

## Chapter 8

# The Right to a Family Environment for Children of Prisoners

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As the “natural environment for the growth and well-being” of children (Convention on the Rights of the Child, 1989, preamble), the family has long enjoyed special protection within international human rights law (e.g. [International Covenant on Civil and Political Rights, 1976](#), art. 23 & 24; [International Covenant on Economic, Social, and Cultural Rights, 1976](#), art. 10; Universal Declaration of Human Rights, 1948). However, the concept of the *family environment* as the optimal setting for the development of children first appears in the Convention on the Rights of the Child (1989). The Convention recognizes that the “child ...should grow up in a family environment, in an atmosphere of happiness, love and understanding” (preamble). To achieve this objective, the Convention directs governments to provide “necessary protection and assistance” to families so that they can fully assume their responsibilities within the community (preamble). These responsibilities include preparing children to be full participants in society.

The use of the phrase *family environment* is particularly important to children who are separated from their parents often for reasons beyond their control. In too many situations, children are separated from their parents, either temporarily or permanently, with little, if any, input about where they live and whether they will have contact with their parents (Bernstein, 2005; Braman, 2004; Seymour, 1998). They may be placed in settings away from their siblings and other relatives. If they remain with relatives, it may be with little ongoing emotional and financial support.

This chapter examines the application of the right to a family environment to a rapidly growing population of children who face such circumstances: the children of incarcerated parents. Although the chapter focuses on children with parents in jail or prison, many other children face similar challenges because their parents are detained for violations of immigration law. In addition, many children have parents who are in the criminal justice system but who are living in the community (e.g. probation, parole, community supervision). Depending on the circumstances, these

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children may face challenges similar to children of prisoners, including periods of involuntary separation.

## The War on Drugs: Casting a Wide Net

Nearly 40 years ago, the USA declared a war on drugs and adopted a policy of imprisonment as a means of protecting the public safety. In 1970, 196,429 persons were in state and federal prisons. By February 2008, however, one in 100 American adults (Pew Center on the States, 2008) – more than 2.3 million people – were behind bars. More than five million others are on probation or parole. Hence, more than seven million adults are under some form of correctional control in the USA (Pew Center on the States, 2009). This gives the USA the dubious distinction of being the global leader in the rate of incarceration, far outpacing nations like China, Russia, and Iran. China, which has a much larger population than the USA, still incarcerates only 1.5 million. Russia has the next highest rate of incarceration in the world at 890,000 inmates (Pew Center on the States, 2008).

The policy to incarcerate was premised on the assumption that crime would be reduced if dangerous and violent criminals were taken off the streets. By the mid-to-late 1980s, however, the jails and prisons were full of people who had committed nonviolent drug and drug-related offenses. Commentators disagree about the impact of incarceration on lowering crime rates. If there has been a positive impact, however, it has been small (JFA Institute, 2007). In some communities, crime has decreased, in others it has remained stagnant, and in still others, crime has increased.

The use of incarceration as a means of controlling crime and enhancing public safety has become a massive public health problem. Aside from capturing low-level offenders who might more productively serve their time in the community, mass incarceration has had significant adverse outcomes for the families of offenders. Quite simply, the use of incarceration has restructured family relationships across generations, reshaped communities, destroyed friendships, and reduced material and emotional resources to masses of children whose relationships with their parents have become the *collateral damage* of this policy.

In the USA, criminal justice policies are individually-focused, thus any adverse impacts on the loved ones of offenders, including their children, have generally not been considered relevant. As a result, the growing imprisonment of parents has created a level of vulnerability and deprivation for their children by effectively excluding them from material and social resources. The loss of a parent to incarceration and the associated stigma often diminishes social capital for children of prisoners (Hagan & Dinovitzer, 1999).

Both men and women have been adversely affected by the policy to incarcerate. In some neighborhoods, men simply are gone. Washington, DC, is a case in point. A 3-year ethnographic of male incarceration in the District of Columbia at the turn of the century revealed that the use of incarceration had been as harmful, and sometimes more harmful, to families of the incarcerated as to the prisoners themselves

(Braman, 2002). If then-prevailing policies were continued, 75% of African American men living in Washington at the time could expect to be incarcerated at some point in their lives (Braman, 2002).

The impact of corrections policies on women was also not fully considered (Chesney-Lind, 2002). In the 30-year period beginning in 1977, the number of female prisoners in state or federal prisons increased 816% from 12,279 to 112,498. By December 2008, more than 214,000 women were held in jails and prisons in the USA (Sabol, West, & Cooper, 2009; Minton & Sabol, 2009). Many others were on probation or parole. Although women are still a much smaller segment of the overall criminal justice population than are men, the rate of incarceration is growing faster among women.

This unprecedented increase in the confinement of women can be tied directly to the War on Drugs and related sentencing reforms. Drug and drug-related offenses (e.g. forgery, prostitution, fraud, shoplifting, and stealing) comprise the vast majority of crimes for which women have been incarcerated. Unlike their male counterparts, women are more likely to be minimally involved in the drug trade, if at all (Frost, Greene, & Pranis, 2006). More often, they are supporting their own drug habit or living with partners engaged in the drug trade. Their peripheral role often has meant that they have had less leverage in plea bargaining than their male counterparts (Kimbrough-Melton & Koons-Witt, *in press*).

The majority of incarcerated men and women are parents. Approximately 75% of women and 65% of men in state prisons nationwide report being parents (Schirmer, Nellis, & Mauer, 2009) and their numbers have been increasing. Using data collected from inmates, Mumola (2000) reported that the number of children with a mother in prison nearly doubled from 1991 to 1999, while the number of children with a father in prison increased by 58% during the same period.

The incarceration of parents – both mothers and fathers – often is detrimental to children. Because mothers are more likely than fathers to be caring for children at the time of their arrest and incarceration, children are more likely to be directly affected by maternal incarceration in their daily life. Therefore, the dramatic increase in maternal incarceration in the twenty-first century (122% from 1991 to 2007) and the possibility of adverse outcomes for their children have generated increased attention by state and federal policymakers alike.

## **Children with Incarcerated Parents: A Large and Diverse Population**

### ***Prevalence***

Because no single agency documents the number of children affected by parental incarceration, the best estimates of the impact of incarceration on American children comes from inmates' self-report during their orientation to prison. On average,

mothers in state prison report that they have 2.4 children and fathers report that they have 2 children. Accordingly, more than two million children were estimated to have a parent in prison in 2008 (LaVigne, Davies, & Brazzel, 2008). When probation and parole are also considered, the figure jumps to as many as ten million – one in seven American children (Glaze & Bonczar, 2009). To put this statistic into context, in 2007, England and Wales identified 140,000 children of prisoners, and Scotland reported 13,500 (Marshall, 2008).

Children affected by parental incarceration tend to be young, poor, and black or Hispanic (Mumola, 2000). The average age of children in Mumola's study was 8, with 58% under age 10 and 22% under age 5. As of July 2007, African American and Hispanic children were, respectively, 7.5 and 2.5 times more likely than White children to have a parent in prison (Glaze & Maruschak, 2008).

### ***The Impact of Incarceration on the Well-Being of Children***

Children of prisoners may be one of the most at-risk populations of children in the USA today. The scarcity of research about the impact of parental incarceration on them has prompted concern among service providers, government officials, and academics alike. Moreover, little is known about the interaction of parent incarceration with a host of other factors (e.g. poverty, academic problems, parent mental health and substance abuse problems, chaotic lifestyles, and ongoing involvement in criminal activity) that often are present in the lives of these children. Very few studies – most using small samples – document the experiences of children from their own point of view. Research has primarily focused on the problems of children of prisoners without considering their entire lives (Johnston, 1995). Nonetheless, the evidence is sufficient to conclude that most children experience parental incarceration as a challenging and potentially traumatic event (Hairston, 2007). The majority of children of incarcerated parents display problems related to parent–child separation, long-term traumatic stress, and inadequate quality of care (Johnston, 1995).

#### **Parent–Child Separation**

The degree to which separation as a result of parental incarceration is significantly different from other forms of parent–child separation is not yet well understood. As in cases of divorce, parental separation because of incarceration may initiate a series of dramatic changes in the lives of children: moving to a new neighborhood, changing schools, substantially lowered standard of living, loss of contact with the absent parent, and decline in parental well-being and mental health (Dunn, 2004; Hetherington & Clingempeel, 1992). Maternal incarceration has been shown to be especially disruptive of the everyday lives of children (LaVigne et al., 2008). Children experiencing maternal incarceration are more likely than those with a father incarcerated to be removed from their home and placed with relatives, usually grandparents, or with

foster parents (Hagan & Dinovitzer, 1999; LaVigne et al.). In her study of the relationships of children of incarcerated mothers, Poehlmann (2005) found that the majority of the children (60%) had lived with one caregiver since the incarceration of their mother but 40% had lived with at least two caregivers. Of the 40%, 30% had changed caregivers four or more times since the incarceration of their mother.

Children of prisoners are more likely than other children in general to experience accumulated risk, including poverty, single-parent home, low maternal education, parental mental illness, substance abuse, and large family size (Dallaire, 2007; James & Glaze, 2006; Murray & Farrington, 2005). Although parent incarceration per se does not necessarily contribute to adverse outcomes for children of prisoners (DeHart & Altshuler, 2009), the continuing severe stress that many families experience increases the likelihood of problems.

Other factors that may be unique to children of prisoners can also exacerbate the negative impact of separation. For example, because children of prisoners often live with relatives, especially if their mother is incarcerated, siblings sometimes have to be separated among relatives (Hagan & Dinovitzer, 1999; Johnston, 1995). Moreover, children with mothers incarcerated are more likely to experience permanent separation because of the time limits that were established by the Adoption and Safe Families Act of (1997) for the initiation of termination of parental rights. From 1997 to 2002, terminations of parental rights involving parental incarceration increased by approximately 250% (Genty, 2003). Finally, the separation of children from their parents because of parental incarceration is often exacerbated by the “social, community and institutional stigma” (Hairston, 2007, p. 2) associated with incarceration.

### **Long-Term Traumatic Stress**

Aside from the day-to-day life challenges facing many children of prisoners, the initial experience of losing a parent or parents often is traumatic. In general, children with incarcerated parents react to separation from their parent in much the same way as any other child. Most often, they experience crying, sadness, and/or repeatedly calling for and looking for mothers (Poehlmann, 2005). They may also experience confusion (52%), anger (40%), sleep problems (32%), and developmental regression (22%) (Poehlmann, 2005). Younger children often do not have the developmental skills to cope with the loss of a parent, and older children may feel the need to hide the incarceration because of stigma. Other studies have relied on parental reports of children’s behavior and direct contact with children of prisoners to document a variety of negative outcomes, including behavioral problems, school-related difficulties, depression, low self-esteem, aggressive behavior, and general emotional dysfunction (Hagan & Dinovitzer, 1999). Some children who visited their mothers in prison showed signs of posttraumatic stress disorder, including depression, feelings of anger and guilt, flashbacks about their mothers’ crimes or arrests, and experiences with hearing their mother’s voices (Kampfner, 1995).

The criminal justice system itself is a source of traumatic events for children. Witnessing the arrest of a parent or returning home from school to an empty house

when a parent is arrested during school hours can exacerbate emotional and behavioral problems. The arrest of a parent is one of the only situations in which parent–child separation occurs without regard given to the circumstances of the child, or for that matter, the existence of a child. Stories abound of children who come home from school to find their parents absent and who fend for themselves until discovered by a neighbor or other adult and reported. Kampfner (1995) found that children of incarcerated mothers were more likely to report long-term recall of the trauma of separation from their mothers than were children from similar high risk backgrounds but without maternal incarceration.

Although many children with parents incarcerated experience adverse outcomes, not all do. Some appear to be resilient in the face of terribly difficult experiences. The degree to which children experience difficulties is related to their age at the time of the incarceration, the gender of the parent removed from the home, and the level of ongoing support the children receive after the parent's incarceration. In her research on attachment relationships in children with incarcerated mothers, Poehlmann (2005) found that children were more likely to have secure relationships when the children lived in stable caregiving arrangements, when they reacted to the incarceration of their mother with sadness rather than anger, and when they were older.

### **Inadequate Quality of Care**

Children separated from their parents because of incarceration are more likely than children separated from their parents for other reasons to experience diminished quality of care in their care giving arrangements. In a study of youth from 11 rural counties in North Carolina, Phillips, Erkanli, Keeler, Costello, and Angold (2006) determined that children who had parents incarcerated were 130% more likely than children in the general population to experience family instability. Similarly, children who had parents involved with the criminal justice system but not incarcerated were 80% more likely than children in the general population to experience family instability (Phillips et al., 2006).

Moreover, Phillips et al. (2006) found that children who had incarcerated parents or parent figures were 80% more likely to live in households characterized by economic strain. If fathers were living with their minor children at the time of their imprisonment, the financial well-being of the family may decline significantly if the father was the primary breadwinner.

Regardless of which parent is incarcerated, a child's quality of care may not improve significantly on release of the parent. Aside from the usual challenges (e.g. accessing employment, housing, treatment) facing inmates on reentry, restrictions on the provision of services to drug offenders make it even more difficult for reentering offenders to find the support necessary to do well. Effects on children may last far beyond their parent's imprisonment (Hagan & Donovitzer, 1999).

## A Children's Bill of Rights

Growing concern over the potential vulnerability of children with incarcerated parents and the lack of attention to them led a coalition of advocates, social service providers, governmental representatives, and others who work with these children to develop a set of "rights" to protect them when their parents are arrested or incarcerated (San Francisco Children of Incarcerated Parents Partnership, 2005). Time and time again, the coalition witnessed the devastation to children of prisoners when their very existence, much less their needs or interests, was not acknowledged by law enforcement, the courts, and correctional agencies.

As the Coalition noted,

They have...committed no crime, but the penalty they are required to pay is steep. They forfeit, in too many cases, virtually everything that matters to them: their home, their safety, their public status and private self-image, their source of comfort and affection. Their lives and prospects are profoundly affected by the numerous institutions that lay claim to their parents – police, courts, jails and prisons, probation and parole – but they have no rights, explicit or implicit, within any of these jurisdictions (San Francisco Children of Incarcerated Parents Partnership, 2005, p. 5).

In the words of children of prisoners, they should have the right to:

1. Be kept safe and informed at the time of my parent's arrest.
2. Be heard when decisions are made about me.
3. Be considered when decisions are made about my parent.
4. Be well cared for in my parent's absence.
5. Speak with, see, and touch my parent.
6. Support as I struggle with my parent's incarceration.
7. Not be judged, blamed, or labeled because of my parent's incarceration.
8. A lifelong relationship with my parent.

Although the statement does not rise to the level of a legally recognized and enforceable claim or entitlement, recent action by the California Assembly (SCR 20, 2009) to adopt a resolution encompassing the bill of rights will ensure that the statement is distributed to children of incarcerated parents. The resolution also invites discussion by the relevant state agencies of ways to use the bill of rights as a framework for analysis and decision making about services to children.

The rights encompassed in the bill of rights are as much psychological as they are policy-and program-oriented. At the core, they require someone to do something to *acknowledge* children, to *engage* them, and to *support* them even when their interests collide with the interests of those in authority or with their incarcerated parents or caregivers. As the Coalition has noted, even if the statement of rights is recognized by the various institutions involved with their parents and taken seriously, "children of prisoners would still face a daunting array of obstacles and traumas" (San Francisco Children of Incarcerated Parents Partnership, 2005, p. 5).

## The CRC's Right to a Family Environment

The concept of a *family environment* first appears in the preamble of the Convention on the Rights of the Child (1989), where it is described as the optimal setting for the “full and harmonious development” of the child’s personality. Living in a *family environment* is equated with living in “an atmosphere of happiness, love and understanding” (preamble).

Melton (1996) has argued that the choice of the words *family environment* was inspired in part because it suggests a set of relationships that are more encompassing than the biological parents of a child. It does not diminish the fundamental role of parents in raising their children (see Convention, 1989, arts. 3, 5, 7, 9, & 10). Rather, it emphasizes “function” over “form.” Because the language starts from the child’s perspective about the relationships that are most important to him or her, family structure becomes unimportant. Thus, in situations where a child cannot live with his or her biological parents, the child still can live in a *family environment*.

Melton (1996) has argued further that the phrase *family environment* rather than *family* creates a legally enforceable right. Although it is not possible for the state to ensure that every child has a family, it is possible for governments to facilitate environments that nurture and support the child’s relationships both in the community and in the institutions. In the community, steps can be taken to engage caregivers, extended family, friends, and neighbors in the care of children. In correctional institutions, connections between parents and children are being encouraged by organizing family centers and special visiting days where parents and their children can interact in a family-like setting.

The strong preference in the Convention for family-like environments is consistent with the general approach of international human rights law that rights derive from the inherent dignity of the child or person. Like the Children’s Bill of Rights, the Convention establishes a framework for policy and programmatic change that starts from the perspective of the child. The primary difference between the Bill of Rights and the Convention’s right to a family environment is the emphasis of the former on the parent relationship and the importance of the relationship to the child even when they are separated. The Convention’s right to a family environment similarly protects the parent–child relationship by requiring governments to preserve family relationships (arts. 5 & 7). A child has the right to know and be cared for by his or her parents (art. 7) and “to maintain personal relations and direct contact with both parents” (art. 9). However, the language of the Convention is also more expansive in encompassing the extended family, community and legal guardians (see arts. 3 & 5), and recognizing their role in providing direction and guidance to the child.

Because the various articles of the Convention (1989) are read together, the Convention also is much more expansive in the obligations of governments. The duty of the government to protect the child’s right to a family environment goes beyond formal preservation of relationships to substantive entitlements that support an environment conducive to family life (Melton, 1996). Concretely, the Convention recognizes the right to “standard of living adequate for the child’s physical, mental, spiritual, moral and social development (art. 27).” This includes nutrition, clothing,



housing, and general material needs (art. 27, §3), social insurance (art. 26), maternal and child health care (art. 24), access to health services (art. 24), and support needed for the prevention of child abuse and neglect (art. 19).

The obligation of governments to provide assistance within their means to parents and caregivers (art. 27, §3) is especially important to children of prisoners. Many are living with relatives, usually grandparents, who generally receive little if any financial support for their grandchildren. Because many relatives are themselves living on limited incomes, their inability to access financial assistance increases the likelihood that children will be shuttled between caregivers or separated from siblings as a way of sharing the financial load. If relatives do access medicaid or other income support services, the incarcerated parent may have an obligation to pay back the support on their release from prison. For most parents who struggle to find employment on release from prison, paying back support is very difficult to do.

Even if children continue to live with one biological parent, the family may face significant financial challenges if the incarcerated parent was working and supporting the family at the time of arrest. The incarceration of fathers often plunges families into economic distress.

The need for support, both financial and emotional, does not cease with the release of the parent from prison. Many parents, especially mothers, resume parenting on their release from prison. Barriers in accessing public housing and income support for some prisoners, and employment for most prisoners, makes it difficult for parents to pick up where they left off.

## **Strengthening Family Environments for Children of Prisoners**

Our experience in serving children of prisoners and their families through our Building Dreams program has reinforced for us the importance of paying attention to the relationships most important to the child. Interventions for children of prisoners should strengthen the ability of their caregivers to parent while simultaneously engaging others in the community to lend support. Children of prisoners can manage trauma and stress much more effectively when they are surrounded by adults – caregivers and neighbors – who can help them cope with the crisis (Hairston, 2007). More often than not, caregivers are isolated in their parenting because of their reluctance to seek help and support. They isolate themselves for a variety of reasons. Some fear that the children will be removed from the home if they bring attention to themselves. Many find the legal process confusing and frustrating and so they are reluctant to ask basic questions about the status of their loved one. Others do not understand how the formal service system works and so they are not effective in securing services. Still others are engaged in antisocial behaviors that would place them at risk if they reached out. Finally, many do not access help because of the stigma associated with having a family member incarcerated. Our experience with Building Dreams, a program that provides support (e.g. mentoring, connections to informal networks and formal social services) to children of incarcerated parents and their caregivers, affirms that, for many families, the harsh impacts of parental

incarceration on children can be ameliorated when comprehensive, community-based support is easily accessible, provided early, and in nonjudgmental ways.

In serving children of prisoners and their families, we have embedded our work in the context of our broader community initiative – *Strong Communities for Children* – aimed at building the capacity of communities to keep kids safe (Melton, this volume; see also Melton & Holaday, 2008; Melton, 2009). The fact that Strong Communities were available to families in only a portion of the counties served by Building Dreams gave us a foundation for understanding the importance of broad-based community support. We simply have not been able to provide the level of service and support to families of the incarcerated living in counties not served by Strong Communities.

The essence of Strong Communities is the mobilization of community members to enhance the likelihood that families will have access to needed services and supports as well as to strengthen informal social support. Based on principles of respect and dignity, Strong Communities was premised on the idea that children and families should not have to become clients to access help. They should be able to get help where they are, when they need it, in a form that they can use it, with ease, and without stigma.

Strong Communities started from the premise that if residents understand the challenges facing families, they will become engaged in creating opportunities for children and their families to access the “conditions necessary for the child’s development” (Convention, 1989, art. 27, §2). Volunteers worked with us to develop an array of supportive services (e.g. family activity centers, parent–child activities, financial counseling, general family advocacy), some of which were universally available to families and others that were targeted to families with high needs. The supportive services that were developed as a part of Strong Communities – even the more intensive services – were available to families free of charge in a variety of community settings (e.g. schools, fire departments, parks, churches, family resource centers, and recreation centers).

Strong Communities was distinctive in two other ways that made it much easier for families of the incarcerated to feel comfortable about receiving help. First, the message of the Strong Communities was that every parent needs help at some time or another. Efforts to normalize the receipt of help and to create opportunities for reciprocity fostered an environment, where families in Building Dreams could open up about their circumstances without feeling stigmatized or ashamed. When families opened up, community members began to understand the challenges faced by children impacted by incarceration, and they responded compassionately to integrate these families into community life.

Second, in an effort to strengthen social connectedness within the service area, Strong Communities emphasized the development of informal networks of support. Considerable research exists to demonstrate the importance of social capital to the well-being of children (Coulton, Crampton, Irwin, Spilsbury, & Korbin, 2007; Coulton & Korbin, 2007; Freisthler & Campton, 2009). Building Dreams families benefited from informal networks in several ways. Families were the recipients of services that ranged from a new house for a family whose mobile home was

condemned, to help with mental health counseling, to respite for grandparent caregivers, and to access to health services. Other families benefited from the advocacy of community members. When a family of seven siblings, most of whom had been severely abused, were at risk of separation because the Department of Social Services did not have a home that could take all of the children, a church network stepped in to offer support so that the Department was comfortable placing the children with a relative caregiver. Still other families in Building Dreams received assistance from professionals (e.g. lawyers, financial counselors, medical personnel) who volunteered their expertise to help others.

## Conclusion

Children with parents in prison have been an under recognized and underserved population until recently. Although research on the life trajectories of these children is only beginning to emerge, concern over their well-being has led organizations throughout the USA to begin identifying strategies for providing treatment for children of prisoners with humanity. The “right to a family environment” in the Convention on the Rights of the Child provides a platform from which to begin constructing useful and appropriate support for children of prisoners. Embedding such support within the community is an effective strategy not only for the concrete support that can be generated, but also for the increased understanding and compassion that occurs when community members have an opportunity to help their neighbors. Governments can be instrumental in facilitating the development of such support.

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