



Mothers in Prison and the Cycle of Incarceration

Melissa Brock, CUNY John Jay College of Criminal Justice

The US has the (dis)honor of having the highest incarceration rate in the world. Approximately 2 million individuals are **incarcerated** across the country, a nearly **700% increase** in the country's general prison population since the 1970s. One consequence of mass incarceration is an increased number of incarcerated parents. As many as 2.7 million children have a **parent in jail or prison** on any given day in the US, half of whom may be **under the age of nine**. It is estimated that over **5 million children** may experience the incarceration of a parent during his/her childhood. The majority (58%) of **incarcerated women are mothers**, compared to imprisoned men who are fathers (47%). The number of mothers in prison increased by **96%** between 1991 and 2016, while the number of fathers in prison grew by half that number during that time. Parental incarceration is a known **adverse childhood event (ACE)**, with the potential to negatively impact health and well-being outcomes over a child's lifespan. Children of incarcerated mothers in particular face a potential path of foster care to permanent severance of the maternal relationship, and the creation of an intergenerational cycle of criminal behavior. Policies that prioritize preservation of the parent-child relationship and increase support for mothers may be key to disrupting this cycle.

Incarcerated Mothers and the Role of the Foster Care System

Mothers in custody are more likely to be the **sole caretakers** of minor children - they are between two and a half and three times more likely to head a single-parent household than incarcerated men. Only 18% of mothers who lived with their child before incarceration reported **sharing caretaking duties**, compared to two-thirds of imprisoned fathers. Most incarcerated fathers reported the other parent to be the child's current caretakers while incarcerated mothers tended to name the child's **grandparent or other family members**. Additionally, mothers were five times more likely to report the child as being in **foster care** than fathers. More than 200,000 children entered foster care during FY 2021, and for 6% of these, parental incarceration was a documented **factor**, although this number may be much higher due to inconsistencies in **reporting**.

Termination of Parental Rights Due to Incarceration

The Adoption and Safe Families Act of 1997 (ASFA) established the "**15/22 provision**" which compels states to seek termination of parental rights when a child has been housed in foster care for 15 of the past 22 months. While the provision has some exceptions, incarceration is not one of them. Nearly **1 in 8 incarcerated parents** with children in foster care will see their parental rights terminated, despite not being charged with child abuse, neglect, or endangerment. They are also more likely to lose their parental rights than parents who **physically or sexually assault** their children. Incarcerated mothers are disproportionately affected due to higher instances of being the sole caretakers of minor children.

Parents in jail and prison face additional challenges in retaining parental rights depending on the state in which they are held. Several states statutorily define incarceration to be **child abandonment**. In others, incarceration produces the circumstances that constitute legal abandonment. Many states list failure to maintain regular communication and visitation, inability to maintain a normal parental relationship, and/or failure to participate in a suitable reunification plan as causes to pursue termination of parental rights based on child abandonment.

Incarcerated individuals have **very little control** over the availability of support services and their ability to participate in counseling, education, or training which may be mandated as part of a reunification plan. Other restrictions associated with incarceration inhibit parents' abilities to maintain regular communication and visitation with a minor child, which can support an allegation of abandonment under some state statutes. For example, there are fewer women's prisons than there are men's prisons, and mothers will often be incarcerated in a facility a great distance away from their children, making visitation time-consuming and expensive for families. Jail and prison visitation can take place behind glass or with limitations on physical touch which may make it difficult or frightening for children to visit a parent comfortably. Incarceration would strain any healthy parent-child relationship; in some cases, however, the essence of imprisonment is designed to eradicate it.

Implications for Policy

The effects of increased maternal incarceration on children are persistent and pervasive. The National Institute of Justice (NIJ) **reports** children of incarcerated mothers as having higher rates of imprisonment, and earlier and more frequent arrests, than children of incarcerated fathers. Children of incarcerated parents may suffer from depression, display increased aggressive and other antisocial behavior, and be more likely to be suspended or expelled from school. They are more likely to suffer economic hardships, with greater hardship associated with a mother's incarceration than a father's.

The foster care and criminal justice systems are also closely related. Foster care is a known **pipeline to incarceration**, with half of foster children encountering the juvenile justice system by age 17. Children of women who have come in contact with the legal system and whose parental rights have been terminated are also **less likely to be adopted** than other children in foster care, increasing the chances of referral to the criminal justice system. And children of women whose history includes **foster care and juvenile incarceration** are at greater risk of imprisonment themselves, creating an intergenerational cycle of criminal behavior.

Disrupting this intergenerational cycle of criminal behavior requires intervention on multiple fronts. While some advocates call for the repeal of ASFA, a more tenable solution may be to codify incarceration as an exception to the 15/22 timeline. Kennedy (2012) offers a second potential solution in an **integrated family court** approach to termination cases wherein the parent, child welfare representative, law guardian, and penal social worker would present aspects of the case that would ordinarily be spread across multiple systems and courtrooms to a single judge. She also suggests incarceration should be **barred from consideration** in parental termination cases.

In cases when preserving the parent-child relationship is in the child's best interests, policies should support parents and encourage success, even when parenting from behind bars.

Some states have made progress in expanding opportunities for incarcerated parents. In **New Jersey**, all incarcerated parents are entitled to regular contact visits with their children and are provided with parenting classes, and state prisoners must be housed in facilities as close as possible to the child's residence. Colorado has passed legislation that designates incarceration as an exception to its adoption policies when it is established that the incarcerated parent has maintained a **meaningful and safe** relationship during the period of incarceration. The state provides the means for incarcerated parents to do so by sponsoring child-friendly events at correctional facilities and appointing a jail employee as a family service coordinator between the criminal justice and human services departments. These efforts can serve to reduce motions for termination of parental rights that are rooted in the failure to maintain a normal parental relationship and to maintain regular communication and visitation. Ultimately, this has the potential to alleviate the deleterious effects of maternal incarceration on children and disrupt the cycle of intergenerational offending.

Read more:

Nazgol Ghandnoosh, Emma Stammen, and Kevin Muhitch, "Parents in Prison," The Sentencing Project, February 2021.

Ronnie Halperin and Jennifer L. Harris, "Parental rights of incarcerated mothers with children in foster care: A policy vacuum." *Feminist Studies*, 30, no. 2 (2004): 339-352.

Deseriee A. Kennedy, "'The Good Mother': Mothering, Feminism, and Incarceration" *William and Mary Journal of Women and the Law*, 18, no. 2 (2012): 161-200.

Eric Martin, "Hidden consequences: The impact of incarceration on dependent children." *National Institute of Justice* 278 (2017).