s incarceration is the primary reason for a child’s placement in foster care.⁴² Very few corrections facilities inquire about an inmate’s status as a parent and whether they have children in the child welfare system.

When a parent’s whereabouts are unknown, it is particularly important that the child welfare agency

consider the possibility of the parent being incarcerated and develop intake protocols so that workers understand how to locate parents who are incarcerated in city, state, and federal corrections facilities. In 2009, California approved legislation SB118 which required child welfare database systems to record information about whether a parent of a child in the child welfare system is or has been incarcerated. The legislation was based on the successful demonstration by the San Francisco Department of Human Services that succeeded in collecting this information with little additional cost to the agency. The Department was successful in collecting this information by conducting a monthly search for all dependency cases in which a parent is incarcerated, by training their staff to enter the data into the appropriate field, and by developing an agreement with the San Francisco Sheriff's Department for data-sharing between the two departments.⁴³ The child welfare agency in New York City has a specialized unit, the Children of Incarcerated Parents Program which provides parents and youth with help facilitating parent/child visits, sibling visits, and case conferences.⁴⁴

Communication with the Incarcerated Parent

Not surprisingly, a parent's ability to communicate is extremely restricted once he or she is incarcerated. They cannot easily access a phone and may not always receive all documents and notifications about their case plan and court hearings in a timely manner. Offering a family conferencing model at the earliest possible opportunity with an incarcerated parent can be extremely helpful in ensuring engagement and smoother communication between the parent, child, and child welfare agency. This meeting should be held at an early juncture of the case, either within 24 hours after removal or as soon as possible following a parent's arrest. This early intervention allows the child welfare agency to avoid filing a dependency petition if other options can be safely explored. In addition, parental engagement at an early stage can be critical in stabilizing a case plan for a child with the lowest level of child welfare. While this front-end case work may require an intensive level of time-sensitive work, including the development of new partnerships with police, sheriffs,

and other correctional organizations, this immediate intervention strategy is critical to the overall success of a case plan involving a child of an incarcerated parent.⁴⁵ Some states, such as California and New York, have statutes that may permit the use of videoconference or teleconference in certain circumstances for an incarcerated parent to participate in developing the family service plan or certain court hearings.⁴⁶

Another equally important reason to find parents is their right to receive notice. Failure to provide proper notice to incarcerated parents will not only result in denial of the parents' fundamental rights, but may also result in court continuances and possible sanctions against the child welfare agency. Ensuring that parents receive timely notice will help to reduce continuances for improper notice and delay in helping children to achieve permanency in a timely manner. Incarcerated parents may need the court to issue an "Order to Produce" to the correctional facility, so that they can be transported to court. Unfortunately, when parents who are incarcerated are brought to court, and therefore away from the correctional facility, they risk falling behind with or not completing any programs they were participating in, or losing their place on an often long program waiting list. A parent's attorney should always advise their client about whether or not it would be in their best interests to attend court.

Unless the court has suspended the child welfare agency's requirements to use reasonable efforts to reunify parent and child, child welfare jurisdictions are mandated to work on reunification efforts with incarcerated parents just as they would in any other cases. Though service referrals and the parent's ability to access helpful programs are severely hampered in prison, social workers should still discuss the service plan with the parent, advise her/ him to participate in any available programs, and plan for additional community services upon release.

Adoption and Safe Families Act/Termination of Parental Rights

The federal Adoption and Safe Families Act (ASFA), with its limited timeframes for termination of parental

rights for a child who has been in foster care for 15 out of the most recent 22 months, has had an immense impact on children of incarcerated parents. Given that the average prison term for most parents in prison, even for non-violent property or drug crimes, exceeds the 15 months period in which child welfare authorities may begin proceedings for the legal termination of parental rights, it is not surprising that one study found that between ASFA's passage in 1997 and 2002, termination proceedings of incarcerated parents has more than doubled.⁴⁷

However, ASFA's termination mandate is conditioned upon courts finding a "compelling reason" to terminate. The lapse of time is not enough. For incarcerated parents, termination usually relies on findings of neglect or abandonment. Both circumstances can be avoided when parents want to continue their parental relationship and the agency succeeds in assisting the incarcerated parent in preserving his or her parent/child relationship. For instance, child welfare regulations require that child welfare agencies make reasonable efforts to facilitate visitation between children and their incarcerated parents. Successful visitation programs can succeed in potentially avoiding terminations.

Maintaining Child-Parent Contacts During Incarceration

There are many advantages related to family stability and children's well-being which justify connecting children with their incarcerated parents, including:⁴⁸

- *For the Child*

Visitation and other contacts allow the children to express their emotional reactions to the separation from their parents. The contact also helps the child to develop a more realistic understanding of their parent's circumstances, preserve important connections, and assures the children that their parents are safe.⁴⁹

- *For the Parent*

Visitation and other contacts also allow parents to deal with separation and loss issues, and to develop

and maintain their role as parents.⁵⁰ Research has shown that parents who maintain contact with their children are less likely to recidivate than inmates who do not maintain contact with their families. Regular visits between parents and their children in foster care are also a necessary—though not always sufficient—step forward in the family reunification process. As mentioned, if a child welfare caseworker cannot locate a parent due to incarceration, or if an incarcerated parent cannot locate a child in the child welfare system, an abandonment finding may be issued. A finding of technical abandonment may lead to a change in the child's permanency planning goal to adoption. Once a child is headed toward the adoption track, arranging visits and parental contact may become even more difficult.

Child welfare agencies are legally mandated to provide visits to incarcerated parents when the goal of the case plan is reunification. Even when the child's permanency goal is changed, parents retain visiting rights until their parental rights are terminated or a court has suspended visits. A change in the child's permanency goal does not eliminate the obligation to provide parent-child visits.

Re-Entry Planning

As parents near their release, child welfare agencies should also be sure to discuss the service plan with them and the remaining steps needed to achieve reunification. In 2008, the federal government signed into law the Second Chance Act (PL 110-199) designed to improve outcomes for people returning to communities from prison and jails. This landmark legislation authorized federal grants to government agencies and nonprofit organizations to provide employment assistance, substance abuse treatment, housing, victim support, and other services that can help overcome barriers and reduce recidivism. Most communities have a re-entry council or services that child welfare agencies can find by going to the National Re-entry Resource Center website at <http://nationalreentryresourcecenter.org>.

It is important to note that in most states parents continue to accrue child support arrearages when they

are incarcerated, despite their inability to pay child support. Oregon is one of the few states that automatically modify the child support requirement to a zero sum when a parent is incarcerated.⁵¹ However, the more common practice is that child support orders are not automatically suspended. Parents with child support arrears can lose many privileges for non-payment, including their driver's license, garnished wages, and federal income tax refunds for failure to pay child support, regardless of the reason. To avoid the adversarial consequences of child support arrears and to encourage family reunification by engaging parents

is incarcerated (the perpetrator parent or the survivor parent), the relationship of the children with each parent, the legal requirements around visits, and other considerations. The following is a partial list of possible areas of impact on child protection work:

Engagement of Parents: The incarceration period may be a time when both parents can be engaged in ways that have not previously been possible. A violent parent who is locked up may be more open to self-reflection and building a relationship with a social worker. In practice, however, some child protection workers do

“When a violent parent is incarcerated, a survivor parent may have ‘breathing room’ that allows her to have a conversation about what she really wants for her family’s future... It can also, however, be a time when a man who uses violence switches tactics of control—using a third party to monitor or stalk her, accusing her of having affairs while he is in jail, or insisting that she visit him frequently and then grilling the kids about what she has been doing.”

—Shellie Taggart, child welfare consultant to Futures Without Violence

(predominately non-residential fathers) as partners in the well-being of their children, several child support policy initiatives have been developed throughout the country. Provisions are often made for a settlement of arrearages for low-income, non-custodial incarcerated parents with the assumption that it is in the best interest of the state and child.

Domestic Violence Issues Related to Children of Incarcerated Parents⁵²

It is important for child welfare agencies to understand whether domestic violence plays or has played a role in the overall family dynamics for incarcerated parents. Obviously, interventions depend upon who

not have or take the time to visit the jailed parent, or may not have the skills to safely engage him. Care must be taken to avoid informing the perpetrator about the other parent's behavior, either past or present.

When a violent parent is incarcerated, a survivor parent may have “breathing room” that allows her to have a conversation about what she really wants for her family's future. This period may give her the opportunity to go to a support group or get services for children and allow her to see more clearly what has been happening in the relationship. The capacity to do so may also, however, be diminished by the duties of being sole caretaker and provider for the children. The worker should view this period as a window of opportunity to see how the

survivor can parent in the absence of the violent partner and to support such efforts; to connect her and her children to appropriate services; and to help build her support system. With all of these interventions, the social worker should allow the survivor and the circumstances (including the length of the incarceration) to guide the speed with which interventions occur.

Assessment of Danger and Risk to Children: When the violent parent is incarcerated, this can provide a needed respite for the family to make plans that enhance their physical safety. It can also, however, be a time when a man who uses violence switches tactics of control—using a third party to monitor or stalk a woman, accusing her of having affairs while he is in jail, insisting that she visit him frequently and then grilling the kids about what she has been doing, and so on. While physical danger or risk may be lessened, the emotional distress to the children may increase.

Danger or risk to the children may also increase if the non-violent parent is the one incarcerated and the parent who is violent maintains custody. Workers should monitor the situation closely, have regular conversations with the children *without* that parent present, and stay in close contact with schools, extended family, and others who can comment on any changes in the children's behaviors that indicate increased risk.

Visitation issues: Parental rights to visitation must be balanced against rights of children to not see a parent of whom they are afraid. State statutes that define “best interests of children” vary, but many take into account factors such as the age; mental and physical health of the child and parents; “social factors” and lifestyles of parents; emotional ties between child and parents; and the preferences of the child, parents, and alternate caregivers. Some are more explicit. Delaware, Kentucky, Michigan, North Dakota, Oregon, Tennessee, and Texas all make explicit reference to consideration of children's exposure to domestic violence or violence between adults in the home when determining what is in the best interests of children.⁵³

If the worker is aware that a child *does not* want to visit a violent parent, she or he should be prepared to advocate for the child's position or to inform a guardian ad litem or Court Appointed Special Advocate regarding the child's wishes.

If the survivor parent is the one incarcerated and the children are in the care of the violent parent, the perpetrator's control over visitation and the children can be a source of extreme anxiety for the incarcerated parent and children. The worker should be prepared to try to engage the violent parent around the needs of the children to see their mother and perhaps help to make arrangements for the visit that do not involve the perpetrator's transportation or control over the visits.

Specific concepts in materials produced by Futures Without Violence (www.futureswithoutviolence.org) for Supervised Visitation Programs may have applications to visitation with incarcerated parents:

- **Beyond Observation: Considerations for Advancing Domestic Violence Practice in Supervised Visitation** discusses emotional and physical safety for children at the visitation site, and describes a continuum of supervised visitation strategies depending on the level of violence and impact on the children.
- **Supervised Visitation: Information for Mothers Who Have Been Abused** offers ideas for mothers to prepare their children for visits, and suggests key questions that may be adapted for visiting an incarcerated parent.
- **Fathering After Violence: Working With Abusive Fathers in Supervised Visitation** contains guiding principles, discusses the essential connection of visitation with safety for mothers and children, and offers guidance on assessment of risk and incorporating cultural contexts as a path to healing.

Sometimes incarcerated abusers use the courts to force a reluctant child to visit them. In some states, children have successfully petitioned the court for rights to terminate contact with their abusive parent who has

murdered the other parent (see Patrick's Law in Massachusetts, for example). At least one state has enacted a law to prevent such abuses of parental visitation rights. In Virginia, § 20-124.2 provides that a parent or other person having legal custody of a child may petition the court to enjoin a parent of the child from filing a petition relating to custody and visitation for any period of time up to ten years if doing so is in the best interest of the child and such parent has been convicted of an offense constituting various violent felonies.

Appropriate Services: A period of incarceration for a violent parent may be a time when children or children and mother together can safely obtain appropriate services to address a broad range of needs. High-quality programs for children who have been exposed to violence incorporate an understanding of how a perpetrator of violence may have undermined the children's relationship with their mother and a focus on building or repairing that relationship. A significant body of research has developed around appropriate services for kids exposed to violence, including: child witness to violence therapeutic services, trauma-informed therapy, reparative therapy, child-parent psychotherapy for family violence, play therapy, and other modalities.

Programs that provide advocacy services to battered women can be extremely helpful in providing access to needed resources, safety planning around visits and court appearances, and emotional support to help women heal and make decisions for the future. Such assistance can also help women and workers to understand the changing dynamics of abuse during the incarceration, and provide legal information and help with harassing phone calls, repeated court petitions, for visitation with children, divorce proceedings, and other issues.

“Research shows that when a parent is locked up in jail or prison, whether locally or hours away from home, the impact on the family, especially children, is traumatic,” according to Tanya Krupat, director of the New York Initiative for Children of Incarcerated Parents. “Many of the children, particularly of incarcerated mothers, end up in foster care. They may endure shame and humiliation, face an increased risk for developing mental health problems, experience school failure or drop out, and commonly encounter stigma from peers and adults which increases the isolation they feel. It is no wonder that human rights advocates have referred to parental incarceration as one of the greatest threats to child well-being in the United States.”

—From article *Children with Incarcerated Parents*, The Bronx Times, November 15, 2010, www.bronx.com/news/Society/1242.html

While in theory, correctional facilities make accommodations for visiting and maintenance of family ties, jails’ and prisons’ primary focus on safety and security can make facilitating parent and child contact—as well as caseworker contact—challenging from the perspective of a child welfare agency. Complaints voiced by caseworkers include the long distance to the prisons; the variations in policies, practice, and visitation rules at each facility; communication restrictions; seemingly unnecessary intrusions on privacy, especially for children and caregivers; a lack of private space for caseworkers to meet with mothers; the difficulties in getting information and making referrals for incarcerated parents to programs inside the corrections facility;

and a lack of notification when incarcerated parents are transferred.⁵⁵

In order to navigate these obstacles, it is important for social workers to understand the rules of each correctional facility and to develop a relationship with the staff at the jail and prison to better coordinate visits and the provision of information to the incarcerated parent, if visitation is safe and appropriate for the child. Because each jail and prison has different visiting rules, the best way to ensure that the incarcerated parents are able to visit with their children is to know the deputized staff, know the rules, and call the facility prior to a visit (including the day of the visit) to ensure that the inmate does not have restrictions on visits.

Jails and Prisons

Despite that fact that the words jail and prison are often used interchangeably, each has a different purpose, legal authority, and population. Jails typically house people for a shorter period of time than do prisons, usually in their local community, often in pretrial status until the prisoner can post bond or are adjudicated, or while they await transfer to prison for short sentences.⁵⁶ Jails also house individuals sanctioned for noncompliance with terms of parole, probation, and other community-based sanctions.⁵⁷ In contrast with the short-term local purposes, some states, such as California, are now using jails to house prison inmates because of overcrowding in state prisons.⁵⁸ Given the comparative fluidity of jail populations, it is often more difficult for child welfare agencies to identify a parent who is in jail than in prison.

In contrast, prison inmates have been tried and convicted of crimes and are incarcerated for long-term confinement. A prison can be under the jurisdiction of either the federal or state government. State prison systems often oversee the incarceration of adult and juvenile offenders, as well as provide parolee services to adult and juvenile offenders. They also operate halfway houses, work release centers, community restitution centers—all considered medium or minimum custody facilities. Inmates assigned to these types of facilities are usually reaching the end of their sentence. Federal prisons are operated by the Federal Bureau of Prisons and are designed to hold individuals convicted of federal crimes, such as racketeering, bank robbery, and other offenses.

The staff members that work in a jail or prison are generally referred to as “corrections officers.” The jail setting has both “deputized” staff (i.e., those officers who have ranks and are either Sheriff’s or Prison staff) and “program staff” (i.e., civilians who provide program services and receive clearance to be in the jail setting for other purposes). The jail or prison system operates similar to the military system with ranks and supervising officers, so it is important to follow the chain of command when seeking authorization and policy

information. Connecting with the program staff in the corrections facility can help the child welfare agency find out what services the inmate is already receiving and where service and counseling gaps might be.

Parole and Probation⁵⁹

Parole refers to programs providing early release from prison sentences that are granted by the parole board to offenders who have demonstrated that they do not pose a risk to victims or the public. In order to qualify for parole, prisoners must have met court-ordered treatment programming conditions outlined on the sentencing judgment, and show evidence of positive change. Probation refers to a situation in which the offender remains under supervision, but in the community rather than serving out a prison term.

Usually, the department of corrections supervises both probationers and parolees under similar rules of supervision. Probationers and parolees, for example, must refrain from using alcohol and illegal drugs and stay out of bars and casinos. They cannot contact their victims or travel outside designated areas without a permit. The judge typically orders probationers and parolees to hold jobs, to pay any outstanding fines and fees (including victim restitution), and to participate in various types of treatment and programming. Probationers and parolees often meet daily, weekly, or monthly with their probation and parole officers to ensure they are complying with the rules. Many sentences include a combination of prison and probation and/or parole. Depending on the circumstances, some inmates require enhanced supervision on probation and may be confined to certain geographic areas or required to wear an electronic ankle monitor.

Finding an Inmate

- *County Jail*

The parent can usually be located by contacting the County Sheriff Department’s administrative booking unit. Because the phone line is usually very busy, it may sometimes be faster to go down to the jail in

person. Inmates are assigned a personal file number, so knowing this number will help locate the parent more quickly. Inmates often use aliases when they are booked in county jail. Becoming acquainted with the deputized staff can greatly assist the caseworkers since these employees are often familiar with the repeat offenders and their aliases and can assist in these searches.

- *State Prison*

If a parent has been sentenced to a state prison, each state usually has an office to help locate inmate (such as the California Department of Corrections and Rehabilitation Identification Unit). You will need the inmate's full name and full birth date (month, day, and year) or their inmate identification number. This unit can only provide the current location and identification number for the inmate. They will not be able to provide other information such as the inmate's date of release. If an inmate was recently admitted or transferred, that information may not be available for several days. Some states, such as New York, now have inmate locator services available online.

- *Federal Prison*

If an inmate has been sentenced to a federal prison, online searches are available, if you have the parent's first and last name, using the "inmate locator" tool on the Federal Bureau of Prison website at www.bop.gov/iloc2/LocateInmate.jsp.

Preparing for a Visit

Planning a child's visit to prison or jail takes significant preparation. Child welfare workers should take appropriate measures to prepare the incarcerated parent prior to the visit about what to expect from the child, given their present circumstances, stages of development, and current interests. Workers should also prepare the child prior to the visit for what to expect at the corrections facility and during the visit. Many communities have nonprofit agencies or faith-based organizations that assist in facilitating communication between the

caregiver, child welfare worker, child, and the incarcerated parent.

- *Visiting Rules*

Each corrections facility has different rules about visiting inmates. Many jails will deal with this issue on the day of the visit, while state and federal prisons often have a pre-clearance procedure that can take weeks or months. For example, inmates in California state prison must sign a Visitor Questionnaire and send it to any adults coming to visit. Children under 18 do not need to fill out the form but must make sure that the person bringing them to the visit has completed this requirement. The prison staff must approve all visitors before they arrive which usually takes approximately 30 working days. Similar to the process for state prison, inmates in a federal prison are required to give a list of proposed visitors to prison staff, who then investigate the proposed individuals before placing them on the approved list. An initial list is usually established within a few days of incarceration that includes immediate family members approved to visit. Additional family and friends may be added to the visitors list following a more lengthy investigation.

- *Child Visitor*

Most jails and prison require a child under 18 to visit only when they are accompanied by an approved adult visitor (e.g., parent, court-appointed legal guardian, social worker) or have a written, notarized permission to visit from the child's parent or legal guardian based on a certified birth certificate or embossed abstract of birth. In some county jails, the age requirement may allow a child to visit alone if they are over 16. Minor children may be required to bring their birth certificate. In addition to documentation for the child, the caregiver or child welfare workers will also need to bring their driver's license and agency identifications. Each facility has its rules regarding who must be present to supervise the child during the visit with the parent. The custodial adult, however, is considered responsible for the child's

behavior so if the child is considered “out of control” by the corrections staff, the visiting adult and child may be asked to leave.

- *Identification Requirements*

Adult visitors, including children over 18, must be prepared to show valid identification with a current photograph to be able to visit. The ID must include their name, address, and birth date. Many jails and prisons allow an expedited process for public child welfare workers with county identification, but it is still important to check with the corrections facility prior to the visit to make sure all requirements are met.

except keys and wallets, which are generally allowed during the visit. Cell phones and cameras are generally not allowed in the visiting room. When in doubt, it is best to ask the corrections staff about their rules prior to the visit.

- *Clothing*

Most corrections facilities have a strict dress code to discourage “inappropriate gang-related clothing or hairstyles.” This may exclude certain colors, numbers, hats, clothing with metal, or jewelry. The best course is to dress conservatively to avoid any dress code restrictions.

“Visiting my Dad is disturbing. I want to visit my Dad. When I visit him it’s good. But I have to wait a long time and am not allowed to bring any toys. It’s like 300 miles and takes a long time to get there. I can play games when I get there but when I get there I have to wait. Then they call you and you go into another room and wait some more. And finally I get to go into a big cafeteria room. When we sit, they call my Dad and when he comes in it feels nice. We visit three hours or two, I think. I’m going next week, I think. I miss him.”

—From KARE Family Center (2011). *Behind Bars—Difficult Questions Children Ask ... And Answers That Might Help*. Arizona Children’s Association.⁶⁰

- *Personal Items*

Visitors may bring money to put into an inmate’s account but they are not allowed to bring any personal items for the inmate. This restriction means children generally cannot bring homemade presents to the visit. There is usually a strict list of permissible items allowed during each visit such as baby formula, diapers, and toys. All visitors are searched, and many jails or prisons do not have lockers to store personal items. It is wise to not bring any personal items

- *Phone Calls*

Generally, the corrections phone systems only allow inmates to call out, but not to receive calls. Phone calls are usually time limited (about 15 minutes) and inmates are often able to make collect calls, although some prisons require inmates to pay for their own calls at considerably inflated rates.

- *Mail and Packages*

Generally, letters sent to inmates must be addressed with the inmate's full name, their department of corrections (DOC) number, the facility address, and a legitimate return address as defined by the U.S. Postal Service. Most facilities do not allow inmates to receive cash, personal checks, or stamps in the mail and all mail is inspected. Correctional facilities also regulate the number and type of gift packages inmates can receive.

- *Contact/Non-Contact Visits*

Visits in corrections facilities may include contact or non-contact visits through glass—also called “phone visits”—both with time limitations. Some facilities have “contact visits” where a parent can touch and hug their children. There is usually an upper age limit for a contact visits with additional restrictions for inmates who have a current or prior conviction for a sexual crime involving a minor child.

- *Preparing Children for a Visit*⁶¹

Because many prisons are located far away, visits may require an overnight stay. There are sometimes non-profit or community resources that can help defray the costs of the visit for the family. The trip to the facility will be long, so it is important to bring food, toys, books, and entertainment for the trip. Be sure to feed children before entering the facility since most facilities do not allow outside food (with some possible exceptions for baby formulas and infant food). Once inside the facility, visitors are dependent on the food available in the institution's vending machines. Arrive early and prepare for long and uncomfortable check-in procedures.

“Since the Women’s Refugee Commission began focusing on this issue in 2007, we have found that challenges to parental rights are becoming more frequent as immigration enforcement expands. Our interviews with detained parents continue to reveal cases in which parents are unable to locate or communicate with their children, unable to participate in reunification plans and family court proceedings, and unable to make arrangements to take their children with them when they leave the country.”

—Women’s Refugee Commission (December 2010). *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention*.⁶²

Fiscal year 2010 had the highest number of undocumented immigrants deported in the history of the United States, according to Department of Homeland Security (DHS) officials.⁶³ In the first nine months of FY 2011, Latinos were 50.3 percent all federal felony offenders sentenced (versus 16 percent the year before).⁶⁴ DHS attributed the record numbers to increased border enforcement, workplace enforcement, and an expansion of DHS’ programs, which use fingerprints to identify undocumented immigrants in prisons and jails.⁶⁵ In 1996, federal legislation was passed which has had significant impact on immigrants charged with crimes.⁶⁶ This law expanded the grounds for deportation to include a broader range of offenses, removed the ability of an immigrant defendant to ask a judge to overturn a deportation decision, and eliminated the ability of many immigrant defendants to be released on bail, even if he or she is not considered a flight risk.⁶⁷ As a result, undocumented immigrants have also ended up in removal proceedings, often for nonviolent,

low-level offenses such as driving without a driver’s license, having broken taillights, or other minor traffic violations. The child welfare implications of this trend are alarming. As immigration enforcement increases, studies point to more frequent challenges to parental rights and numerous violations of due process.

The exact overall number of children impacted by immigration enforcement, including those who end up in the child welfare system, is unknown since this information is currently not collected in a consistent way by the Department of Homeland Security or local child welfare agencies.⁶⁸ More aggressive enforcement has also had a chilling effect on the willingness of many in the immigrant community to seek assistance during a crisis, such as reporting domestic violence or child abuse/neglect, for fear of arrest, detention, and deportation.⁶⁹ Undocumented immigrants are also justifiably afraid to visit their detained friends and relatives for fear of being detained themselves.

Who Can Be Deported?⁷⁰

While any person who is not a U.S. citizen can be deported,⁷¹ non-citizen immigrants with past convictions and undocumented immigrants are particularly at risk for deportation. However, not everyone who is subject to removal proceedings is deported. Immigrants with certain convictions can be deported, barred from adjusting their status to lawful permanent resident, or prohibited from returning to the U.S. after a trip abroad. The type of conviction is very broad and may even include offenses that the criminal judge considers too minor to warrant jail time. Another common scenario is that an immigrant may finish his criminal sentence and then be deported, either immediately or years after the conviction. Undocumented immigrants are deportable, regardless of whether or not they have a conviction. However, any arrest or conviction makes them more likely to be discovered by immigration officials and will also make it more difficult for them to adjust their immigration status. This would include (1) individuals who have entered the U.S. through illegal border crossings; (2) individuals with old deportation orders, such as those who applied for a green card application or asylum application, or were denied and did not know the government had started a deportation case; and (3) those who have overstayed visitor's visas.

No Right to Appointed Counsel in Removal Proceedings⁷²

The U.S. Supreme Court has held that immigration proceedings are civil, not criminal, and therefore detainees do not have a constitutional right to appointed counsel. The detainee must use his own financial resources to seek out and retain private attorneys, unless he is able to find a pro bono attorney or legal service provider. While there are nonprofit legal organizations that provide free deportation defense services, the supply is limited by overwhelming demand.⁷³ As a result, most detainees are unrepresented by counsel in immigration court.

Locating Someone in Immigration Detention

Information needed to locate someone in immigration detention includes their full name (including all aliases), date of birth, country of birth, and their alien registration number (i.e., "A" number). This 9-digit number (e.g., A99 999 999) can be found on most immigration papers and on the detainee's bracelet. U.S. Immigration and Customs Enforcement (ICE) has an online detainee locator system that is able to identify and locate a detainee who is currently in ICE custody or who was released from ICE custody for any reason within the last 60 days. The online locator system cannot search for records of persons under age 18: <https://locator.ice.gov/odls/homePage.do>. The list of immigration detention facilities is also available on the ICE website: www.ice.gov/detention-facilities/index.htm.

How to Contact Someone Detained by ICE

Individuals in immigration detention can make phone calls, but only if they have enough money in their accounts to buy a phone card. Some detention center place a limit on the number of minutes a person can talk on the phone. Detainees may also place collect calls from some of the facilities if they are calling a number that accepts them. There is no way to call in to an adult immigration detention center and speak with a detainee (although you may be able to leave a message for someone). Detainees can only place calls, they cannot receive them. They can also send and receive mail. Letters can be sent to detainees by putting their name and alien registration number above the address of the detention center. Attorneys sending legal mail should stamp and write on the address that it is legal mail, so that it remains unopened and/or confidential. If a person is no longer in ICE custody or has been transferred to a different facility, the mail is returned to the sender with an explanation of its return. Detainees can send mail only if they have money in their accounts to buy stamps. Detainees cannot receive stamps in the mail, although there are permitted to receive photographs and cards.

How to Visit Someone in ICE Detention

Individuals can visit detainees in immigration detention, but they will need government identification documents to do so. Individuals who are undocumented immigrants or have past criminal convictions should not visit someone in immigration custody, since they are likely to be detained or placed into removal proceedings as well. It is important to contact the facility for visiting hours and policies, such as dress code, prior to the visit since each facility has different visiting rules. Some facilities allow contact visits while others only allow visits behind glass partitions. The detained parent will probably need to fill out a form authorizing the family's visit in advance with the children's names and Social Security numbers. Detained parents with children in the child welfare system have a right to visitation if it is included in their case plan. Attorneys usually have different visitation hours than family members and are usually required to set up the visitation 24 hours in advance. Lists of pro bono (free) legal organizations are supposed to be posted in all detainee housing units and to be updated quarterly. Clergy may visit detainees but often must make prior arrangements with the detention facility's chaplain office. Consular officials are usually allowed to meet with their detained nationals at any time.

Detention Center Personnel

The ICE Office of Detention and Removal Operations (ICE-DRO) website provides information about different local ICE-DRO offices: www.ice.gov/about/dro/contact.htm. The ICE Field Director is in charge of the facility. Each detainee has a specific deportation officer in charge of their case. Cases are generally assigned by nationality or by last name and the deportation officer has a direct telephone line for communication.

Detention Transfer Policy

Detainees are often transferred from their initial detention facilities to remote locations, sometimes experiencing multiple transfers without regard to whether the detainee is to participate in dependency court proceedings. DHS' state policy requires notification within

24 hours of transfer to the detainee's attorney.⁷⁴ Social workers can contact the detainee's deportation officer and ICE field officer and request that these officials use their discretion to prevent the transfer of a parent involved in a dependency court proceeding.

An Overview of the Removal Proceedings for an Incarcerated Parent

Immigration and Customs Enforcement is the branch of the Department of Homeland Security responsible for carrying out enforcement actions. After a foreign-born parent is incarcerated and finishes his or her sentence, ICE has the authority to question and obtain information about people who are incarcerated for criminal convictions. If ICE believes this person can be deported from the U.S., they will place an "immigration detainer" (also known as an "ICE hold") on the non-citizen. The detainer allows ICE to pick up a person within 48 hours after he or she is released from criminal custody in order to transfer them to ICE custody. Some states have programs that allow the non-citizens incarcerated in prisons or jails to be released into the custody of ICE before the completion of their full sentence for the sole purpose of deportation. However, if ICE has not picked up the individual within 48-hours of the time he or she is released from custody (excluding weekends and holidays) and the ICE detainer is the only basis for retaining custody, federal regulation does not permit continued incarceration of the individual.⁷⁵ Each case is different. Some individuals are detained by ICE for only a few days while other detentions may last several weeks or months. While some cases can last a very long time (up to several years), this usually occurs if the detained individual decides that they want to continue to appeal the judge's decisions regarding their case.

After an immigrant is transferred to immigration custody, one of three things may happen:

1 Consent to Deportation. If someone can be deported from the U.S., ICE may give them the chance to voluntarily consent to or "sign for" their deportation. If they sign for their deportation and they are from Mexico, they may be sent back to Mexico within several

days. However, even if they sign this form, a judge may decide that they are eligible for a case of immigration relief and refuse to accept the deportation order. If this happens, the person will be required to see an immigration judge.

2 Hearing Before an Immigration Judge. When a detained individual appears before an immigration judge, he has the right to contest his deportation, apply for relief from deportation, and request voluntary departure. Once someone is transferred to immigration custody, it usually takes several weeks until his first hearing in front of the judge. If a person knows that they want to request deportation, they may do so at the first hearing. If they want to fight their case, they will likely have several hearings and their case may last several months or even years.

important to note that in all cases, automatic deportations can be stopped if a person expresses a fear of returning to their country, at which point they must be permitted to see an immigration judge.

Challenging Deportation

While each case is different, there are many grounds on which an individual may challenge their deportation, including temporary protected status or having a parent who is a U.S. citizen, and a range of other circumstances. An experienced immigration attorney can help the detainee to assess and present their case in front of an immigration judge, although it may take several hearings for the judge to make a decision. If a person loses his or her case in front of an immigration judge, the individual also has the right to appeal that decision.

“When asked whether they had encountered cases in which one or more family members were in immigration detention facilities, the majority of judges, social workers, and attorneys had encountered it ... and many reported its occurrence significantly more recently.”

—Interviews with Arizona court and child welfare personnel, University of Arizona, 2011⁷⁶

3 Automatic Deportation. There are several situations in which an individual may be automatically deported without signing any documents or without appearing before an immigration judge. First, they may have been previously deported, so ICE can simply use the old order to deport them immediately without appeal. Second, if a person is undocumented and has been convicted of an “aggravated felony,” ICE has the power to deport him without appearing before an immigration judge. Third, if someone is from a country other than Mexico and is caught within 14 days of crossing the border and 100 miles from the border, a person may be denied the right to see an immigration judge. It is

Getting Out of Detention

There are three main ways to be released from detention:

1 Bond: A bond is an amount of money paid to ICE as a guarantee that the person will attend all hearings, obey conditions of release, and comply with the judge’s final order, even if it means having to leave the U.S. If the bond amount is too high for the individual to pay, he can request an immigration bond for a lower amount. A person’s eligibility for a bond may depend on whether he enters the U.S. legally or has any type of lawful status at the present time.⁷⁷ Whether or not

they have lawful status, immigrants who have a drug or firearm conviction are not eligible for a bond. An individual may also not be eligible for a bond if he has other convictions, including theft, assault, or using false documents. If a person is eligible for a bond and pays it, he can be released from detention for the duration of the immigration case, as long as he complies with the regulations for release. If an individual out on bond doesn't show up for the hearing, he forfeits the bond money and is the subject of an automatic order of removal in absentia.

Humanitarian Guidelines⁷⁸

In 2007, ICE developed internal humanitarian guidelines that apply to workplace raids involving the arrest of more than 25 people. The guidelines called for expedited release of pregnant women, nursing mothers, and sole caretakers of minor children as well encouraged close coordination with state child welfare agencies. While these guidelines have reduced family separation for undocumented workers in larger sweeps, they do not apply to smaller groups or individual arrests. In

“Over 5 million children in America have at least one undocumented parent, and the vast majority are U.S.-born citizens. When a single mother is detained by immigration authorities without the opportunity to make care arrangements for her child, that child may be turned over to the foster care system without any idea of what happened to his mother. When an undocumented mother is scared to call the police when her husband abuses her, she is left powerless in defending her child’s safety as well.”

—From Blog, “*My Mother’s Story*” by Wendy Cervantes, Vice President, Immigration and Child Rights Policy, First Focus

② **Release on individual recognizance:** In some limited cases, ICE or an immigration judge can release the detainees without having to pay a bond. Sometimes, a detainee can be released under “alternatives to detention,” programs run by private companies hired by ICE.

③ **Parole:** ICE may also release any individual from detention on “parole.” Sometimes, the detainee is asked to pay money as part of the parole guarantee and sometimes there are other conditions attached to the parole. An individual cannot appeal the denial of a parole request.

June 2011, ICE issued a memorandum directing their staff to exercise “prosecutorial discretion” in individual cases by declining, delaying, or terminating removal proceedings for cases where people have longstanding ties to the community, U.S. citizen family members, or other characteristics that merit a favorable exercise of discretion.⁷⁹

Given these guidelines, it is important that the detained parent tell their deportation officer *immediately* that they are a sole caregiver for minor children and request to be released on bond or under alternate supervision. Explaining their situation to the deportation officer does not guarantee release but is worth requesting.

Having the Parent Designate Someone to Act on Their Behalf While They Are Detained⁸⁰

Ideally, the children of the detained parent are already in someone else's responsible care, such as another parent or designated guardian. However, if the detained parent is the sole caregiver to the child, he or she may consider appointing a temporary guardian to look after the child in order to avoid unnecessary involvement with the public child welfare system. Legal authority will help the caregiver obtain medical care for the child, register the child for school, and obtain a passport if needed. Each state has different procedures for how a parent designates legal authority, including custody or guardianship, each with different legal processes depending on the state.⁸¹ The parent may also consider giving a trusted friend or relative "power of attorney" to make certain decisions on behalf of the individual and the child while the parent is detained or after deportation, such as paying bills, selling a car or other property, or closing a bank account. Granting someone power of attorney or consenting to legal guardianship approved by the court conveys significant responsibilities, so it is important that the detained parent identify a relative or other guardian that they trust completely.

Participation by Detained Parents in Dependency Court Hearings⁸²

Detained or deported parents have a difficult time participating in dependency court hearings when their children are involved with the child welfare system. A detained parent is usually not able to attend dependency court hearings unless he or she is eligible for and can afford a bond to secure their release from custody. ICE usually will not release a person in custody to attend another court proceeding. Immigrants who have been deported are usually not allowed to re-enter the U.S. legally to attend a hearing after deportation, although some child welfare agencies have been able to make arrangements for parents to appear in court through telephonic or web-based appearances.⁸³ Because immigration detention centers are different

from criminal detention facilities, they currently have no services or classes available to help a parent with reunification.

The Role of Foreign Consulates⁸⁴

There are several ways that foreign consulate can intervene in immigration proceedings. According to the Vienna Convention on Consular Relations, law enforcement agencies are required to notify all arrestees of their rights to contact their respective consulates.⁸⁵ The foreign consulate may provide in-person interviews with any nationals in custody to ensure that they have not been subject to abuses or other violations while in detention, assist with required travel documents prior to deportation, notify families about the deportation process, etc. A list of foreign consular offices is available online at www.embassy.org/embassies. If the child is a U.S. citizen, the consulate may be able to advocate on behalf of the detained immigrant parent since children are often able to obtain dual citizenship.

Returning Children to Their Country of Origin⁸⁶

If the detained parent has lost his immigration case or decided to return to his country of origin, that parent may request that their children be permitted to return with them. For example, an immigration judge may be able to order that the family be reunited at the airport prior to deportation. This may be a complicated process if the child is in custody of the other parent, legal guardian, or under the supervision of the child welfare system. In these situations, the detained parent may consider the following:

- If the child was born in the United States, the parents should have original copies of important vital documents such as the child's birth certificate and Social Security card before they leave the U.S. The Centers for Disease Control and Prevention has instructions on how to obtain certified copies of birth certificates at www.cdc.gov/nchs/w2w.htm.

- If a child is a U.S. citizen and does not yet have a U.S. passport—or needs to renew it—he or she can use the passport instructions and applications available at many post offices.⁸⁷ The detained parent will need to complete a special form in person in the presence of a notary called “Notarized Statement of Consent or Special Circumstances” (DS-3053) explaining why he cannot go with his child. The child must go in person to apply for the passport with their other parent. If the other parent is unavailable or there is no court-appointed legal guardian, the absent parent will need to show legal evidence that he has sole custody of the child. While a court order is the best proof of sole custody, a notarized letter from the government, religious official, or death certificate of the other parent may also be accepted as sufficient evidence. If the child is in the child welfare system, the child welfare caseworker should be able to help the child get the U.S. passport. The parent may also need to contact his or her consulate to obtain the appropriate travel documents if the child has dual nationality.
- If the child is not a U.S. citizen and does not have a passport, the parents will need to contact their consulate to find out the application process.
- If the child is traveling with an adult, he or she will need a notarized permission letter or other special documentation for adults accompanying minors out of the country. Check with the airline for specific guidance on specific travel requirements. The airlines will also provide specific instructions for older children traveling unaccompanied from the United States to another country.
- It is also possible for deported immigrants to prepare or amend a valid power of attorney (POA) agreement after deportation. The most straightforward way to do so is to have either the deported parent or a notary public (or similar official in the immigrant’s home country) draft the POA, have the POA notarized, and then have the POA “apostilled.” An “apostille” is a way to authenticate or legalize documents so they will be honored in another country.⁸⁸

For More Information

General Overview

- The Annie E. Casey Foundation website has numerous resources available for free download under its “children of incarcerated parents” publication search. www.aecf.org
- Grantmakers for Children, Youth and Families’ website has numerous resource available for free download under its “children of incarcerated parents” publication search, including an issue of their grantmaker magazine focused specifically on this issue. www.gcyf.org
- The San Francisco Children of Incarcerated Parents Partnership developed a “Bill of Rights of Children of Incarcerated Parents” which has received national and international attention, including a “Rights to Realities” replication campaign. Large quantities of this brochure can be ordered at www.sfcipp.org
- The National Resource Center on Children and Families of Incarcerated Parents at the Families and Corrections Network has information for service providers, sponsors webinars and conferences, and provides technical assistance to organizations. <http://fcnetwork.org>
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- The Florence Immigrant and Refugee Rights Project’s website includes information about immigration law and detention procedures including “Know Your Rights” packets and self-help materials. www.firrp.org
- Immigrant Legal Resource Center (ILRC). ILRC provides legal assistance for judges, attorneys and others. Their website includes publications, webinars and their “lawyer of the day” service. www.ilrc.org
- International Social Service United States of America Branch, Inc. (ISS-USA) is a member of a network of more than 150 social work providers around the world which provides searches for families, conducts home studies and post-placement reports, certifies adoptive home studies, mediates family conflicts across borders, and provides training and technical assistance to the U.S. child welfare system. www.iss-usa.org

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Dear Incarcerated Parent – it’s important to write letters to your child

By Dee Ann Newell, MA, Executive Director and Founder

Arkansas Voices for Children Left Behind, www.arkansasvoices.org, Sept, 2011

Having worked for more than two decades with incarcerated parents and their children, I wanted to share my observation on the importance of letter writing. My agency, Arkansas Voices Left behind, utilize letter writing as part of our parenting from prison and jail curricula, as well as a way to provide support for the children left behind. I have had the chance to read letters written by the parent, read letters received by the child, and read letters written by the children to their parents. Here are my insights based on these different lenses of observation.

When children are separated from their parents due to parental incarcerated, many parents re-discover the almost-lost art form of letter writing. While phone calls and contact visits are also important, letter writing offers as a valuable form of communication – one that is tangible and can be read and re-read by a child throughout their life.

First, regardless of what your child may say, children need someone who will love them unconditionally, a love that is invaluable when it comes from a separated parent. Children are always looking to their parents for this acceptance. When they feel that you, their parent, truly value them, you provide them with the courage and resilience to overcome feelings of self-doubt, knowing that they have a place in this world because they have a place of value with their parent.

Many parents, both inside and outside of prison, take it for granted that their children know how special they are to their parent. However, most parents do not communicate this acceptance and love in a concrete or repetitive manner. This is especially difficult for parents separated by prison or jail walls and their children are coping with the loss of the parent in their daily lives. The children don’t have the opportunity to observe the parental love in small, daily ways which those of us on the outside take for granted. Sometimes, the children are torn between caregivers who may or may not allow collect phone call from you, or may even forbid them to write letters to their incarcerated parents. However, if your child’s caregiver permits them to receive your letters, these letters offer a genuine way for a parent inside to communicate the sought-for message of acceptance, value, worthiness in a way that children “hear” the message. The letter is a message that they can read again and again.

Many children have told me they sleep with these letters. Many children have shared these letters with me, and those that receive them too infrequently will tell me how often they return to the letters for comfort and soothing of their loss. Letters matter to the children of incarcerated parents.

Here are some suggestions for enhancing the effectiveness of letters from a parent in prison or jail to a child. First, it is important to focus on the child in the letter, but avoid asking questions that place the child in an awkward position if the caregiver is also reading the letter. It is best to write words of encouragement and of value—as unconditional as you can compose – such as:

“I think of you so often and wonder what you are doing, hoping it is interesting or fun.”

“I admire (like, love, appreciate, value) the kind of caring person you are becoming.”

“I have noticed or hear from (your grandmother, father, and foster parent) about how hard you work at school.”

“I admire you for the efforts you are putting out. I believe that being willing to work hard is so important in all that you do.”

Briefly share with your child that you are well, getting along with so-in-so, doing so-in-so, in whatever brief way you can reassure your child that you are okay. Please avoid telling them your troubles, health issues, fears, woes, or anxieties, especially for younger children. Also, avoid attempting to discipline the child through a letter. For example, if someone has told you some negative behavior or attitude of the child, avoid being the source of negative complaints about their behavior. Because you are not there, try not attempt to correct behaviors or attitudes with a letter, but do keep the door open for them to share with you their feelings, fears, offering them a listening ear without judgment. Parents who are incarcerated cannot discipline effectively long-distance and your frequently re-read letters are not the place to state a negative opinion of the child, from someone else or from you. You are the encourager, perhaps the most important encourager in your child’s life during your separation; your role as disciplinarian will come after you are back.

Here is an excerpt from an actual letter from an incarcerated mother in prison to her daughter:

When you are going through a difficult time, you may wonder if you’re making the right choice. You may wonder about how things will work out. Make sure the choice you make feels right to you and that you have prayed about it. I know you for who you are. You are a very strong and a very intelligent and motivated young lady. And you can and will face the challenges that come to you, and make the right choices for you. And never forget that you are a very loving and warm person with a lot to give others, as well as to receive love from others...”

This is the kind of letter that inspires and reassures children. This mother has given her child some things to think about, ways to be positive about herself, convey unconditional acceptance while encouraging and nurturing qualities, character skills, mindfulness and encouragement. This letter represents a few of the things that a child of an incarcerated parent needs from their parent.



Ten Tips for Kinship Caregivers of Children of Incarcerated Parents

By Dee Ann Newell, MA, Executive Director and Founder

1. Recognize that the children have probably endured multiple traumas and may have behaviors that are reactive to these, including withdrawal, anxiety, isolation, or aggressive and unpredictable behaviors.
2. Keep the communication door open with the children. Proactively let them know you are accepting of their feelings and to feel safe expressing them to you in words. You have to tell them this, even when you think that they should know this.
3. Recognize your own ambivalence toward the incarcerated parent can bewilder the child, who, in turn feels conflicted in loyalties and may shut down their sharing with you.
4. Realize that there is often grieving and mourning in the worlds of these children, and rituals and symbols help to comfort the children.
5. Tell them stories about yourself as a child, allowing you to share some of the times when you were conflicted and were successful in working out your conflicts, both inner and with others.
6. When seeking counseling for the child in your care, and many need the professional help of mental health providers, be sure that the therapist has experience and compassion for children of incarcerated parents. Some of the typical prejudice in our society regarding incarcerated parents also exists with professionals who have not been trained in the research and understanding of these children.
7. If there has been a relationship with the parent in prison, and there has been no violence perpetrated against the child by their parent, permit the children to visit and receive letters and phone calls, with economics determining the frequency due to the high cost of prison calls. This is so important if the parent will be returning during the childhood of the child, as sustaining the relationship is critical to the well-being of the children. However, children of parents with longer sentences also need to maintain contact and the sentence length should not determine if there is a relationship.
8. Never force a child to visit their parent, but if they wish to, be sure to prepare them for the visit, the security protocols, the dress code, long waits, the presence of guards, and the change in appearance of their parent.
9. Know the visiting rules and teach them to the children.
10. Always tell the child the truth about the incarceration of the parent. Deception will only create more fear.

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