

Submission to the United Nations Committee on the Rights of the Child for the Day of General Discussion on Children of Incarcerated Parents

Introduction

This submission is made by the Osborne Association's New York Initiative for Children of Incarcerated Parents and The Committee for Hispanic Children and Families, Inc. on behalf of children of incarcerated parents and in support of the Convention on the Rights of the Child, which the United States has signed, but not yet ratified.¹ Since 2006, we and our government and community-based partners in New York have focused on achieving policy and practice change to uphold the rights of children of incarcerated parents.² For this submission, we focus on the priority areas identified by the Committee on the Rights of the Child, and provide five key recommendations (see Annex) which have international relevance for transforming criminal justice and children's service systems to safeguard the rights and well-being of children around the globe.

Scale of Incarceration in the United States and New York

The U.S. leads the world in incarceration, with an incarceration rate of 762 per 100,000—five to eight times that of other industrialized countries.³ Of the 2.3 million people in jails or prisons (most of whom are Black and Latino), more than 1.2 million men and women (54%) are parents of children under age 18.⁴ This translates into **one in every 28 children having an incarcerated parent**, compared to 1 in 125 just 25 years ago.⁵ Today, **1 in 9 African American children (11.4%), 1 in 28 Hispanic children (3.5%) and 1 in 57 white children (1.8%) have an incarcerated parent.**⁶ Furthermore, a Black boy born in 2001 has a 1 in 3 chance of going to prison in his lifetime; a Latino boy a 1 in 6 chance; and a white boy a 1 in 17 chance. A Black girl born in 2001 has a 1 in 17 chance of going to prison in her lifetime; a Latino girl a 1 in 45 chance; and a White girl a 1 in 111 chance.⁷

New York alone is home to an estimated 105,000 children of incarcerated parents; only an estimate is available because of the invisibility of this issue and the lack of responsibility of any single agency for the well-being of these children.⁸

Impact of Parental Incarceration: Children's Experiences

Children of incarcerated parents are an overlooked population. Unintended victims of their parents' choices, they tend to live in high-risk environments and experience a host of consequences, from the emotional and psychological trauma of separation, increased family and residential instability, developmental challenges, and a greater likelihood to be exposed to extreme poverty.⁹ Risk factors among children of incarcerated parents operate along two pathways: parental problems that existed prior to and may have contributed to the parent's

incarceration (e.g. addiction, mental health, domestic violence), and problems introduced as a result of the parent's incarceration (i.e. family and school disruption, trauma, grief, stigma).¹⁰ Yet, there is no single story that best describes what it is like for a child to have a parent who is incarcerated—experiences are diverse and so are the risk and protective factors, and thus, the outcomes as well.

Although it is challenging to disentangle the consequences of parental incarceration from other risk factors that children may have experienced prior to the incarceration, parental incarceration is now recognized as its own distinct adverse childhood experience (ACE)—the type that can increase the likelihood of negative outcomes.¹¹ It is distinguished from other adverse childhood experiences by the unique combination of trauma, shame, and stigma, which can increase feelings of isolation that can deter children and families from seeking services.¹² Studies show that while collectively children whose parents are involved with the criminal justice system are exposed to more risk factors than other children, there is not a universal risk factor for this population; services designed to address their needs should implement individualized assessments and tailored services.¹³

Children's Bill of Rights

Developed in 2005 by the San Francisco Children of Incarcerated Parents Partnership with input from children themselves, the *Children of Incarcerated Parents: A Bill of Rights* provides an important framework and an essential roadmap for reform. These include the right to be kept safe and informed, to be considered, not to be judged and stigmatized, and to have access to and have a lifelong relationship with their parent.¹⁴

Do children have a right to information about their incarcerated parent?

The above *Bill of Rights*, the findings of researchers, and the experiences of service providers, as well as children and families around the country strongly advocate for children being told an age-appropriate truth about their parent's incarceration and whereabouts.¹⁵ While children may not need to know the full details of their parent's crime, truthful information can serve to reassure them of their parent's safety, that they are not to blame, and that they will be well-taken care of in their parent's absence. Children also need to be able to trust their caregivers; this becomes more critical when children may feel powerless and scared. When a well-intentioned lie is told (for example, that their parent is working, away at school, in the hospital or military), more confusion, anxiety, and ultimately, a breach of trust can result.

Informing other adults in children's lives about parental incarceration should be done on a selective basis, depending in large part on the training, sensitivity and confidence of the person or professional, and whether the child would like for the person/ professional to know. In many cases, trained and sensitive professionals can offer much-needed support to children and

information to caregivers and families experiencing the consequences of parental incarceration. For example, a trained teacher can better support a child who returns from visiting her incarcerated parent and exhibits angry or withdrawn behaviors, often related to the pain of having to leave the parent behind. Training for professionals who interact with children and families on the impact of parental incarceration is a critical step towards creating safe and supportive spaces for families to self-identify and seek help when a parent is incarcerated.

Lack of Service Coordination and Data

Nationally, incarcerated individuals and their children and families may interact with the criminal justice and child welfare systems, as well as other systems (education, parole and probation, and the courts), yet these systems rarely coordinate their services and none are specifically responsible for the needs of children of incarcerated parents.

There is also a pervasive absence of data on children of incarcerated parents. Law enforcement does not collect information about whether and how many children are present at the time of arrest or who is designated to care for them. Departments of corrections do not collect detailed information about this population of children; nor do local or state child welfare systems systematically capture data about the incarcerated parents. Gathering this information would allow for early identification of service needs for children, increase interagency coordination, provide critical information about the magnitude and nature of the issues, and provide the basis for more public funding and private funding. Confidentiality and reducing the stigma that children and families face must be paramount in all discussions about data collection and data-sharing.

Parental Arrest

When a parent is arrested, children may face immediate and long-term risks. One study conducted in 1998 estimated that of parents arrested, 67% were handcuffed in front of their children, 27% reported weapons drawn in front of their children, 4.3% reported a physical struggle, and 3.2% reported the use of pepper spray.¹⁶ An arrest can be traumatic and confusing for children, especially when they are present. In a 2010 study examining the relationship between witnessing arrests and post traumatic stress, children who witnessed the arrest and had a recently arrested parent were 73% more likely to have elevated post traumatic stress symptoms than children who did not witness an arrest and have an arrested parent.¹⁷ Furthermore, children's respect for the law and sense of right and wrong can be complicated by an arrest. This is particularly true if they were not aware of their parent's law-breaking, if they witnessed aggression toward their parent during an arrest, or if their parents did not take responsibility for their actions (e.g. using language to convey that arrests happen randomly or without justification). Few mental health professionals or social workers are trained in discussing

parental arrest with children and it is common for children not to have spoken about this often traumatic experience with anyone.

Despite the very first right asserted in the *Children's Bill of Rights*—“**I have the right to be safe and informed at the time of my parent's arrest,**” most law enforcement agencies have no policies to guide officers when children are present during an arrest. Child-sensitive arrest protocols and training for arresting officers rarely exist in circumstances when the presence of children is unforeseen during an arrest (e.g. traffic stop, warrant sweeps, or routine patrol). Although several states within the U.S. are now implementing child-sensitive arrest protocols and there are several concrete examples of partnerships with law enforcement to address children's needs at this time, it remains the exception for officers to routinely ask all arrestees if they are responsible for any dependents and to look for signs of children at the time of arrest (diaper bag, toys, etc.).¹⁸

Additionally, few uniform policies exist to help law enforcement officers ensure suitable arrangements for children's temporary care and whether post-arrest services are needed when children are present at an arrest not involving child abuse or neglect. Partnerships between law enforcement and community-based providers that can provide arrest-related support to children and families are important steps towards safeguarding children, as are child welfare protocols that factor in arrest when arranging temporary or long-term care and service planning for children present during an arrest. Jurisdictions that are implementing child-sensitive arrest protocols and partnerships have reported positive responses from arresting officers who “feel better about doing their work when they know there are people and services available for the children.”¹⁹

Courts and Sentencing

The pre-trial detention and sentencing period can be confusing and scary for children. Although their parent is technically “innocent until proven guilty,” this is not often how this period feels for families. Historically, courts have been focused on the specifics of a defendant's crime and criminal history. It does not consider the defendant as a parent (unless the crime was child-related) or the impact judicial proceedings, sentencing, and incarceration can have on their children and parental responsibilities. Implementing Family Impact Statements during sentencing would remedy this, as well as uphold Rights #2 (“I have the right to be heard when decisions are made about me”), and Right #3 (“I have the right to be considered when decisions are made about my parent”) of the *Children's Bill of Rights*.²⁰

When parents have concurrent criminal and Family Court cases, children's access to their parents may be affected by the decisions of either or both courts and the lack of coordination between the two. In particular, criminal court orders of protection pertaining to children sometimes ban

children from seeing their parents for 5, 10 or more years and can do significant harm. Since family dynamics, children's development, parent-child attachment, or trauma treatment is generally not the focus of criminal courts, orders of protection risk harming children further and should be under the jurisdiction of the Family Court.

Incarceration and Visiting

The debate about whether it is “good for children” to visit jails or prisons has existed as long as correctional facilities have allowed visiting. Once thought of as a privilege to be earned by the parent or a reward for good behavior, research now supports **visiting is a child's right**—in most cases essential for children's adjustment to their parents' incarceration and to contribute towards their positive outcomes. While the debate continues, most experts agree visits reassure children that their parents are safe, relieve them of any blame they may be placing on themselves, maintain and strengthen the parent-child bond, provide opportunities for children to connect with positive qualities in their parents and by extension, within themselves, and allow parents to take responsibility for their actions and help their children make sense of the world around them. Sometimes an assessment of the jail or prison environment (as unhealthy or dangerous) and the process of getting to the visiting room (as lengthy or unpleasant) can be mistaken for an assessment of the quality of the parent-child interaction; efforts to distinguish what is being assessed are needed to ensure that children who want to see their parent are able to do so. There are situations where children may not wish to visit their incarcerated parent or even where it would be traumatic for a child to do so; children's feelings about visiting should always be considered and listened to, and visiting and contact re-assessed over time.

In the U.S., visiting jails (local facilities which hold pre-sentence detainees or those who have been sentenced to one year or less) is often more difficult than visiting prisons (where parents have been sentenced to more than one year). Although the number of children visiting parents in prisons and jails in the U.S. has increased over the past decade, a 2010 federal report noted that more than half of parents in state prisons reported having received no personal visits from their children since their admission.²¹ Many correctional facilities across the U.S. only allow non-contact visits, which can be traumatic and deterrent for child-parent visits. Non-contact visits violate Right #5 of the *Children's Bill of Rights* which asserts, “I have a right to see, speak with, and touch my parent.”

Other factors can also discourage visiting such as distance, cost, scheduling, and harsh visiting policies that change and are inconsistent across facilities and treat visitors as criminals “by association.” Despite the reality of these barriers, it should be the child's desire and right to visit a parent that determines whether visits happen and how frequently; logistical and systemic barriers should not serve to sacrifice the critical child-parent relationship.

Conclusion

There are more issues to be covered when discussing the rights of children whose parents are incarcerated. In addition to the challenges and needs, and the current violations of children's rights occurring in the U.S. and around the world, there are also promising, effective programs, examples of interagency collaboration and legislation, as well as criminal justice and children's service professionals who are active and successful partners in safeguarding the rights of these children. We hope the issues presented here will contribute towards greater justice for these children and we respectfully refer to Osborne's recently released report, *A Call to Action: Safeguarding New York's Children of Incarcerated Parents* available at www.osborneny.org, for a more comprehensive discussion.

¹The Osborne Association provides direct services to individuals involved in the criminal justice system and their children and families, and advocates for a criminal justice system which respects the dignity of all people and honors individuals' capacity to change. Founded in 1931, Osborne has been focusing its efforts on the rights of children of incarcerated parents in particular since it launched the NY Initiative for Children of Incarcerated Parents in 2006. The Committee for Hispanic Children and Families, Inc. (CHCF) was founded by its current President Elba Montalvo in 1982 and focuses on combining education and advocacy to expand opportunities for children and families and strengthen the voice of the Latino community. CHCF has consultative status in the Economic and Social Council of the UN.

² The NY Initiative for Children of Incarcerated Parents consists of over 40 local and state government agencies and community organizations. Our statewide Summit held in November 2010 brought together more than 240 individuals and over 100 agencies and organizations.

³ ABC News. "U.S. Prison Population Hits All-Time High: 2.3. Million". News Release, 6, June 2008.

⁴ The Pew Charitable Trusts: Pew Center on the States. (2010). *Collateral Costs: Incarceration's Effect on Economic Mobility*. Washington, DC: Author.

⁵ Ibid.

⁶ The Pew Charitable Trusts: Pew Center on the States. (2010).

⁷ Children's Defense Fund. (2008). Cradle to Prison Pipeline Campaign Fact Sheet. Washington, D.C.: Author.

⁸ The Osborne Association. (2010) New York Initiative for Children of Incarcerated Parents Fact Sheet. Brooklyn, NY: Author.

⁹ Phillips, S. D., Erkanlia, A., Keeler, G. P., Costellow, E.J. & Angold, A. (2006). Disentangling the Risks: Parent Criminal Justice Involvement and Children's Exposure to Family Risks. *Criminology and Public Policy*, 5, 677-702

¹⁰ Ibid.

¹¹ Middlebrooks, J.S. & Audage, N.C. (2008). *The effects of childhood stress on health across the lifespan*. Atlanta, GA: Centers for Disease Control and Prevention, National Center for Injury Prevention and Control.

¹² Bates, R., Lawrence-Wills, S., & Hairston, C. (2003). *Children and families of incarcerated parents: A view from the ground*. Jane Addams Center for Social Policy and Research, Jane Addams College of Social Work.

¹³ Phillips, S.D. & Gleeson, J.P. (2007). *What We Know Now that We Didn't Know Then about the Criminal Justice System's Involvement in Families with whom Child Welfare Agencies Have Contact*. Center for Social Policy and Research, Jane Adams College of Social Work. Chicago, IL: University of Illinois at Chicago.

¹⁴ The eight rights (available at www.sfcipp.org) are expressed from a child's point of view and include the following rights:

- 1) To be kept safe and informed at the time of my parent's arrest;
- 2) To be heard when decisions are made about me;
- 3) To be considered when decisions are made about my parent;
- 4) To be well-cared for in my parent's absence;
- 5) To speak with, see and touch my parent;
- 6) To support as I face my parent's incarceration;
- 7) To not be judged, blamed or labeled because my parent is incarcerated;
- 8) To a lifelong relationship with my parent.

¹⁵ See Johnston, D. (1995), Parke & Stewart-Clarke (2004), and Naudeau, S. (2010). Cited in *Children of Incarcerated Parents: Theoretical, Developmental, and Clinical Issues*. (Eds. Harris, Y.R., Graham, J.A., Carpenter, G.J.O, 2010).

¹⁶ Phillips, S. D. (1998). Programming for children of female offenders. Proceedings from *4th National Head Start Research Conference*. Washington, DC [cited in report to the Oregon Legislature on Senate Bill 133 (p.2). December 2002

¹⁷ Phillips, S. D., & Zhao J. (2010). The relationship between witnessing arrests and elevated symptoms of posttraumatic stress. *Children and Youth Services Review*, 32 (10), 1246-1254.

¹⁸ New Mexico, San Francisco, California, and New Haven, Connecticut are among the jurisdictions implementing child-sensitive arrest protocols.

¹⁹ Osofsky, J.D. (2004), *Young Children and Trauma: Treatment and Intervention*. New York, NY: Guilford Press.

²⁰ See Krupat, T, Gaynes, E. & Lincroft, Y. (2011) *A Call to Action: Safeguarding New York's Children of Incarcerated Parents*. New York Initiative for Children of Incarcerated Parents, The Osborne Association, 23-28.

²¹ Glaze, L., & Maruschak, L. (2010). *Bureau of Justice Statistics: Parents in prison and their children*. Washington, D.C.: U.S. Department of Justice.