



**Correctional Association
of New York**

2090 Adam Clayton Powell Blvd, Suite 200

New York, NY 10027

212.254.5700 ■ fax: 212.473.2807

www.correctionalassociation.org

When “Free” Means Losing Your Mother:

The Collision of Child Welfare and the Incarceration of Women in New York State

A report of the Women in Prison Project of the
Correctional Association of New York

February 2006

When “Free” Means Losing Your Mother: The Collision of Child Welfare and the Incarceration of Women in New York State

This report of the Women in Prison Project of the Correctional Association of New York was co-authored by **Julie Kowitz Margolies**, Project Director from 2000 to 2003, and **Tamar Kraft-Stolar**, Project Director from 2003 to present.

This report was made possible by the generous support of the **Child Welfare Fund** and the **Daphne Foundation**.

The Correctional Association of New York (CA) was formed in 1844 by citizens concerned about prison conditions and the lack of services for inmates returning to their communities. In 1846, the New York State Legislature granted the CA authority to inspect prisons and report on its findings. Through four projects — Juvenile Justice, Prison Visiting, Public Policy/Drug Law Reform, and Women in Prison — the CA advocates for a more humane prison system and a more safe and just society.

Created in 1991, the Women in Prison Project is dedicated to addressing the effects of the state's criminal justice policies on women and their families. Recognizing that incarceration is an ineffective and inhumane response to the social ills that drive crime, the Project advocates for a shift in government priorities away from imprisonment and toward alternative to incarceration programs where a woman can stay connected to her family, take responsibility for her actions, address underlying issues, and become a productive member of society.

Under the CA's legislative mandate, the Project has the unique authority to monitor conditions inside women's correctional facilities in New York State. Additionally, the Project performs research and policy analysis; produces reports, policy papers and fact sheets; manages ReConnect, a leadership training program for formerly incarcerated women; conducts public education and legislative advocacy; and coordinates the Coalition for Women Prisoners, a statewide alliance of more than 900 people. Through these integrated and strategic efforts, the Project strives to create a criminal justice system that addresses women's specific needs and that treats people, their families and their communities with fairness, dignity and respect.

For more information about the Women in Prison Project or the Coalition for Women Prisoners, please call 212-254-5700 or visit www.correctionalassociation.org/WIPP/WIPP_main.html

Acknowledgements

We thank Correctional Association Board Chair John M. Brickman, former Board Chair and current Vice Chair James D. Silbert, Board Members Lourdes Falco, Ann E. Lewis, and Jan Warren, Executive Director Robert Gangi, and Women in Prison Project Associate Jaya Vasandani for providing editorial input and review; Amy Thesing for designing this report; CA Board member William J. Dean for his kind assistance; and Davis Polk & Wardwell for generously donating printing services.

We extend our most heartfelt thanks to the dedicated members of the Coalition for Women Prisoners' Incarcerated Mothers Committee, who helped conceive and research this report, and to all the individuals who were interviewed — caregivers, foster care caseworkers, formerly incarcerated mothers, and young people with incarcerated mothers — for sharing their experiences and observations. We hope that this report accurately gives voice to their concerns and recommendations.

We are grateful to the officials from the New York City Department of Correction and the New York City Administration for Children's Services for their thoughtful feedback on this report. We received no response from the officials at the New York State Department of Correctional Services to the draft of this report that we sent to them.

We would like to extend a special thank you to David Tobis and Kaela Economos from the Child Welfare Fund and Abigail Disney, Pierre Hauser, and Yvonne Moore from the Daphne Foundation for their encouragement and support for this report.

Finally, we express our deepest gratitude to the distinguished members of the Advisory Committee whose insight and expertise informed all aspects of the report's analyses and recommendations for improvement.

When "Free" Means Losing Your Mother Advisory Committee

Philip Genty, Esq., Clinical Professor, Columbia Law School and Director, Prisoners and Families Clinic; member of the Advisory Group of the National Institute of Corrections' Federal Resource Center for Children of Prisoners; former member of Family Court Advisory and Rules Committee to the Chief Administrative Judge of the State of New York.

Tanya Krupat, MPH, MSW, Charles H. Revson Fellow, Columbia University; former Director of ACS' Children of Incarcerated Parents Program and Visiting Improvement Project; former Family Services Coordinator at Taconic Correctional Facility.

Martha L. Raimon, Esq., Senior Associate at The Center for the Study of Social Policy; Consultant to the Women's Prison Association (WPA); former Director of WPA's Incarcerated Mothers Law Project; former Director of the Brooklyn Legal Services' Family Law Unit.

Lynn Vogelstein, Esq., Staff Attorney in the Family Law Unit at South Brooklyn Legal Services; former Soros Justice Fellow focusing on the representation of formerly incarcerated parents seeking to reunify with their children.

Table of Contents

Executive Summary	ix
Introduction	1
The Invisible Woman	4
Children Adrift and at Risk: An Unknown Number	7
The Increased Risks When Children Are in Foster Care	10
The Legal Rights and Responsibilities of Parents with Children in Foster Care.	10
Barriers to Effective Legal Redress for Incarcerated Mothers.	12
Relationships Severed: The Adoption and Safe Families Act	15
Salvaging Families: Regular Visitation.	19
The Experiences of Caregivers, Caseworkers, Mothers, and Children: What Stakeholders Have to Say.	21
Caregivers and Other Visitors	21
Caseworkers	23
Incarcerated Mothers	26
Children of Incarcerated Mothers	30
Recommendations for Change	33
Child Welfare System	34
New York State Department of Correctional Services	38
Legal System	41
Interagency Reforms	42
New York State and City Budgets.	42
Endnotes	47
Correctional Association Board of Directors and Staff	60

“We do not believe that incarcerated mothers and their children were sentenced to lose each other....

The fact that the mother has made a serious error does not negate motherhood, nor should it condemn children to lose their rights to the support and guidance of their mother. To profoundly disrupt family relations during the mother’s imprisonment is to sentence the children to possible life-long injury.”

– Precious Bedell and Kathy Boudin

The Foster Care Handbook for Incarcerated Parents

Bedford Hills Correctional Facility, 1993

When “Free” Means Losing Your Mother: The Collision of Child Welfare and the Incarceration of Women in New York State

EXECUTIVE SUMMARY

Mary, a mother of two young children, is sentenced to three to six years in prison after being convicted of larceny for using her ex-boyfriend’s debit card. She is incarcerated at a medium-security prison eight hours away from her home, which is in New York City. Mary has no family in New York, so a friend takes her children after Mary is arrested. Unfortunately, the friend cannot afford to continue caring for both her own children and Mary’s, and eventually Mary’s children are placed in foster care. Acting under state law, the child welfare agency files a petition to terminate Mary’s parental rights 15 months after her children enter foster care. Termination of rights was not part of Mary’s sentence, yet she now faces the prospect of being cut off from her children forever.



In 1973, about 380 women were incarcerated in New York State correctional facilities. Driven by policies like New York’s harsh Rockefeller Drug Laws, today that number has increased by nearly 630%, a rate of growth significantly higher than the rate for men. Although New York’s female prison population — along with the total prison population — has been steadily decreasing since 2000, there are currently still more than 2,800 women in state custody. Women of color are disproportionately represented: nearly three-quarters of New York State women prisoners are African American or Latina. Almost 75% are mothers; most were primary caretakers of their children before their arrest, many as single parents. More than 11,000 children have a mother incarcerated in a New York correctional facility, either in a state prison or city or county jail.

When a mother is sent to prison, she becomes part of a stigmatized and invisible community. She often receives substandard health care and deficient rehabilitation services,

has minimal access to effective vocational and educational programs, and faces significant barriers to maintaining stable relationships with — and sometimes parental rights to — her children. These obstacles include limited visiting and family reunification services, inadequate or non-existent legal representation in Family Court, and insufficient coordination between corrections departments, child welfare agencies and the courts.

A mother's incarceration has a pernicious effect on her family and community. The removal of a primary caretaker disrupts family structures, while relatives who may assume responsibility for minor children must grapple with added financial burdens. Separation and dislocation cause children significant mental distress. These repercussions are concentrated within a handful of low-income communities of color in New York City, where more than half of the state's women prisoners lived before their incarceration. Social, emotional and economic harm to families and communities is a defining legacy of female imprisonment.

This picture need not be so grim. Research and experience have shown that maintaining family ties can mitigate the destructive aspects of parental incarceration by helping children process their mother's absence, easing family reunification when a mother returns home, bolstering children's well-being and healthy development, and decreasing the likelihood that a mother will return to prison.

Visits play a critical role in preserving and building family ties, but consistent visiting between incarcerated parents and their children at most New York State prisons is the exception rather than the rule. Albion Correctional Facility, New York's largest women's prison, which houses more than 40% of the state's female inmates, is roughly 370 miles from New York City. The associated travel expenses can be prohibitive for families typically struggling with poverty, while the long distances are extremely taxing on young children and the older relatives with whom they often live. Child welfare agencies often fail to arrange regular prison visits and the handful of private organizations that facilitate visits do not have sufficient resources to provide services for most children of incarcerated parents who need them. A government study published in 2000 found that more than half of mothers in state prisons nationwide have never had a visit with their children.

Incarceration adversely affects families regardless of whether the children are living in foster care or in a private custody arrangement. Changes in New York's child welfare policies, however, have exacerbated the risks for incarcerated mothers with children in foster care. In 1999, New York State enacted a law modeled on the federal Adoption and Safe Families Act (ASFA) that requires a child welfare agency to file a petition to terminate parental rights if a child has been in foster care for 15 of the last 22 months. Although ASFA has laudable goals — to prevent children from lingering in foster care and to find permanent homes quickly for children who cannot be reunified with their families — in practice it is a blunt instrument that often causes serious damage.

No comprehensive data exist on termination of parental rights proceedings filed against incarcerated parents. A recent study, however, indicates that termination proceedings involving incarcerated parents nationwide increased by an estimated 108% from ASFA's enactment in 1997 to 2002. In contrast, in the five years preceding the implementation of ASFA, the number of termination proceedings involving incarcerated parents increased by about 67%. New York State's ASFA laws make no exception for incarcerated parents. Because the median minimum sentence for women in New York (36 months) far exceeds ASFA's 15-month timeline, mothers in prison — including mothers whose children remain in foster care solely because they can find no alternative temporary home — face increased danger of being separated from their children forever.

ASFA does have limited exceptions, one of which allows a foster care agency to waive filing a termination proceeding if it has documented a “compelling reason” why termination would not be in the “best interest of the child.” This exception is critical for incarcerated mothers with children in foster care. A caseworker who observes first-hand that a child's relationship with her mother is integral to the child's well-being is more likely to exercise his or her discretion and reconsider filing a termination proceeding after ASFA's 15-month deadline has been reached.

Unfortunately, most child welfare agencies do not provide caseworkers with adequate training, resources or support to facilitate regular prison visits, and New York State corrections' policies and practices often make visiting difficult and unpleasant even for the most experienced visitor. These realities, along with the courts' frequent unwillingness to hold foster care agencies and correctional facilities accountable, lead many already over-worked caseworkers to disregard their legally mandated responsibilities to arrange for child-parent prison visits at least once per month. Without visits and the chance to witness interactions between a mother and her child, a caseworker would be hard pressed to find a “compelling reason” not to petition the court to terminate parental rights.

ASFA's time limits intensify the challenges facing incarcerated mothers. State law mandates that parents with children in foster care — including incarcerated parents — maintain consistent contact with and “plan for the future” of their children, which includes finding a stable, non-foster care home placement within a reasonable period of time. Failure to fulfill these obligations can trigger allegations of “abandonment” or “permanent neglect” which can serve as grounds to terminate parental rights and “free” a child for adoption. Unlike other parents, an incarcerated mother confronts serious impediments to maintaining contact with the outside world: she can only place extremely expensive collect calls which many foster care agencies, foster families, relatives and friends do not or cannot accept; she is rarely able to participate in important planning meetings with her child's caseworker; and she often faces difficulty being produced for Family Court hearings where she might meet her child's lawyer or caseworker and the judge.

An incarcerated mother's limited access to legal representation and the courts jeopardizes her fundamental rights as a parent. Even though New York State law provides indigent parents with the right to assigned counsel in Family Court proceedings, generally an attorney will be initially assigned only if the parent is physically produced in court — sometimes an insurmountable hurdle for an incarcerated mother. Additionally, even if an incarcerated mother is produced and assigned counsel during one phase of her case, the representation can end with that phase. Recently passed legislation designed to provide indigent parents with continuity of counsel may improve this situation, although the practical impact of these statutory changes remains to be seen. Even an incarcerated mother who retains the same lawyer will likely have little or no time to discuss her case with counsel before she appears in front of the judge for the first time and will have continuing difficulty meeting and communicating with her lawyer outside of court to prepare for trial.

ASFA's timeframes also ignore a child's right to have a relationship with his or her mother. Many children would rather reunify with their mother when she is released, even if that means remaining in foster care for a longer period of time. Children, especially very young children, are unlikely to comprehend the implications of having their relationship with their mother "terminated" or being "freed" to be adopted by someone else. Moreover, many children continue to languish in foster care even after being "freed" for adoption. Cutting children's ties to their mothers without a likely prospect of providing them with a permanent and stable home not only seems precipitous, but also contrary to the sound child welfare policy espoused by ASFA's stated goals.

Whatever their living circumstances, children of incarcerated parents have committed no crime, yet are punished by the loss of their parents and the accompanying emotional hardship, including feelings of anxiety, guilt, fear and depression. Beyond experiencing short-term damage to their well-being, children of incarcerated mothers are more likely than their peers to become involved in illegal activity, to abuse substances, and to have difficulties in school. For many who are in foster care, being "freed" for adoption does not bring relief from a troubled family situation: it simply means losing their mother forever.

The overwhelming majority of people interviewed for this report felt that visits are vital to maintaining familial relationships and reducing the trauma of separation. Also prevalent was the strong conviction that current prison conditions discourage visiting by creating undue hardships for adult visitors and children alike. Interviewees described the long distances visitors must travel to some women's facilities as expensive and exhausting, security procedures as burdensome and humiliating, and treatment by some correction officers as disrespectful. Although certain visiting facilities were singled out for praise, interviewees criticized most facilities as having few, if any, age-appropriate activities for children, limited space, and little to eat. Interview participants also described the need for more programs to assist families separated by incarceration.

On the importance of visits

Caregiver: “The best way to have a relationship is through talking. She wants to see that her mother is okay, and my daughter wants to see that my granddaughter is okay. We make the best of the situation.”

Caseworker: “Once you see the bond between the mother and the child, it becomes rewarding.”

Incarcerated mother: “Children need to see their mother. Even if it’s painful, you need to have the connection. By seeing her I could still be her mother . . . You need to have contact with the kids all the time.”

Incarcerated mother: “I needed them to know that mommy didn’t abandon them. They needed to understand that. Mommy made a mistake . . . and I am coming back for you and I’m fighting for you.”

Child of an incarcerated mother: “[Y]ou never had enough time. Just when you were beginning to feel a connection it was time to leave, and the sense of disappointment and loss would reappear . . . the visit gave a sense of comfort to be with my mom. After not being with her and being with so many strangers it felt safe and complete.”

On visiting conditions

Caregiver: “By the time you get in [to Albion Correctional Facility], you gotta turn around and come back . . . Right when you get in the door, it’s already time to leave. Just a hug, then back on the bus at 12:30 [p.m.]”

Child of an incarcerated mother: “I was treated just like the prisoner. Humiliated, violated and stripped [of my] dignity. After all the security points and searches it doesn’t make you even want to ever go back.”

On the need for more programs

Incarcerated mother: “Maybe if I had started seeing him in prison, he might have been through that anger by the time I was out.”

Incarcerated mother: “Me and my children could have been bonding since I was in Bayview, so that way, when I came home, it wouldn’t have been so new for me trying to reunite and interact with them.”

Recommendations for Change

The destruction of family bonds need not be an inevitable corollary to incarceration. Detailed below are criminal justice, corrections and child welfare policy reforms that will enable New York to better address the severe difficulties confronting families torn apart by incarceration. Without such fundamental reforms, New York cannot effectively reduce recidivism, rebuild families, allow individuals to become healthy, productive members of society, or interrupt the intergenerational cycle of crime and prison.

Child Welfare System

1. New York State should amend its ASFA laws to allow exceptions for incarcerated parents who lack options for long-term, non-foster care placements for their children.
2. New York State should provide a range of alternatives to long-term foster care placements or adoption that would provide permanent homes for children without irrevocably severing their relationship with their parents, including establishing a subsidized legal guardianship program.
3. New York State should initiate a series of ongoing trainings to educate all parties involved in child protective cases about the option for birth parents and adoptive parents to enter into court enforceable open adoption agreements.
4. New York City's Administration for Children's Services (ACS) and child welfare agencies in other parts of New York State should increase specialized services to all children in foster care with a parent in prison; consistently track comprehensive data about children with incarcerated parents; and ensure that foster care agencies fulfill their legally mandated duty to make diligent efforts to maintain parent-child relationships during incarceration, including facilitating family visits at least once per month.

New York State Department of Correctional Services

5. The New York State Department of Correctional Services (DOCS) should be required to gather critical data about incarcerated parents and their children.
6. DOCS' classification policy should prioritize the placement of incarcerated mothers in facilities in close proximity to their children.
7. All women's medium and minimum security correctional facilities should have daily visiting hours for children.
8. Incarcerated mothers should have increased telephone access to their children and agencies working with their children and the ability to call agencies and family members at reasonable rates.

9. Visiting environments should meet the special needs of children and be conducive to mother-child interaction.
10. Security procedures for visitors with children should be improved and standardized.
11. Correction officers assigned to process visitors and guard visiting rooms should receive special training to improve their treatment of caregivers and children.

Legal System

12. Whenever possible, women offenders with children should be sentenced to community-based alternative to incarceration programs where they can live with or near their children while serving their sentences.
13. Legal representation of incarcerated parents in child protective proceedings should be institutionalized to ensure that parents receive consistent and competent legal services.

Interagency Reforms

14. New York State and City departments of correction, child welfare agencies, and the courts must improve coordination of services for incarcerated mothers and their children. New York State should convene a task force to examine and recommend improvements to interagency coordination of services for incarcerated parents and their children, including the process for producing incarcerated parents for Family Court hearings.

New York State and City Budgets

15. New York State and City should provide state and city corrections departments with additional resources to assist incarcerated mothers with protecting their parental rights and overcoming barriers to reunification. State and city corrections departments should also strengthen and expand partnerships with private organizations that provide services to incarcerated mothers and their families.
16. New York State should allocate funds for DOCS to expand its transportation services for children and caregivers to all seven correctional facilities that house women. In addition, DOCS should overhaul the current rules for its transportation program, which seriously limit opportunities for visiting.
17. New York State should allocate at least \$1 million in Temporary Assistance to Needy Families (TANF) funds and/or other funds to programs that assist caregivers, foster care caseworkers, and children by facilitating mother-child prison and jail visits, and provide transitional services that support reunification after a mother's release.

When “Free” Means Losing Your Mother: The Collision of Child Welfare and the Incarceration of Women in New York State

Introduction

Mary lived in the Bronx with her two children, ages three and eight, before her arrest. She was charged with larceny for using her ex-boyfriend’s debit card without his consent. For months, he had refused to repay money he had borrowed from her when they were still involved. Mary was convicted and sentenced to a mandatory minimum of three years in prison, with a maximum sentence of six years. By the time she was released after serving her minimum sentence, Mary’s legal relationship to her children had been severed and she had lost the right ever to see them again.

Mary had no family living in New York, so a friend took her children when Mary was arrested. Unfortunately, the friend could not afford to continue caring for her own children and Mary’s, and six months later, Mary’s children were placed in foster care. During her trial, Mary was held in custody of the City Department of Correction (“DOC”) on Rikers Island. About the same time her children entered foster care, Mary was sentenced and sent to Bedford Hills Correctional Facility in Westchester County for one month. She was then transferred to Albion Correctional Facility near Rochester, where she spent the next two years before being transferred to a facility closer to New York City.

Once her children entered foster care, Mary was no longer able to speak with them regularly by phone because the foster family would not accept the extremely expensive collect calls Mary (like all inmates) had to make from prison. The children’s caseworker did not bring Mary’s children to see her once during her stay at Albion, although Mary was entitled to monthly visits with them by law. She never met the caseworker in person, although she occasionally received mail from her. Because the caseworker’s foster care agency also did not accept collect calls, Mary spoke with the caseworker only on the two occasions when her prison counselor agreed to place a call on her behalf. Mary wrote letters to the caseworker and to her children instead.

Notwithstanding the caseworker’s failure to fulfill her legal duty to facilitate visits between Mary and her children, the caseworker determined that the “goal” for Mary’s children should be changed from “reunification” to “adoption.” Having never witnessed any interaction between Mary and her children, the caseworker based her decision on the length of Mary’s sentence and the uncertainty around whether Mary would receive parole.

A few months after being transferred to Albion, Mary received notice of a Family Court hearing at which the judge would review the foster care agency's plan for Mary's children. Mary wrote to the judge and asked to be produced in court. Although the judge issued an order to produce her, correctional staff at Mary's facility failed to process the order correctly and, as a result, did not place Mary on the facility's court transportation list. When Mary was not produced in court, the judge adjourned the case for one month and issued another order to produce her.

This time, to Mary's relief, the facility staff processed the order appropriately and she was transported to New York City and transferred to Rikers Island to await her court date. At the hearing, Mary and her new court-appointed lawyer had five minutes to discuss Mary's case before the proceeding. Notwithstanding Mary's testimony that she had spoken with her children and their caseworker about her plans to reunify with her children after release and that she was on the waiting list for a parenting program at her correctional facility, the judge approved the foster care agency's request to change the goal for Mary's children to "adoption."

After Mary's children had been in foster care for 15 months, the agency filed a petition to terminate her parental rights. During the termination trial, Mary testified that she had tried her best to communicate with her children through letters and phone calls, that she would be released soon, and that she intended to regain custody of her children once she found a place to live and a job. The foster care caseworker testified that Mary had not maintained consistent contact with her children during her incarceration and asserted that Mary would be unable to offer her children an alternative home in a reasonable period of time. With only limited time to speak with and gather information from Mary before the trial, the lawyer assigned to represent Mary was not able to present a strong defense. At the end of the trial, based mainly on the caseworker's testimony and the length of Mary's sentence, the judge found that Mary had "failed to plan for the future of her children," granted the petition to terminate her parental rights and "freed" her children for adoption.

When her rights were terminated, Mary and her children became legal strangers. Although Mary was ultimately released on parole after serving her minimum sentence, she had already lost all rights to see or contact her children ever again. Mary now has no legal right to find out about her children's well-being, where they live, or even if they have been adopted.

Mary's children have suffered greatly since her incarceration. Her daughter has trouble staying focused in school and, because she has been teased about her mother's imprisonment, isolates herself from classmates and teachers. Mary's son, who was only three at the time of her incarceration, cries most mornings when dropped off for school and has recurring nightmares about the day his mother was arrested. Both children often feel anxious and depressed, even when around friends and other family members.

The horrifying situation presented by this scenario is by no means new or unique. Two decades ago, the New York State Council on Children and Families¹ convened an inter-agency workgroup charged with the task of reviewing and clarifying the rights and responsibilities of incarcerated mothers and the obligations of the relevant state agencies, “so that efforts on behalf of these high risk families can be more effective.”² The workgroup found that an incarcerated mother faces significant and sometimes debilitating challenges to maintaining her parental role and her family ties: idiosyncratic visiting procedures; restrictive telephone policies that limit the number of calls she can make and require her to make calls collect at exorbitant rates; the failure of foster care agencies and caregivers to comply with visiting mandates; the long distance between where she is incarcerated and where her children live, and the attendant transportation issues; unpleasant visiting areas; and a limited ability to enforce her visiting rights from prison.³ More than 20 years later, none of the Council’s sensible recommendations to address these problems has been implemented.

In the two decades since the Council’s study, the number of women incarcerated in New York State has skyrocketed and the crisis of families broken apart by incarceration has only become more acute. At year-end 1981, 762 women were incarcerated in New York State prisons and 71% were mothers.⁴ By January 1, 2005, 2,789 women were state prisoners and nearly 75% of them were mothers, an estimated two-thirds of whom lived with their minor children before going to prison.⁵

In 1999, New York State enacted a law based on the federal Adoption and Safe Families Act (“ASFA”) which drastically accelerated the timetable under which a child welfare agency must file a petition to terminate the rights of a parent with children in foster care.⁶ No exception is made for children of incarcerated parents. The median minimum sentence for women in New York — 36 months — far exceeds the minimum number of months under ASFA that a child can be in foster care before the child welfare agency must file a termination proceeding. Incarcerated parents — including incarcerated mothers whose children remain in foster care solely because they can find no alternative temporary home — now face a significantly increased risk of being separated from their children forever.

incarcerated parents — including mothers whose children remain in foster care solely because they can find no alternative temporary home — now face a significantly increased risk of being separated from their children forever

The Invisible Woman

If incarcerated women share one salient, seemingly inescapable characteristic, regardless of race, class, age or other factors, it is their invisibility. They are, quite literally, locked away — isolated, unseen, and in minimal contact with the world outside.⁷ In her last public appearance, an incarcerated woman was a criminal defendant. In prison, she is a convicted criminal. Her fellow citizens, especially those without a mother, sister, or daughter in prison, have little impetus to learn more about her. She belongs to a constituency without political influence or popularity.

Incarcerated women's isolation and stigmatization obscure the many reasons why society should care about them. The unfortunate and regrettable truth is that women in prison are among the most vulnerable and marginalized members of society — women who, in other contexts, society would profess an obligation to support and protect. They are mothers, often of young children. Most are survivors of childhood physical or sexual abuse, many of whom have also endured abusive relationships as adults. Many have been raped, many have HIV and Hepatitis C, and many are mentally ill. Most have had very little education. Many were homeless, unemployed or on public assistance before going to prison. Overwhelmingly, they are poor women of color who are in prison for committing crimes related to drug addiction, domestic violence, and poverty.

Incarceration is a largely ineffective and inhumane response to these complex social and economic problems. Even so, New York currently incarcerates approximately 6,000 women in its prisons and jails.⁸ It has the sixth largest population of incarcerated women in the United States, exceeded by Texas, California, Florida, Georgia, and Ohio.⁹ More than 27,000 women are on probation or parole in New York.¹⁰ Almost eight in ten women who entered New York's prisons in 2004 were convicted of non-violent offenses; nearly 20% of those women were convicted of drug possession only.¹¹ The majority of women in New York State incarcerated for a violent felony offense have no prior violent felony arrests or convictions.¹² More than 83% of women inmates report having an alcohol or substance abuse problem before arrest. Nevertheless, alternative to incarceration programs for women are too few in number and capacity, and prison-based treatment opportunities are severely limited.¹³

New York's Rockefeller Drug Laws, which, even after recent legislative changes, exact disproportionate and harsh sentences for the sale or possession of even small amounts of drugs, account in large part for both the dramatic increase in women's incarceration and the racial disparities among women under custody.¹⁴ When New York enacted the Rockefeller Drug Laws in 1973, only 384 women were incarcerated in New York State prisons, 102 of whom were drug offenders; by January 2004, the number of women incarcerated for drug offenses had increased by more than 850% to 973.¹⁵ Almost the entire increase in women sentenced to prison in New York from 1986 to 1995 — 91% — resulted from drug convictions.¹⁶

The racial disparities among women in prison are stark. More than 71% of women in New York's prisons are women of color: almost 48% are African American and about 24% are Latina.¹⁷ This racial stratification becomes even more skewed with respect to women under custody for drug offenses: about 82% are women of color,¹⁸ even though African American and Latina women represent roughly 30% of the female New York State population over age 18.¹⁹

This disparity does not correlate to racial differences in drug consumption — studies show that Caucasians use, sell, and buy drugs in greater numbers than people of color.²⁰ Instead, the imbalance evolves from law enforcement waging the “war on drugs” in poor urban neighborhoods of color, where drug transactions typically take place on the street, between strangers.²¹ As one author notes, “ [I]n poor urban minority neighborhoods, it is easier for undercover narcotics officers to penetrate networks of friends and acquaintances than in more stable and closely knit working-class and middle-class neighborhoods. The stranger buying drugs on the urban street corner or in an alley, or overcoming local suspicions by hanging around for a few days and then buying drugs, was commonplace. Police undercover operations can succeed [in working and middle-class neighborhoods] but they take longer, cost more, and are less likely to succeed.”²²

Moreover, because the main criterion for guilt under the drug laws remains the amount of drugs in the offender's possession at the time of arrest, rather than his or her role in the transaction, the drug laws provide an incentive to law enforcement to concentrate efforts on drugs couriers — typically people who are only peripherally involved in the drug trade. Major profiteers are unlikely to carry drugs themselves. In addition, the mandatory provisions of the Rockefeller Drug Laws prohibit judges from considering otherwise significant mitigating factors that, for many women, would warrant lower sentences or diversion to alternative to prison programs. For example, women frequently occupy minor and subordinate positions in drug crimes, often become involved in criminal conduct as a result of abuse and coercion or a desire to provide for their children, and typically pose low risks to public safety. Judges are also unable to consider the important role that mothers have in caring for their children.

Compounding the effects of intensified drug law enforcement in poor, urban neighborhoods is the economic reality that poor women of color lack the resources to afford privately-funded substance abuse treatment. As a result, poor women of color are significantly more likely than middle- or upper-class Caucasian women to serve time as a result of criminal activity related to their drug abuse.

Women inmates commonly have minimal or nonexistent serious criminal histories. Of all female inmates under custody in January 2005, approximately 33% either had never been arrested or had never been convicted of any crime prior to their current offense.²³ More than half were first felony offenders.²⁴ More than 60% are under custody for

non-violent crimes, yet the median minimum sentence for women offenders in New York is 36 months and the median maximum sentence is 72 months.²⁵

About three-fourths of women in New York State prisons are mothers.²⁶ Although roughly 60% come from — and will likely return to — New York City or its suburbs, more than 40% of women prisoners are incarcerated in Albion Correctional Facility, near Rochester, more than 370 miles away from their families and homes.²⁷ More than 40% of women in prison are under age 35.²⁸ Fourteen percent are younger than 25 years old.²⁹ Almost 60% of women in state custody lack a high school diploma; more than 20% read below a 5th grade reading level, and over 40% read at an 8th grade level or below.³⁰ Many women prisoners lived in poverty before being arrested: nationally, 37% of women prisoners had an income of less than \$600 in the month prior to their arrest.³¹

Past trauma and abuse are strongly tied to women's involvement in illegal activity.³² Women drug abusers are four times more likely to have a history of being sexually assaulted than women who do not use drugs.³³ Childhood molestation is a strong indicator for later substance abuse: the National Center on Addiction and Substance Abuse has found that 70% of women in substance abuse treatment report that they had been sexually abused as children.³⁴ Girls who have been abused are at increased risk of running away, and, lacking other options, becoming further victimized through involvement in drugs or prostitution. They are also at higher risk for criminal involvement, incarceration, and mental illness.³⁵

A disturbing correlation exists between elevated rates of substance abuse and mental illness among women prisoners and the staggeringly high percentage of women prisoners who have experienced physical or sexual abuse. A 1999 study of women incarcerated at Bedford Hills Correctional Facility found that more than 80% had experienced sexual or physical abuse as children, and that more than 90% had endured sexual or physical violence in their lifetimes.³⁶ A 1996 study by New York's Division of Criminal Justice Services found that 93% of women convicted of killing sexual intimates — current or former boyfriends, girlfriends, or spouses — had been physically or sexually abused in the past.³⁷

Children Adrift and at Risk: An Unknown Number

How many children have a mother incarcerated in New York State? How many incarcerated women have minor children living in New York State? How many of those children enter foster care as a result of or at some point during their parent's incarceration? Although New York's Department of Correctional Services ("DOCS") tracks the number of living children women inmates have, it does not gather data on the age of each child, where they live, or with whom. The New York City Department of Correction (DOC) has only recently begun to document some information about inmates' children; because DOC is currently in the process of computerizing the information, however, statistics are not yet available to the public.³⁸ New York State's Office of Children and Family Services (which oversees foster care, adoption, and child protective services statewide) and New York City's Administration for Children's Services (which does the same in New York City) both neglect to document in any systematic manner the total number of children in foster care who have an incarcerated parent, whether the parent's incarceration led to the foster care placement of the children, or whether a parent's incarceration has an impact on a foster care agency's determination of whether to file a petition to terminate parental rights.³⁹

Few studies have attempted to document the number of children with incarcerated parents, and none is comprehensive. A frequently cited Bureau of Justice Statistics report on incarcerated parents, *Incarcerated Parents and Their Children*,⁴⁰ sampled only 104 mothers out of an estimated total of more than 2,300 mothers incarcerated in New York State, resulting in a fairly high margin of error.⁴¹

A recent Administration for Children's Services–commissioned study by the Vera Institute of Justice, *Hard Data on Hard Times: An Empirical Analysis of Maternal Incarceration, Foster Care, and Visitation*, provides more specific data but still has limitations. *Hard Data* found that 448 children, or just over 5.2%, who first entered New York City-based foster care in 1997 had a mother who was incarcerated for at least 30 consecutive days during the first three years of the child's foster care placement. Extrapolating from those findings, *Hard Data* estimates that more than 500 of the roughly 9,700 children entering foster care each year from 1996 to 1999 had a mother who was incarcerated for at least one month. The report notes that if similar trends held in 2003, this estimate drops to 350 children, concomitant with a decline in the total number of children entering care each year after 1999 (to 6,850 in 2003). Described by its authors as part of "the first large-scale effort to examine the prevalence of incarceration among the biological mothers of foster children," *Hard Data* remains geographically restricted to foster care entries in New York City because the Administration for Children's Services ("ACS") is a city agency. Moreover, because the cohort studied was limited to a single year, the report must make admittedly broad generalizations for subsequent years based on percentages derived from 1997 data.⁴²

more than 11,000 children have a mother incarcerated in a New York jail or prison

Because they are incomplete, the available data only loosely sketch the number of children with incarcerated mothers and their current circumstances. As previously noted, almost 75% of women in New York State correctional facilities are mothers; in 2005, they reported having more than 5,600 children.⁴³ Considering that roughly the same number of women are incarcerated in county and city jails statewide as are incarcerated in state facilities,⁴⁴ and assuming that female jail inmates are likely to have similarly-sized families as state inmates, this report estimates that more than 11,000 children have a mother incarcerated in a New York jail or prison. Nationally, 22% of all minor children with a parent in prison are younger than five years old, and 58% are younger than ten.⁴⁵

As a result of child welfare and corrections agencies' conspicuous failure to document children's current and past living circumstances in cases of parental incarceration, it is unknown exactly how many children in New York have been uprooted from their homes after their mother goes to prison, or how many were already living with relatives, or in foster care placement, before their mothers' arrest.⁴⁶ Another recent ACS-commissioned Vera Institute of Justice report, *Patterns of Criminal Conviction and Incarceration Among Mothers of Children in Foster Care in New York City*, found that incarcerated mothers with children in foster care in New York City are more likely to have been arrested, convicted and incarcerated in the year following their children's entry into foster care⁴⁷ — findings which suggest that the family was already in crisis before the mother's arrest.⁴⁸ This report also found, however, that significant percentages of mothers were arrested in the year preceding their child's placement and that most of these mothers were arrested in the month prior to placement.⁴⁹

Regardless of whether a mother's incarceration follows a child's foster care placement, or vice versa, the question of who cares for the child remains critically important. The Bureau of Justice Statistics reports that roughly 64% of mothers incarcerated in prisons nationally lived with their minor children prior to arrest.⁵⁰ Although working with a limited sample, Human Rights Watch found that 88% of fathers incarcerated in New York State reported that their children were living with their mothers, while only 20% of incarcerated mothers reported that their children were living with their fathers. More than 74% of incarcerated mothers reported that their children were living with a grandparent or other relative. Of great concern is that more than 18% of incarcerated mothers reported that their children were living in non-kinship foster care; the corresponding figure for incarcerated fathers was less than 1%.⁵¹ Applying these percentages to the total number of children with a mother in jail or prison in New York, it seems fair to estimate that almost 2,000 of those children are living in foster homes or agencies, and that just over 8,100 are living with relatives.⁵²

Although usually preferable to foster care placement, living with relatives does not necessarily eliminate a child's sense of dislocation. Relatives' financial constraints often

force children to be separated from siblings, moved from relative to relative, or placed in foster care, over time.⁵³ Most children of incarcerated mothers will live with at least two different caregivers; many will move two, three or more times.⁵⁴

Whatever their living circumstances, children of incarcerated mothers suffer from feelings of profound loss and instability. At the most fundamental level, abrupt and continued separation from one's mother is inherently traumatic for any child. The constant uncertainty that surrounds separation due to incarceration only intensifies the stress experienced by children with parents in prison.⁵⁵ Witnessing one's mother being arrested — handcuffed and taken away — is also extremely distressing, even more so if a struggle occurred.⁵⁶ Many children feel remorse and guilt for having innocently opened the front door to the police, or because they feel they should have somehow prevented the arrest. A child who did not witness the arrest may be tormented by an imagined and troubling arrest scene, fueled by ubiquitous crime dramas and “reality” television shows — or by her memory of other arrests she has witnessed in her neighborhood.⁵⁷ Many children are ashamed that their mother is in prison, or of the crime that put her there. The sudden and complete separation children experience when their mother goes to prison is often cruelly perpetuated for the duration of her incarceration: a U.S. Department of Justice report found that more than half of all mothers in state prisons nationwide have never had a visit with their children, whether the children were in foster care or not.⁵⁸

Such upheaval and loss leave children of incarcerated parents vulnerable to elevated levels of anxiety, fear, loneliness, anger, and depression.⁵⁹ They may be stigmatized and ostracized by classmates, lose self-esteem, withdraw from relationships with adults and peers, act out in school or become truant, and experience a decline in academic performance.⁶⁰ Beyond the short-term damage to their well-being and stability, they face an increased risk of becoming involved with the criminal justice system and substance abuse.⁶¹ One survey found that 41% of teenage children of incarcerated parents had been suspended from school and 31% had had run-ins with the police.⁶² It is no surprise that approximately 40% of incarcerated adults have an immediate family member who has spent time in prison.⁶³

The Increased Risks When Children Are in Foster Care

The Legal Rights and Responsibilities of Parents with Children in Foster Care

Decades ago, the United States Supreme Court recognized that a parent's right to raise his or her children is essential, fundamental, and a "basic civil right."⁶⁴ Parents' fundamental liberty interest⁶⁵ in the care and custody of their children does not "evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."⁶⁶ In such circumstances, New York State law acknowledges that "the state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home," where such services are consistent with the health and safety of the child.⁶⁷

As a matter of law, a mother's incarceration cannot be used as a ground to terminate her parental rights and therefore does not eviscerate her fundamental right to raise her children, even if the children are in foster care or with relatives other than the father. In 1983, New York's child welfare laws were amended to state explicitly that incarcerated parents should not be deprived of the right to consent or withhold consent to their children's adoption on the basis of incarceration alone,

a mother's incarceration cannot be used as a ground to terminate her parental rights and therefore does not eviscerate her fundamental right to raise her children

and that incarcerated parents maintain the same rights and responsibilities as non-incarcerated parents with respect to visiting, communicating with, and planning for the future of their children.⁶⁸

Although an incarcerated mother retains her right to raise her child, countervailing policies and interests come into play when a child enters foster care.

Once the state takes responsibility for a child's care and custody, it assumes an enhanced interest in the child achieving a safe, permanent home — with the parent, if feasible, but if not, in an alternative home. An incarcerated mother is not relieved of her obligations to maintain contact with the child, and to "plan for the future" of her child, such as taking steps to provide an adequate, stable home within a reasonable period of time.⁶⁹ If she does not or cannot meet these obligations, the child welfare agency can seek a judicial determination that her child is abandoned⁷⁰ or permanently neglected,⁷¹ and file a proceeding to terminate her parental rights.

When a child welfare agency's goal for the child is to return to the parent,⁷² regardless of a parent's incarceration and absent a court order to the contrary, state law requires the agency to make "diligent efforts" to "assist, develop and encourage a meaningful relationship between the parent and child." At a minimum, child welfare agencies must consult with the parent in developing an appropriate service plan for the child; arrange for at least monthly visits between the parent and child; and regularly inform the parent of the child's progress, development and health.⁷³

New York State law also recognizes that the incarceration of a parent presents “special considerations in achieving a permanent and stable environment for a child” and mandates that the court must take into account an incarcerated parent’s specific circumstances and need for assistance when determining whether he or she has “permanently neglected” his or her child.⁷⁴ Additionally, as part of the law’s “diligent efforts” requirement, foster care agencies must provide services to assist incarcerated parents in fulfilling their legal obligations to maintain contact with and plan for the future of their children.⁷⁵ In practice, however, when the parent is incarcerated, child welfare agencies often fail to fulfill their responsibility to make these mandated “diligent efforts”⁷⁶ and courts sometimes overlook serious breaches of permanency planning requirements in the interest of expediting adoptions.⁷⁷

Without substantial assistance from the child welfare agency, an incarcerated mother — especially one without a financially stable support network — will have extreme difficulty meeting the requirements of New York’s child welfare laws. For example, even for an incarcerated parent, long-term foster care will not satisfy the law’s planning requirement.⁷⁸ In a recent, illustrative decision, an incarcerated mother’s rights to her child were terminated despite her having maintained regular contact for seven years through letters, pictures, visits and telephone calls. Notwithstanding this consistent and, by all accounts, positive interaction, the New York Family Court found, and the appellate court upheld, that termination of parental rights and adoption by the foster parent would be in the best interest of the child because the mother had “failed to offer any resource for the child other than continued foster care for as long as she remained in prison.”⁷⁹

Furthermore, while an incarcerated mother will be held to strict standards for planning for the future of and maintaining contact with her child, she has little recourse if the child welfare agency fails in its mandated responsibility to assist her with those goals. Because she is in prison, an incarcerated mother cannot meet with the caseworker of her own volition — the caseworker must come to her. Nor can she easily telephone her child’s caseworker: first, most caseworkers spend the majority of their working hours in the field or in court, not at a desk; second, in New York, inmates are permitted to make collect calls only, which cost 600% more than market rates for the general public.⁸⁰ Not surprisingly, many foster care agencies and foster parents do not accept these calls. In the rare instances where an agency does accept collect calls, an inmate can still only use the phone during specified times, and the times an inmate is permitted to use the phone do not necessarily correspond to the hours a caseworker is in the office. Inmate mothers often repeatedly call their child’s caseworker with no success.⁸¹ If a caseworker does not bring an incarcerated mother’s child to visit her at the prison, she cannot simply attend an arranged visit elsewhere as a non-incarcerated parent often can.

The critical issue is that an incarcerated mother can lose all legal rights to her children simply because she is unable to offer an alternative placement to foster care (considered

a “failure to plan”) or maintain consistent communication with her children because she is in prison — not because she has ever physically abused them.⁸² Ultimately, although the federal constitution and New York State law protect an incarcerated mother’s fundamental right to raise and have a relationship with her child, if her child is placed in foster care, those rights are significantly eroded by the competing interest in finding the child a “permanent home” within the circumscribed time frame.

Barriers to Effective Legal Redress for Incarcerated Mothers

An incarcerated mother’s ability to seek redress from the court system is also severely limited. Although she has the right to be present at Family Court proceedings involving her child, and to petition the court for relief if she is not receiving visits or if the foster care agency otherwise neglects to work with her, her concerns are unlikely to be heard if she does not appear in person. The only way for an incarcerated mother to appear in court is if the court issues an order to the correctional facility to produce her.

For an incarcerated mother to be produced in court is no easy feat. The Family Court may be unaware that the mother is incarcerated and, if she fails to appear, has no duty to ascertain if incarceration was the cause. Even when the court knows a mother is incarcerated, has taken steps to determine her location, and issues an order to produce her in the correct manner, numerous other breakdowns can — and often do — occur. The order may not reach the correctional facility in time for the inmate to be produced in court or the inmate may have been transferred to another facility by the time the order arrives — and by the time the order is forwarded to the new facility (if it reaches the facility at all), the court date may have passed or been adjourned. Even if the order reaches the facility in time, correctional staff may fail to notify the inmate of the order, clear her for transfer, or place her name on the list that designates inmates to be transported and transferred to the custody of a facility closer to the court. These all-too-common failures of correctional facilities to follow the basic steps to produce an inmate in Family Court make little sense when compared to the relative consistency with which inmates are produced on time for their criminal proceedings.

Further complicating the matter is the fact that state inmates with children in custody of New York City foster care agencies must be transferred to the temporary custody of the City and housed on Rikers Island until their Family Court appearances. Incarcerated mothers sometimes spend weeks or even months on Rikers while waiting for their children’s cases to be heard. During their time away from the state facility, they will risk losing their job placement or their place in a prison-based rehabilitation program for which there are often long waiting lists. A mother’s ability to maintain her program placement is critical as completion of certain programs, like drug treatment, may be mandated in order for an inmate to be released early or to reunify with her child after prison. Additionally, because criminal and family courts often do not coordinate

with one another, an incarcerated mother may be faced with conflicting court dates or be forced to choose between appearing in Family Court and attending a parole hearing that could determine whether she will be released.

Additionally, many incarcerated mothers do not receive adequate legal counsel for Family Court matters. Although New York statutory law provides indigent parents with the right to assigned counsel in certain Family Court proceedings from what is referred to as the 18-B panel,⁸³ generally an attorney will be initially assigned only if the parent is physically in court.⁸⁴ As previously noted, being produced in Family Court is sometimes an insurmountable hurdle for an incarcerated mother. Even if an incarcerated mother is produced and assigned counsel during one phase of her case, the representation can end with that phase. It is possible that recent statutory changes will improve this situation: New York State passed legislation, effective December 2005, designed to provide indigent parents with continuity of counsel. Whether this positive change will, in fact, translate into continuous representation for incarcerated parents for the duration of their cases remains to be seen.⁸⁵ Even an incarcerated mother who retains the same lawyer will likely have little or no time to discuss her case with counsel before she appears in front of the judge for the first time and will have continuing difficulty meeting and communicating with her lawyer outside of court to prepare for trial.⁸⁶

If an incarcerated mother is produced in Family Court and assigned counsel is not available, the case will likely be adjourned and the mother will be sent back to Rikers, or to an upstate facility, to start the process again. For many years, New York State suffered from a shortage of 18-B assigned counsel, which resulted in large part from the low rate 18-B attorneys were paid. In 2003, for the first time since 1986, the legislature raised 18-B rates.⁸⁷ Although this long-overdue raise seems to have eliminated the 18-B shortage,⁸⁸ it was not sufficient to alleviate all problems associated with representation by some 18-B attorneys. As independent practitioners, most 18-B lawyers lack access to critical institutional supports, such as social workers, paralegals, investigators and administrative staff. Because of these limitations, even the most skilled 18-B attorney may find it challenging to represent incarcerated parents effectively in complex child protective cases.⁸⁹

Furthermore, although the Family Court judge — not the child welfare agency — retains discretion over whether to “free” a child for adoption, the particular realities of child protective cases involving incarcerated parents can sometimes make it difficult for the judge to access comprehensive information and to assess whether termination is truly in the best interests of a child. As with all cases, a Family Court judge presiding over a termination trial involving an incarcerated parent must base the decision of whether to terminate rights and “free” a child for adoption on the evidence each side submits during trial. Infrequent contact between a caseworker and an incarcerated parent, and limited communication between an incarcerated parent and her lawyer

compromise an incarcerated parent's ability to present her case and, in so doing, creates an imbalance in the information on which a Family Court judge depends to determine whether termination of rights is an appropriate outcome.

For all of these reasons, the Family Court system often fails to protect incarcerated mothers' fundamental parental rights, and, in the process, does a great disservice to children with mothers in prison.

Relationships Severed: The Adoption and Safe Families Act

The difficulties facing mothers in prison and their children have only intensified since the enactment of the federal Adoption and Safe Families Act (ASFA) in 1997.⁹⁰ ASFA's putative goals are to prevent children from lingering in foster care and from being returned to unsafe homes, and to find permanent homes quickly for children who cannot be reunified with their families. Although these stated goals are laudable, in practice ASFA is sometimes a blunt instrument that causes serious damage. ASFA blindly shortens the time period that parents are given to reunify with their children before the child welfare agency must file a petition to terminate parental rights, yet mandates no new services or funds for services to assist families in crisis, and does not ensure placement in a permanent adoptive home for children who have been "freed."

ASFA forced states to conform to its mandates by amending the statute that authorizes federal reimbursement for state child welfare expenses; states that did not pass their own version of ASFA faced severe fiscal sanctions.⁹¹ New York initially resisted authorizing such a version and was granted several extensions from the federal government. At the beginning of 1999, however, New York remained out of compliance with ASFA and stood to lose millions of dollars in federal subsidies. Finally, in February 1999, New York enacted an analogue of ASFA's provisions.⁹²

The basic grounds for termination of parental rights have not changed, and New York continues to recognize that "it is generally desirable for [a] child to . . . be returned to [the child's] birth parent," and that "the state's first obligation is to help the family with services . . . to reunite it if the child has already left home."⁹³ The new statutory requirements, however, have precipitously shortened the time frame within which a foster care agency must file a petition to terminate parental rights ("TPR"). Whenever a child has been in foster care for 15 of the most recent 22 months — regardless of the child's age or attachment to his or her parent — the foster care agency is almost always required to file a petition to terminate parental rights.⁹⁴ Notably, the ASFA time frame results neither from research on child development nor on the effects of long-term foster care on children, but solely from Congressional compromise.⁹⁵

A parent whose rights are terminated loses not only custody but all legal rights to the child, including the rights to contact the child, to receive information on the child's development and well-being, to give input into important decisions in the child's life, and to seek visits with or custody of the child. Considering that the median minimum sentence for women in New York State correctional facilities is approximately 36 months, hundreds of women and their children have been put at risk of being separated forever.⁹⁶

As previously stated, the full impact of maternal incarceration on children in foster care is uncharted by available statistics. New York child welfare agencies do not track how many children in foster care have incarcerated parents. They also have not monitored

how many termination proceedings have been filed in cases where a parent is incarcerated and what grounds were used, how many proceedings actually result in termination, how many children of incarcerated parents “freed” for adoption have actually been placed in permanent homes, and, for those children who have been placed, the length of time it took for that placement to occur.

Preliminary research suggests that ASFA’s rigid requirements have had a negative effect on incarcerated parents and their children. Termination of parental rights proceedings involving incarcerated parents nationwide increased by an estimated 108% from ASFA’s enactment in 1997 to 2002. In contrast, in the five years preceding the implementation of ASFA, the number of termination proceedings involving incarcerated parents increased only by approximately 67%.⁹⁷

We do not know how many children of incarcerated mothers have already been “freed” for adoption.⁹⁸ We do know that thousands of children in New York who have been “freed” for adoption are not being adopted and continue to live in foster care. From 2000 to 2004, more than 21,000 children were freed for adoption in New York City. During that same period, just over 14,000 children were adopted; more than 7,000 were not.⁹⁹ At year-end 2003, more than 8,000 children in foster care had a goal of adoption.¹⁰⁰ Of that number, about 2,200 had been freed for adoption but not yet placed; roughly 5,600 had the goal of adoption but had not yet had parental rights terminated.¹⁰¹ Nationally, the number of children in foster care with living parents who have had their parental rights terminated increased significantly from 52,000 in 1998, just after the federal ASFA was passed, to 75,000 in 2000.¹⁰²

ASFA has three limited exceptions which a foster care agency can invoke to delay or decline filing a termination proceeding after 15 months.¹⁰³ One exception applies where the responsible agency has not provided the parent with services that are necessary to facilitate the return of the child to the parent.¹⁰⁴ This exception is unlikely to be used because, as one commentator noted, it “requires a state agency to jeopardize its federal funding by admitting that it has not done its job properly.”¹⁰⁵

Another exception applies to children placed in what is known as “kinship” foster care, in other words, children who live in foster care with relatives.¹⁰⁶ Under this exception, foster care agencies are not *required* to file a termination proceeding after 15 months, but caseworkers retain discretion to do so. Ultimately, children in kinship foster care are still subject to ASFA’s timelines and their parents can still face termination of parental rights.

Last, even where a child has been placed in non-kinship foster care for 15 out of the last 22 months, the foster care agency can decline to file a termination proceeding if it has documented a “compelling reason” why termination would not be in the “best interest of the child.”¹⁰⁷ This exception preserves some measure of a foster care

agency's discretion to evaluate the specific circumstances of a family and develop an individualized plan for that family despite the number of months a child has been in foster care.¹⁰⁸

An estimated one in five children of mothers incarcerated in New York lives in non-kinship foster care.¹⁰⁹ The compelling reason exception is critical for these families. In a statutory scheme that is otherwise based on generalized, crude timeframes, this exception provides some traction to the notion that the nature of a mother's relationship with her child is relevant to whether the state can or should legally sever that relationship.

It can be extremely difficult, however, for an incarcerated mother to demonstrate to her child's caseworker that the strength of her relationship with her child, her attempts to find a stable home for post-release reunification, and her self-improvement efforts while in prison provide a sufficiently compelling reason for the agency to refrain from filing a termination proceeding. As previously noted, an incarcerated mother faces serious impediments to maintaining contact with the outside world: she can only place expensive collect calls; is often moved from facility to facility; is unable to participate in important planning meetings with her child's caseworker; and has difficulty being produced for Family Court hearings, where she would meet her child's lawyer, caseworker and the judge.

From the caseworker's perspective, bringing a child to prison is a time-consuming and intimidating proposition. Many caseworkers have had little or no contact with incarcerated mothers and have never witnessed an interaction between the mother and her child.¹¹⁰ One study found that almost half of incarcerated mothers in New York State surveyed received no correspondence from their child's caseworker, more than two-thirds did not receive a copy of their child's case plan, and one-third were not notified of court hearings with respect to those plans.¹¹¹ Unfortunately, many caseworkers fail to exercise the discretion afforded them by the compelling reason exception, and simply file a termination proceeding and leave the decision to the judge.

Compounding these obstacles is the high turnover rate for foster care caseworkers, caused by low pay, large caseloads, and inadequate training and resources. A recent survey found more than a 40% yearly turnover rate in New York foster care agency staff.¹¹² Cases are passed from one chronically inexperienced and overburdened caseworker to another. If an incarcerated mother is fortunate enough to have been in contact with her child's caseworker, she must often begin the process of building a relationship with a new caseworker again and again.

In the wake of ASFA, it is entirely plausible that a mother sentenced to three years as a first time felony drug offender for selling \$10 worth of drugs will face the real and disturbing prospect of permanently losing all rights to her children. The longer a woman's sentence, the greater the likelihood she will lose her parental rights. This additional

punishment — particularly in cases involving incarcerated mothers whose children remain in foster care solely because they can find no alternative temporary home — shocks the conscience.

ASFA's timeframes also ignore the child's right to have a relationship with his or her mother. Many children would rather reunify with their mother when she is released, even if that means remaining in foster care for a longer period of time. Children, especially very young children, are unlikely to comprehend the implications of having their

cutting children's ties to their mothers without a likely prospect of providing them with a permanent and stable home not only seems precipitous, but also contrary to the sound child welfare policy espoused by ASFA's stated goals

relationship with their mother "terminated" or being "freed" to be adopted by someone else.¹¹³ ASFA rarely allows for consideration of either a child's age and developmental level, or the nature of the relationship between a child and his or her mother. ASFA's compelling reason exception provides the only mechanism for caseworkers to assess

such critical factors. Additionally, many children continue to languish in foster care even after being "freed" for adoption. Cutting children's ties to their mothers without a likely prospect of providing them with a permanent and stable home not only seems precipitous, but also contrary to the sound child welfare policy espoused by ASFA's stated goals.

Salvaging Families: Regular Visitation

Multiple studies have concluded that visits between incarcerated mothers and their children in foster care significantly increase the likelihood of reunification after the mother's release.¹¹⁴ Prison officials and researchers agree that strong family ties motivate inmates to participate in programs and maintain good behavior, improve inmates' state of mind, lead to easier prison management, and greatly reduce recidivism. Research on children in foster care reveals that family visits are vital to maintaining ties, bolstering children's well-being and healthy development, reducing the trauma of separation, and assisting families to reunify after a parent's release.¹¹⁵

To its credit, New York City's Administration for Children's Services has made efforts to impress upon its contracted foster care agencies the seriousness of their "legal obligations . . . to arrange and facilitate visits between foster children and their incarcerated parents."¹¹⁶ In response to what it identified as "some misunderstanding regarding these requirements," ACS' Division of Foster Care and Preventive Services issued a clarifying memorandum in 1999 unequivocally stating that "*caseworkers are required to arrange and facilitate at least monthly child-parent visits to incarcerated parents when such visits are in the child's best interest, are reasonably feasible, and are permissible by the facility.*"¹¹⁷ The memorandum further emphasizes that where the goal for the child is reunification, "*no exceptions are made on the basis of travel distance to the correctional facility.*"¹¹⁸ Even where return to the parent is not the goal, "a lengthy sentence '*alone . . . does not relieve an agency from its obligation to consider other factors in arranging for visitation,*' including the parent-child relationship prior to incarceration, the child's age and desire to visit" ¹¹⁹ Notwithstanding ACS' effort to clarify these legal requirements, caseworkers often fail to arrange monthly visits for children with mothers in prison.

Caseworkers' misunderstanding of statutory requirements is not the only plausible explanation for this failure: ACS does not provide caseworkers with adequate training, resources, or support to facilitate regular prison visits. Moreover, even though state law requires DOCS to cooperate with child welfare agencies in making "suitable arrangements" for an inmate to visit with his or her child, DOCS' policies and practices — such as frequent transfers of inmates, tiresome and humiliating security procedures, and sometimes unwelcoming treatment of visitors by correction staff — often make visiting difficult and unpleasant even for the most experienced visitor.¹²⁰ These realities, along with the courts' frequent unwillingness to hold foster care agencies and correctional facilities accountable, lead many already overworked caseworkers to disregard — either intentionally or not — their legal responsibilities to provide visits.

without visits, an incarcerated mother is simply a name in a file attached to a sentence of more than 15 months, and the likelihood that her parental rights will be terminated rises sharply

With the enactment of ASFA, visits have become even more critical for mothers with children in foster care. Visits provide the only opportunity for a caseworker to observe the interaction of an incarcerated mother and her child, and to develop a sense of the relationship's importance to the child's well-being. If visits are not taking place — if the caseworker is not bringing the child to visit — the caseworker would be hard pressed to find a “compelling reason” not to file a petition to terminate the mother's parental rights.¹²¹ Barring circumstances where a caseworker and a mother have had significant interaction prior to the mother's incarceration, without visits, an incarcerated mother is simply a name in a file attached to a sentence of more than 15 months — and the likelihood that her parental rights will be terminated rises sharply.

The Experiences of Caregivers, Caseworkers, Mothers, and Children: What Stakeholders Have to Say

The incarceration of mothers in New York State has repercussions for multiple stakeholders — caregivers, foster care caseworkers, friends or relatives who bring children to visit, and of course, the children and mothers themselves. To reflect the views of those most affected by maternal incarceration, this report includes the results of interviews with each of these groups.¹²²

The overwhelming majority of people interviewed expressed a belief that visiting in appropriate environments can maintain family integrity during a mother's incarceration and facilitate reunification upon her release. Concomitant with that view was the strong conviction that the current conditions under which visiting takes place deter visiting and create undue hardship for adult visitors and children alike. In particular, interviewees described visiting procedures as burdensome and often humiliating for visitors, and visiting areas at most of New York's prisons as inadequate. They also described the need for more programs to assist children, caregivers, caseworkers, and incarcerated mothers.¹²³

Caregivers and Other Visitors: "You'd think you're a prisoner once you get there. I didn't come up here to go behind bars."¹²⁴

Nearly all caregivers interviewed were grandmothers; others included aunts, a friend, a sibling, and a father. In a few instances, children were visiting another female relative. All visitors but one were bringing two or three children to visit. Among the group, caregivers had visited all of DOCS' female facilities for mother-child visits, although not every caregiver had visited every facility.

Interviewers asked general questions about caregivers' relationships to the children they had brought to visit, the children's ages, which facilities they had visited, and the number of times they had been to those facilities. They were asked to describe the relationship between the mother and her children, and their opinion as to the importance of visiting to that relationship. They were also asked to identify the main obstacles to visiting, articulate their experiences of the security process, give their opinions about facilities and activities for children, and share their ideas for possible improvements.

Caregivers expressed a nearly uniform view that visits are important to children's well-being and should continue to take place even when the relationship between mother and child is strained. Said one grandmother, "The best way to have a relationship is through talking. She wants to see that her mother is okay, and my daughter wants to see that my granddaughter is okay. We make the best of the situation." Said another, "I don't care what their mother [did] — they love their mother." Equally strong was the opinion that while visiting is not necessarily unhealthy or negative for children,

current visiting conditions at some facilities deter visits and undermine their success when they do take place. Some caregivers went so far as to say that certain correctional facilities intentionally make visiting difficult because “they want to discourage you from coming.”

Caregivers consistently objected to security processing delays that take away significant time from visits. Although some visitors described waiting as little as 10 to 15 minutes, most described waits of 45 minutes to two hours. In addition, because Albion and Taconic Correctional Facilities have no indoor waiting area for visitors, some visitors described having to stand outside “in all kinds of weather” while waiting to be processed. One caregiver described a visit when she waited outside the facility for three hours in the rain because security was only allowing five families at a time in the visiting room. “After that, I decided not to go back.”

Visitors also objected to having to wait for the mother to be brought to the visiting room after already enduring security delays, sometimes for well over an hour. One caregiver noted that she often met families on the bus from other states, and that they all shared the same problem: “By the time you get in, you gotta turn around and come back Right when you get in the door, it’s already time to leave. Just a hug, then back on the bus at 12:30 [p.m.]” Some commented that even if they arrive early for visits, delays at

“By the time you get in, you gotta turn around and come back Right when you get in the door, it’s already time to leave.

Just a hug, then back on the bus at 12:30 [p.m.]”

should not be sent so far away.” All stated that the eight-hour bus ride was extremely long and uncomfortable, and some commented that bus drivers keep the bus extremely cold to stay awake for the overnight drive and play movies inappropriate for children.

security run into the 11:00 a.m. count, when inmates must stay in their cellblocks or dormitories until all inmates have been counted. This process can take from one-half hour to more than an hour, depending on the facility, and thus significantly shortens the already limited time most prisons allot for visiting.¹²⁵

Caregivers who brought children from New York City to visit Albion (near Rochester) found the experience exhausting and aggravating. Said one caregiver, “Mothers should not be sent so far away.” All stated that the eight-hour bus ride was extremely long and uncomfortable, and some commented that bus drivers keep the bus extremely cold to stay awake for the overnight drive and play movies inappropriate for children.

With dismayingly consistency, caregivers described correction officers, particularly those at security, treating visitors with considerable disrespect. “The correction officers treat you like a prisoner.” “Kids shouldn’t have to feel like they are prisoners also.” “They are nasty and disrespectful.” “Sometimes they try to humiliate people.” “They are nasty and treat people like criminals.” “They look at me like I’m a criminal or an animal.” “They are very, very disrespectful. They take their time calling your visit down and they act as if you yourself [are] a prisoner.” “It would be alright if you weren’t treated like a prisoner.” Caregivers also criticized officers for insisting that young children stand in the security line without moving, often for very long

periods of time, or that they remain seated at a table in the visiting room for the entire visit. These visitors pointed out that such expectations for young children are unrealistic and counter-productive. A handful of caregivers did say that some correction officers at security or in the visiting room are pleasant or helpful, or simply that they left visitors alone.

A related concern was the lack of child-friendly activities or games at many facilities. Many caregivers pointed out that young children are not capable of sitting still for an entire visit and having a lengthy conversation with their mother. Children need age-appropriate activities or they become restless, particularly after a long trip and a sometimes longer wait. As one caregiver explained, “There is no chance to be a kid.” Many commented that the visiting space itself was too confined, and that the outdoor areas where children can play are often in disrepair.

Several caregivers pointed out that limited visiting hours at some facilities, particularly at medium and minimum security prisons which permit visits only on weekends, further restricted opportunities for visiting.¹²⁶ Finally, some commented that vending machines in the visiting rooms (which provide the only available food because visitors cannot bring in food) are often out of stock or sell only stale and costly items.

Overall, caregivers identified cost, distance, an unpleasant security process, inadequate visiting areas, and having to wait outside as the main obstacles to visiting. A few also found that other responsibilities (to children, work, other family members, or schools) interfered with visits. Two caregivers said that having to bring children into a prison environment was an obstacle to visiting; two others stated that a difficult or unhealthy relationship with the child’s mother was an issue. Notably, even the caregivers who expressed these misgivings were interviewed en route to visiting an incarcerated mother with her children.

Caseworkers: “We dread these cases.”¹²⁷

Almost all the caseworkers interviewed for this report had worked in foster care for two years or more; the range was nine months to 15 years. Combined, they had handled approximately 30 cases involving incarcerated parents. They were asked about their own and their colleagues’ outlook on working with incarcerated parents; the differences and challenges compared to cases where incarceration is not a factor; ASFA’s impact, if any, upon how a caseworker handles a case with an incarcerated parent; issues surrounding permanency planning; their position on the importance of mother-child visits; and their recommendations for improvement.

Caseworkers described their own and their colleagues’ outlook on working with incarcerated parents as generally negative. A caseworker’s initial reaction to receiving a new case with an incarcerated parent is that the case will “take much more time,” will be

“more work,” and that the case is “probably not a reunification.” Caseworkers stated that cases involving incarcerated parents often elicit “a negative feeling” and are much more difficult to manage than other cases. “It’s harder to plan and harder to make visits happen.” One caseworker communicated that “dread” was the feeling associated with these cases. Another commented that the first thing that comes to mind is that the parent has a drug problem. However, another caseworker recognized that “the parent still has rights and the caseworker still has to work with them.”

When asked what particular difficulties children of incarcerated parents face, caseworkers identified the embarrassment of having an incarcerated parent; infrequent visits; anger because of their parent’s choices; being cut off from family; not being able to see their mother when they would like; having to communicate through letters; difficult emotions when incarcerated parents do not want them to visit; and the painful emotions of saying goodbye at the end of a visit. One caseworker felt that children of incarcerated parents faced the same issues as other children in foster care.

With respect to the impact of ASFA on their work with incarcerated parents, caseworkers commented most often on ASFA’s accelerated timeline for finding permanent placement. “Cases go to TPR [termination of parental rights] while the parent is incarcerated. It’s harder to reunify.” One caseworker said that ASFA forces caseworkers to change the goal from “reunification” to “adoption” because of the timeline. Another, however, remarked that ASFA has exceptions so that “incarceration does not equal TPR; if the foster care agency is strong on training, caseworkers know this.”

Caseworkers typically communicated with incarcerated parents by letter, by leaving messages with a prison counselor when possible,¹²⁸ and occasionally through visits or seeing a parent in court. Only one caseworker interviewed said that she accepts col-

lect phone calls from incarcerated parents. All caseworkers believed that incarcerated mothers were informed of their rights and responsibilities; some thought that “counselors,” presumably prison-based counselors, inform the inmates.¹²⁹

“Incarceration does not equal termination of parental rights. If the foster care agency is strong on training, caseworkers know this.”

When any child goes into foster care, the foster care agency is required to develop a service plan designed to help the family address the reasons for the child’s placement. Where the goal for the child is to return to his or her parent, the plan must include identification of the services necessary for the child to return home and the development of an individualized visiting plan for the family.¹³⁰ Every six months, the agency must hold a case conference, called a service plan review (“SPR”). During an SPR, the foster care agency reviews the steps the parent must take to reunify with his or her child and determines whether the child’s “permanency goal” should be to return to the parent, to be placed with a relative, to remain in foster care until he or she can live as an independent adult,

or to be adopted. A permanency goal of “adoption” is a critical step toward an agency’s ultimate decision to file a termination of parental rights proceeding.

Notwithstanding the paramount importance of these meetings to determine the child’s future, case conferences can be held in the parent’s absence. This practice is particularly damaging for incarcerated parents: DOCS does not permit parents to be produced for SPRs at foster care agencies and ACS rarely conducts SPRs at correctional facilities or takes advantage of the opportunities to teleconference or video-conference these meetings. Not surprisingly, caseworkers generally reported that incarcerated parents were not involved in their SPRs. Two caseworkers said they mailed a completed SPR to a parent in prison; one had an incarcerated father attend by speakerphone.

“Once you see the bond between the mother and the child, it becomes rewarding.”

In terms of case outcomes involving incarcerated parents, caseworkers reported that most of their cases were ongoing. Parents in several cases were facing long-term incarceration. Two caseworkers mentioned cases where the parent had voluntarily surrendered parental rights.¹³¹

Some caseworkers perceived that their colleagues generally held negative attitudes about mother-child visiting in prison, either because they believe children should not be exposed to prison, or because caseworkers themselves feel humiliated by the security process. They opined that some caseworkers held the more moderate view that although visiting is not good for all children or all families, it can be beneficial for some. Interestingly, only one caseworker stated that she herself had negative views about visiting. Several had positive experiences with visiting. “Once you see the bond between the mother and the child, it becomes rewarding.” Another said, “I have no problem with it.” Some said that unless the relationship is negative, visiting should take place.

Several caseworkers said they had heard of a so-called “50-mile” rule and erroneously thought that the rule relieved them of their obligation to facilitate visits when the parent was incarcerated more than 50 miles away. Despite ACS’ attempts to dispel the myth of the “50-mile” rule (such as a 1999 memorandum stating that “*no exceptions [to monthly prison visits] are made on the basis of travel distance to the correctional facility*”),¹³² some caseworkers reported they first learned that the rule did not exist while being interviewed for this report. One said she had heard about the “rule” but did not believe it, and took children to visit regardless.

Caseworkers suggested that they could be better supported if the visiting process to prisons was expedited and if they received more training on visiting prisons. One suggested visit escorts for caseworkers. Several suggested the expansion of programs that assist caseworkers with visiting.¹³³ They expressed that children in foster care whose parents are incarcerated could be better supported if the frequency and length of visits were

increased, and if caseworkers ensured that mothers and children were having “real interaction.” Two caseworkers suggested creating support groups for older children coping with parental incarceration.

Incarcerated Mothers: “You took my freedom, but you didn’t take my love for my kids.”¹³⁴

The formerly incarcerated mothers interviewed ranged in age from 17 to 48 years old during their incarceration, with the majority having been incarcerated during their thirties. The shortest length of incarceration reported was eight months; most mothers had been incarcerated for three or four years, with one mother having been incarcerated for five years.

Most mothers had two or three children at the time of their incarceration, ranging in age from infants to 11 years old, although three had five children or more ranging in age from infants to teenagers. Nearly half were pregnant at the time of their incarceration and gave birth while incarcerated. Some were enrolled in prison-based nursery programs, where they were permitted to keep their child with them at the facility until the child was 12 to 18 months old.¹³⁵ Overall, children’s placement during their mother’s incarceration varied. Some were in foster care; most were with relatives.

Notably, at the time of the interview, each woman was enrolled in a program for formerly incarcerated mothers designed to facilitate post-release family reunification by providing housing and other supportive services.¹³⁶ In some ways, their enrollment in one of these programs means the mothers interviewed were atypical. Few women have the opportunity to take advantage of these programs as only a handful exist. Some mothers interviewed had received enhanced visiting services from the programs in which they or their children were enrolled while they were incarcerated. Many openly articulated their need for help and believed the assistance they received from their respective programs distinguished them from other inmates who did not have access to the same services.

Even with this added assistance, most mothers interviewed said they still faced daunting obstacles to visitation during their incarceration because they were not enrolled in a program either until after their release or until several months or years into their incarceration. Moreover, for mothers with children in foster care, ASFA’s timelines still applied (or apply) to them. Some of the mothers interviewed still had not regained custody of their children; some had already had their parental rights terminated. Finally, all the mothers interviewed experienced the emotional difficulties of being separated from their children and the struggles associated with parenting from prison.

Largely because the status of their family relationships prior to and at the time of their incarceration differed considerably, the individual experiences of incarcerated mothers were varied. Some women had voluntarily placed children in foster care or with rela-

tives prior to their incarceration; others had children removed from their care by the state. Still others had multiple children who were split between foster care and relatives after the mother became incarcerated. Some had children who were initially placed in foster care but later lived with relatives — or the reverse, if the family placement became unworkable. Each of these scenarios presented slightly different permutations on the issues incarcerated mothers face with respect to visiting. Nevertheless, several common themes emerged from the interviews.

Mothers kept in contact with their children through phone calls, mail, and visits, although each type of contact was erratic. In general, mothers reported that while incarcerated on Rikers Island, the New York City jail, they could speak to their children by telephone frequently because inmates pay for calls out of a prison account rather than having to call collect (which is the case at all state prison facilities, where most mothers interviewed spent the majority of their incarceration). Most mothers said that while they spoke to their children daily or several times per week at Rikers, they spoke with them monthly or bi-monthly from state facilities because of the exorbitant cost of collect calls. Some said that caregivers, both family and foster parents, would refuse collect calls entirely, so that they were unable to call unless a correctional counselor placed a call for them. One noted that it was extremely difficult to get in touch with a foster care caseworker except through prison clergy.

Most mothers interviewed were transferred between facilities several times during their incarceration, which had considerable impact upon their ability to visit with or otherwise contact their children. Some mothers noted that they received more visits on Rikers Island or at Bayview Correctional Facility, which are in New York City (the former located between Queens and the Bronx, the latter a state prison in Manhattan), than they had in upstate facilities. Not surprisingly, mothers who had been incarcerated at Albion Correctional Facility rarely saw their children. “Albion was the worst because you’re an hour past Buffalo and an hour to Canada. So the commute alone is outrageous.” Said another mother who had two children with relatives and one in foster care, “When I was in Albion [for two years], my kids never went up there.” One mother related that she saw her daughter once in three and a half years while incarcerated at Albion. When she saw her daughter for the first time after being transferred downstate to Taconic Correctional Facility in Westchester, it was difficult: “She was big and she was a baby the last time I saw her.”

Mothers with children in foster care rarely received visits from their children unless family members brought the children. Caseworkers and foster parents generally did not bring children to visit.

Location was not the only factor affecting frequency of visits. For children in kinship care, if family ties had already been compromised or severed due to prolonged difficulties related to a mother’s struggle to function and manage daily life (for example, as a result of substance abuse), regular visitation was more likely to be jeopardized. Some family

members refused to bring the child into a prison environment regardless of whether the child had expressed a desire to visit. “I didn’t see [my daughter] at all during the eight months because her father refused to bring her to the jail.” One mother commented that she did not see her children because she did not want them to see her in prison.

Many of the interviewed mothers’ children moved at least once or more during their mother’s incarceration. Most frequently, these moves were between foster homes or from living with relatives into foster care. “[My daughter] had to move a year before I came home because it didn’t work out in my sister’s house. My niece was abusing my daughter so they removed her. So she stayed a year in foster care. [My son] was put in a psychiatric ward for kids. He was there three months and was abused by other kids. From there he [was placed in a foster home] and there [he] was completely in the street So he got removed from that house.” Two mothers who received visits from their children in foster care described their intense distress at seeing their children poorly cared for: “When the agency used to take him to see me, I said, ‘Why is my son so skinny?’ And they finally removed him from that house;” “I saw [my son] four times the first year of his life and the times I did see him he was filthy, he was dirty, I thought he was autistic. He showed no emotion. He was very distant.”

Prison security procedures also ranked high on the list of obstacles to visitation. Mothers expressed strong reactions to the security search routine they endured before and after visits. Protocols were described as an humiliating and offensive experience, sorely in need of amendment and improvement. As one mother commented, “They would dismantle you [so that] by the time you came back you feel like you [were] in a fight instead of on a visit.” Some expressed their distress at having to take off bras, undo hairstyles, remove dentures, and the like. They equally expressed anguish over their children and family members being subjected to long and dehumanizing security procedures, and to being treated “like criminals.”

“Albion was the worst because you’re an hour past Buffalo and an hour to Canada. So the commute alone is outrageous.”

Another recurring concern for incarcerated mothers involved the lack of an appropriate setting for family visitation. The environment and circumstances surrounding visits varied considerably depending on the prison but were most commonly described as hostile, uninviting, and not conducive to constructive family reunions. Issues were numerous and included the confined quarters where visits with children take place; the unreasonable expectations placed on children during visits (including the restriction of movement and long waits); a lack of activities and toys, particularly for young, active children, as well as too few activities for mothers and children to engage in together; the absence at several facilities of an outdoor space in which children could play (particularly during mild weather); empty food vending machines; and long security delays.

Despite the numerous difficulties associated with visiting — emotional and otherwise — mothers overwhelmingly emphasized that regular visitation was extremely important or imperative for a number of reasons: maintaining and nurturing relationships; assisting children to grasp and process their mother’s absence; and preparing for and easing the post-incarceration reunification experience. “It’s a bad idea not to visit. Children need to see their mother. Even if it’s painful, you need to have the connection. By seeing her I could still be her mother You need to have contact with the kids all the time.” “It’s very important for kids to know what you are doing and where you are. [You can’t] suddenly disappear and then pop up again out of nowhere. They need to see you in prison so they understand why you are away and why they cannot be with you.” “When you start on the inside, you build your relationship ahead of time — before you can come out.” “I needed them to know that mommy didn’t abandon them. They needed to understand that. Mommy made a mistake . . . and I am coming back for you and I’m fighting for you.”

“I needed them to know that mommy didn’t abandon them. They needed to understand that. Mommy made a mistake . . . and I am coming back for you and I’m fighting for you.”

Additionally, mothers reported that the lack of family visits has detrimental effects on post-release reunification, both for parents and their children. “[My daughter] is already the type of kid . . . [who] doesn’t let things bother her a lot. [Not seeing her] reinforced her shutting things down.” “Maybe if I had started seeing him in prison, he might have been through that anger by the time I was out.” “During the time we couldn’t see each other, I was still writing them, and talking to them on the phone, but a void came in between us My kids were suffering just as much being out there without me.” “Think about the kids and the mothers. You want nobody to judge that woman; she made a mistake, she’s paying. Who are [they] to step between a mother and child relationship? What [they’re] doing is more harm to these kids. They’re getting angry, they don’t care about school, and they become like a bomb ready to explode.” “Me and my children could have been bonding since I was in Bayview, so that way, when I came home, it wouldn’t have been so new for me trying to reunite and interact with them.”

Mothers also felt that sharing the experience of family visiting with other incarcerated mothers permitted them to explore unfolding problems related to family reunification with other women struggling with similar difficulties. Mothers emphasized the value of a support network, particularly structured groups run by a facilitator, that allowed them to prepare for the challenges that release and family reunification can present.¹³⁷ “It’s difficult coming out. When you start on the inside, you can sense ahead of time what they’re going through, and then you have support around you.”

Mothers were also asked questions about their experiences with the legal system and their encounters with assigned Family Court attorneys. Some mothers with children in foster care reported never having been produced for Family Court; some said their

parental rights had been terminated while they were incarcerated. Some mothers who were produced for court affirmed that they had little or no time to discuss their cases with assigned counsel and felt that they had not received adequate legal assistance. “When we got to the courts, my lawyer was nowhere to be seen [Then she] just came in, did not read my case, had my folder, [and] she asked me in five minutes to ‘tell her about my case.’ And I said, ‘It’s not going to take five minutes. My case is complicated.’ The lawyers are just overworked or they don’t give a damn.” One formerly incarcerated mother who was still pursuing the return of her children said of her assigned counsel, “My attorney . . . has like 500 cases and half the time he doesn’t even remember. When he comes I have to really refresh his memory until he says, ‘Oh, that case.’ We go in there and we’re not even prepared.”

Children of Incarcerated Mothers: “You never had enough time.”¹³⁸

Children interviewed ranged in age from 11 to 15 years old when their mothers were incarcerated, and from 14 to 28 when interviewed. The length of maternal incarceration spanned from 11 months to 12 years. They were asked who cared for them while their mother was incarcerated and for how long, which facilities they had visited, and how they had communicated with their mother while she was incarcerated. They were also asked to identify the main obstacles to visiting, their experience of the security process and visiting generally, whether there were activities for children, and whether they thought visiting helped them maintain a relationship with their mother.

Relatives had cared for some of the children interviewed, others had spent time in foster care, and some had experienced both. Most communicated with their mother by phone, typically twice per month, although one had no phone contact in the year his mother had been incarcerated, and another had spoken with his mother only three times in two years. Most communicated by mail as well.

Although two children said they visited their mother twice a month, most only visited a handful of times during their mother’s incarceration, regardless of whether they were

with relatives or in foster care. One child in foster care whose mother was incarcerated at Albion had visited only once in a year. Another who had spent time in foster care recalled visiting her mother four times in 12 years. Yet another related that she saw her mother every few months while living with relatives.

“I was treated just like the prisoner. Humiliated, violated and stripped [of my] dignity. After all the security points and searches it doesn’t make you even want to ever go back.”

Distance was an obstacle to visiting for all children interviewed; high travel expenses and difficulties in going through the security process were also common issues. All expressed that the prison environment was a deterrent to

visiting; some explained that this was specifically because of “hassles” and delays encountered at security. Some expressed that their relationship with their mother made visiting difficult; others said that the visits were too short to establish a connection.

Children of incarcerated mothers were split on their perceptions of the security process and correction officer treatment. Two described very brief waits at security (up to 20 minutes) and felt officers at security and in the visiting room treated them “fine” or “well.” Significantly, these two children were particularly fortunate in that both had visited their mothers as part of the Osborne Association’s Family Ties program, which coordinates and expedites visits for children to Albion Correctional Facility, as well as accompanying them during the visit (for one child, that had been his only visit).¹³⁹

Others described the security process as extremely unpleasant, similar to caregivers’ experiences. In addition to reporting waits of up to two hours to be processed, they felt mistreated by officers at security and by some visiting room officers. “I was treated just like the prisoner. Humiliated, violated and stripped [of my] dignity. After all the security points and searches it doesn’t make you even want to ever go back.” “They always made you feel like you had to pay the time also.” Others commented that officers were often inconsistent with security procedures, which increased the stress associated with visits. Some found that the process got easier once the security officers became familiar with them over time: “At first they were strict, but eventually they were really friendly;” “[once] they knew us it was okay.” Most children expressed that officers in the visiting room generally “don’t bother [you],” although one child said visiting room officers were “mean, with no respect.” Children were also displeased with long waits during the inmate count.

“Just when you were beginning to feel a connection it was time to leave . . . the visit gave a sense of comfort to be with my mom. After not being with her and being with so many strangers, it felt safe and complete.”

In the children’s opinion, the adequacy of visiting room size varied by facility, as did whether there were appropriate activities for children. Bedford Hills Correctional Facility was singled out as being a notable exception to this problem.¹⁴⁰ One child pointed out that even at facilities that have activities for younger children, few or none are offered for older children.

Although answers varied as to whether visits helped children maintain a relationship with their mother, the children consistently expressed that the *option* to visit is critical for all children and should not be restricted or denied. At the same time, they felt that no child should be forced to visit. Children also emphasized the importance of beginning visits soon after a parent has been incarcerated. One child, after expressing the view that visits should begin without delay, commented: “I spent three years without contact while being with my relatives. If [visiting] was implemented at an earlier

stage it would have helped [the relationship] a lot.” Others described mixed feelings about whether visiting helped maintain their relationship. “No, because you never had enough time. Just when you were beginning to feel a connection it was time to leave, and the sense of disappointment and loss would reappear. Yes, because the visit gave a sense of comfort to be with my mom. After not being with her and being with so many strangers, it felt safe and complete.”

Recommendations for Change

The social, emotional and economic disruption of families is one of the most overlooked and damaging collateral consequences of incarceration. A vast increase in the number of women incarcerated in New York over the past three decades has left thousands of children — innocent of any crime — separated from their primary caregivers. Each year, hundreds of children in foster care have mothers who are incarcerated in New York State.

Because of changes in New York's child welfare policies during the latter half of the 1990s, many children will be separated from their incarcerated mothers permanently, even though the vast majority of these cases do not involve physical abuse, and many arise merely because the mother has no alternative to foster care as a temporary home for her children. Being "freed" for adoption does not guarantee a child placement in a permanent and stable home, and many "freed" children continue to languish in foster care even after their relationship with their parents has been legally severed. New York State communities do not experience this disruption of the social fabric equally: the majority of women inmates and their children come from poor urban communities of color.

Limited visiting and family reunification services, inconsistent and humiliating visiting policies and procedures, inadequate legal representation in Family Court, and insufficient coordination of services provided by city and state corrections departments, child welfare agencies, and the courts guarantee that separation, trauma and fractured relationships will remain a defining legacy of female imprisonment.

Destroying family bonds need not be an inevitable corollary to incarceration. Detailed below are criminal justice, corrections and child welfare policy reforms that will enable New York to address more effectively the serious problems facing families separated by incarceration. Amending New York's ASFA laws, providing alternatives to long-term foster care placement or adoption, expanding visiting and family reunification services, and increasing the number of women diverted to community-based correctional alternatives would go a long way toward ameliorating the harsh consequences of maternal incarceration.

Without such fundamental reforms, New York cannot effectively reduce recidivism, rebuild families, enable individuals to become healthy, productive members of society, or interrupt the intergenerational cycle of crime and prison.

Child Welfare System

1. **New York State should amend its ASFA laws to allow exceptions for incarcerated parents who lack options for long-term, non-foster care placements for their children.**

New York's ASFA laws should be amended to be more responsive to the particular circumstances of incarcerated parents, particularly in light of the lengthy sentences many inmates serve. Other states' ASFA laws lessen ASFA's negative impact: Nebraska and New Mexico exclude incarcerated parents from ASFA's time frame if the only reason for filing a termination petition is because a parent is incarcerated;¹⁴¹ Colorado makes an exception if a child has been in foster care for longer than the prescribed 15-month period for circumstances beyond the parent's control, such as incarceration for a reasonable period of time.¹⁴²

Providing an exception to ASFA's time frame for incarcerated parents would empower foster care agencies to meet the special challenges of families involved in the criminal justice system. In appropriate circumstances, caseworkers would have more time to arrange for consistent visiting at correctional facilities and help maintain regular contact between children and their incarcerated parents. Such an exception would not preclude a caseworker from filing a termination petition after 15 months if the caseworker deemed it appropriate. Rather, the exception would allow a caseworker to avoid prematurely filing a termination before he or she has had an adequate opportunity to evaluate the parent's expected release date and compliance with the service plan, to assess the parent-child bond, and to facilitate family reunification.

This modification would assist caseworkers in their effort to make sound, meaningful permanency decisions in cases involving incarcerated parents and their children, and would lessen the risk incarcerated parents face of losing rights to their children forever.

2. **New York State should provide a range of alternatives to long-term foster care placement or adoption that would provide permanent homes for children without irrevocably severing their relationship with their parents, including establishing a subsidized legal guardianship program.**

Subsidized legal guardianship programs supply caretakers (either relatives or close family friends) with the funds and legal authority to care permanently for children who live (or will live) with them. Unlike foster care — meant to be a *temporary* living situation — subsidized guardianship programs provide a *permanent* placement option for children who cannot be reunified with their biological parents within ASFA's prescribed timeline.

In circumstances where an incarcerated mother is unable to find a permanent non-foster care placement within ASFA's timeframe, subsidized guardianship can provide an alternative to "freeing" the child for adoption and placing him or her in an unfamiliar adoptive home, or forcing an adoptive parent-child relationship with grandparents or other family members. Additionally, in circumstances where a surrogate caretaker cannot afford to care (or continue caring) for a child, guardianship programs allow caretakers to receive subsidies outside of foster care — which can either shorten a child's stay in foster care or prevent foster care placement altogether. Because it can provide a permanent alternative to both foster care and adoption, subsidized legal guardianship is consistent with ASFA's goal of finding permanent homes quickly for children who cannot be reunified with their biological parents.

Most children with incarcerated parents have experienced considerable emotional hardship and disruption in their lives. In appropriate circumstances, living with relatives or close family friends can provide children with a greater sense of security and stability and often is preferable to living with strangers, even if those strangers are trained to be foster parents.¹⁴³

Thirty-four states and the District of Columbia have used federal funds and state tax monies to establish subsidized guardianship programs to expand permanency options for children who cannot be reunified with their birth parents. Because states can decide to allot equivalent subsidies to legal guardians, adoptive parents, and foster care agencies, guardianship programs will not necessarily place extra financial burden on the state or taxpayers.¹⁴⁴ New York should follow the example of other states and implement a subsidized guardianship program to allow more children the option of staying permanently with extended family members and friends without irreversibly cutting ties to their biological parents or increasing child welfare expenses.¹⁴⁵

3. New York State should initiate a series of ongoing trainings to educate all parties involved in child protective cases about the option for birth parents and adoptive parents to enter into court enforceable open adoption agreements.

An open adoption agreement allows a child and his or her birth parent to maintain an ongoing relationship even after the child has been legally adopted by another person. Under such an agreement, the biological and adoptive parents can decide on the degree of "openness" in the relationship, such as letter writing, phone calls, sharing of information, personal visits, and/or other forms of contact. Studies have shown that open adoption can have numerous positive effects: a child can live in a stable and permanent home while preserving emotional ties to his or her birth parents; biological parents can continue to play a role in their child's life; and adoptive parents can build relationships with birth parents and facilitate their adopted child's understanding of his or her family history.¹⁴⁶

In New York, parents facing termination of rights can opt for what is referred to as a “conditional surrender” — essentially an open adoption agreement — which allows a parent to surrender all rights to his or her child with certain conditions. While conditional surrender agreements can be beneficial to all parties involved, only agreements that are recognized by the court allow a biological parent legal recourse if an adoptive parent fails to comply with the agreement’s terms. Until recently, such “court enforceable” agreements were not authorized in New York State.¹⁴⁷ The New York State Legislature recently passed legislation, effective December 2005, to give biological parents more clearly defined legal rights to enforce the conditions contained in a surrender agreement after adoption.¹⁴⁸ Although this legislation could be of significant benefit to parents, it is still too early to tell how the standards contained in the amendment will be applied in cases involving conditional surrender agreements.

Court enforceable open adoption agreements can effectively meet the particular needs of each family and accommodate the best interests of the child, while allowing biological and adoptive parents recourse if either party does not abide by the terms of the agreement.¹⁴⁹ New York State should conduct ongoing educational trainings for lawyers, law guardians, judges, foster care caseworkers, birth parents and adoptive parents about the option — and potential benefits — of entering into a court enforceable open adoption/conditional surrender agreement.

- 4. New York City’s Administration for Children’s Services (ACS) and child welfare agencies in other parts of New York State should increase specialized services to all children in foster care with a parent in prison; consistently track comprehensive data about children with incarcerated parents; and ensure that foster care agencies fulfill their legally mandated duty to make diligent efforts to maintain parent-child relationships during incarceration, including facilitating family visits at least once per month.**

Parental incarceration affects a considerable percentage of children in foster care each year. Because most, if not all, caseworkers will encounter this issue in the course of their work, ACS and child welfare agencies in other parts of New York State should incorporate information on working with children of incarcerated parents into their core caseworker training. Caseworkers and supervisors should receive training on navigating the criminal justice system, prison visiting procedures, the barriers to parenting faced by incarcerated mothers and fathers, and incarcerated parents’ legal rights, including the right to at least monthly visits from their children in foster care (when the permanency plan for the child is to return to the parent and absent a court order to the contrary). Additional supervision and assistance should also be provided to these caseworkers.¹⁵⁰

In order to identify which children and caseworkers need support in this area, child

welfare agencies must track which children under their care have a parent in prison. As parents frequently become incarcerated after their children enter foster care, it is insufficient for child welfare agencies to gather data on parental incarceration only when children are first placed. Instead, these agencies should develop a mechanism to track parental status throughout a child's placement. In addition to tracking individual cases, child welfare agencies should consistently gather data on the total numbers of children living in foster care with an incarcerated parent. ACS recently upgraded their computer tracking system to allow caseworkers to note the address of a child's parent, including whether the parent is incarcerated. Because this system does not have the capability to aggregate data, ACS does not have statistics on the total numbers of children living in foster care in New York City with an incarcerated parent.¹⁵¹ Without systemic data, the scope of incarceration's effects on children, families, and communities in New York State cannot be properly analyzed and addressed.

ACS and child welfare agencies in other parts of the state should also gather other relevant data about children in foster care with an incarcerated parent, such as what role incarceration played in the foster care placement of the child; how often visits have been provided; how many termination proceedings have been filed in cases where a parent is incarcerated and the grounds for and outcomes of those proceedings; how often caseworkers invoke ASFA's exceptions to delay or decline filing a termination proceeding; the length of time between foster care placement, the filing of a proceeding and termination of rights; and the permanency outcomes for children of incarcerated parents who are "freed" for adoption.

In 2000, ACS launched the Children of Incarcerated Parents Program ("CHIPP") — a significant step in recognizing the special needs of children with a parent in prison. CHIPP is a unique program which provides much-needed services, including facilitating foster care visits and case conferences at city, state and federal correctional facilities within the tri-state area and providing technical assistance for caseworkers handling cases that involve an incarcerated parent.¹⁵² CHIPP does not have sufficient resources, however, to provide extra assistance, training and follow-up for every caseworker, foster parent and child, or to help track and monitor each case where a parent is incarcerated. To ensure that all children in foster care with incarcerated parents are provided with the necessary services, ACS should expand CHIPP and increase the program's ability to serve as a central resource for caseworkers managing children with incarcerated parents and to work more extensively with ACS-contracted child welfare agencies.

In addition to launching CHIPP, ACS has recently taken another positive step: the agency now facilitates a parenting class for certain mothers incarcerated on Rikers Island.¹⁵³ Given the large number of mothers serving sentences on Rikers, and the constant influx of new inmates each day (many of whom are parents), ACS should

expand this program to ensure that all inmate mothers have access to the information offered. ACS should also replicate this program for mothers incarcerated in the New York State prison system.

Additionally, ACS and child welfare agencies in other parts of New York State should take proactive steps to ensure that all agencies meet their legal obligation to facilitate visits between incarcerated parents and their children.¹⁵⁴

New York State Department of Correctional Services

5. The New York State Department of Correctional Services (DOCS) should be required to gather critical data about incarcerated parents and their children.

DOCS must gather comprehensive information about the number, age and placement of incarcerated parents' children, whether they live in New York State, and the current status of an incarcerated mother's or father's parental rights. Implementation of effective policies and the appropriate allocation of resources is not viable in the absence of an accurate measure of the problems to be addressed.

6. DOCS' classification policy should prioritize the placement of incarcerated mothers in facilities in close proximity to their children.

Albion Correctional Facility, the largest women's facility in the New York State prison system, is inordinately far from New York City, where many children of incarcerated mothers live. This distance unduly restricts and frequently prevents any face-to-face contact between a mother incarcerated at Albion and her children. For children in foster care, it virtually guarantees that foster parents and caseworkers will not bring the children to visit on a regular basis. Additionally, a woman confined at Albion encounters more difficulties in being produced for Family Court. Women from upstate counties who are incarcerated in downstate facilities face the same obstacles in reverse. When DOCS processes new female inmates, it should determine whether an inmate has children and where they live, and assign a classification that prioritizes placement, whenever possible, at a facility near the children.

7. All women's medium and minimum security correctional facilities should have daily visiting hours for children.

While Bedford Hills Correctional Facility, New York State's only maximum security facility for women, permits visits every day, all minimum and medium security facilities for women allow visits on weekends only — a practice that significantly limits opportunities for visiting.¹⁵⁵ Designated foster care visiting times at most facilities are even more restricted, sometimes limited to one day per week, or to a few hours

over several days.¹⁵⁶ In addition, while DOCS does not require paperwork from visitors before they come to the facility on regular visiting days, on non-regular days, visitors are required to apply for “gate clearance” prior to their visit — an often time-consuming and difficult process which varies from facility to facility.¹⁵⁷

Inevitably, caregivers and foster care caseworkers have limitations on the times during which they can facilitate visits and are often forced to make last minute plans when minor children are involved. These realities conflict with the rigid requirements of current prison visiting rules. Authorizing daily visiting hours at minimum and medium security women’s prisons — and assigning sufficient correction staff to monitor visits during these hours — would not only remove the need for visitors to receive prior gate clearance, it would also better accommodate the schedules of caregivers and caseworkers and the children in their care. Until visiting days are expanded to include all week and weekend days, however, medium and minimum security facilities should dispense with the practice of requiring prior gate clearance for children visiting parents on non-regular visiting days.

8. Incarcerated mothers should have increased telephone access to their children and agencies working with their children and the ability to call agencies and family members at reasonable rates.

The telephone is no less than a lifeline for incarcerated mothers — one through which they can contact their children, their children’s guardians, foster care agencies, schools, and therapists, and remain involved in their children’s lives. Incarcerated individuals in New York State, however, can only place collect calls, which cost 600% more than market rates for the general public.¹⁵⁸ Many service providers and family members will not or cannot accept the charges. Incarcerated mothers should have access to free telephone services, on a supervised basis, so that they can establish and maintain contact with their children and their children’s caretakers and service providers. Until incarcerated parents are offered free telephone services, state funds should be used to subsidize foster care agencies, foster parents and caregivers for the cost of collect calls. When a collect call to those involved in the care and custody of children is not feasible, incarcerated parents should have the option of paying for telephone calls out of their personal accounts at reasonable rates — a system similar to those currently used by the New York City Department of Correction and many federal prisons.¹⁵⁹

9. Visiting environments should meet the special needs of children and be conducive to mother-child interaction.

Most visiting facilities at women’s prisons do not address the unique needs of children, who cannot be expected to remain seated for the duration of a visit without activities, toys, or appropriate food. Bedford Hills Correctional Facility is an excep-

tion, providing a separate children's center with enough space for comfortable mother-child interaction as well as child-friendly books and toys. While some other women's facilities may have designated children's areas adjacent to their visiting rooms, these rooms are typically too cramped to permit mothers and children to be in the area together, and may contain reading material and games ill-suited for children of various ages. Each female correctional facility should provide a comfortable space for parent-child interaction, age-appropriate toys and books, and structured activities in which mothers and children can engage together. Outdoor areas for children to play in during mild weather should also be maintained.

In addition, because DOCS does not allow visitors to bring their own refreshments into state prisons, vending machines should be kept stocked with fresh and nutritious food so that children and caregivers can eat and drink during a visit.

10. Security procedures for visitors with children should be improved and standardized.

Visitors, particularly those bringing children, should not have to endure long waits (often outside regardless of weather conditions), humiliating security practices such as being forced to remove under-wire bras, and the inconsistent application of security procedures. Procedures should be streamlined to minimize delays; additional staff should be assigned to process visitors on busy visiting days such as Mother's Day and other holidays (which facilities can easily anticipate); appropriate indoor waiting areas for visitors should be created; and visiting rules should be applied consistently. Where a change in security practice must be implemented, such changes should be clearly posted in the facility and child welfare agencies should be notified in a timely fashion. Whenever possible, security staff at front gates and in the visiting room should be assigned to those posts consistently so they can become familiar with caregivers and children.

11. Correction officers assigned to process visitors and guard visiting rooms should receive special training to improve their treatment of caregivers and children.

Caregivers and children of incarcerated mothers repeatedly described being treated by some correction officers in a humiliating manner — which some visitors believed was intended to discourage them from returning for future visits. Others related that officers' inappropriate expectations of young children's behavior caused unnecessary tension during or a premature termination of visits. Some interviewees described receiving better treatment from more experienced correction officers who had, over time, become familiar with the visiting process and the visitors themselves. Correction officers assigned to posts with a high level of visitor contact should be trained by relevant child welfare and community organizations, and experienced fellow correction officers, to identify and eliminate whatever biases

they may bring to their interaction with families of incarcerated people. Officers should also receive training in child development so that they can respond appropriately to children in a visiting room setting.

Legal System

12. Whenever possible, women offenders with children should be sentenced to community-based alternative to incarceration programs where they can live with or near their children while serving their sentences.

Women offenders are particularly appropriate for diversion to alternative to incarceration programs, including drug treatment: many have been convicted of non-violent or “victimless” crimes, and the majority of those who are incarcerated for a violent felony offense have no prior violent felony arrests or convictions. A mother’s placement in a community-based corrections program as opposed to prison may prevent her children from entering or staying in foster care. Even if a mother cannot live with her children while she is in a program, her placement within the community will simplify visiting, make possible her attendance at foster care agency conferences and Family Court proceedings, provide a more hospitable visiting environment, and ease the reunification process when she is released.

13. Legal representation of incarcerated parents in child protective proceedings should be institutionalized to ensure that parents receive consistent and competent legal services.

Incarcerated parents often face untenable obstacles to consistent quality legal representation. They encounter significant barriers to being produced for Family Court — especially if they are unrepresented — and generally cannot be assigned counsel until they appear. In addition, incarcerated parents are sometimes assigned different counsel for each phase of their Family Court case. This inconsistency — which, as previously noted, may be eliminated because of recent legislation — is particularly troubling considering that incarcerated parents usually have little or no time to consult with their lawyer before proceedings commence.

Furthermore, although legal services agencies support law guardians representing children in termination proceedings, and ACS supports lawyers representing the foster care agency, lawyers representing incarcerated parents are usually independent practitioners with access to few, if any, institutional supports. Without adequate resources and support, independent lawyers are often unable to provide effective counsel in complex child protective cases that involve numerous participants (an incarcerated parent, child, caregiver, foster care agency, caseworker, and corrections department) throughout each stage of the case. To avoid putting incarcerated parent

defendants at an unfair disadvantage — and to decrease the possibility of unnecessary terminations — representation should be institutionalized to ensure that attorneys for parents have sufficient resources to conduct investigations, employ social workers, maintain legal support staff, and incorporate an interdisciplinary approach to their defense efforts.

Interagency Reforms

- 14. New York State and City departments of correction, child welfare agencies, and the courts must improve coordination of services for incarcerated mothers and their children. New York State should convene a task force to examine and recommend improvements to interagency coordination of services for incarcerated parents and their children, including the process for producing incarcerated parents for Family Court hearings.**

When corrections departments, child welfare agencies, and the courts communicate poorly and fail to coordinate efforts, incarcerated mothers and their children are harmed. Corrections and child welfare agencies must collaborate to improve visiting procedures for foster care caseworkers and caregivers bringing children to visit prisons. They must also seek ways to facilitate the participation of incarcerated mothers in agency permanency planning for their children, whether by phone, teleconference, or by holding these meetings at the facility where a mother is incarcerated or at a more mutually convenient facility. Corrections departments, child welfare agencies, and the courts must also coordinate efforts to ensure that incarcerated mothers are notified of and produced for relevant Family Court proceedings, and that Criminal and Family Court dates and mandates (such as parole hearings and participation in prison-based programs) do not conflict.

New York State and City Budgets

- 15. New York State and City should provide state and city corrections departments with additional resources to assist incarcerated mothers with protecting their parental rights and overcoming barriers to reunification. State and city corrections departments should also strengthen and expand partnerships with private organizations that provide services to incarcerated mothers and their families.**

15a. New York State Department of Correctional Services

Correction counselors at women's facilities have hundreds of inmates on their caseloads and are not specially trained in child welfare issues. Moreover, facilitating family communication and reunification is not part of their mandate. Prison counselors, however, are ideally positioned to serve as the point of contact between incarcerated mothers,

their families, child welfare agencies, and the courts. New York State should allocate additional resources to allow DOCS to hire specialized counselors to work exclusively on child welfare issues. These counselors would: identify upon an inmate's admission to a facility whether she has children in foster care and for how long; contact relevant foster care agencies, lawyers, judges, and family members; help facilitate visitation; provide incarcerated mothers with phone access to foster care agencies or caregivers; assure that incarcerated mothers are informed of their rights and responsibilities, as well as all agency and Family Court proceedings; and provide supportive services to incarcerated mothers, including individual and group counseling and assistance with transitional planning. Hiring specialized counselors would also help DOCS to comply with New York State law which requires correctional facilities to cooperate with child welfare agencies in arranging visits between inmates and their children.¹⁶⁰

To further expand the services offered to assist inmate mothers with child welfare issues, DOCS should increase partnerships with non-profit agencies that provide services for incarcerated parents. Such agencies include the Women's Prison Association's Incarcerated Mothers Law Project (IMLP) and Volunteers of Legal Service (VOLS), two non-profit organizations that collaborate to conduct educational trainings and provide *pro bono* legal counsel to mothers incarcerated on Rikers Island and at Bayview and Taconic correctional facilities,¹⁶¹ and Hour Children, a non-profit organization that provides family reunification, counseling, and parenting programs for mothers at Taconic, among other services.¹⁶²

15b. New York City Department of Correction

The New York City Department of Correction (DOC) has recently taken steps to bolster its services for inmate mothers. For example, DOC has revised its inmate orientation handbook to include information on the rights and responsibilities of parents with pending child custody cases and, in collaboration with DOC, ACS recently started parenting classes for certain inmate mothers.¹⁶³ New York City should allocate increased resources to allow DOC to expand its ongoing programs and provide additional services to meet the needs of all mothers — both those with children in foster care and those with children living in private arrangements — in its custody.

16. New York State should allocate funds for DOCS to expand its transportation services for children and caregivers to all seven correctional facilities that house women. In addition, DOCS should overhaul the current rules for its transportation program, which seriously limit opportunities for visiting.

The cost of private transportation, particularly to upstate prison facilities, is often prohibitive for low-income families.¹⁶⁴ Cost should not prevent children from visiting their mothers in prison. DOCS offers only extremely limited bus services for families of incarcerated mothers. Albion Correctional Facility is currently the only

women's prison to which DOCS sends buses from New York City.¹⁶⁵ DOCS takes an estimated six months to process an inmate's application and issue tickets, and, after the initial application, an inmate is allowed only two tickets (which includes minor children) every four to six months. Moreover, an inmate must use her tickets when they are issued — she cannot amass tickets and use them all at once.¹⁶⁶ Funding to this program should be increased to allow DOCS to provide free transportation to each of New York State's female correctional facilities for children and their caregivers at least once per month.

17. New York State should allocate at least \$1 million in Temporary Assistance to Needy Families (“TANF”) funds and/or other funds to programs that assist caregivers, foster care caseworkers, and children by facilitating mother-child prison and jail visits, and provide transitional services that support reunification after a mother's release.

A handful of excellent programs in New York provide visiting assistance to caregivers, caseworkers, and children with incarcerated mothers, as well as reunification services upon a mother's release. These programs include: ACS' Children of Incarcerated Parents Program which, among other services, facilitates foster care visits and case conferences weekly on Rikers Island and several times a week to state and federal correctional facilities;¹⁶⁷ the Osborne Association's Family Ties Program,¹⁶⁸ which facilitates visits between children living in New York City and their mothers incarcerated at Albion Correctional Facility near Rochester and, in collaboration with local community organizations, offers prison-based parenting services and reunification services upon release; Hour Children,¹⁶⁹ which operates multiple residences in Queens at which formerly incarcerated mothers can reunite with their children, as well as many other services, including visiting; the Women's Prison Association,¹⁷⁰ which has several programs that assist currently and formerly incarcerated mothers and their children, including Sarah Powell Huntington House, a residence that serves women with criminal justice histories who are homeless and either have custody of their children or have a goal of family reunification in the near future; and Edwin Gould Services for Children's Incarcerated Mothers Program,¹⁷¹ which aims to prevent foster care placement of children affected by a mother's incarceration through a variety of services, including support services for grandparents raising young children and intensive counseling services for children and other family members. As effective as these programs are, they are too few in number and are only able to serve a limited number of incarcerated women and their families.

The state should increase funding to these and other similar programs using TANF dollars and/or other funds. In 1996, the federal “Personal Responsibility and Work Opportunity Reconciliation Act” ended individual entitlement to public assistance

benefits and instituted block grants to states, called TANF.¹⁷² States now have greater flexibility both in structuring eligibility requirements and in funding a wide variety of employment and training activities, supportive services, and benefits with TANF funds. New York has taken advantage of this greater flexibility by using TANF to fund a variety of programs, including alternative to incarceration programs.

The U.S. Department of Health and Human Services' *Helping Families Achieve Self-Sufficiency: A Guide to Funding Services for Children and Families Through the TANF Program*, states that TANF funds can be used for parenting skills training, activities to promote parental access and visitation, and job placement and training services for non-custodial parents.¹⁷³ While incarcerated parents are not eligible for TANF assistance during their incarceration, they are eligible for TANF-funded services if their children are receiving TANF, as are formerly incarcerated parents of TANF children. To fulfill TANF's stated goal of providing "assistance to needy families so that children may be cared for in their own homes or in the homes of relatives," New York State should allocate TANF funds for visiting and reunification programs that help mothers maintain ties with their children during incarceration and reunite with their children after release.¹⁷⁴

ENDNOTES

- ¹ Created in 1977 and charged with the task of “acting as a neutral body to coordinate the State Health, Education and Human Services Systems to ensure that all children and families in New York State have the opportunity to reach their potential,” the New York State Council on Children and Families’ “vision” is “to facilitate the development of State and Local service systems that are coordinated, strength based, prevention oriented, and responsive to the needs of children and families.” New York State’s Division of Criminal Justice Services (which, among other responsibilities, gathers and analyzes crime data in New York State) and the Office of Children and Family Services (which oversees child welfare agencies statewide) are member agencies of the Council. See <http://www.ccf.state.ny.us> (visited 1/11/06).
- ² *Incarcerated Mothers and Their Children*, (New York State Council on Children and Families, April 1982), at 2.
- ³ *Id.* at 18-20.
- ⁴ *Id.* at 2-3.
- ⁵ Christopher J. Mumola, *Incarcerated Parents and Their Children* (Bureau of Justice Statistics, U.S. Department of Justice, August 2000) (hereinafter *Incarcerated Parents*). This Bureau of Justice Statistics report estimates that over 64% of women in state prisons lived with their children prior to incarceration. *Collateral Casualties: Children of Incarcerated Drug Offenders in New York* (Human Rights Watch, 2002) (hereinafter *Collateral Casualties*). Separately analyzing the New York data from *Incarcerated Parents*, Human Rights Watch reported that nearly 54% of female inmates in New York lived with their children before arrest. However, *Collateral Casualties* was based on a very small sample of only 104 out of an estimated total of 2,369 women in New York State prisons in 2000. Tracy L. Snell and Danielle C. Morton, *Women in Prison, Survey of State Inmates, 1991* (Bureau of Justice Statistics, U.S. Department of Justice, 1991). *Hub System: Profile of Inmate Population Under Custody on January 1, 2005* (State of New York Department of Correctional Services, 2005) (hereinafter *DOCS Jan 2005 Hub Report*), at 3 and 17.
- ⁶ Public Law 105-89, codified at 42 U.S.C. §§ 670–679a.
- ⁷ Prisoners’ isolation is well illustrated by the name of the “New York Mothers of the Disappeared” campaign, organized by the William Moses Kunstler Fund for Racial Justice. See <http://www.kunstler.org/projects.html> (visited 1/11/06).
- ⁸ *DOCS Jan 2005 Hub Report*, note 5. This report counts 2,789 women under custody of New York State prisons. At mid-year 1999, New York reported 3,293 women in custody of local jails. James J. Stephan, *Census of Jails, 1999* (Bureau of Justice Statistics, U.S. Department of Justice, August 2001), at 22. Since 1990, the adult female jail population has grown 7% annually, compared to 4.2% for men. Paige M. Harrison and Jennifer C. Karberg, *Prison and Jail Inmates at Midyear 2004* (Bureau of Justice Statistics, U.S. Department of Justice, April 2005), at 8. Absent an exact number for jail inmates, and taking into consideration the average increase in the female jail population nationally, this figure assumes that at a minimum, the female jail population has remained steady since 1999.
- ⁹ Allen J. Beck and Paige M. Harrison, *Prisoners in 2004* (Bureau of Justice Statistics, U.S. Department of Justice, November 2004), at 5. New York State has five correctional facilities that house women only: Bedford Hills Correctional Facility (maximum security), located in Westchester County; Taconic (medium security), also in Westchester and across the road from Bedford; Albion (medium security), located upstate near Rochester, in Orleans County; Bayview (medium security), located in New York City; and Beacon (minimum security), located in Dutchess County. Women are also incarcerated at two facilities that also house men in separate units: Lakeview Shock Incarceration Correctional Facility (minimum security) in Chautauqua County, near the Canadian border, and Willard Drug Treatment Center, in Seneca County.
- ¹⁰ At year-end 2004, there were 22,971 women on probation in New York State. Letter from New York State Department of Probation and Correctional Alternatives, November 4, 2005 (on file at the Women in Prison Project). In 2002, there were 4,190 women on parole in New York State. Figure derived from Camille Graham Camp and George M. Camp, *The 2002 Corrections Yearbook* (Criminal Justice Institute, Inc.), at 186-7.

- ¹¹ *Preliminary Data Tables Year 2004 Court Commitments* (State of New York Department of Correctional Services), at 17. See also *Undercustody Population, Crime by Sex* (New York State Department of Correctional Services, January 1, 2004, on file at the Women in Prison Project). Non-violent property offenses include forgery, grand larceny, stolen property, driving while intoxicated, contempt, and burglary in the third degree (entering or remaining unlawfully in a building with intent to commit a crime therein). See also Miriam Ehrensaft, Ajay Khashu, Timothy Ross and Mark Wamsley, *Patterns of Criminal Conviction and Incarceration Among Mothers of Children in Foster Care in New York City* (Vera Institute of Justice and Administration for Children's Services, December 2003), at 11 (hereinafter *Patterns of Criminal Conviction*), which studied the arrest, conviction and incarceration rates of mothers whose children entered foster care in New York City in 1991 and 1996. *Patterns of Criminal Conviction* reports that nearly 80% of mothers who had ever been convicted of a crime were convicted of larceny/theft, prostitution, or drug offenses.
- ¹² Twenty-one percent of women sentenced to New York State prison in 2004 for a violent offense had at least one prior violent felony conviction. Thirty-nine percent had at least one prior violent felony arrest. Figures derived from Computerized Criminal History System statistics, New York State Department of Criminal Justice Services (on file at the Women in Prison Project).
- ¹³ Figures derived from *DOCS Jan 2005 Hub Report*, note 5, at 55. See also E. Michele Staley, *Female Offenders: 2001-2002* (State of New York Department of Correctional Services, June 2003). By comparison, the Substance Abuse and Mental Health Services Administration (SAMHSA) of the federal Department of Health and Human Services reports that 1.5% of the female population nationally can be classified with illicit drug dependence or abuse. *Substance Dependence, Abuse and Treatment: Findings from the 2000 National Household Survey on Drug Abuse* (Department of Health and Human Services, SAMHSA Office of Applied Studies, 2002), Section 2.3. In February 2001, Albion Correctional Facility, the largest women's prison in New York, which currently houses more than 40% of all female state prisoners, had a waiting list of more than 600 women for its 220 treatment slots.
- ¹⁴ Recent amendments to New York's drug laws, which took effect on January 13, 2005, have reduced the length of some but not all mandatory minimum prison sentences and increased the weight requirements for some narcotics possession offenses. Although these changes are a small step in the right direction, a judge still cannot take into consideration mitigating factors — such as an individual's role in the drug transaction or history of addiction — when sentencing drug offenders. See N.Y. Penal Law §§ 70.70–70.71 & 220.00–220.65.
- ¹⁵ Letter from State of New York Department of Correctional Services Director of Public Information, May 15, 2001 (on file at the Women in Prison Project); 2005 figures derived from *DOCS Jan 2005 Hub Report*, note 5, at 28.
- ¹⁶ Marc Mauer, et al., *Gender and Justice: Women, Drugs, and Sentencing Policy* (The Sentencing Project, 1999), at 3.
- ¹⁷ Figures derived from *DOCS Jan 2005 Hub Report*, note 5, at 8.
- ¹⁸ *Drug Offense by Race/Ethnicity; Women Under DOCS' Custody on 10-29-05* (State of New York Department of Correctional Services, on file at the Women in Prison Project).
- ¹⁹ About 16% are African American and 14% are Latina. Figures derived from *2000 Census of Population and Housing, Age by Sex by Race and Hisp/Latino Ethnicity (Including Median Age by Sex)*, New York State Data Center, Section 3, at 1 and 2. See <http://www.nylovesbiz.com/nysdc/census2000/Section3Profiles/Standard/sf1s3nystate.pdf> (visited 1/11/06).
- ²⁰ See *Collateral Casualties*, note 5, at 4. *Punishment and Prejudice: Racial Disparities in the War on Drugs* (Human Rights Watch, May 2000) (hereinafter *Punishment and Prejudice*). See also *2001 National Household Survey on Drug Abuse: Volume I, Summary of National Findings* (Department of Health and Human Services, SAMHSA Office of Applied Studies).

- ²¹ See *Punishment and Prejudice*, note 20, Section VII, at 3. “Although crack was the least used of all illicit drugs in the U.S., and although more whites used illicit drugs than blacks, the ‘war on drugs’ has been targeted most notoriously at the possession and sale of crack cocaine by blacks. Crack cocaine in black neighborhoods became a lightning rod for a complicated and deep-rooted set of racial, class, political, social, and moral dynamics Tactical considerations also encouraged the concentration of anti-drug resources in disadvantaged minority neighborhoods and the consequent disproportionate number of black drug offender arrests. Police departments point to the number of arrests as a measure of effectiveness The circumstances of life and the public nature of drug transactions in low income urban neighborhoods make arrests far easier there than in other neighborhoods. In poor black neighborhoods, drug transactions are more likely to be conducted on the streets, in public, and between strangers, whereas in white neighborhoods — working class through upper class — drugs are more likely to be sold indoors, in bars, clubs, and private homes.”
- ²² *Id.* Section VII, at 3 (quoting Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America*, New York: Oxford University Press, 1995).
- ²³ Figures derived from *DOCS Jan 2005 Hub Report*, note 5, at 35.
- ²⁴ *Id.* As of January 1, 2004, approximately 56% of women under custody were first-time felony offenders.
- ²⁵ More than 60% figure derived from *DOCS Jan 2005 Hub Report*, note 5, at 28. Median minimum sentence figure from *Descriptive Statistics of Women Under DOCS’ Custody on 10-29-05* (State of New York Department of Correctional Services, on file at the Women in Prison Project). Median maximum sentence figure derived from *Men and Women Undercustody: 1987-2001* (State of New York Department of Correctional Services, 2004), at 35 and 44. Before changes to New York’s Rockefeller Drug Laws were enacted in January 2005, the sentencing structure in New York State included mainly indeterminate sentences for non-violent offenses that have a minimum and maximum sentence (for example, 15 years to life) and determinate sentences for violent offenses that have a single, flat sentence (for example, 5 years). Thirty-six months is the *median* of the minimum indeterminate sentences and the determinate sentences together. The *average* minimum sentence for women offenders in New York State is approximately 65 months — because this number includes the longest sentences, including sentences of life without parole, the *average* minimum sentence is higher than the *median* minimum sentence. Recent changes to the Rockefeller Drug Laws have significantly altered New York State’s sentencing structure for non-violent offenses. Under the revised statute, all drug offenses carry only determinate sentences. See note 14. Women drug offenders are sentenced from an average minimum of 39 months to an average maximum of 96 months. See *Female Offenders*, note 13, at 10.
- ²⁶ Figures derived from *DOCS Jan 2005 Hub Report*, note 5, at 17.
- ²⁷ *Id.* at 3 and 10. As of January 1, 2005, 52% of women in New York State prisons were from New York City; an additional 9.6% came from downstate suburbs.
- ²⁸ *Id.* at 5.
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ Lawrence A. Greenfield and Tracy L. Snell, *Women Offenders* (Bureau of Justice Statistics, U.S. Department of Justice, December 1999) (rev. 10/3/00), at 8.
- ³² See Beth E. Richie, “Exploring the Link Between Violence Against Women and Women’s Involvement in Illegal Activity,” in *Research on Women and Girls in the Justice System: Plenary Papers of the 1999 Conference on Criminal Justice Research and Evaluation* (National Institute of Justice, September 2000) (hereinafter *Research on Women and Girls*).
- ³³ *Substance Abuse and the American Woman* (National Center on Addiction and Substance Abuse, June 1996), at 23.
- ³⁴ *Id.* at 4. Compared to only 12% for men.

- ³⁵ See Cathy Spatz Widom, “Childhood Victimization and the Derailment of Girls and Women to the Criminal Justice System,” in *Research on Women and Girls*, note 32. See also Elaine Lord, “Prison Careers of Mentally Ill Women,” in *Acting Out: Maladaptive Behavior in Confinement* (American Psychological Association, Washington, D.C. 2002), at 385.
- ³⁶ Angela Browne, et al., *Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women* (International Journal of Law & Psychiatry 22 (3-4), 1999).
- ³⁷ *Homicide by Women* (New York State Division of Criminal Justice Services, June 1996), at 8.
- ³⁸ Information DOC currently collects via paper documents includes the number of children an inmate has, whether the inmate has custody of those children, and if the children are in foster care. Telephone interview with New York City Department of Correction Deputy Commissioner for Programs and Discharge Planning Kathleen Coughlin (January 6, 2006).
- ³⁹ See *infra* text accompanying note 151. See also *Patterns of Criminal Conviction*, note 11, at 22 and 26. This December 2003 Vera Institute of Justice report analyzed data which suggests that, each year, several hundred children who enter New York City’s foster care system have a mother who either is or will be in prison or jail at some point during their foster care stay. Although the report did not analyze whether the mother’s incarceration directly led to the foster care placement of the children, it found that where the mother’s incarceration overlapped with the child’s foster care stay, approximately 11% of those mothers were incarcerated in the year immediately preceding the child’s placement in foster care. Interestingly, in most cases where maternal incarceration overlapped with a child’s foster care placement, the mother became incarcerated in the year immediately following the child’s placement. The report hypothesizes that in many of these cases, “the children were removed at a time when the mother’s substance abuse and other criminal activity had increased and she was no longer able to care for the children. The downward spiral then continued after the child’s placement.” This pattern suggests that child welfare has the potential to improve prospects for family reunification in these cases by assisting the mother before she further descends into a criminal lifestyle.
- ⁴⁰ *Incarcerated Parents*, note 5.
- ⁴¹ See *Collateral Casualties*, note 5, at 13. *Incarcerated Parents* was based in part on data from New York; *Collateral Casualties* separately analyzes the New York data.
- ⁴² Ajay Khashu, Timothy Ross and Mark Wamsley, *Hard Data on Hard Times: An Empirical Analysis of Maternal Incarceration, Foster Care, and Visitation* (Vera Institute of Justice and Administration for Children’s Services, August 2004). *Hard Times* examined a cohort of children who entered foster care in fiscal year 1997, which spanned from June 30, 1996 through July 1, 1997. 2003 projected statistics are for fiscal year 2003 (July 1, 2002 to June 30, 2003). See *Hard Times* at 4-6.
- ⁴³ *Number of Children for Women Under DOCS Custody on 10-29-05* (State of New York Department of Correctional Services, on file at the Women in Prison Project). See also *DOCS Jan 2005 Hub Report*, note 5, at 17. Ages of these children, or where they reside, are not available.
- ⁴⁴ See note 8.
- ⁴⁵ *Incarcerated Parents*, note 5, at 2. No accurate New York-specific data exist because state corrections agencies collect no information on inmates’ children beyond how many children inmates report having. Similarly, New York child welfare agencies collect no specific statistics on children of incarcerated parents.
- ⁴⁶ See *Patterns of Criminal Conviction*, note 11, at 19 and 22. This report analyzed patterns of arrest and incarceration among mothers of children who entered New York City’s foster care system in 1991 and 1996. The report estimates that 1,376 children who entered foster care in New York City in 1991 and 1,532 in 1996 had a mother who was incarcerated at some point during their stay. Thirty-nine percent of children entering foster care in 1991 and 35% of children entering in 1996 had a mother who had been arrested and convicted at some point in the child’s life.

- ⁴⁷ *Id.* at 22. In cases where the mother's incarceration overlapped with the child's foster care stay, 18% of the 1991 study mothers were sentenced after the placement, as opposed to 11% before. In 1996, 14% were sentenced after compared to 10% before.
- ⁴⁸ *Id.* See also "Gentler Justice, Family Treatment Court," in *Families in Limbo: Crisis in Family Court*, (Child Welfare Watch, Winter 1999), at 12. Supporting this conclusion is the fact that a majority of petitions filed to remove a child from a home and place him or her in foster care involve allegations of parental substance abuse. Community-based drug treatment programs are a more appropriate response than prison for many women with substance abuse problems in that they allow a mother to recover while increasing a family's chances to stay connected and stable. See also *Collateral Casualties*, note 5. See also *Crossing the Bridge: An Evaluation of the Drug Treatment Alternative-To-Prison (DTAP) Program, A CASA White Paper* (National Center on Addiction and Substance Abuse, March 2003).
- ⁴⁹ *Patterns of Criminal Conviction*, note 11, at 19. Of children in both cohorts whose mother had ever been arrested, 11% of children in the 1991 cohort and 19% of children in the 1996 cohort had a mother who had been arrested and convicted in the year preceding their foster care placement. As the authors of the report acknowledge, this data cannot test whether a mother's incarceration directly led to the foster care placement of her children.
- ⁵⁰ *Incarcerated Parents*, note 5, at 4. Forty-six percent of mothers in state prisons, compared to about 15% of fathers, were the only parent living with their children in the month before their arrest. Thirty-one percent of mothers, compared to 4% of fathers, were living alone with their children prior to arrest.
- ⁵¹ Fifty-one percent of incarcerated mothers reported that their children were living with a grandparent and 23% reported that their children were living with other relatives. The Bureau of Justice Statistics' data analyzed in *Collateral Casualties* does not specify whether incarcerated parents reported that their children were living in kinship or non-kinship foster care. It seems accurate to assume, however, that the category of "foster home/agency" refers to non-kinship foster care only. *Collateral Casualties*, note 5, at 6. See also *Incarcerated Parents*, note 5, at 3. Nearly 17% of incarcerated women report having been in foster care themselves as children. *Women in Prison*, note 5, at 5.
- ⁵² Undoubtedly, a percentage of the children of incarcerated mothers are adults. Bureau of Justice Statistics' studies from the early 1990s indicate that from six to 11% of the children of women in prison and jail, respectively, are adults. See *Women in Jail, 1989* (Bureau of Justice Statistics, U.S. Department of Justice, March 1992). See also *Women in Prison*, note 5. Nationally, 70% of women held in local jails, and 65% of women in prison, have minor children. See also *Women Offenders*, note 31, at 7.
- ⁵³ Although no New York-specific data exist, an Arkansas study found that 29% of children of incarcerated mothers had been separated from brothers and sisters. Susan Phillips and Barbara Bloom, "In Whose Best Interest? The Impact of Changing Public Policy on Relatives Caring for Children with Incarcerated Parents," in *Child Welfare: Special Issue, Children with Parents in Prison* (Child Welfare League of America, Sept.-Oct. 1998), at 535. A California study found that 50% of children live apart from siblings, and that a mother's incarceration causes up to one-quarter of these separations. Denise Johnston, "Effects of Parental Incarceration," in *Children of Incarcerated Parents* (Gabel and Johnston, eds., New York: Lexington Books, 1995).
- ⁵⁴ *Id.*, Denise Johnston, "The Care and Placement of Prisoners' Children," Gabel and Johnston, at 109. See also *Child Welfare Outcomes 2000: Annual Report* (U.S. Department of Health and Human Services, 2003), at IV-235. Under the federal ASFA law, all states must supply data to the U.S. Department of Health and Human Services (HHS), which then reports to Congress on states' performance on seven national child welfare outcomes. New York's data for the year 2000 indicate that 24% of children in foster care for 12 to 24 months move three or more times and 33% in care for 24 to 36 months do so. Those percentages increase to 40% for children in care for three to four years, and 55% for children in care four years or more. These numbers cover all children in foster care, not just children of incarcerated parents, and do not include the number of times a child may have moved before entering foster care, or a child's move from living with family into foster care.

- ⁵⁵ See Lois W. Wright, Ph.D. and Cynthia Seymour, JD presented by Peter Breen, M.S.W. “Effects of Parental Incarceration on Children and Families,” and Rosemary Sarri, Ph.D “Children of Incarcerated Mothers,” in *What About Me? Children with Incarcerated Parents Michigan Family Impact Seminars*, Briefing Report No. 2002-1, Edited by Eileen Trzcinski, Deborah Satyanathan, M.S.W., Lynda Ferro, M.S.W. (School of Social Work, Wayne State University, March 2002). See also *The Study of the Needs of Children Whose Parents Are Incarcerated*, House Document No. 32 (Virginia Commission on Youth, 1993).
- ⁵⁶ *Id.*, Virginia Commission on Youth, at 13. Gabel and Johnston report that one in five children witness their mother’s arrest and that half of the children who are present at the time of their mother’s arrest are between the ages of 3 and 7, and are in their mother’s sole care. Gabel and Johnston, note 54, at 105. See also *What Happens to Children?* (Child Welfare League of America). See <http://www.cwla.org/programs/incarcerated/whathappens.htm> (visited 1/11/06). See also Ross Parke and K. Alison Clarke-Stewart, *Effects of Parental Incarceration on Young Children*, papers prepared for the “From Prison to Home” Conference, January 30-31, 2002, hosted by U.S. Department of Health and Human Services (hereinafter *From Prison to Home*).
- ⁵⁷ See note 56. See also Adela Beckerman, “Charting a Course: Meeting the Challenge of Permanency Planning for Children with Incarcerated Mothers,” in *Child Welfare: Special Issue, Children with Parents in Prison* (Child Welfare League of America, Sept.-Oct. 1998), at 517 and 518.
- ⁵⁸ *Incarcerated Parents*, note 5, at 5.
- ⁵⁹ See Virginia Commission on Youth, note 55, at 13-17. See also note 56 and note 57. See also *How Can I Help? Working with Children of Incarcerated Parents*, Vol. 1 (The Osborne Association, 1993). See also Barbara Bloom and David Steinhart, *Why Punish the Children?* (National Council on Crime and Delinquency, January 1993), at 32.
- ⁶⁰ Gabel and Johnston, note 53, at 66-84. See note 55 and note 56. See also Cynthia Seymour, “Children with Parents in Prison: Child Welfare Policy, Program, and Practice Issues,” in *Child Welfare: Special Issue, Children with Parents in Prison* (Child Welfare League of America, Sept.-Oct. 1998), at 472.
- ⁶¹ *Id.*, Gabel and Johnston, note 53, at 80-82. See also Eric Brenner, *Fathers in Prison: A Review of the Data* (National Center on Fathers and Families, 1998), at 2. See also *Background Paper*, prepared for *From Prison to Home*, note 56, at xi-xvi. See also J. Mark Eddy and John B. Reid, *The Antisocial Behavior of the Adolescent Children of Incarcerated Parents: A Development Perspective*, papers prepared for *From Prison to Home*, note 56, at 21-23.
- ⁶² *Children of Incarcerated Parents*, Commission on Youth Document (Virginia Commission on Youth, 2002), at 11.
- ⁶³ *Women in Prison*, note 5, at 5. Forty-seven percent of female and 37% of male prisoners reported having had an immediate family member in prison.
- ⁶⁴ See, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).
- ⁶⁵ Fundamental liberties are those interests that are “implicit in the concept of ordered liberty” such that “neither liberty nor justice would exist if [they] were sacrificed.” *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937). Supreme Court Justice John Marshall Harlan identified fundamental liberties as those liberties that demonstrate “respect for the teachings of history [and] solid recognition of the basic values that underlie our society.” *Moore v. East Cleveland*, 431 U.S. 494, 503, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) (citing *Griswold v. Connecticut*, 381 U.S. 479, 501 (1965)).
- ⁶⁶ *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).
- ⁶⁷ N.Y. Soc. Serv. L. § 384-b(1)(a)(iii).
- ⁶⁸ 1983 N.Y. Laws ch. 911, §§ 1(i)(ii)(iii)&(iv), eff. Jan. 1, 1984. Prior to 1983, state law explicitly permitted a child to be adopted without an incarcerated parent’s consent.

- ⁶⁹ N.Y. Soc. Serv. L. §§ 384-b(7)(a)&(7)(c).
- ⁷⁰ A child is “abandoned” if his or her parent “evinces an intent to forego his or her parental rights and obligations by . . . fail[ing] to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency.” N.Y. Soc. Serv. L. § 384-b(5)(a).
- ⁷¹ A child is “permanently neglected” where his or her parent has failed for more than a year to “substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so.” N.Y. Soc. Serv. L. § 384-b(7)(a).
- ⁷² N.Y. Soc. Serv. L. § 384-b(1)(a)(ii). New York State law acknowledges that “it is generally desirable for the child to remain with or be returned to the birth parent . . . unless the best interests of the child would be endangered.”
- ⁷³ N.Y. Soc. Serv. L. § 384-b(7)(f); 18 N.Y.C.R.R. §§ 430.12(c)(2)&(d)(1).
- ⁷⁴ 1983 N.Y. Laws ch. 911, § 1, eff. Jan. 1, 1984.
- ⁷⁵ N.Y. Soc. Serv. L. § 384-b(7)(f).
- ⁷⁶ New York State correctional policies and practices — such as limited visiting hours, restrictive telephone policies, lengthy visitor security procedures, unfriendly visiting environments, and sometimes disrespectful security staff — often make it even more difficult for foster care caseworkers to fulfill their legal responsibilities in meeting permanency planning requirements.
- ⁷⁷ See, e.g., *In the Matter of the Application of Seaman’s Society for Children and Families for the Custody and Guardianship of Jonathan R. v. Tanya and Michael R.*, 2005 WL 1118108 (N.Y. Fam. Ct. April 12, 2005). In *Jonathan R.*, the Court found that the foster care agency had fulfilled its “diligent efforts” requirement notwithstanding the fact that the agency had failed to facilitate legally mandated visits to the correctional facility in which the father was incarcerated. “Regardless of whether the Respondent Father was housed fifty miles away or not does not absolve the Agency’s duty to facilitate visitation. This Court is troubled by the Agency’s lack of efforts to facilitate visitation. Nevertheless, this Court does find that the Agency did satisfy the requirement of diligent efforts.”
- ⁷⁸ See *In re Gregory B.*, 74 N.Y.2d 77 (N.Y. 1989). In *Gregory B.*, the Court of Appeals rejected incarcerated fathers’ argument that their parental rights could not be terminated merely because they had no relative to care for their children during their incarceration, where the only offered alternative was continued, long-term foster care.
- ⁷⁹ See *In re Ida Jessica H.*, 733 N.Y.S.2d 426 (1st Dep’t 2001).
- ⁸⁰ See *Collateral Casualties*, note 5, at 10. See also <http://www.ccr-ny.org/v2/reports/report.asp?ObjID=0z90mxpZk5&Content=452> (visited 1/11/06).
- ⁸¹ See Martha L. Raimon, *Barriers to Achieving Justice for Incarcerated Parents*, 70 Fordham Law Rev. 243 (2001).
- ⁸² See N.Y. Soc. Serv. L. §§ 384-b(8)(a)(i)(ii)(iii)&(iv) for definition of “severely abused” child. See N.Y. Soc. Serv. L. §§ 384-b(8)(b)(i)(ii)&(iii) for definition of “repeatedly abused” child.
- ⁸³ Family Court Act § 262(a)(iv). New York State reimburses private attorneys on the 18-B panel for representing indigent defendants. See N.Y. County Law § 18-B.
- ⁸⁴ A small number of indigent parents are represented by attorneys that they have retained from legal services organizations.
- ⁸⁵ Family Court Act § 1090(b), effective December 21, 2005. See also *Testimony of The Legal Aid Society on the Effects of Incarceration on Families*, May 30, 2000 (prepared by The Legal Aid Society of New York’s Prisoners’ Rights Project).

- ⁸⁶ Because all phone calls from New York State prisons must be made collect at exorbitant rates, an incarcerated mother's ability to communicate with her lawyer also depends on the willingness of the attorney to accept expensive collect calls. *Id. Testimony of The Legal Aid Society on the Effects of Incarceration on Families*. See also "Separation Anxiety, Parent Lawyer at a Loss," in *Families in Limbo: Crisis in Family Court*, (Child Welfare Watch, Winter 1999). See also Raimon, note 81.
- ⁸⁷ 18-B attorney rates were raised from \$40 per hour for in-court work and \$25 per hour for out-of-court work to \$75 per hour for both in- and out-of-court work. See Marea L. Beeman and James Downing, The Spangenberg Group, *Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview*, prepared for The American Bar Association Bar Information Program (August 2003), at 7.
- ⁸⁸ Telephone interview with Harriet Weinberger, Esq., Law Guardian Director, New York State Appellate Division Second Department (October 17, 2005), and telephone interview with Jane Schreiber, Esq., Law Guardian Director, New York State Appellate Division First Department (October 20, 2005).
- ⁸⁹ Some observers bluntly criticize the inadequate representation some 18-B lawyers provide. See generally *Nicholson v. Williams*, 203 F. Supp. 2d 153, 253-54 (E.D.N.Y. 2002) (Weinstein, J.) ("The 18-B attorney system as now organized and financed holds out the promise to a . . . mother that she will be properly represented by a competent attorney when she seeks to retain or obtain the return of her children . . . seized by ACS. It then cruelly supplies attorneys who cannot, and do not, properly represent her. They do not investigate. They do not consult with their client. They are not available for consultation. Their very existence delays hearings and proper prompt resolution of cases in Family Court, resulting in unnecessary separation of mothers and children and in unnecessarily prolonging those separations. The result is a practice and policy by the State and City of New York violating the substantive and procedural constitutional rights of many . . . mothers and their children.")
- ⁹⁰ See note 6.
- ⁹¹ Although domestic relations, including child welfare, fall within the province of the state (and not federal) government, Washington routinely influences state policy by predicating federal contributions to state programs on state law's conformance with federal objectives. Conditioning federal highway money on states raising their speed limits is a classic example.
- ⁹² Codified in sections of New York State's Social Services and Domestic Relations Law, and Family Court Act.
- ⁹³ N.Y. Soc. Serv. L. §§ 384-b(1)(a)(ii)&(iii).
- ⁹⁴ N.Y. Soc. Serv. L. § 384-b(3)(l)(i). There are exceptions to this stringent requirement, discussed further in this report.
- ⁹⁵ The original bill as introduced would have required the filing of a termination proceeding at 18 months; an amendment proposed shortening the time frame to 12 months. See Celeste Pagano, *Recent Legislation: Adoption and Foster Care*, 36 Harvard J. Legis. 242, 246 (1999).
- ⁹⁶ See note 25.
- ⁹⁷ Philip M. Genty, Columbia Law School Clinical Professor of Law (published research forthcoming, statistics on file with author). See also Philip M. Genty, "Twelfth Annual Symposium on Contemporary Urban Challenges: Damage to Family Relationships as a Collateral Consequence of Parental Incarceration," 30 Fordham Urb. L.J. 1671 (July 2003). The article reports preliminary statistics on termination of parental rights proceedings involving incarcerated parents derived from a search on the Lexis database. The author indicates that the cases found in the search had not yet been reviewed in detail at the time of the article's publication. After conducting this review, the author determined that the statistics cited should be revised downward. The statistics cited in this report (67% and 108%) are the downwardly revised figures.
- ⁹⁸ *Patterns of Criminal Convictions*, note 11, at 25.

- ⁹⁹ *ACS Update Annual Report 2004, Five Year Trend*. See http://www.nyc.gov/html/acs/downloads/pdf/stats_update_5year.pdf (visited 1/11/06).
- ¹⁰⁰ *2003 Monitoring and Analysis Profiles with Selected Trend Data: 1999 – 2003*, New York State Office of Children and Family Services, Office of Strategic Planning and Policy Development, Bureau of Management Information (August 2004), at 22.
- ¹⁰¹ *Id.* at 23.
- ¹⁰² U.S. Department of Health and Human Services, Administration for Children and Families, *The AFCARS Report* (Interim FY 1998 Estimates as of April 2000 (3)) and *The AFCARS Report* (Interim FY 2000 Estimates as of August 2002 (7)).
- ¹⁰³ Only a foster care agency can invoke these exceptions to decline from filing a TPR; an incarcerated parent or his or her lawyer cannot use the exceptions either as a defense or to delay or prohibit an agency from filing a termination proceeding.
- ¹⁰⁴ N.Y. Soc. Serv. L. § 384-b(3)(l)(i)(C).
- ¹⁰⁵ Philip M. Genty, *Incarcerated Parents and the Adoption and Safe Families Act: A Challenge for Correctional Services Providers*, in *The ICCA Journal on Community Corrections* (November 2001), at 43.
- ¹⁰⁶ N.Y. Soc. Serv. L. § 384-b(3)(l)(i)(A).
- ¹⁰⁷ N.Y. Soc. Serv. L. § 384-b(3)(l)(i)(B).
- ¹⁰⁸ Within limits. Long-term foster care will not satisfy the requirement that a parent “plan for the future of the child.”
- ¹⁰⁹ See note 51.
- ¹¹⁰ See *Incarcerated Parents*, note 5, at 5. See also *Collateral Casualties*, note 5, at 8.
- ¹¹¹ Beckerman, note 57, at 515.
- ¹¹² The Council of Family and Child Caring Agencies, *2002 Budget Briefing Paper: Stop the Staffing Crisis in New York’s Foster Care Programs*.
- ¹¹³ See Johnston, note 53.
- ¹¹⁴ See Beckerman, note 57, at 518.
- ¹¹⁵ See Mary Ellen White, Eric Albers, and Christina Bitonti, “Factors in Length of Foster Care: Worker Activities and Parent-Child Visitation,” *Journal of Sociology and Social Welfare*, Vol. XXIII, No. 2 (June, 1996), at 75–84. See Inger P. Davis, John Landsverk, Rae Newton, and Williams Ganger, “Parental Visiting and Foster Care Reunification,” *Children and Youth Services Review*, Vol. 18, Nos. 4/5 (1996), at 363–382. See Judge Leonard P. Edwards, “Judicial Oversight of Parental Visitation in Family Reunification Cases,” *Juvenile and Family Court Journal* (Summer 2003).
- ¹¹⁶ Memorandum from Lisa Parrish, Deputy Commissioner, ACS Foster Care and Preventive Services, to Executive Directors, Foster Care Agencies, “Clarification of Child Visits with Incarcerated Birth Parents,” dated November 11, 1999. The memorandum references and attaches a much earlier administrative directive on the same subject, “Termination of Parental Rights of Incarcerated Parents,” OCFS Administrative Directive 85 ADM-42, dated September 3, 1985. ACS provides direct foster care services to some children in foster care, but most children are placed in and receive foster care services from non-profit agencies under contract with ACS.
- ¹¹⁷ *Id.* Additional emphasis in original.
- ¹¹⁸ *Id.* In this memo, ACS attempts to dispel what is commonly referred to as the “50-mile rule,” a remarkably persistent yet fictitious exception to caseworkers’ obligations to arrange visitation at correctional facilities. It clarifies that a distance of more than 75 miles to a prison merely triggers a different reimbursement mechanism for visit-related expenses, but in no way relieves the foster care agency of

the obligations to arrange visits (50 miles apparently being a throwback to an earlier distinction for reimbursement purposes). Yet some caseworkers continue to use the so-called “50-mile rule” to justify refusing to visit facilities beyond a 50-mile radius from New York City, to the great detriment of incarcerated mothers. Of the five women’s state prisons, both Albion and Beacon Correctional Facilities are well beyond that radius; Bedford Hills and Taconic Correctional Facilities are just within it. Bayview Correctional Facility is located in New York City, as is Rikers’ Island, the New York City jail. Lakeview Shock Incarceration Correctional Facility, which houses both male and female inmates, is nearly 450 miles away, next to the Canadian border. Willard Drug Treatment Center, which also houses men and women, is 250 miles away from New York. Some of the caseworkers we surveyed said they first learned that the 50-mile rule does not exist while being interviewed for this report.

¹¹⁹ *Id.* In addition, ACS has also issued a guide for caseworkers entitled *No Time to Lose: A Handbook for Child Welfare Professionals Working with Children and Their Incarcerated Parents*, developed by its Children of Incarcerated Parents Program (CHIPP). The guide explains how to navigate the criminal justice system, outlines how to plan for permanency with incarcerated parents, describes procedures for visits, offers tips for talking to children about their parent’s incarceration, and provides a guide of visiting procedures at each women’s facility.

¹²⁰ N.Y. Correct. § 619.

¹²¹ Moreover, the caseworker’s failure to bring the child to visit is in itself a fairly strong indicator of his or her stance on reunification of the family.

¹²² The Women in Prison Project also sought to interview correction officers and prison administrators, including superintendents of New York State’s women’s facilities. The respective superintendents of each facility either refused those requests or simply declined to respond. *See, e.g.*, Letter from then-Superintendent of Albion Correctional Facility Anginell Andrews, dated September 25, 2002 (on file at the Women in Prison Project).

¹²³ Women in Prison Project staff and members of the Incarcerated Mothers Committee of the Coalition for Women Prisoners conducted these interviews. Because the number of participants in each group interviewed was small, the data reflected in this report does not represent a statistically significant sample. In many areas, participants’ responses suggest the need for further and broader research by relevant agencies.

¹²⁴ One focus group was conducted with grandmothers receiving support services from the Incarcerated Mothers Program at Edwin Gould Services for Children. Individual interviews were also conducted with visitors to the Children’s Center at Taconic Correctional Facility. In total, 18 grandparents or other caregivers were interviewed.

¹²⁵ Albion allows visiting on Saturdays, Sundays and public holidays from 8:00 a.m. – 2:30 p.m. Telephone interview with Senior Guidance Counselor, Guidance Unit at Albion Correctional Facility (August 16, 2005). Bayview allows visiting on Saturdays, Sundays and public holidays from 8:00 a.m. – 3:00 p.m. Telephone interview with Counselor, Guidance Unit at Bayview Correctional Facility (August 16, 2005). Taconic allows visiting on Saturdays and Sundays from 8:30 a.m. – 3:00 p.m., and foster care visits on Thursdays from 8:30 a.m. – 3:30 p.m. Telephone interviews with Secretary and Counselor, Guidance Unit at Taconic Correctional Facility (August 16, 2005). Bedford Hills allows visiting every day from 8:30 a.m. – 3:30 p.m. Telephone interview with Counselor, Guidance Unit at Bedford Hills Correctional Facility (August 16, 2005). Beacon allows visiting on Saturdays, Sundays, and public holidays from 8:30 a.m. – 3:00 p.m. Telephone interview with Corrections Counselor, Guidance Unit at Beacon Correctional Facility (August 16, 2005). Willard Drug Treatment allows visiting on Saturdays and Sundays from 9:00 a.m. – 3:00 p.m. Telephone interview with Secretary, Parole Office at Willard Drug Treatment Facility (August 16, 2005). Lakeview Shock allows visiting for Annex inmates on Saturdays and Sundays, Platoon inmates on a Saturday or Sunday from 9:00 a.m. – 3:00 p.m., and reception and disciplinary confinement inmates on Saturdays. Telephone interview with Keyboard Specialist, Guidance Unit at Lakeview Shock Incarceration Correctional Facility (August 16, 2005).

¹²⁶ *Id.*

¹²⁷ Anonymous phone interviews were conducted with foster care caseworkers from ACS-contracted agencies. Seven caseworkers in total were interviewed.

¹²⁸ A prison counselor has hundreds of inmates on his or her “caseload” and meets with an inmate approximately every three months depending on the facility.

¹²⁹ This scenario is unlikely because prison counselors are not trained in child welfare law.

¹³⁰ In certain cases, a child welfare agency may ask the court to find that “reasonable efforts” by the agency to return the child to his or her biological parents are not required. Such instances include cases where a parent has been convicted of subjecting his or her child to “severe” or “repeated” abuse; has voluntarily committed a violent crime against his or her child’s sibling; or has previously had parental rights to his or her child’s sibling involuntarily terminated. Family Court Act § 1039-b. “Section 1039-b was enacted in 1999 as part of New York’s implementation of the Federal Adoption and Safe Families Act (ASFA). The intent is to fast-track possible termination of parental rights in cases involving extreme forms of abuse. The goal is achieved by dispensing with the traditional and often time consuming requirement that the child care agency (public or private) employ diligent efforts to rehabilitate the parent, with the intent of family reunification.” Merrill Sobie, “Practice Commentaries” for McKinney’s Family Court Act § 1039-b (2003).

¹³¹ See *infra* text accompanying notes 146 and 147. In exchange for voluntary surrender, parents can specify who will adopt the child and retain certain rights, such as the right to have contact with the child after adoption.

¹³² See note 118 for information about the so-called “50-mile” rule.

¹³³ Many referred specifically to CHIPP. See note 119.

¹³⁴ In-person individual interviews were conducted with 14 formerly incarcerated mothers.

¹³⁵ The New York State prison system has two nursery programs that allow incarcerated mothers to keep their infants with them for up to 18 months: one at Bedford Hills Correctional Facility, in New York’s Westchester County, which has the capacity to house 26 mothers and infants, and another at Taconic Correctional Facility, also in Westchester County, which has the capacity to house 17 mothers and infants. *Profile and Three Year Follow-up of Bedford Hills and Taconic Nursery Programs: 1997 and 1998* (State of New York Department of Correctional Services, 2002).

¹³⁶ Mothers interviewed were living either at Women’s Prison Association’s (WPA) Sarah Powell Huntington House or at one of Hour Children’s several residences for formerly incarcerated women with children. Some WPA clients had reunified with their children at Huntington House at the time of the interview; others were waiting to regain custody from foster parents or relatives. Almost all mothers at Hour Children had been enrolled in its programs during their incarceration, and Hour Children had taken custody of their children prior to the mother’s release. Upon release, the mother and child had reunified and were living together.

¹³⁷ See Kathy Boudin, “Lessons From a Mother’s Program in Prison: A Psycho-social Approach Supports Women and Their Children,” *Women and Therapy*, Vol. 21, No. 1 (The Haworth Press, Inc., 1998), at 103-125. (Simultaneously published in *Breaking the Rules: Women in Prison and Feminist Therapy*, Judy Harden and Marcia Hill, eds. (The Haworth Press, Inc., 1998), at 103-125.)

¹³⁸ The smallest group interviewed for this report was children of incarcerated mothers. Out of concern that discussing their mothers’ current incarceration might cause emotional distress to younger children, only adults whose mothers had been incarcerated when they were children and teenagers with currently incarcerated mothers were interviewed. In total, five children of incarcerated mothers were interviewed.

¹³⁹ See http://www.osborneny.org/Family_Ties.htm (visited 1/11/06).

¹⁴⁰ This may be due, in part, to the existence of the Children’s Center at Bedford Hills Correctional

Facility which offers services to incarcerated mothers, including parenting classes and workshops, visiting services, and a visiting area for inmate mothers and their children. See Kate Stone Lombardi, *Parenting Behind Bars*, N.Y. Times, April 11, 2004. See also http://www.sowingseeds.tv/ep12_roulet.jsp (visited 1/11/06).

¹⁴¹ Neb. Rev. Stat. § 43-292.02 (2)(b) and N.M. Stat. Ann. 1978, § 32A-4-28(d).

¹⁴² Colo. Rev. Stat. § 19-3-604(2)(k)(IV).

¹⁴³ See Edwards note 115.

¹⁴⁴ Further, because families with subsidized guardianship arrangements have little to no ongoing foster care agency involvement, it is likely that subsidized guardianship programs would save the state money.

¹⁴⁵ See J. Creasie Finney Hairston, *Prisoners and Families: Parenting Issues During Incarceration*, papers prepared for *From Prison to Home*, note 56, at 45. See also Bloom, note 59, at 33. See also *Expanding Permanency Options for Children: A Guide to Subsidized Guardianship Programs* (Children's Defense Fund and Cornerstone Consulting Group, 2003). See also *Subsidized Kinship Guardianship: It's Time* (Federation of Protestant Welfare Agencies, Inc., April 2002). See also Glenda Rothberg, "Special Issue on Adoptions Introduction," 39 *Fam. & Conciliation Courts Rev.* 19 (January 2001).

¹⁴⁶ *Id.*, Rothberg. See Marianne Berry, "Risks and Benefits of Open Adoption," *The Future of Children, Adoption*, Vol. 3 No. 1 (Spring 1993). See also Cross-Borough Collaboration, *The Basics: Adoption in New York State* (2002).

¹⁴⁷ See N.Y. Soc. Serv. L. §§ 383-c 2, 3(b)&5(b)&(c), pre-2005 amendments.

¹⁴⁸ N.Y. Soc. Serv. L. §§ 383-c 2, 3(b)&5(b)&(c); N.Y. Soc. Serv. L. § 384(2)(b); N.Y. Dom. Rel. § 112-b; Fam. Ct. Act § 1055(a), effective December 21, 2005. Massachusetts and California also offer adoptive and birth parents the option of entering into court enforceable open adoption agreements. Mass. Gen. Laws Ann. 210 § 6(c) and Cal. Fam. Code § 8616.5 (West 2005).

¹⁴⁹ See Rothberg, note 145. See Amy L. Doherty, *A Look at Open Adoption*, 11 *J. Contemp. Legal Issues* 591 (2000). See Tammy M. Somogyi, *Opening Minds to Open Adoption*, 45 *U. Kan. L. Rev.* 619 (March 1997).

¹⁵⁰ See Philip Genty, "Permanency Planning in the Context of Parental Incarceration: Legal Issues and Recommendations," in *Child Welfare: Special Issue, Children with Parents in Prison* (Child Welfare League of America, Sept.-Oct. 1998), at 556 and 557.

¹⁵¹ Telephone interview, Acting Chief of Staff to Executive Deputy Commissioner of the Administration for Children's Services Stephanie Gendell (January 9, 2006).

¹⁵² See *Out of Sight, NOT Out of Mind: Important Information for Incarcerated Parents Whose Children Are in Foster Care* (New York City Administration for Children's Services' Children of Incarcerated Parents Program, February 2005).

¹⁵³ See note 151.

¹⁵⁴ ACS has recently created an Office of Family Visiting focused on maintaining and strengthening family relationships between children in foster care and their parents. Authors of this report note ACS' recognition of the importance of visiting and hope that this new office will help reinforce ACS' commitment to fulfilling their legal obligation to facilitate meaningful visits between incarcerated parents and their children in foster care.

¹⁵⁵ Visiting hours and practices vary at each New York State women's correctional facility. For example, inmates at Albion with last names in the A-L category are allowed visitors on Saturday, while M-Z are allowed visitors on Sunday; these groups switch visiting days every other weekend. Visiting hours at Albion are from 8:00 a.m. to 2:30 p.m. Telephone interview with Senior Guidance Counselor, Guidance Unit at Albion Correctional Facility (August 16, 2005). At Taconic Correctional Facility, all inmates are allowed visitors on both Saturday and Sunday and visiting hours last from 8:30 a.m. to 2:30 p.m. Telephone interview with Secretary of Guidance Unit at Taconic Correctional Facility (August 16, 2005).

Most inmates at Lakeview Shock are only permitted visits one day every other weekend. In addition, the inmate count typically takes place during visiting hours. Telephone interview with Keyboard Specialist, Guidance Unit at Lakeview Shock Incarceration Correctional Facility (August 16, 2005).

¹⁵⁶ For example, Taconic permits foster care visits on Thursdays only, between 8:30 a.m. and 3:30 p.m. Telephone interview with Counselor, Guidance Unit at Taconic Correctional Facility (August 16, 2005).

¹⁵⁷ Telephone interviews with Sergeant in the Watch Commander's Office, Bayview Correctional Facility; Senior Counselor in the Guidance Office, Taconic Correctional Facility; Program Administrator, Beacon Correctional Facility; officials in the Office of the Deputy of Programs, Albion Correctional Facility; Deputy Superintendent, Willard Drug Treatment Center; and Keyboard Specialist in the Guidance Unit, Lakeview Shock Incarceration Correctional Facility (August 17, 2005).

¹⁵⁸ See Raimon, note 81.

¹⁵⁹ See Nancy G. La Vigne "Rational Choice and Inmate Disputes Over Phone Use on Rikers Island," *Crime Prevention Studies*, Volume 3, ed. Ronald V. Clarke (1994). See Telephone Regulations for Inmates, Program Statement 5264.07, U.S. Department of Justice, Federal Bureau of Prisons (corrected copy February 4, 2002).

¹⁶⁰ See note 120.

¹⁶¹ See <http://www.volspobono.org/rtf1.cfm?pagename=VOLS%20Programs#mothers> (visited 1/11/06).

¹⁶² See <http://www.hourchildren.org> (visited 1/11/06).

¹⁶³ This section of the handbook was drafted by the Women in Prison Project and members of the Coalition for Women Prisoners' Incarcerated Mothers Committee. DOC expects the revised handbook to be released in Spring 2006. *New York City Department of Correction Inmate Handbook*, under revision as of January 12, 2006, at 13 and 14 (on file at Women in Prison Project).

¹⁶⁴ For example, Operation Prison Gap, a frequently used — and relatively inexpensive — bus service that transports families of inmates upstate charges \$55 per adult and \$30 per child for travel to Albion. A trip to Lakeview Shock Incarceration Correctional Facility costs \$65 for adults and \$35 for children. A round-trip Metro North peak ticket for one adult and one child to Bedford Hills, New York, where Taconic and Bedford Hills Correctional Facilities are located, costs \$46, plus the cost of a taxi to and from the facility, which can cost from \$5 to \$10 each way.

¹⁶⁵ DOCS also sends buses to Bedford Hills Correctional Facility and Taconic Correctional Facility that pick-up from Buffalo, Rochester, Syracuse and Albany. Telephone interview with State of New York Department of Correctional Services' Ministerial Services Department (January 10, 2006).

¹⁶⁶ Telephone interview with State of New York Department of Correctional Services' Ministerial Services Department (August 8, 2005).

¹⁶⁷ See note 152.

¹⁶⁸ See note 139.

¹⁶⁹ See note 162.

¹⁷⁰ See <http://www.wpaonline.org> (visited 1/11/06).

¹⁷¹ See <http://www.egscf.org> (visited 1/11/06).

¹⁷² 42 U.S.C.A. § 616.

¹⁷³ *Helping Families Achieve Self-Sufficiency: A Guide to Funding Services for Children and Families Through the TANF Program* (Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, December 1999), at 11.

¹⁷⁴ 42 U.S.C.A. § 601.

Board of Directors

Chair

John M. Brickman

Vice Chairs

Catherine M. Abate

Gail Allen, MD

Ralph S. Brown, Jr.

Clay Hiles

Alexander Papachristou

James D. Silbert

Joan Steinberg

Gregg A. Walker

Treasurer

Peter Swords

Secretary

Seymour James, Jr.

Directors

Wilhelmus B. Bryan III

Constance P. Carden

Gregory L. Curtner

Le Roy Davis

William J. Dean

Lourdes Falco

Nereida L. Ferran, MD

Leroy Frazer, Jr.

Richard Girgenti

Richard M. Gutierrez

Elizabeth B. Hubbard

Ricky Jones

Ann E. Lewis

Michael B. Mushlin

Frederik R-L. Osborne

John S. Prescott, Jr.

Meile Rockefeller

Hon. Felice K. Shea

David D. Troutt

Katrina vanden Heuvel

William J. vanden Heuvel

Jan Warren

Basil Wilson

Rev. Alfonso Wyatt

Staff

Robert Gangi

Executive Director

Jack Beck

Prison Visiting Project Director

Richard Bryant

Fiscal Manager

Laura Davidson

Office Manager

Josephine Diaz

Administrative Assistant

Mishi Faruquee

Juvenile Justice Project Director

Susan Gabriel

Director of Development

Suzanne E.W. Gray

Communications Assistant

Carnell Hayes

Office Assistant

Shayna Kessler

Prison Visiting Project Associate

Tamar Kraft-Stolar

Women in Prison Project Director

Margaret Loftus

Juvenile Justice Project Associate

Marci McLendon

Development Associate

Asadullah Muhammad

Youth Training Coordinator

Juvenile Justice Project

Stacey Thompson

Community Outreach Coordinator

Women in Prison Project

Jaya Vasandani

Women in Prison Project Associate

Andrea B. Williams

ReConnect Program Coordinator

Women in Prison Project

Correctional Association of New York

2090 Adam Clayton Powell Blvd, Suite 200

New York, NY 10027

Tel. (212) 254-5700

Fax. (212) 473-2807

www.correctionalassociation.org

Copyright © 2008, Correctional Association of New York

All Rights Reserved



Correctional Association of New York