

## **Dual Punishment: Incarcerated Mothers and Their Children**

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*Children with incarcerated parents are among the most at-risk populations in the United States. The recent trend toward mass incarceration in the United States, especially of women, has harmful implications for children because often their primary caregiver becomes incarcerated. Research indicates that children with incarcerated mothers are at heightened risk for attachment disturbance, leading to depression, anxiety, and other trauma-related stress. Such children are often subject to frequent changing of caregivers within the foster care system, which exacerbates these problems. Child welfare legislation is becoming more sensitive to the needs of children of incarcerated parents, but less reliance on prisons and more alternatives to incarceration are needed in order to mitigate the harmful impact of maternal incarceration on children. This review will focus on the following: (1) a history of the mass incarceration of women; (2) emotional, psychological, and social risk factors for the children of incarcerated women; (3) the intended and unintended repercussions of child welfare legislation; and (4) a case study of an alternative to incarceration program.*

There are currently 2.3 million people incarcerated in the United States, a number that has more than doubled since the 1980s (Bureau of Justice Statistics, 2011; Glaze, 2011). The trend toward mass incarceration inflicts irreparable damage on families and communities (Richie, 2002). Of the innumerable problems associated with mass incarceration, one of the most serious, and often ignored, repercussions is the lifelong harm inflicted upon a child with an incarcerated mother.

Children of incarcerated parents are often referred to as “hidden victims,” because they bear the heavy burden of a crime they did not commit (Miller, 2006). As a result of increasing jail and prison populations, at least 2.4 million children in the U.S.

have one or both parents in a correctional facility (Boudin & Zeller-Berkman, 2010). Nearly 75% of women in correctional facilities were the primary, and sometimes sole, caretakers of their children prior to their arrest, which often led to their children's entrance into the foster care system (Margolies & Kraft-Stolar, 2006). These children are put at risk for lifelong attachment difficulties, which may lead to the externalization of negative behaviors (Bowlby, 1980; Bowlby, Ainsworth, Boston, & Rosenbluth, 1956; Shalfer & Poehlmann, 2010). The following is an overview of the rise in female incarceration over the past three decades. A discussion of the traumatic implications of maternal incarceration on children will further explain the saliency of this trend. Additionally, changes in child welfare legislation will be reviewed and a case example of an alternative to incarceration program will be presented.

### **A Brief History of Mass Incarceration**

The number of incarcerated women in the U.S. more than doubled during the 1990s, and the number of incarcerated women with children increased by 87% during that time (Chesney-Lind, 2002; Travis & Waul, 2003). This major increase occurred alongside New York's Rockefeller drug laws, which were the bedrock that established the criminalization of drug addiction. The Rockefeller drug laws were enacted in 1973, initiating mandatory sentences for the possession and/or sales of illicit drugs. Under the Rockefeller laws, a person convicted of the possession of 4 ounces or the sale of 2 ounces of narcotics receives a mandatory sentence of 15 years-to-life in prison (Gray, 2009; Schlosser, 1998). Despite the repeal of the Rockefeller drug laws' mandatory sentences in April 2009, these laws still serve as the catalyst for mass incarceration by criminalizing addiction rather than treating it as a public health concern (Chesney-Lind, 2002; Schlosser, 1998).

Black and Hispanic communities are disproportionately affected by mass incarceration; staggeringly, 36 out of 1,000 Black women and 15 out of 1,000 Hispanic women will be incarcerated at some point in their lifetime, whereas only 5 out of 1,000 White women ever serve time in a correctional facility

(Richie, 2002). This puts Black and Hispanic children at a heightened risk for extended separation from their mothers (Richie, 2002).

### **Incarcerating Women by the Masses**

Shortly before the turn of the 21st century, the number of incarcerated women in the U.S. soared from 12,000 to over 90,000 in less than 20 years (Chesney-Lind, 2002). In response to the rapid increase of women sentenced for criminal charges, the number of female-only correctional facilities in the U.S. grew from 34 before 1980, to over 104 facilities by the mid-1990s (Chesney-Lind, 2002). Rising rates of incarceration appear to imply that women are committing significantly more crimes today than they were 30 years ago. However, between 1990 and 1999, the total number of arrests of adult women, which could be interpreted as a measure of women's criminal activity, increased by only 14.5%, while the number of women in prison increased by 105.8%. (Chesney-Lind, 2002). Less than half of all incarcerated women have been convicted of a violent offense, indicating that many of these incarcerated women were serving time under mandatory sentences for drug-related crimes (Chesney-Lind, 2002). The recent rise in the incarceration of women creates unprecedented instability within families and communities by inflicting punishment rather than promoting justice (Chesney-Lind, 2002; Richie, 2002).

### **Traumatic Impact on Children of Incarcerated Mothers**

The escalation in maternal incarceration over the past three decades poses significant risk for incarcerated women's children, who arguably suffer more long-term effects of the incarceration than their mothers do (Myrna, 2006). As previously noted, 75% of women were the primary caregiver of at least one child before their incarceration (Margolies & Kraft-Stolar, 2006). There are numerous mitigating and facilitating factors that influence the degree of the traumatic effect on children, such as a child's age at the time of maternal incarceration. However, it is clear that mass incarceration places the children of incarcerated

parents, especially children with incarcerated mothers, as one of the largest at-risk populations in the U.S. (Mumola, 2000).

Attachment theory provides a deeper understanding of the profound impact that caregiver separation has on both the immediate and lifetime behavior of infants and young children, including children's ability to develop future healthy relationships (Bowlby, 1980; Bowlby et al., 1956; Shlafer & Poehlmann, 2010). Bowlby et al. (1956) explain that young children who are deprived of maternal care and affection not only experience temporary trauma, but also may suffer long-term effects. Externalized negative behavior, which results from insecure caregiver attachment, can negatively affect peer relationships, lower self-esteem, and even hinder children's ability to exhibit empathy toward others (Bretherton & Munholland, 2008; Shlafer & Poehlmann, 2010).

There are many organizations that support children with incarcerated parents. In discussing the impact of incarcerated mothers on their children, Tanya Krupat, the Program Director of the New York Initiative for Children of Incarcerated Parents at the Osborne Association, posits that the prevailing societal assumption that incarcerated mothers are a negative influence on their children is inconsistent with, and unreflective of, an incarcerated woman's actual role in the lives of her children, which may have been very positive. As such, most criminal charges and sentences do not accurately account for a woman's role as a mother, and are not indicative of how well a mother parents (personal communication, November 29, 2011; Hairston, 2003).

Krupat acknowledges that the traumatic loss experienced by children separated from a parent due to incarceration is marked with feelings of social stigma and shame that surround the parent's incarceration, distinguishing it from other forms of parental loss (personal communication, November 29, 2011). The internalization of this stigma and shame heightens children's risk of insecure attachment, which increases the possibility of long-term negative outcomes (Shlafer & Poehlmann, 2010). The social stigma and shame associated with parental incarceration can have a profound impact on a child's sense of self and can ultimately cause lasting emotional hardship (Shlafer & Poehlmann, 2010),

such as “elevated levels of anxiety, fear, loneliness, anger, and depression” (Margolies & Kraft-Stolar, 2006, p. 9).

Children whose primary caregiver becomes incarcerated are also at an increased risk of antisocial and delinquent behavior as a result of the sudden change in caregiver and overall home environment (Graham, Harris, & Carpenter, 2010). Kampfner (1995) conducted an assessment of children with incarcerated parents to examine the impact of the separation on a child’s acute stress reactions. Approximately 75% of the children with an incarcerated parent were identified to have trauma-related stress (Kampfner, 1995; Miller, 2006). Similarly, Krupat observed that the removal of, or change in, the primary caregiver makes children—particularly infants and young children—vulnerable to insecure attachment and ultimately the inability to attach if no stable caretaker steps into the role of consistent and responsive primary caregiver (personal communication, November 29, 2011).

### **Foster Care: A Safe Haven?**

Foster care is not inevitable for children with incarcerated mothers, but it is often the only viable option. Approximately 68% of incarcerated mothers in state prison have children who are cared for by grandparents or other relatives (Glaze & Maruschak, 2010). Some of these children have plans to return to their mother’s care after her release (Miller, 2006). This can be the most reasonable and least disruptive option for children. Kinship foster care is an arrangement in which a child’s relative assumes the role as caregiver as a foster parent when a child is placed in custody of the state. Kinship foster care can be a positive alternative to living with one’s mother, but not every child has a family member willing or able to take on this responsibility. A relative with a criminal history or past involvement with the child welfare system is likely to not be approved as a kinship foster caregiver. If a kinship foster care placement is not secured, then a child must be placed in a nonfamilial foster care arrangement. Eleven percent of incarcerated mothers in state prison have children in a foster care home or agency, compared to only 2.9% of incarcerated men who report a their child’s caretaker as a foster care home or agency

(Glaze & Maruschak, 2010). Incarcerated mothers with children in the foster care system face numerous barriers to exercising their parental rights from the correctional facility and often struggle to maintain strong ties with their children (Bedell & Boudin, 1993).

Subjection to numerous foster care placements is common yet problematic for children with an incarcerated parent, placing children at greater risk for the aforementioned externalized negative behaviors (Shlafer & Poehlmann, 2010). Attachment theory research demonstrates the detrimental psychological outcomes of movement from one caregiver to another within the foster care system, which is the unfortunate reality for many children whose primary caregiver becomes incarcerated (Shlafer & Poehlmann, 2010).

### **Problems & Progress: Child Welfare Legislation**

While child welfare laws may be well-intentioned, many are not framed in a way that protects children with incarcerated mothers (Christian, 2009). Unfortunately, and ironically, while these laws aim to protect children, there are often unintended negative consequences. The Adoption and Safe Families Act of 1997 (ASFA) is an example of one such law. ASFA is one of the most problematic pieces of federal legislation facing families with an incarcerated parent. In an effort to secure a permanent residence for children to prevent multiple foster care placements, ASFA allows for parental rights to be terminated if a child resides in foster care for 15 of the most recent 22 months (Christian, 2009; Margolies & Kraft-Stolar, 2006; Miller, 2006). ASFA proves to be problematic for incarcerated parents because a typical sentence for an incarcerated parent is between 80 and 100 months, meaning that ASFA could lawfully terminate parental rights during a parent's incarceration even if the parent is completely capable of caring for her/ his child after release (Christian, 2009). Margolies and Kraft-Stolar (2006) provide a striking example of ASFA's impact on families: "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” (p.17). Children have been deeply affected by the unforgiving combination of strict sentencing and ASFA regulations on the termination of parental rights.

Through committed efforts by service providers and child advocates, several states have passed amendments to ASFA in order to protect the parental rights of incarcerated parents. In June 2010, New York State passed an amendment to ASFA providing foster care agencies discretion to delay parental rights termination on a case-by-case basis if a child’s primary caregiver is incarcerated (The Correctional Association of New York, 2010). Under this amendment, foster care caseworkers are not mandated to file a termination of parental rights petition in the Family Court if they can demonstrate that the continuation of the parent-child relationship is in the best interest of the child (Christian, 2009).

Colorado and California have passed ASFA amendments similar to New York’s, and a handful of other states have drafted their own caveats in order to protect children of incarcerated parents. However, some states, such as North Carolina and Pennsylvania, have not passed any legislation regarding the rights of incarcerated parents, leaving many children still vulnerable to their mother legally losing custody during her incarceration on the grounds of “permanent neglect” (Christian, 2009, p.10). Amending ASFA at the federal level would alleviate the need for state-by-state amendments; either way, amending ASFA is a necessary step toward maintaining family ties during maternal incarceration. However, more alternatives are needed to keep children out of the foster care system altogether, as demonstrated by their heightened risk of delinquent behavior, insecure attachment, anti-social behaviors, anxiety, depression, and other trauma-related stress resulting from caregiver separation and, specifically, foster care placement (Bedell & Boudin, 1993; Graham et al., 2010; Kampfer, 1995; Margolies & Kraft-Stolar, 2006; Miller, 2006; Schlafer & Poehlmann, 2010).

### **Keeping Families Together: Exploring Alternatives to Incarceration**

A basic understanding of the risk factors associated with maternal incarceration demands the development and implementation of more alternatives to incarceration (ATIs). The need for ATIs still far exceeds the options currently available. ATIs create an effective way to combat the detrimental impact of maternal incarceration on children, while remaining accountable to the court system, and treating the root causes of criminal activity, such as drug addiction (Chesney-Lind, 2002).

### ***ATI Case Study: Drew House***

A small pilot project of the office of the Brooklyn District Attorney was designed for the specific purpose of not sending mothers to jail or prison so that they can stay with their children. The women and their children who participate in this project live in their own apartment at Drew House in Brownsville, New York. Women in the program fulfill their court mandates, are supervised by Treatment Alternatives for Safe Communities, and live in a private apartment with their children. Without this program, their children would have been placed in foster care upon their mother's incarceration. Women qualify for the program at Drew House if they are homeless, have custody of dependent children, suffer from mental illness or substance abuse, are not currently taking illicit drugs, and have been charged with a felony. The program supplies a safe and therapeutic environment for women and their children, while providing financial security, housing stability and most importantly, avoiding the traumatic impact of maternal separation on children.

A house manager lives on site to oversee the program, while family therapists and employment specialists regularly work with participating families. This program is a more intensive treatment model, however it is cost-effective; to house a mother and two children for a year, it costs \$34,000, compared with \$129,000 for both incarceration and foster care. (Robbins, 2011). Successful completion of this ATI program takes approximately 18 months and subsequently dismisses the felony offense, keeps the family together, and avoids the damaging and irreversi-



ble affects of removing mothers from their children (Drew House, n.d.).

## **Conclusion**

As demonstrated in this analysis, a severely detrimental consequence of female incarceration is the removal of mothers from their children. Mandated sentencing for drug-related crimes over the past 30 years, in conjunction with problematic child welfare legislation, creates a two-fold dilemma for women. They are not only incarcerated, but potentially face termination of their parental rights. The current functioning of the child welfare and criminal justice systems places children at risk of severed relationships and considerable negative outcomes. Research demonstrates that caretaker instability increases children's risk of experiencing the traumatic effects of insecure attachment, such as depression, anxiety, suicidal ideation, other trauma-related stress, and the externalization of negative behaviors.

ATI programs that keep families together, such as Drew House, treat the complex issues of mental illness and substance abuse, while also protecting children from the traumatic impact of maternal separation. If the U.S. reduces its reliance on prisons and begins offering more community-based programs, both women and their children will have greater protection from the damaging impact of incarceration. A movement toward more ATI programming has begun, but it is still far from resolving the widespread problem of maternal incarceration. Children do not deserve to suffer for a crime they did not commit, and by keeping families together, children will be protected from the lasting detrimental impact of separation from their mothers through incarceration.

## **Author's Note**

I wrote this paper in response to my experiences working with incarcerated mothers with the Osborne Association on Rikers Island. "The Osborne Association offers opportunities for individuals who have been in conflict with the law to transform their lives through innovative, effective, and replicable programs

that serve the community by reducing crime and its human and economic costs... [offering] opportunities for reform and rehabilitation through public education, advocacy, and alternatives to incarceration that respect the dignity of people and honor their capacity to change” (The Osborne Association, 2010). Prior to beginning the field placement, I was naive to the pervasive issues facing women in the criminal justice system. Throughout the fall of 2011, I co-facilitated a parenting class for incarcerated mothers with the Osborne Association and coordinated a visiting day for the women’s children and families. These experiences broadened my understanding about the hardships of parental incarceration and ultimately increased my desire to advocate for women and families adversely affected by the criminal justice system.

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