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An Inherited Sentence: Parental Incarceration as a Pathway to Foster Care Entry

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Executive Summary

In the current age of mass incarceration, almost half of all imprisoned people in the United States are parents to children under the age of 18.¹ Incarceration removes parents from their homes, leaving children to navigate the consequences of that absence. In 2016, over 1 million children had a parent who was in prison, and estimates show that 2.7 million children have a parent in jail or prison on any given day.² The consequences of a child experiencing parental incarceration include family separation, trauma, and an increased risk of entering the foster care system.³ When a parent is no longer able to provide childcare or find a family member who can provide it during their incarceration, foster care entry is possible.⁴ It is estimated that 15% of children in the foster care system have an incarcerated parent.⁵ As the criminal justice system continues to expand its reach into family life, particularly for low-income communities and communities of color, parental incarceration has become an under-examined driver of child welfare involvement.⁶

Background

Whether confined in jails, state prisons, or federal prisons, a defining characteristic of incarcerated people is that many of them are also parents. According to national estimates, roughly half of incarcerated individuals in state prisons and 57% of those in federal prisons are parents to minor children.⁷ The criminal justice system has therefore become one of the largest disruptors of family life. The United States incarcerates more people than any other democracy, with every individual state having higher incarceration rates than most countries in the world.⁸ In the 1970s, an average of 360,000 people were incarcerated; today, there are over 2 million people incarcerated at any given time.⁹ It is important to acknowledge how and why parental incarceration has exponentially increased in the last few decades.

The modern era of mass incarceration began in the 1970s and was exacerbated through the 1980s and 1990s by intense political and social change.¹⁰ In the 1970s, the United States had just spent a decade undergoing major social changes, such as the Civil Rights movement and the expansion of rights for marginalized groups.¹¹ By the mid-1970s, violent crime, unemployment, and racial tensions had substantially increased across the country.¹² The general public called for criminal justice reform, and policymakers listened.¹³ Policy debates, political decisions, and public opinion all shifted towards punitiveness in sentencing.¹⁴

Beginning with the War on Drugs, a government effort to aggressively police and prosecute drug offenses, policymakers adopted mandatory minimum sentencing laws that required incarceration for certain crimes and truth-in-sentencing policies that limited early release by requiring offenders to serve most or all of their sentences.¹⁵ Through all of these changes, incarceration became more common than ever before.¹⁶ These policies disproportionately impacted low-income families, particularly Black and Latino communities.¹⁷ As incarceration

increased, so did the number of children affected. Today, approximately 2.7 million children have an incarcerated parent.¹⁸

Parental incarceration disrupts families and removes primary caregivers, placing children at an increased risk of state involvement.¹⁹ While abuse and neglect are the most common reasons for foster care entry, parental incarceration can trigger child welfare involvement when there is no alternative caregiver available or when incarceration exacerbates difficult living situations.²⁰ Children separated from a parent due to incarceration experience family disruption, trauma, and instability.²¹

Definitions

- Parental incarceration: The confinement of a parent regardless of conviction status. This includes parents held in pretrial detention, serving jail or prison sentences, or detained in immigration facilities.²²
- Foster care: The removal of a child from their home and placement under state supervision in child welfare agencies.²³
- Mass incarceration: The large-scale imprisonment of Americans due to punitive sentencing policies, especially affecting individuals from marginalized racial and economic groups.²⁴
- Termination of parental rights (TPR): Legal action permanently severing parental rights to custody and reunification.²⁵

Problem Analysis

There are currently over 300,000 children in foster care, with 176,340 children entering the system in 2023.²⁶ While maltreatment, such as neglect and abuse, remains the primary reason for foster care entry in the United States, research indicates that parental incarceration can increase the likelihood that a child enters the foster care system.²⁷ The Annie E. Casey Foundation similarly notes that children may enter foster care following a parent's incarceration when other caregivers are not available.²⁸ For many families, incarceration can lead to a loss of income, housing instability, and the physical removal of a primary caregiver, which all contribute to potential state intervention.²⁹ While there are more men in prison than women, the percentage of women in prison who are mothers is higher than the percentage of men in prison who are fathers.³⁰ As mothers are often the primary caregiver, children experiencing maternal incarceration have a higher risk of entering foster care.³¹ Even when incarcerated parents were not living in the same home as their children, over 50% of them were financially caring for them.³²

Reunification and Parental Rights

A child whose primary caregiver is incarcerated and who has no other family to care for them, will likely enter the foster care system.³³ Once a child is in the system, reunification becomes a priority.³⁴ Maintaining a connection between an incarcerated parent and their children is important to reunification efforts.³⁵ Estimates show that only 3% of children in the foster care system experiencing parental incarceration have parents who were incarcerated because of child abuse or neglect.³⁶ Visiting an incarcerated parent can also be a challenging experience for a child in the foster care system due to unreliable transportation and the location of the prison or jail.³⁷ Research shows that, on average, both men and women are imprisoned over 100 miles away from their children.³⁸

While reunification is the ultimate goal of the foster care system, incarceration can lead to the termination of parental rights under the Adoption and Safe Families Act (ASFA) of 1997, which requires states to move to terminate parental rights when a child has been in foster care for 15 out of 22 months.³⁹ This act was intended to

limit the amount of time a child spends in the child welfare system in order to allow for stability and permanent placement.⁴⁰ However, this timeline is not designed to accommodate prison sentences that are longer than one year.⁴¹ Incarcerated parents with children in foster care are more likely to have their parental rights terminated than parents who have physically or sexually assaulted their children.⁴² Mothers, particularly those who are primary caregivers, experience these challenges at a heightened level.⁴³ Research shows that ASFA disproportionately harms incarcerated mothers and low-income parents who are unable to access family reunification services.⁴⁴

Incarcerated parents often face obstacles when trying to maintain parental rights through reunification services. These include limited access to visitation, court hearings, and mandated programs that create barriers.⁴⁵ The children most impacted by parental incarceration and foster care placement are disproportionately children of color and children from low-income households.⁴⁶ Black children are significantly more likely than white children to experience parental incarceration: a reflection of racial disparities in policing, sentencing, and incarceration.⁴⁷ Latino and Native American children similarly face increased risks.⁴⁸

Families often encounter barriers that make reunification difficult even after an incarcerated parent comes back home. Housing requirements and parole requirements are only some of the barriers that can undermine family stability.⁴⁹ In some states, parents released from custody are required to have stable housing and a job before reunification happens, despite the numerous barriers formerly incarcerated people face in the labor and housing markets.⁵⁰ Employers frequently deny applicants with criminal records, and public housing rules in many states do not allow people with criminal records to become tenants.⁵¹ These barriers interact with child welfare policies that prioritize permanency, even when parents are doing their best to comply with their court requirements.

Incarcerated Mothers

Women are the fastest growing segment of the incarcerated population, and many incarcerated women are mothers.⁵² Known as the new victims of mass incarceration, the majority of those who are mothers were primary caregivers to their children prior to their incarceration.⁵³ Pretrial detention plays a significant role in family separation, with 60% of incarcerated women being held in pretrial detention because they cannot afford bail.⁵⁴ Pretrial detention increases the risk for losing custody since jails do not offer many opportunities to arrange childcare or coordinate with family.⁵⁵ Spending time behind bars can result in immediate, and severe, disruptions to caregiving plans and can lead to foster care entry.⁵⁶ This is especially true when alternative caregivers are unavailable.

Incarcerated mothers have their parental rights terminated more often than incarcerated fathers, partially due to the fact that maternal incarceration leads to a higher risk of foster care entry than paternal incarceration.⁵⁷ The relationship between maternal incarceration and foster care placement varies between states. States that spend the most on incarceration, such as Oklahoma, Louisiana, and Texas, experience the greatest overlap between their criminal justice and child welfare systems.⁵⁸ Oklahoma has one of the highest rates of maternal incarceration, with over 85% of incarcerated women in the state being mothers. Children experiencing maternal incarceration in Oklahoma face higher risks of entering the foster care system.⁵⁹ Additionally, states with stronger family reunification programs and alternative sentencing options for parents, like New York or California, have lower risks of foster care entry.⁶⁰

Dual Punitive System

The foster care system is facing strain from limited capacity, high turnover, and resource limitations.⁶¹ When caseloads are high and services are struggling, the connection between the criminal justice system and the child welfare system goes underexamined. The interaction between mass incarceration and child welfare has created a dual punitive system where families experience different forms of state surveillance and control.⁶² Children are

placed into foster care more often in states with large, punitive criminal justice systems than in states with large social welfare programs.⁶³ Some scholars believe that the child welfare system has evolved along with the criminal justice system in ways that disproportionately harm minority families.⁶⁴ While data sharing between the two systems is currently not common, preliminary findings show that 40% of children who have been in foster care have had an incarcerated parent at some point in their lives.⁶⁵

Similar to the criminal justice system, Black and Brown families are overrepresented in the child welfare system.⁶⁶ While incarcerated parents who have children in foster care are complying with their sentences, the child welfare system also requires them to be as involved as possible in service plans for reunification.⁶⁷ If they do not complete all requirements, their parental rights may be terminated.⁶⁸ One in eight of these incarcerated parents will have their parental rights terminated due to the barriers of both the criminal justice system and the child welfare system.⁶⁹ Both incarcerated parents and their children in foster care experience consequences that feel like punishment. Children live with the absence caused by incarceration and, in a real sense, inherit their parent's sentences.

Immigration Enforcement and Family Separation

Current immigration enforcement shows that immigration detention operates similarly to incarceration when it comes to family separation.⁷⁰ Even though most people in Immigration and Customs Enforcement (ICE) detention do not have criminal records, the number of detainees is exponentially increasing.⁷¹ Although they are legally different, immigration detention is a punitive way of interrupting caregiving and creating instability that can lead to foster care placement when there is no alternative caregiver available.⁷² Policies that criminalize immigration serve as a different pathway to separation for mixed-status families and increase risks for Latino and immigrant children who already face discrimination.⁷³ Deportation and detention have a profound impact on family stability, and should be taken into consideration within the broader conversation of child welfare.⁷⁴

The increased criminalization of immigration, and the large-scale enforcement operations by the Department of Homeland Security (DHS) are causing family separation and increasing the risk of foster care entry for US citizen children.⁷⁵ For the undocumented children of parents being held in ICE detention, child welfare involvement may involve being transferred to the Office of Refugee Resettlement (ORR).⁷⁶ While this office primarily deals with unaccompanied minors who are apprehended at the border, undocumented minors can enter into its custody as well.⁷⁷ The ORR cares for children until they can be placed with a sponsor or relative.⁷⁸ This is incredibly difficult when a child's relatives are also undocumented, as many of them are ineligible to serve as caregivers due to their status.⁷⁹ The child welfare system was not designed to address the consequences of immigration enforcement, and highlighting this gap is important within the context of increased immigration arrests.⁸⁰

Policy Recommendations and Conclusion

Reducing foster care entry for children with incarcerated parents requires policies that prioritize family preservation and address barriers created by incarceration. Research shows that maintaining consistent contact between incarcerated parents and their children supports reunification and reduces the likelihood of foster care placement.⁸¹ Programs that provide child-friendly visitation, affordable video and phone communication, and parenting education during incarceration are currently implemented in several states and have been successful in supporting family stability.⁸²

Improved coordination between the criminal justice system and the child welfare system is also necessary. Child welfare decisions, including foster care placement and termination of parental rights, are often made without fully accounting for incarceration-related barriers such as limited access to visitation, court hearings, or required services.⁸³ Rigid timelines under ASFA, combined with limited communication between systems, increase the risk

of foster care entry when incarceration is the primary barrier to reunification.⁸⁴ Policies that allow flexibility in timelines can reduce family separation.⁸⁵

Finally, states should expand family-focused reentry and diversion programs, including those supported through the Second Chance Act. These programs provide parenting resources, case coordination, and reentry planning that stabilizes caregiving plans after release.⁸⁶ Evidence suggests these programs can reduce child welfare involvement linked to parental incarceration and support family reunification.⁸⁷

Endnotes

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